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and putative class members

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

LISA MARGOLIS

vs.

ATLANTIC COAST MEDIA GROUP
LLC

and

HYDROXATONE LLC

Defendants.

CIVIL ACTION NO.:

**CLASS ACTION COMPLAINT AND
DEMAND FOR JURY TRIAL**

Plaintiff LISA MARGOLIS for herself and all others similarly situated, by her attorneys, for her class action complaint against Defendants ATLANTIC COAST MEDIA GROUP LLC and HYDROXATONE LLC, states:

NATURE OF THE CASE

This lawsuit is brought by Lisa Margolis, individually and as a putative class representative, against Atlantic Coast Media Group LLC and Hydroxatone LLC (hereinafter,

“Defendants”) regarding their fraudulent billing practices and breach of contract. Defendants sell a line of skin care products directly to consumers on television, radio, print media and over the internet. Defendants advertise that these products are tested as a free trial and that customers will only have to pay for shipping and handling in order to receive this free trial. This is a lie and a breach of the agreement, because instead of sending the customers a free trial, Defendants send customers a three-month supply of products, then bill the customer’s credit card for the entire three-month supply. In many cases, Defendants also send and bill for other products (such as vitamins) which the customer has not ordered. Defendants have done this to thousands of people across the country. This is illegal, and this lawsuit seeks to stop this practice and recover all of the money that Defendants wrongfully took from the Plaintiffs.

VENUE AND JURISDICTION

1. This court has diversity subject-matter jurisdiction over this action pursuant to 28 U.S.C. §1332(d), conferring Federal jurisdiction over class actions where, as here, “any member of a class of Plaintiffs is a citizen of a State different from any defendant” and where, as here, the aggregated amount in controversy exceeds five million dollars (\$5,000,000), exclusive of interest and costs.”

2. This court has personal jurisdiction over the parties because Plaintiff submits to the jurisdiction of this Court, and Defendants have their headquarters in this District.

3. Venue is proper in this court pursuant to 28 U.S.C. §1391 because Defendants transact business in, contract to supply services in, are found within, and have agents in this District, and caused injury or damage in this District by acts or omissions outside of this district while regularly doing and soliciting business in this district.

PARTIES

4. Lisa Margolis is an individual residing at 483 Longspur Road in Richmond Heights, Ohio.

5. Defendant Atlantic Coast Media Group is a Virginia business entity with its principle place of business at 499 Washington Boulevard 15th Floor, Jersey City, New Jersey. Defendant provides consumers with products such as skin creams, cosmetics and beauty supplies.

6. Defendant Hydroxatone LLC is a Virginia business entity with its principle place of business at 499 Washington Boulevard 15th Floor, Jersey City, New Jersey. Defendant provides consumers with products such as skin creams, cosmetics and beauty supplies.

FACTS

7. Defendants market skin care products, including moisturizing cream, directly to consumers over various media, including internet, print, television and radio advertisements.

8. Plaintiff heard Defendants' advertisement for moisturizing cream.

9. The advertisement stated that Plaintiff could receive an order of Defendants' moisturizing cream free to try it out, and that Plaintiff only needed to pay \$7.95 for shipping and handling.

10. Plaintiff called the number provided in the advertisement.

11. While on the phone, Defendants' agent attempted to sell Plaintiff other products.

12. Plaintiff declined and said she only wanted to try the package of free moisturizing cream.

13. Defendants obtained Plaintiff's credit card number and told Plaintiff that she would be billed only \$7.95 for the shipping and handling.

14. Instead of sending Plaintiff the free trial package of the cream, defendant sent MULTIPLE packages of the cream.

15. The invoice properly stated that Plaintiff was being charged \$7.95 for shipping and handling, but improperly stated that Plaintiff's total charges were "\$209.85 for the Hydrolyze Premium Beauty Program."

16. Rather than being a free trial transaction, the invoice set forth extensive charges:

"On Jan. 09, 2011 you will be charged \$69.97.

On Feb 08, 2011 you will be charged \$69.94.

On Mar 10, 2011 you will be charged \$69.94."

17. The invoice further, improperly stated that Defendant "will ship a new shipment to you every 90 days" of the cream and Plaintiff was being "billed on the same schedule," to wit, every month.

18. Defendants also shipped Plaintiff three boxes of dietary supplements which Plaintiff did not request or contract for.

19. Defendants properly charged Plaintiff \$7.95 on December 6, 2010 for shipping and handling.

20. Defendants *improperly* charged Plaintiff \$3.95 on December 6, 2010 without Plaintiff's authorization.

21. Defendants improperly charged Plaintiff's credit card on January 4, 2010 for \$33.95 and on January 10, 2011 for \$69.97.

22. Plaintiff contacted Defendants on January 12, 2011 in an attempt to obtain a refund for the overbilling, but Defendants refused.

23. Defendants then further improperly charged Plaintiff's credit card on February 7, 2011 for \$33.94, on February 9 for \$60.94 and on March 11, 2011 for \$69.94.

24. Defendants have acted in the same way toward all members of the class by obtaining customer credit card information, ostensibly for "shipping and handling only," through the pretext of a risk-free trial offer of skin product, but then issuing unauthorized billings on the credit card number provided.

CLASS ALLEGATIONS

25. Plaintiff realleges and incorporates herein all previous paragraphs of this Complaint.

26. Plaintiff brings this action on behalf of herself and for all other persons similarly situated (herein collectively referred to as "Plaintiffs" or "putative class members") who:

- a. Participated in a free trial of any product from the Defendants, for payment of only shipping and handling;
- b. Provided a credit card or debit card number, and
- c. Were billed on that card by Defendants more than shipping and handling, without subsequent written authorization to do so.

27. This class numbers over forty (40) persons and is so numerous that joinder of all members is impracticable, and it is further impracticable to bring all such persons before this Court.

28. The injuries and damages to these class members present questions of law and fact that are common to each class member, and that are common to the entire class as a whole.

Those questions include:

- *Did Defendants use common, standardized advertisements to offer free trials of products to customers?

*Did Defendants use common, standard scripts when obtaining credit card numbers from customers who contacted Defendants to participate in those free trial programs?

*Did the programs offer customers product which was represented as costing only “shipping and handling” as part of the free trial?

*Did the Defendants bill the customers’ credit cards for more than shipping and handling, and did the Defendants obtain subsequent written authorization to do so?

*Did the Defendants send more than the free trial package of product to customers in the shipment?

29. Defendants have engaged in the same conduct regarding all of the other members of the class asserted in this suit.

30. The claims, defenses, and injuries of the representative Plaintiff are typical of the claims, defenses and injuries of the entire class, and the claims, defenses and injuries of each class member are typical of those of the entire class.

31. Representative Plaintiff will fully and adequately protect and represent the entire class, and all of its putative class members.

32. The identity of all members of this class cannot be determined at this time, but will be so determined at a later time upon obtaining discovery from Defendants and others.

33. The prosecution of separate actions by each member of this class would create a substantial risk of inconsistent or varying adjudications with regard to individual members of the class that would establish incompatible standards of conduct for the Defendants.

34. The prosecution of separate actions would also create a substantial risk of adjudication with respect to individual members of the class which, as a practical matter, would be dispositive of the interest of other members not parties to the adjudication, thereby substantially impairing and impeding their ability to protect these interests. Further, the

maintenance of this suit as a class action is the superior means of disposing of the common questions which predominate herein.

FIRST CLAIM FOR RELIEF
Breach of Contract

35. Plaintiff realleges and incorporates herein all previous paragraphs of this Complaint.

36. Plaintiff and Defendants entered into a contract whereby Plaintiff agreed to pay a shipping and handling charge for a free trial of a product of Defendants.

37. Plaintiff performed all conditions required of her under the contract, or their performance was waived.

38. Plaintiff paid Defendants for the shipping and handling of the free trial product by providing a debit or credit card number.

39. Defendants breached the contract by charging Plaintiff more than shipping and handling.

40. Defendants further breached the contract by sending Plaintiff more than the free trial package of product, and billing plaintiff's card for same.

41. As a direct and proximate result of Defendants' breach of contract, Plaintiff has suffered damages.

42. Defendants have taken the same actions toward all members of the class who have likewise suffered such damages.

SECOND CLAIM FOR RELIEF
Fraud

43. Plaintiff realleges and incorporates herein all previous paragraphs of this Complaint.

44. Defendants represented to Plaintiff that the product she ordered was free and she would only be charged for shipping and handling.

45. Further, Defendants represented that plaintiff was providing a credit or debit card number for use in paying the shipping and handling of that free trial product.

46. Plaintiff relied on this representation in contracting with Defendants for a free trial of moisturizing cream and in supplying them with her credit or debit card number for use to pay the shipping and handling charges for that product.

47. This reliance was reasonable.

48. The statements made by Defendants were knowingly false.

49. Defendants' representation that Plaintiff would pay for the free trial offer and would not be charged for any additional products was made falsely, with knowledge of its falsity, or with utter disregard and recklessness as to whether this representation was true or false that knowledge of falsity may be inferred.

50. Defendants' representation that plaintiff was contacting it to obtain a free trial of skin moisturizer and was giving a credit or debit card number to be used for payment of the shipping and handling on that product was false.

51. Defendants intended that Plaintiff would rely on its representations in order to get customers' payment information (credit or debit card number) so as to charge them for products that they never requested or ordered.

52. As a direct and proximate result of Defendants' fraud, Plaintiffs have suffered damages.

53. Defendants have acted in the same way toward all members of the class and they have similarly suffered damages.

THIRD CLAIM FOR RELIEF
Unjust Enrichment

54. Plaintiff realleges and incorporates herein all previous paragraphs of this Complaint.

55. Defendants billed Plaintiff for goods or services which Plaintiff never requested or ordered.

56. Defendants retained the money which it obtained from Plaintiff through her credit card using the fraudulent scheme described above.

57. This money was collected from Plaintiff's account wrongfully, since Plaintiffs did not request or order the products and did not authorize the charges.

58. Defendants have been unjustly enriched through the receipt of revenue they otherwise would not have enjoyed.

59. As a direct and proximate result of Defendants' acts, Defendants must disgorge all such unjust revenue and return it to Plaintiffs.

60. Defendants have acted in the same way toward all members of the class and they have similarly suffered damages.

FOURTH CLAIM FOR RELIEF
Sending Unordered Consumer Products

61. Plaintiff realleges and incorporates herein all previous paragraphs of this Complaint.

62. The foregoing conduct by Defendants was taken in consumer transactions dealing with goods for personal, household, or family use, in which plaintiff and the class members were consumers and Defendants were suppliers.

63. The foregoing conduct by Defendants was sending to plaintiff and the class members product or goods which they did not order.

64. Contrary to law, Defendants engaged in this conduct and obtained money from plaintiff and the class members.

65. Plaintiff and the class members are entitled to keep without charge or cost all product sent for which Defendants do not have an order, and Plaintiff and the class members are entitled to a refund of all moneys paid to Defendants for those unordered products, with interest and such other relief as permitted by law, including the common law and statutes of all states where Defendants have engaged in this practice.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

1. For an Order determining at the earliest possible time that this matter may proceed as a class action under Fed. R. 23 and certifying this case as such;
2. For compensatory damages;
3. For punitive damages;
4. For reasonable costs and attorney fees;
5. For such other or further relief as this Honorable Court deems Plaintiff and the class entitled.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, the Plaintiff and the putative class members hereby demand a jury trial of this action in the number of 8 jurors.

Respectfully submitted,

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By _____
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Dated: July 27, 2011