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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

IFC CREDIT CORPORATION,

Defendant.

Civil No.

07C 3155

JUDGE COLE

MAGISTRATE JUDGE COLE

[PROPOSED] ORDER FOR PRELIMINARY INJUNCTION

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), has filed a Complaint against IFC Credit Corporation ("IFC") for injunctive and other relief, including rescission of contracts and restitution. The FTC's Complaint alleges that IFC has engaged in unfair and deceptive acts and practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), by: accepting and collecting on certain contracts that IFC had purchased from a now defunct reseller of telecommunications services; filing collections actions against consumers in a distant forum; and making false representations to consumers in pursuing collections. The FTC also has moved, pursuant to Fed. R. Civ. P. 65, for a preliminary injunction to address IFC's practices.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has considered the pleadings, declarations, exhibits, and memoranda of law, as well as argument of counsel for both parties, and finds as follows:

1. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58.
2. This is an action by the Commission instituted under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b). Pursuant to this section, the Commission has the authority to seek the relief contained herein.
3. The Commission's Complaint states claims upon which relief may be granted against Defendant under Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).
4. This Court has jurisdiction over the subject matter of this case and there is good reason to believe it has jurisdiction over all parties. Venue in the Northern District of Illinois is proper.
5. The acts and practices of Defendant are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
6. This Court has authority to grant a preliminary injunction and other appropriate relief pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and Rule 65 of the Federal Rules of Civil Procedure.
7. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes the issuance of preliminary relief upon a proper showing that, weighing the equities and considering the Commission's likelihood of ultimate success, this action would be in the public interest.
8. Section 5(a) of the FTC Act prohibits unfair or deceptive acts or practices in or affecting commerce. 15 U.S.C. § 45(a). An act or practice is deceptive under Section 5 if it is material and likely to mislead consumers acting reasonably under the circumstances. *FTC v. Bay Area Bus. Council, Inc.*, 423 F.3d 627, 634-35 (7th Cir. 2005); *Kraft, Inc. v. FTC*, 970 F.2d 311, 314 (7th Cir. 1992); *FTC v. World Travel Vacation Brokers, Inc.*,

861 F.2d 1020, 1029 (7th Cir. 1988). Reasonable consumers are not required to doubt the veracity of express representations, and the Court may presume express claims to be material. *Kraft*, 970 F.2d at 322; *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1095 (9th Cir. 1994). Further, consumers' reliance on express claims is presumptively reasonable. *FTC v. World Media Brokers, Inc.*, No. 02 C 6985, 2004 WL 432475, at *7 (N.D. Ill. 2004); *World Travel*, 861 F.2d at 1029. An act or practice is unfair under Section 5 if it causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. 15 U.S.C. § 45(n); FTC Unfairness Statement (1980) (appended to *International Harvester Co.*, 104 F.T.C. 949, 1070 (1984), 1984 FTC Lexis 2, *305).

9. The evidence presented by the FTC – including sworn declarations and testimony from consumers, former NorVergence employees, former and current IFC officials; promotional materials, sales manuals, and sales scripts; Rental Agreements; internal IFC emails and other records; and collection letters – demonstrates a likelihood of success on the merits under Section 5(a) of the FTC Act. That evidence indicates that IFC purchased fraudulently obtained Rental Agreements from NorVergence in order to collect on them from innocent consumers, and that IFC knew that the Rental Agreements were primarily financing services, as opposed to *bona fide* equipment rentals. Despite this knowledge, IFC has continued to collect and harass consumers on the fraudulent debts even after services were never provided and NorVergence went bankrupt.
10. IFC's practice of accepting and collecting on the NorVergence Rental Agreements has caused, and is likely to continue to cause, substantial injury to consumers who are paying on worthless Rental Agreements, or defending against IFC's collection actions, when

they are not receiving any services. This injury is not reasonably avoidable by the consumers, and not outweighed by countervailing benefits to consumers or competition. As such, the FTC has shown it is likely to prevail in proving that IFC's practice is unfair under Section 5(a) of the FTC Act.

11. The FTC's evidence also shows that Defendant harms consumers by filing lawsuits and execution actions against them in distant forums. This practice has caused, and is likely to continue to cause, substantial injury to consumers by greatly increasing the costs of defending the suits and by increasing the risk that consumers will default. Consumers cannot reasonably avoid this injury and it is not outweighed by countervailing benefits to consumers or competition. As such, the FTC has demonstrated it is likely to prevail in proving that IFC's practice is unfair under Section 5(a) of the FTC Act.
12. In addition, the FTC's evidence shows that IFC has consistently represented to consumers that they have no defenses to payment on the NorVergence Rental Agreements, or that they are precluded from raising any defenses or counterclaims, despite the fact that consideration has failed – that is, services have not been provided. IFC also has represented that consumers are obligated to pay IFC under additional theories of liability, including fraud in the inducement and misrepresentation. The FTC's evidence demonstrates a reasonable likelihood that these claims are false and have resulted in substantial injury to consumers who relied upon them, either by paying IFC on the worthless Rental Agreements or paying to settle IFC's claims against them. Therefore, IFC's claims are deceptive under Section 5(a) of the FTC Act.
13. There is good cause to believe that immediate and irreparable damage to consumers will continue without injunctive action by the Court. Without injunctive relief, Defendant

will continue to harass and collect on fraudulent debt, thereby forcing consumers to pay for services not received and incur substantial legal fees and other costs in defending against IFC's collection suit. Further, consumers' credit is being harmed by the pending collection actions being instituted against them.

14. In balancing the equities, the public interest – in stopping the significant ongoing harm caused by IFC's practices and in effective enforcement of the law – is compelling and receives far greater weight than any private concerns. *World Travel*, 861 F.2d at 1029. By contrast, the private equities in this case are not compelling. Compliance with the law is hardly an unreasonable burden. There is no oppressive hardship to IFC in requiring it to comply with the law and refrain from engaging in unfair practices and making false representations. *FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 347 (9th Cir. 1989).
15. Weighing the equities and considering the FTC's likelihood of success, entry of this Preliminary Injunction ("Order") is in the public interest.
16. No security is required of any agency of the United States for issuance of a preliminary injunction. Fed. R. Civ. Pro. 65(c).

ORDER

Definitions

1. **"Collect"** means to communicate orally or in writing, by electronic or other means, that a consumer is indebted or otherwise owes a payment to a creditor, including but not limited to sending a dunning letter or invoice, making a telephone call, and speaking in person to the consumer and representing that the consumer owes a payment to a creditor.
2. **"Consumer"** means the signatory or guarantor, including any individual, corporation, or other entity, of any equipment rental agreement that originated with NorVergence, Inc.,

and as to which Defendant now asserts a right to collect, whether on the contract or on a judgment obtained via an action to enforce the judgment.

3. **“Defendant”** or **“IFC”** means IFC Credit Corporation, an Illinois Corporation, and its divisions, subsidiaries, successors, and assigns.
4. **“Distant forum”** means a forum in a county other than (a) one in which the consumer has its principal place of business or residence, or (b) one in which the consumer signed a NorVergence Rental Agreement.
5. **“Document”** is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a) and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.
6. **“NorVergence Rental Agreement”** means an agreement to rent telecommunications equipment from NorVergence, Inc., including but not limited to an “Equipment Rental Agreement.”
7. **“Material”** means likely to affect a person’s choice of, or conduct regarding, goods, services, or a charitable contribution.

I. PROHIBITED MISREPRESENTATIONS

IT IS THEREFORE ORDERED that Defendant, and its officers, agents, servants, employees, and all persons in active concert or participation with it who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation,

subsidiary, division or other device, in connection with NorVergence Rental Agreements, are hereby preliminarily restrained and enjoined from:

- A. Representing that consumers have no defenses to payment on the NorVergence Rental Agreements, including defenses of fraud in the inducement or defenses that material provisions of the NorVergence Rental Agreements are unenforceable;
- B. Representing that consumers are precluded from raising any defenses or counterclaims relating to enforcement of or payment on the NorVergence Rental Agreements;
- C. Representing that consumers are obligated to pay IFC on the NorVergence Rental Agreements under any theory of liability, including fraud in the inducement and misrepresentation; and
- D. Misrepresenting or failing to disclose any material fact to a consumer regarding or relating to the NorVergence Rental Agreements.

II. PROHIBITED COLLECTION PRACTICES

IT IS FURTHER ORDERED that Defendant, and its officers, agents, servants, employees, and all persons in active concert or participation with it who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division or other device, in connection with NorVergence Rental Agreements, are hereby preliminarily restrained and enjoined from:

- A. Taking any action or assisting others in taking any action to collect or attempt to collect any payment from any consumer relating to any NorVergence Rental Agreement. For purposes of this Order, a payment is “related to any NorVergence Rental Agreement” if it is based upon a NorVergence Rental Agreement, a judgment arising at least in part out of a NorVergence Rental Agreement, or any payment plan, restructuring agreement, or

other plan or contract pursuant to which the consumer owes a monetary obligation to IFC;

- B. Taking any action or assisting others in taking any action, including legal action, to seek payment on or otherwise enforce or attempt to enforce any NorVergence Rental Agreement;
- C. Failing to immediately cease prosecuting any legal action that Defendant already has initiated against any consumer to collect on or enforce any NorVergence Rental Agreement, *provided that* Defendant may file pleadings if a stay, sought pursuant to Paragraph D below, has not yet been granted and failing to file would result in the dismissal of Defendant's suit or other irreparable prejudice;
- D. Within 10 days of entry of this Order, failing to seek a stay of any legal action that Defendant already has initiated against any consumer to collect on or enforce any NorVergence Rental Agreement; and
- E. Enforcing or attempting to enforce, or assisting others in enforcing or attempting to enforce, any judgment granted against any consumer by any court of the United States or any state, either prior to or subsequent to the date of entry of this Order, relating to a NorVergence Rental Agreement.

III. NOTICE PROVISIONS

IT IS FURTHER ORDERED that Defendant, and its officers, agents, servants, employees, and all persons in active concert or participation with it who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division or other device, in connection with NorVergence Rental Agreements:

- A. Shall send, within 10 days of entry of this Order, to all consumers whom IFC considers its debtors, the Notice set forth as Attachment A to this Order. The Notice shall be printed in clear and conspicuous type, and no other material shall be included in the envelope in which the Notice is sent;
- B. Shall not report or verify to any business or consumer credit reporting agency the existence of any debt or other negative information relating to any Norvergence Rental Agreement; and
- C. Shall provide notice, within 20 days of entry of this Order, to business and consumer credit reporting agencies that the FTC is disputing the validity of debts reported by IFC relating to NorVergence Rental Agreements and that a federal court has found that the FTC is likely to prevail on the merits of its case.

IV. PROHIBITED DISTANT FORUM PRACTICES

IT IS FURTHER ORDERED that Defendant, and its officers, agents, servants, employees, and all persons in active concert or participation with it who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division or other device, in connection with NorVergence Rental Agreements, are hereby preliminarily restrained and enjoined from contesting any motion, petition, request, or other effort by a consumer to transfer venue of any action previously filed by Defendant against the consumer in a distant forum relating to a NorVergence Rental Agreement.

V. REQUIRED DISTRIBUTION OF ORDER BY DEFENDANT

IT IS FURTHER ORDERED that Defendant shall, upon service of this Order, immediately provide a copy of this Order to each affiliate, division, successor, assign, employee, independent contractor, agent, attorney, and any other person or entity that may be subject to any

provisions of this Order, and shall, within 10 days from the date of entry of this Order, serve upon counsel for Plaintiff a sworn statement that it has complied with this provision of the Order, which statement shall include the name and address of each person or entity who received a copy of this Order.

VI. SERVICE OF ORDER

IT IS FURTHER ORDERED that copies of this Order may be served by the FTC by any means, including facsimile transmission, upon any person or entity that may be subject to any provision of this Order.

VII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

SO ORDERED

DATED this ____ day of _____, 2007.

UNITED STATE DISTRICT JUDGE

Respectfully Submitted,



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ATTORNEYS FOR PLAINTIFF

ATTACHMENT A

Notice to Consumers Regarding NorVergence Rental Agreements

To: [Consumer]

Re: FTC v. IFC Credit Corporation (N.D. Ill., filed June 6, 2007)

Rental Agreement # _____

The Federal Trade Commission (“FTC”) has sued IFC Credit Corporation (“IFC”) in Federal District Court in Illinois. The FTC alleges that IFC has violated the FTC Act by (1) collecting payments from consumers on NorVergence Equipment Rental Agreements, (2) telling consumers they have no defenses against IFC’s claims when they really do, and (3) suing consumers in Illinois even if the consumers live and work far away. A federal judge has determined that the FTC is likely to prevail in this case. This is a preliminary ruling, not a final decision.

At the FTC’s request, the judge has ordered IFC to stop collecting payments on NorVergence Equipment Rental Agreements until the case is resolved. IFC also has to stop filing new lawsuits or enforcing judgments based upon NorVergence Equipment Rental Agreements. More information about the case and a copy of the judge’s Order can be found on the FTC’s website at: www.ftc.gov.

This Notice is required by the judge’s Order.