



FTC Initiates First Enforcement Action for Sending Commercial Text Messages

The Federal Trade Commission filed a complaint against Phillip Flora for allegedly sending millions of commercial text messages, in violation of Section 5 of the FTC Act, to consumers' mobile phones and other wireless devices, and for allegedly sending commercial email messages, in violation of the CAN-SPAM Act, to consumers' computers. Flora's commercial text messages advertised debt assistance and loan modification services while his commercial email messages advertised his text messaging marketing services.

The FTC alleged that many of the recipients of Flora's text messages had registered their mobile phone numbers on the national Do Not Call Registry, few if any had consented to receive messages from Flora, and many were charged a fee for receiving the messages. In addition, the text messages directed consumers to a website containing "gov" in the domain name that touted itself as the "Official Home Loan Modification and Audit Assistance Information" beneath a graphic of the U.S. flag. The FTC also alleged that when a consumer responded to the text messages, often to opt-out of receiving any more from Flora, Flora recorded the consumer's mobile telephone number and sold it to other marketers as debt assistance leads.

The FTC alleged that Flora violated Section 5(a) of the FTC Act which prohibits "unfair or deceptive acts or practices in or affecting commerce." According to the complaint, acts or practices are unfair under Section 5 of the FTC Act if they cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition. Also, misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

The FTC alleged that Flora violated the CAN-SPAM Act by sending commercial email messages that failed to include any notification of the recipient's ability to decline receiving future email messages from Flora, and failed to include a valid physical postal address of the sender.

The FTC asked the court to seize Flora's assets and is seeking an injunction, restitution to consumers, and the disgorgement of ill-gotten monies.

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