

UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS
KANSAS CITY-LEAVENWORTH DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Sprint Corporation, a corporation,

Defendant.

Case No. 2:15-cv-9340

**COMPLAINT FOR CIVIL
PENALTIES, PERMANENT
INJUNCTION, AND OTHER
EQUITABLE RELIEF**

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission (“FTC” or “Commission”), pursuant to Section 16(a)(1) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 56(a)(1), for its Complaint alleges:

1. Plaintiff brings this action under Sections 5(a), 5(m)(1)(A), 13(b), 16(a) of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), and 56(a), and Section 621(a) of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681s(a), to obtain monetary civil penalties, a permanent injunction, and other equitable relief for Defendants’ acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45; Section 615 of the FCRA, 15 U.S.C. § 1681m; and the rule regarding Duties of Users Regarding Risk-Based Pricing (“Risk-Based Pricing Rule”), 12 C.F.R. § 1022.70 *et seq.*

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b), 56(a), 1681s(a), and 1692l.

3. Venue is proper in this district under 28 U.S.C. § 1391(b)(1), (b)(2), and (c)(2), and 15 U.S.C. § 53(b).

PLAINTIFF

4. This action is brought by the United States of America on behalf of the FTC. The Commission is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce, and the FCRA, 15 U.S.C. § 1681 *et seq.*, which imposes duties on consumer reporting agencies and those who furnish information to a consumer reporting agency or use information obtained from a consumer reporting agency.

DEFENDANT

5. Defendant Sprint Corporation (“Sprint”) is a Delaware corporation with its principal place of business at 6200 Sprint Parkway, Overland Park, Kansas. Sprint transacts or has transacted business in this district and throughout the United States.

6. At all times material to this Complaint, acting alone or in concert with others, Sprint has advertised, marketed, distributed, or sold mobile phone and data plans to consumers throughout the United States. Under these plans, consumers can incur charges for voice, data, text, and third-party services, and then pay those charges on a later date.

COMMERCE

7. At all times material to this Complaint, Defendant has maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

THE FAIR CREDIT REPORTING ACT

8. The FCRA was enacted in 1970, became effective on April 25, 1971, and has been in force since that date. The Fair and Accurate Credit Transactions Act (“FACT Act”) amended the FCRA in December 2003, Public Law No. 108-159, 117 Stat. 1952, and the Dodd Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) amended the FCRA in July 2010, Pub. L. No. 111-203, 124 Stat. 1376.

9. Section 621 of the FCRA, 15 U.S.C. § 1681s, authorizes the Commission to use all of its functions and powers under the FTC Act to enforce compliance with the FCRA by all persons subject thereto except to the extent that enforcement specifically is committed to some other governmental agency, irrespective of whether the person is engaged in commerce or meets any other jurisdictional tests set forth by the FTC Act.

THE RISK-BASED PRICING RULE

10. Section 311 of the FACT Act added Section 615(h), 15 U.S.C. § 1681m(h), to the FCRA to direct the Commission and the Federal Reserve Board to prescribe a rule requiring companies to provide consumers with notice when they engage in the practice of Risk-Based Pricing. Risk-Based Pricing occurs when companies provide consumers less favorable credit terms based on a review of their credit reports. Congress added Section 615(h) to the FCRA to ensure that consumers offered less favorable credit terms will receive notice of, among other

things, any credit score used by the company and the key factors that adversely affected that score. 15 U.S.C. § 1681m(h)(5)(E). Consumers need disclosure of the key factors adversely affecting their credit scores to determine whether those scores are based on errors in their consumer reports and whether they should contact consumer reporting agencies to correct those errors.

11. The Dodd-Frank Act transferred rulemaking authority for most provisions of the FCRA to the Consumer Financial Protection Bureau; the FTC remains vested with enforcement authority. *See* Sections 1061 and 1088 of the Dodd-Frank Act. Pursuant to the Dodd-Frank Act and the FCRA, as amended, the Consumer Financial Protection Bureau republished the Risk-Based Pricing Rule at 12 C.F.R. § 1022.70 *et seq.*, effective December 30, 2011.

12. The FCRA defines a “consumer report” as “any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for (A) credit or insurance to be used primarily for personal, family, or household purposes” 15 U.S.C. § 1681a(d)(1).

13. The Risk-Based Pricing Rule applies to any person who uses a consumer report in connection with an application for or grant of credit, and who grants to a consumer, based in whole or in part on the consumer report, credit on terms that are materially less favorable than those available to a substantial proportion of consumers. 12 C.F.R. § 1022.72.

14. The Risk-Based Pricing Rule defines “credit” as “the right granted by a creditor to a debtor to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment therefor.” 12 C.F.R. § 1022.71(h).

15. The Risk-Based Pricing Rule, defines “material terms” to include, “[i]n the case of credit for which there is no annual percentage rate, the financial term that varies based on information in a consumer report and that has the most significant financial impact on consumers, such as a deposit required in connection with credit extended by a telephone company or utility” 12 C.F.R. § 1022.71(n)(3).

16. A person subject to the Risk-Based Pricing Rule must provide a Risk-Based Pricing Notice containing the following specified information to consumers receiving the materially less favorable terms:

- A. A statement that a consumer report includes information about the consumer’s credit history and the type of information included in that history;
- B. A statement that the terms offered have been set based on information from a consumer report;
- C. A statement that the terms offered may be less favorable than the terms offered to consumers with better credit histories;
- D. A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;
- E. The identity of each consumer reporting agency that furnished a consumer report used in the credit decision;

- F. A statement that Federal law gives the consumer the right to obtain a copy of a consumer report from the consumer reporting agency or agencies identified in the notice without charge for 60 days after receipt of the notice;
- G. A statement informing the consumer how to obtain a consumer report from the consumer reporting agency or agencies identified in the notice and providing contact information (including a toll-free telephone number, where applicable) specified by the consumer reporting agency or agencies;
- H. A statement directing consumers to the Web site of the Consumer Financial Protection Bureau to obtain more information about consumer reports; and
- I. If the creditor used a credit score,
 - i) A statement that a credit score is a number that takes into account information in a consumer report, that the consumer's credit score was used to set the terms of credit offered, and that a credit score can change over time to reflect changes in the consumer's credit history;
 - ii) The credit score used in making its credit decision;
 - iii) The range of possible credit scores under the model used to generate the credit score;
 - iv) All of the key factors that adversely affected the credit score, limited to four key factors unless one of the key factors was the number of enquiries to the consumer's report and in such instance listing five key factors;
 - v) The date on which the credit score was created; and

- vi) The name of the consumer reporting agency or other person that provided the credit score.

See 12 C.F.R. § 1022.73(a).

17. The Risk-Based Pricing Rule provides that a business providing closed-end credit must provide consumers with a Risk-Based Pricing Notice before “consummation of the transaction.” 12 C.F.R. § 1022.73(c)(1)(i).

18. The Risk-Based Pricing Rule defines “consummation” as “the time that a consumer becomes contractually obligated on a credit transaction.” 12 C.F.R. §§ 1022.71(e); 1026.2(a)(13).

DEFENDANT’S BUSINESS ACTIVITIES

19. Sprint provides mobile phone and data plans. Under these plans, consumers can incur charges for voice, data, text, and third-party services, and Sprint bills them for those charges at a later date. By offering consumers the ability to incur charges and pay for them at a later date, Sprint extends closed-end credit and is therefore subject to the Risk-Based Pricing Rule.

20. For certain consumers, Sprint provides services and extends credit only if the consumers pay an additional fee of up to \$7.99 a month as part of an Account Spending Limit Program (“ASL Program”). Many consumers who have been enrolled in the ASL Program did not know that they are enrolled or paying additional fees until it was too late to cancel Sprint service without incurring fees. For a substantial proportion of other consumers, Sprint provides services without enrolling them in the program or imposing additional fees.

21. To determine whether a consumer should be subject to an ASL Program, Sprint relies on information in consumer reports and credit scores.

22. Sprint provides notification to consumers enrolled in the ASL Program, but that notification has not contained the key factors in those reports that adversely impact consumers' credit scores. Because Sprint has omitted those factors, the notification has failed to provide consumers with information necessary for them to determine whether their credit scores are based on errors in their consumer reports. The notification also does not contain an explanation of the information contained in consumer reports, and language encouraging consumers to verify the accuracy of the information contained in consumer reports and advising that consumers can access the Consumer Financial Protection Bureau's website to obtain more information about consumer reports. In some instances, Sprint provides the notification after a consumer has become contractually obligated and is subject to additional fees.

VIOLATIONS OF THE RISK-BASED PRICING RULE

Count I

23. Sprint has provided credit to consumers on material terms that are materially less favorable terms than those offered to a substantial proportion of other consumers, based on information in consumer reports.

24. In numerous instances, Sprint has failed to provide a notice with all the information required by the Risk-Based Pricing Rule before consummation of the transaction.

25. Sprint's acts or practices, as described in Paragraphs 23-24 violate the Risk-Based Pricing Rule. Pursuant to Section 621(a)(1) of the FCRA, 15 U.S.C. § 1681s(a)(1), Sprint's violations of the Risk-Based Pricing Rule constitute unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). Section 621 of the FCRA, 15 U.S.C. § 1681s, authorizes the Commission to use all of its functions and powers under the FTC Act to

enforce compliance with the requirements imposed by the FCRA on all persons subject thereto except to the extent that enforcement specifically is committed to some other governmental agency, irrespective of whether the person is engaged in commerce or meets any other jurisdictional tests set forth by the FTC Act.

THIS COURT’S POWER TO GRANT RELIEF

26. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC.

CIVIL PENALTIES FOR VIOLATIONS OF THE RISK-BASED PRICING RULE

27. Section 621(a)(2)(A) of the FCRA, 15 U.S.C. § 1681s(a)(2)(A), as adjusted by 16 C.F.R. § 1.98(m), authorizes the Court to award monetary civil penalties of not more than \$3,500 for each knowing violation of the FCRA that constitutes a pattern or practice of violations of the statute.

28. Each instance in which Sprint has failed to comply with Section 615(h)(1) of the FCRA, 15 U.S.C. § 1681m(h)(1), and the Risk-Based Pricing Rule, 12 C.F.R. § 1022.70 *et seq.*, constitutes a separate violation of the FCRA for the purpose of assessing monetary civil penalties under Section 621(a)(2)(A) of the FCRA, 15 U.S.C. § 1681s(a)(2)(A).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, pursuant to 15 U.S.C. §§ 45(m)(1)(A), 53(b), 1692l, 1681s(a), and the Court’s own equitable powers, respectfully requests that the Court:

1. Enter judgment against Sprint and in favor of Plaintiff for each violation alleged in this Complaint;

2. Enter a permanent injunction to prevent future violations of the FCRA and the Risk-Based Pricing Rule by Sprint;

3. Award such relief as the Court finds necessary to redress injury to consumers resulting from Sprint's violations of the FCRA, including but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten gains;

4. Award Plaintiff monetary civil penalties from Sprint for each violation of the FCRA and the Risk-Based Pricing Rule alleged in this Complaint; and

5. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA

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