

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

LANDMARK CLEARING, INC.,
a Texas corporation;

LARRY WUBBENA, individually, and as an
officer of Landmark Clearing, Inc.;

ERIC LOEHR, individually, and as an officer
of Landmark Clearing, Inc.,

Defendants.

CIVIL NO. _____

**COMPLAINT FOR
INJUNCTIVE AND OTHER
EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), for its Complaint alleges:

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to obtain permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief against Defendants for engaging in unfair acts or practices in connection with their processing of debits and charges to consumer financial accounts on behalf of Defendants’ client merchants. Defendants’ acts and practices violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b).
3. Venue in this District is proper under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b) and (c).

PLAINTIFF

4. Plaintiff, the FTC, is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC is charged, *inter alia*, with enforcement of 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.
5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. § 53(b).

DEFENDANTS

6. Defendant Landmark Clearing, Inc., (“Landmark”) is a Texas corporation with its principal place of business at 5340 Legacy Drive, Suite 204, Plano, Texas 75024. It is engaged in the business of providing payment processing services to merchants, including many who are considered “high risk” by banks and the payment processing industry. Landmark transacts or has transacted business in this District and throughout the United States.
7. Defendant Larry Wubbena (“Wubbena”) is the President and 33.3% owner of Landmark. Individually or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth herein. He transacts or has transacted business in this District and throughout the United States.
8. Defendant Eric Loehr (“Loehr”) is the Executive Vice President of New Business Development of Landmark. Individually or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth herein. He transacts or has transacted business in this District and throughout the

United States.

9. Landmark, Wubben, and Loehr are hereinafter referred to collectively as “Defendants.”

COMMERCE

10. At all times material to this Complaint, Defendants have 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.

DEFENDANTS’ BUSINESS PRACTICES

Introduction

11. Landmark is a third-party payment processor (“payment processor”). As a payment processor, Landmark enters into contracts with merchants (“client merchants”) in which Landmark agrees to process the exchange of money between the client merchant and the client merchant’s customers. Specifically, Landmark debits consumers’ bank accounts on behalf of its client merchants. In order to provide payment processing services, Landmark enters into a contractual relationship with one or more banks, through which the debits are processed. In addition to working directly with client merchants, Landmark also enters into contracts with Independent Sales Organizations (“ISOs”), which are companies or individuals, that solicit, arrange, or refer clients to Landmark for payment processing services in exchange for a share of the processing fees.
12. Several of Landmark’s client merchants have routinely provided Landmark with the bank account information of consumers who did not authorize the client merchant to debit their accounts.
13. Landmark plays a critical role in its client merchants’ unlawful business practices. It provides its client merchants with access to the United States banking system, controls the procedures through which money is debited from consumers’ bank accounts, and disburses

consumer funds back to its client merchants.

14. In anticipation of and in the course of processing debits on behalf of several of its client merchants, Landmark knew, or should have known, that its client merchants routinely failed to obtain the consumers' authorization for such debits.
15. In many instances, Landmark debited the bank accounts of consumers who had never heard of Landmark or its client merchants, had never knowingly agreed to purchase any products or services from Landmark's client merchants, and had never gone to any websites of Landmark's client merchants.
16. Kenneth W. of Nevada is one example. In May 2010, he applied online for a payday loan, providing his bank account number so that the loan, if approved, could be deposited into his account. Shortly thereafter, Kenneth W.'s bank notified him that his auto insurance payment had "bounced" because of a negative account balance. Upon reviewing his statement, he learned that the negative balance was due to an unexpected debit by Direct Benefits Group ("DBG"), a company that operates an online shopping club. DBG's debit was processed by Landmark. Kenneth W. had never heard of DBG, and had not authorized DBG or Landmark to debit his account. As someone looking for a payday loan, he had no interest in joining a fee-based shopping club. In addition to the unauthorized debit of approximately \$50, Kenneth W. was charged \$35 in overdraft fees by his bank and a \$25 bounced-payment fee by his insurance company. The next month, Landmark again debited Kenneth W.'s account on behalf of DBG without his authorization, causing him to again incur overdraft charges and "bounce" fees when his account became overdrawn. Kenneth W. contested the DBG debits and eventually received a refund from DBG, but was never reimbursed for the overdraft charges or "bounce" fees. He ultimately closed his bank account to stop DBG and Landmark from debiting his account.

17. Likewise, in August of 2010, Melissa T. of Idaho was examining her bank statement and noticed a \$99 debit from Platinum Online Group (“Platinum” or “Platinum Online”). This debit had been processed by Landmark. As with so many of the consumers debited by Landmark, Melissa T. did not have much money in her account to begin with, and Landmark’s debit caused her account to become overdrawn, resulting in a \$35 overdraft fee. Melissa disputed the unauthorized debit with her bank, and was refunded the \$99, but did not receive a refund for the overdraft fee. A month later, Landmark again debited \$99 from her account on behalf of Platinum. Her bank told her she should close her account, which she did. She never received a refund for the second \$99 charge. Melissa T. never authorized Platinum or Landmark to debit her account, and does not know how Platinum obtained her account number.
18. These are just two of the thousands of consumers who have been harmed by Landmark’s business practices. The FTC and other law enforcement agencies have received hundreds of similar complaints about unauthorized debiting by Landmark and its client merchants. Many of the victimized consumers had insufficient funds in their bank accounts to cover the unanticipated and unauthorized Landmark debits, resulting in overdraft charges and “bounce” fees. And while some consumers, often only after a great deal of effort, ultimately were able to obtain refunds for the unauthorized debits, few were reimbursed for overdraft charges and “bounce” fees.
19. The impact of Landmark’s payment processing activities is widespread and has caused substantial injury to thousands of consumers, often those who can least afford to have funds unexpectedly taken from their accounts without authorization.

**Landmark, as a Payment Processor, Uses Remotely
Created Payment Orders to Debit Consumer Bank Accounts**

20. Landmark offers payment processing services to merchants using a variety of different payment mechanisms, including credit cards, debits processed through the Automated Clearing House Network (“ACH Network”), and remotely created payment orders (“RCPOs”). At issue in this Complaint is the payment mechanism known as RCPOs, and referred to by Landmark as its “Virtual Draft” product.
21. Payment processors and merchants must choose which type of payment mechanism to use as the instrument to debit consumer bank accounts. Debits processed through the ACH Network, a nationwide inter-bank electronic network, are subject to the monitoring and operating rules of the National Automated Clearing House Association (also known as “NACHA - The Electronic Payments Association” or “NACHA”), a private self-regulatory trade association. NACHA closely monitors electronic transactions processed through the ACH Network. Among other things, NACHA monitors the levels at which attempted debits are returned by consumers or their banks back through the network. High rates of returned transactions (“return rates”) can be indicative of unlawful practices, such as unauthorized debiting of consumer accounts.
22. In recent years fraudulent merchants have increasingly migrated to the use of other, less monitored, payment alternatives, such as remotely created checks (“RCCs”) and a new electronic version of RCCs, referred to herein as RCPOs. RCCs and RCPOs are payment mechanisms that clear through the regular check clearing system. However, because RCCs and RCPOs are not subject to the kind of monitoring and oversight that ACH transactions are subject to by NACHA, they have become an attractive payment mechanism for merchants engaged in unauthorized debiting of consumer accounts.
23. In the course of advertising its services to prospective client merchants, Landmark

expressly promoted its RCPO processing product, Virtual Draft, as a less regulated alternative to ACH transactions. For example, Landmark declared on its website and in its promotional materials that:

NACHA, the governing body over check processing rules and regulations, has stated businesses with return rates of higher than a 1% unauthorized return rate cannot process ACH transactions. If your company is at risk of higher return rates, Virtual Draft processing is a great solution for your business needs.

Screen Capture of Landmark Website, Virtual Draft page, attached as Ex. A.

24. An RCPO is a payment mechanism that is processed through the banking system much like a traditional paper check. It contains the name, consumer's bank account number, and bank routing number. An RCPO, however, is an electronic image, created by the payment processor or merchant, rather than by the consumer. Unlike a traditional paper check, an RCPO does not have the consumer's signature. In place of the consumer's signature, an RCPO generally bears a statement such as "Authorized by Account Holder," "Signature Not Required," "Authorized by Drawee," or words to that effect.
25. The creator of an RCPO is required to have obtained the express authorization of the consumer in order to submit an RCPO for a debit through the banking system. However, the creator of an RCPO generally does not need to present this authorization to the consumer's bank, and instead merely needs to state that it has the consumer's authorization on file. Consequently, any person who obtains a consumer's bank account number and has access to appropriate software can create an RCPO and deposit it, either directly or through a payment processor, in a bank willing to accept such payment instructions.
26. When a consumer authorizes a debit to his or her bank account, an RCPO transaction involving a payment processor works as follows:
 - (1) a consumer gives his or her name, bank account information, and authorization-to-

debit to the merchant;

(2) the merchant provides the information to the payment processor;

(3) the processor inputs the information onto an electronic check template, which converts the information into an electronic file and transmits it to the processor's bank for deposit;

(4) the payment processor's bank sends the RCPO image through the check clearing system to the consumer's bank, just like any other check is processed;

(5) the consumer's bank receives the RCPO image, debits the consumer's account, and remits the funds to the payment processor's bank account; and,

(6) the payment processor keeps some of the proceeds as a reserve against returns and as payment for its services and its bank's services, and disburses the rest of the money to its client merchant.

27. Landmark charges its client merchants a "processing fee" for every attempt to process an RCPO, and a much higher fee ("return fee") for processing every transaction that is returned (*i.e.*, rejected by consumers' banks) for any number of reasons. Landmark's pricing structure is such that the income earned by Landmark from its client merchants' returned transactions is significantly higher than the income earned from merely processing a transaction that ultimately clears. The more returned transactions generated by Landmark's client merchants, the higher the return fees Landmark will earn.
28. The volume and rate of returned RCPO transactions are not subject to monitoring by any centralized entity in the check clearing system. Largely because of the lack of return rate monitoring, and because a consumer's actual signature is not required on an RCPO, RCPOs have become an attractive payment mechanism for merchants and processors engaged in unauthorized debiting and other unlawful practices.

Landmark's Unauthorized Debiting of Consumer Accounts

29. Since at least November 2008, Landmark has used RCPOs to debit, or attempt to debit, millions of dollars from consumers' bank accounts without those consumers' authorization. Landmark made these unauthorized debits in connection with providing payment processing services for several of its client merchants.
30. Several client merchants of Landmark generated astronomical rates of returned transactions – sometimes higher than 50 percent, 70 percent, and even 80 percent. These rates of returned transactions mean that in more than half the purchases, the consumer requested a refund with his bank or the bank initiated a return due to other reasons. These rates of returned transactions evidence the obvious lack of consumer authorization, either because the consumer never authorized the debit at all, or because the consumer provided the merchant consent to be debited, but the purported authorization was based on deceptive representations or omissions about the offer that was the subject of the debit.
31. For example, from May 2010 to March 2011, Landmark processed approximately 58,000 RCPOs (with a value of over \$5.7 million), through the First Bank of Delaware, on behalf of client merchant Platinum Online, of which more than 83% were rejected by consumers' banks and returned.
32. In another example, from May 2010 to February 2011, Landmark processed approximately 111,000 RCPOs (with a value of over \$5.3 million), through First Bank of Delaware, on behalf of DBG, a client merchant referred by the ISO agent, Jason Schwartz of Creative Cashflow Solutions. Of these attempted debits, more than 70% were rejected by consumers' banks and returned.
33. Defendants knew, or should have known, that their client merchants often did not have valid consumer authorization to debit the consumers' bank accounts. Despite this

knowledge, Landmark nonetheless went ahead and debited consumers' accounts.

**High Total and Reason-Specific Return Rates
Provide Signs of Unauthorized Debiting**

34. In the banking and payment processing industries, the monitoring of merchant return rates is a well-established component of "risk management" practices. In fact, under NACHA guidelines, all participants in the ACH Network are expected to "know their customer," monitor return rates and other suspicious behavior to prevent fraud or other illegal activity, and investigate the business practices of client merchants who generate unusually high return rates.
35. A returned transaction refers to an attempted debit refused or reversed by the consumer's bank. The "total return rate" reflects all returned transactions. A higher-than-industry-average total return rate associated with a single merchant is a red flag for unauthorized debiting practices, which includes instances where the consumer never authorizes the debit or where the consumer authorizes the debit, but such authorization is based on deceptive representations or omissions about the offer that is the subject of the transaction. Any total return rate generated by a merchant that is significantly higher than the average industry return rate should trigger, at a bare minimum, scrutiny and investigation of the merchant's underlying business practices by the payment processor. Each return is typically categorized by the reason for the return ("return reason"). Certain return reasons may be particularly indicative of unauthorized debiting, including but not limited to, unauthorized/stop payment, insufficient funds in the consumer's bank account (NSF), and account-number-discrepancy reasons.
36. Neither the banking industry nor the Federal Reserve Bank currently maintains specific information about average industry return rates for RCPOs. However, information is available concerning average industry return rates for comparable consumer payment

mechanisms, such as traditional checks, ACH debits, and credit cards.

37. For example, the average industry total return rate for ACH transactions in 2010 was 1.5 percent. *NACHA 2010 Return Rates*. The average total return rate for all bank checks processed through the check clearing system in 2009 was approximately 0.46 percent. *2010 Federal Reserve Board Payments Study, April 5, 2011, at 9, 22*. Return rates significantly higher than these industry averages for comparable payment mechanisms typically indicate unauthorized debiting or other unlawful practices.

**Landmark Specifically Marketed RCPOs to High Risk Merchants
as a Less Monitored Payment Alternative**

38. Landmark expressly promoted its willingness to accept high returns as a selling point of Virtual Draft, its RCPO processing product. Landmark declared on its website and in its promotional materials that “[b]usinesses with a high percentage of overall returns” and “[b]usinesses with higher return rates of unauthorized returns” will benefit from Landmark’s Virtual Draft. *Screen Capture of Landmark Website, Ex. A*.
39. Landmark adopted an internal company policy to accept “High-Risk” client merchants whose return rates reached as high as 50 percent. Landmark also accepted client merchants whose applications declared anticipated return rates in excess of 50 percent, and Landmark continued processing for client merchants whose actual return rates exceeded 50 percent.

Landmark’s RCPO Return Rates Provide Signs of Unauthorized Debiting

40. Landmark closely monitors the level of returned transactions. In fact, the underwriting guidelines in Landmark’s contract with its bank, the First Bank of Delaware, required that Landmark examine the past return rates for prospective client merchants before Landmark agreed to begin processing for them.

41. Landmark's merchant return rates were often thirty to forty *times* higher than the industry averages for bank checks and ACH debits, as described in paragraph 37, and also would be considered excessively high in the credit card industry.
42. In addition to total return rates, Landmark knew that its RCPOs were also generating unacceptably high levels of returns for reasons indicative of unauthorized debiting, such as consumer-unauthorized, insufficient funds (NSF), and account-number-discrepancy reasons.
43. An excessively high percentage of Landmark's RCPO return reasons were specifically designated as either consumer-unauthorized or stop-payment-by-consumer.
 - a. These designations are used when a debit initially clears but then the consumer affirmatively notifies his or her bank that the debit was unauthorized, thus putting Landmark on express notice that the transactions had not been authorized by consumers.
 - b. For some Landmark client merchants, the rates were as much as two hundred and fifty *times* higher than the ACH industry average for consumer-unauthorized and stop-payment returns, which totaled 0.02% in 2010. *Combined Rate for ACH Return Codes R07 and R10, NACHA 2010 Return Rates.*
44. Likewise, an excessively high percentage of Landmark's RCPO returns were due to insufficient funds (NSF). The NSF designation is used when a debit "bounces" due to a negative balance in a consumer's account.
 - a. Consumers who are likely to have insufficient funds in their accounts do not commonly "authorize" merchants to debit their accounts because these consumers know they will incur substantial "overdraft" charges (or "NSF Fees") imposed by the banks.

b. For some Landmark merchants, NSF return rates were more than forty *times* higher than the ACH industry average for NSF returns, which totaled 1.07% in 2010.

Combined Rate for ACH Return Codes R01 and R09, NACHA 2010 Return Rates.

45. Similarly, an excessively high percentage of Landmark's RCPO returns were due to account-number discrepancies.

a. Returns due to account-number discrepancies occur when the consumer's bank is unable to locate an account with the name or number provided by the merchant. High numbers of account-number discrepancies can be a tell-tale indicator that a merchant is using account information that was not provided by the debited consumers.

b. For some Landmark client merchants, rates for "unable-to-locate-account" returns were more than ninety times higher than the ACH industry average for "unable-to-locate-account" returns, which totaled 0.17% in 2010. *Rate for ACH Return Code R03,*

NACHA 2010 Return Rates.

The Information Given to Landmark by its Client Merchants Put Landmark on Notice that it Would be Engaging in Unauthorized Debiting

46. Landmark's client merchant files and merchant applications also put Landmark on notice that it would be engaging in unauthorized debiting.

47. For example, in May 2010, Landmark accepted the merchant Platinum as a client merchant, even though Landmark had previously terminated a company controlled by the same principals as Platinum *because of its high return rates.*

48. In 2006, four years before processing for Platinum, Landmark processed for EdebitPay. Platinum is a wholly-owned subsidiary of EdebitPay, and the principals of both entities, Dale Paul Cleveland ("Cleveland") and William Richard Wilson ("Wilson"), are the same.

49. In 2006, of the roughly 89,000 transactions Landmark processed for EdebitPay, 85% were returned by consumers' banks – an unmistakable sign of unauthorized debiting.

50. On July 30, 2007, the FTC filed a complaint against EdebitPay and its principals Cleveland and Wilson, alleging, among other things, that EdebitPay debited consumers' bank accounts without their express informed consent, including consumers who had never applied for or requested the product EdebitPay was selling. The complaint also alleged that many consumers incurred NSF overdraft fees caused by the unauthorized debits.
51. Landmark was aware of the FTC action and allegations. In fact, defendant Loehr, who at the time held the title "Director of Sales and Marketing" at Landmark, submitted a sworn declaration to the FTC in 2007 in which he stated that EdebitPay generated an 85% return rate, and that "[l]ess than three months after Landmark began processing transactions for EdebitPay, we decided to terminate the contract because of the extremely high return rates associated with EdebitPay transactions."
52. Cleveland, Wilson, and EdebitPay settled with the FTC in 2008, agreeing to pay \$2.2 million in consumer redress and agreeing to an order that prohibited them from, among other things, deceiving consumers or debiting consumers without obtaining their express informed consent.
53. Landmark was aware of the FTC settlement. Materials in Landmark's merchant file show that Landmark knew: (a) that EdebitPay and its principals, Cleveland and Wilson, had settled with the FTC for \$2.2 million and were subject to a consent order; (b) that Cleveland and Wilson were also the principals of Platinum Online; and (c) that Platinum was a wholly-owned subsidiary of EdebitPay.
54. On May 27, 2010, the FTC filed an action seeking to hold EdebitPay and its principals in contempt for continuing to engage in practices that violate the 2008 FTC consent order. On February 3, 2011, the court in that action held EdebitPay and its principals, Cleveland

and Wilson, in contempt, and ordered them to pay \$3.7 million in monetary sanctions.

FTC v. EdebitPay, LLC, 2:07-cv-04880 (C.D. Ca., Feb. 3, 2011).

55. In addition, Platinum's April 2010 application to Landmark informed Landmark that Platinum anticipated a future return rate of 75% on a monthly volume of 6,000 RCPOs. In other words, Platinum told Landmark up front to *expect* that only 25% of its attempted debits of consumers' accounts would clear, and that 75% of its attempted debits would be rejected every month. Platinum also provided Landmark with its past six months of transaction records with a previous processor. These records show a past return rate of 85 percent.
56. Landmark thus knew, from information in its own files, that the principals behind one of its major client merchants had a history of unauthorized debiting of consumer accounts. Yet despite this knowledge, and despite the explicit notice of Platinum's anticipated return rates, Landmark agreed to process RCPOs for Platinum.
57. The same can be said with respect to other Landmark client merchants. For example, client merchant DBG's application to Landmark informed Landmark that DBG expected a future return rate of 70% on a monthly volume of 12,000 RCPOs. In other words, DBG informed Landmark up front to expect that only 30% of its attempted debits would clear, and that 70% of its attempted debits would be rejected every month.
58. DBG's application also informed Landmark that DBG advertised through online "cash advance/loan websites" and was in the business of operating a shopping-club membership service. Businesses associated with online payday lenders have an elevated risk of fraud, and the FDIC recommends that banks and processors conduct extra diligence and monitoring of these type of client merchants. *See FDIC Guidance on Payment Processor Relationships*, Nov. 7, 2008.

59. DBG also provided Landmark with copies of transaction records from a payment processor, Jason Schwartz of Creative Cashflow Solutions (which also acts as an ISO), who previously processed for the same principal as that of DBG, Kyle Wood. These records show total return rates of 62%, 66%, 67%, 69%, 71% and 100% for various Wood-controlled entities and time periods. Thus Landmark knew from its own underwriting files that the principal behind DBG had a history of operating businesses with extraordinarily high return rates, and had been referred by an ISO/processor which had itself processed alarmingly high levels of returns for DBG.
60. Documents provided to Landmark as part of DBG's application, and a business background check performed for DBG's application, showed Landmark that Kyle Wood was an officer (director, secretary, and treasurer) and shareholder of City West Advantage. City West Advantage was sued by the FTC in 2008 for, among other things, debiting consumers without obtaining express informed consent. City West Advantage is currently under an FTC consent order.
61. Additionally, any reasonable inquiry into the business practices of its client merchants would have revealed that there were numerous complaints to public consumer complaint sites about unauthorized debiting on behalf of Landmark's client merchants. Such routine diligence would also have raised questions about the suspect business models and products of several of its client merchants.
62. Despite the knowledge that its client merchants were generating astronomical return rates, and the abundance of red flags raised by its client merchant applications and files, Landmark continued to process RCPOs for client merchants until the spring of 2011, when the First Bank of Delaware informed Landmark that it would no longer process for any of Landmark's RCPO client merchants. In response, Landmark began searching for a new

bank through which to continue processing RCPOs for its client merchants. With respect to one of its client merchants, which had previously generated a 70 percent return rate, Landmark entered into an arrangement to provide software services to enable that client to continue processing RCPO transactions through a new bank, Public Savings Bank.

Consumers Were Harmed By Landmark's Unauthorized Debiting

63. Consumer injury caused by Landmark's unauthorized debiting practices has been substantial in at least three ways: (1) by debiting millions of dollars from consumers' bank accounts without consumer authorization; (2) by causing significant overdraft charges to consumers; and (3) by forcing consumers (and banks) to take the time and effort to reverse debits and, in certain instances, to close or change their accounts.
64. The RCPOs processed by Landmark and returned for insufficient funds triggered hundreds of thousands of dollars in overdraft charges to consumers. Thus, even when Landmark was unable to successfully debit from consumers' accounts due to insufficient funds, many consumers still suffered harm. And with few exceptions, neither Landmark nor its merchants reimbursed consumers for overdraft fees, and consumers' banks often refused to do so as well.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

65. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce."
66. 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. 15 U.S.C. § 45(n).

COUNT I

67. Defendants' acts or practices in processing unauthorized debit transactions to consumers' bank accounts, as described in paragraphs 11-64 above, have caused or are likely to cause substantial injury to consumers that is not reasonably avoidable by consumers themselves and that is not outweighed by countervailing benefits to consumers or competition.
68. Therefore, Defendants' acts or practices as described above, constitute unfair acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a) and § 45(n).

CONSUMER INJURY

69. Defendants have caused consumers substantial monetary loss by causing funds to be debited from the consumers' bank accounts on behalf of client merchants engaged in deceptive, misleading, or unfair sales practices, which also resulted in other related consumer harm, such as incurring the costs of closing accounts, paying over-draft fees, bouncing checks, opening new accounts, and ordering new checks. Such consumers could not reasonably have avoided this injury. Defendants have been unjustly enriched as a result of their unlawful practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

70. 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. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

PRAYER FOR RELIEF

71. WHEREFORE, Plaintiff the Federal Trade Commission, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, requests that the Court:
- A. Award Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action, and to preserve the possibility of effective final relief;
 - B. Enter a permanent injunction to prevent future violations of the FTC Act by Defendants;
 - C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, including but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and,
 - D. 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.

Dated: December 15, 2011

Respectfully submitted,

WILLARD K. TOM
FEDERAL TRADE COMMISSION, General Counsel

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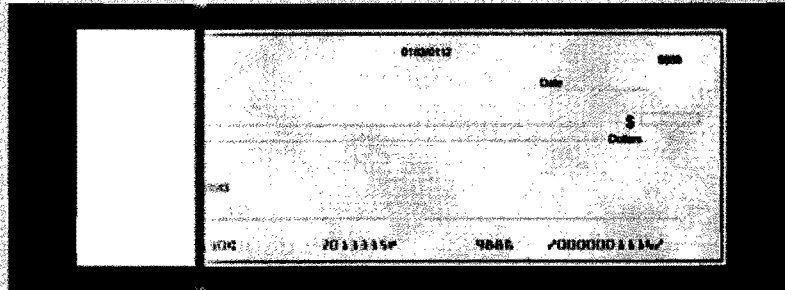
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Virtual Draft™



Combining the old technology of collecting check payments with the new technologies of the Check 21 Network, Virtual Draft™ empowers your company to create and process virtual checks for your customer's bill payments.

Waiting for checks to arrive is a pain point for many organizations. Virtual Draft™ can help. Virtual Draft™ creates a legal substitute check from the information on a regular check. It is as easy as providing the client's full address, account information, and amount of the check.

A majority of banks provide copies of check images to their customers either online or with monthly bank statements. Since companies can customize the check's background and memo information, it provides an additional avenue to communicate information to your clients. There are many ways to use this added space such as providing a remaining account balance in the memo line, a picture of the product purchased as the background of the check, discount information or coupon codes for future purchases, and much more.

Why Landmark Virtual Draft™?

- Check 21 payment processing with the convenience of a web-based interface
- Eliminate handling mailed-in paper checks
- Faster funding and notification of returns
- Setup recurring payments through an editable schedule or budget with pause controls
- Both the front and back of virtual checks are available in a batch with your client's payment

Who would benefit from Landmark Virtual Draft™?

- Businesses with a high percentage of overall returns
- Businesses with higher rates of unauthorized returns
- Businesses that would benefit from the ability to send information directly to a consumer's account

NACHA, the governing body over check processing rules and regulations, has stated businesses with return rates of higher than a 1% unauthorized return rate cannot process ACH transactions. If your company is at risk of higher return rates, Virtual Draft™ processing is a great solution for your business needs.

What We Do

Landmark Clearing provides electronic check and credit card processing services. We process transactions through the ACH and Check 21 networks. Our core capabilities are ACH, Check 21, debit and credit card merchant services, flat file integration, IVR systems, and online payment processing.

Corporate Location

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