

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
- CIVIL DIVISION -**

**OFFICE OF THE ATTORNEY GENERAL,
STATE OF FLORIDA,
DEPARTMENT OF LEGAL AFFAIRS,**

**CASE NO.
DIVISION:**

Plaintiff,

vs.

**FIRSTUSA BUSINESS DEVELOPMENT INC,
d/b/a BusinessOne Financial, a Florida
corporation; and TODD MYERS,
an individual,**

Defendants.

**COMPLAINT FOR INJUNCTIVE
AND OTHER STATUTORY RELIEF**

Plaintiff, Office of the Attorney General, State of Florida, Department of Legal Affairs (“Plaintiff” or “Attorney General”), sues defendants, FirstUSA Business Development Inc (“FirstUSA”), a Florida corporation, and Todd Myers, an individual (collectively, “Defendants”), and alleges the following:

INTRODUCTION

1. Since at least 2015, the Defendants have used a variety of deceptive or unfair business practices outlined below to induce consumers to purchase business coaching products and services supposedly designed to help consumers start or improve a home-based internet business. The Defendants marketed these services through telemarketing calls to consumers within Florida and across the country.

2. The Defendants induce consumers to pay thousands of dollars, sometimes tens of thousands of dollars, by falsely promising, among other things, that the Defendants' products and/or services will enable consumers' home-based businesses to be profitable and succeed.

3. Many consumers who purchase the Defendants' products and/or services do not earn the promised profits and fail to receive the products or services promised by the Defendants. Adding insult to injury, the Defendants continue to target their existing customers with follow-up telemarketing calls designed to induce additional sales, which are typically referred to as an "upsell." Consumers have lost hundreds of thousands of dollars as a result of the Defendants' deceptive and/or business practices.

JURISDICTION AND VENUE

4. This is an action for injunctive relief, consumer restitution, civil penalties, attorney's fees and costs, and other statutory and equitable relief against the Defendants, brought pursuant to the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes ("FDUTPA").

5. This court has jurisdiction pursuant to the provisions of FDUTPA. The Attorney General seeks relief in an amount greater than Thirty Thousand Dollars (\$30,000.00), exclusive of interest, costs, and attorneys' fees.

6. The statutory violations alleged herein affect more than one judicial circuit of the State of Florida, including the Sixth Judicial Circuit in and for Pinellas County, Florida.

7. Venue is proper in the Circuit Court of the Sixth Judicial Circuit, in and for Pinellas County, Florida pursuant to Section 47.011, Florida Statutes. The statutory violations alleged herein have occurred, in part, within Pinellas County. The principal place of business of FirstUSA is currently in Pinellas County, Florida, and at all times material hereto the principal

place of business for FirstUSA has been in either Pinellas County or Hillsborough County, Florida.

THE PARTIES

8. The Attorney General is the enforcing authority of FDUTPA and is authorized to bring this action and to seek injunctive and other equitable and statutory relief, including restitution, disgorgement, and civil penalties.

9. The Attorney General has conducted an investigation of the matters alleged herein and has determined that this enforcement action serves the public interest.

10. FirstUSA is an active for-profit Florida corporation with its current principal place of business listed as 28051 US Highway 19 North, Suite 104, Clearwater, FL 33761. FirstUSA used and registered “BusinessOne Financial” as a fictitious name. Since its incorporation in 2013, FirstUSA’s principal place of business has been in either Pinellas or Hillsborough County, Florida.

11. Todd Myers is an individual who, upon information and belief, resides in Hillsborough County, Florida.

12. At all times material hereto, Todd Myers has (i) been an officer of FirstUSA and has held the title of “President” of FirstUSA; (ii) directly participated in, managed, operated and controlled, and had the ability to control, the operations of FirstUSA; and (iii) held a direct or indirect interest in FirstUSA.

13. At all times material hereto, Defendants have engaged in “trade or commerce” as defined in Section 501.203(8), Florida Statutes, when Defendants engaged in the marketing, selling and provision of business development and/or coaching services and products to consumers in Florida and nationwide.

THE DEFENDANTS' BUSINESS ACTIVITIES

A. Overview

14. At all times material hereto Todd Myers and FirstUSA have engaged in the business of selling and fulfilling business development and/or coaching products and consulting services to consumers through telemarketing phone sales. These products or services (hereinafter, collectively referred to as the “Products” and individually referred to as a “Product”) include, but are not limited to, the following:

- a. designing affiliate websites, landing pages, website templates, logos, and banner ads;
- b. performing website upgrades;
- c. performing website analytics and website hosting;
- d. domain registration and renewal;
- e. drafting and submitting press releases for publication;
- f. business education and credit building services or products, including but not limited to, (i) business plans a/k/a business action plans; (ii) business cash flow analyses; and (iii) corporate credit education and/or credit builder programs referred to as the “Business Education Program” and “Business Credit Builder;”
- g. purported entity setup; and
- h. social media marketing packages.

15. FirstUSA’s sales to consumers are conducted through a telemarketing operation, which relies on “leads.” Leads typically consist of contact information of potential customers supplied by a third-party in exchange for a fee or a percentage of FirstUSA’s sales.

16. FirstUSA used other businesses owned by Todd Myers to fulfill certain Products sold to consumers, including BusinessOne, Inc. (“BusinessOne”). Upon information and belief,

BusinessOne fulfilled, at a minimum, the business credit builder product and the social media marketing product. FirstUSA also used BusinessOne's merchant account to make sales. Business One also entered into sales contracts with consumers.

17. The Defendants induce consumers to pay large sums of money, typically thousands of dollars, by falsely representing that the Products will cause the consumers' businesses to be profitable and/or successful.

18. Many consumers who purchase Products do not receive the products they thought they purchased and earn very little money, if any, as a result of such purchase.

19. Given the high cost of FirstUSA's Products, FirstUSA also provided financing for consumers through Universal Account Servicing, LLC ("UAS"). Through this process, consumers would apply for a retail installment account and FirstUSA served as their lender. UAS serviced, i.e., collected the payments from consumers, on behalf of FirstUSA.

20. Many consumers used credit – either their own credit card or the financing provided by FirstUSA – to pay for the Products and they ended up in debt to pay for the Products, and were never able to get their money back from FirstUSA.

21. Numerous other consumers paid in cash and they were never able to get their money back from FirstUSA.

B. Complaints Received by the Attorney General

22. From August 2015 to the present day, the Attorney General has received complaints related to Defendants from approximately 41 consumers. Approximately 73% of the complaints were submitted by seniors. The Attorney General has also reviewed consumer complaints filed with other agencies. Starting as early as 2015 and continuing throughout 2016, 2017 and 2018, the consumer complaints reviewed by the Attorney General allege a pattern of

unfair and deceptive conduct by Defendants whereby Defendants would (1) make false or misleading representations in an effort to solicit the consumer's business; (2) collect payments for services or products that Defendants failed to provide at all or provide as promised; and/or (3) collect payments for services or products related to which the Defendants promised the consumer would achieve certain financial results, which the consumer did not achieve.

C. Misrepresentations to Consumers and the Failure to Fulfill Products

23. Defendants either make false or misleading representations to consumers to solicit or retain business, or they have the ability to control such false or misleading representations.

24. More specifically, FirstUSA encourages consumers to purchase its Products by representing that they are likely going to earn substantial income.

25. For example, some of the misrepresentations to consumers related to financial results are as follows:

- a. Within one or two months of purchasing a Product, the consumer will earn \$2,000 - \$5,000;
- b. Within a week of purchasing the Product, the consumer will receive a profit from their website; and
- c. Having a landing page, one of the Products, will cause you to earn income.

26. FirstUSA entices consumers to spend money on their Products with reassurances that they will make all the money back and therefore the purchase is just an investment in their business.

27. FirstUSA also misrepresents the nature of the products being sold to consumers.

28. Many consumers understood that FirstUSA would start a new online business for them, and this did not happen.

29. Many consumers paid FirstUSA thousands of dollars for what they thought would be a functioning e-commerce website, which can facilitate on-line sales. However, the consumers never received an e-commerce website; rather, FirstUSA frequently created a non-functioning website that was based on a template, or they created a landing page.

30. FirstUSA sales agents frequently misrepresent the name of the company they are calling on behalf of, or they imply they are calling on behalf of another entity, such as a company with whom the consumer has already done business.

31. Similarly, FirstUSA sales agents use fake names when speaking with consumers; therefore, the consumers do not know the identity of the person selling them the Products.

32. During telemarketing calls, FirstUSA sales agents falsely state that they are a salary employee implying that they do not earn commissions from any purchase made by the consumer.

33. FirstUSA sales agents do in fact earn commissions from telemarketing sales to consumers.

34. During the telemarketing calls, FirstUSA asks consumers for personal information related to their financial circumstances, including their income, savings, retirement accounts, debts and credit card balances and limits. FirstUSA agents claim they need this financial information to assess the consumer's qualifications for certain "programs."

35. FirstUSA's representations about the use of consumers' financial information are false. Upon information and belief, FirstUSA uses this information to determine what Products the consumer can afford to purchase from FirstUSA as opposed to using this information to determine what "program" the consumer qualifies for.

36. Many consumers have reported that after paying FirstUSA they never received the Products purchased, or that what they received is not what FirstUSA told them they would receive.

37. Numerous consumers have stated that FirstUSA promised to build their business' credit, and the consumer paid for such service, yet FirstUSA failed to fulfill this service.

38. Frequently, FirstUSA did not begin fulfilling consumers' purchases until after the consumer contacted FirstUSA to complain that they had not received the Products.

39. Finally, consumers face an uphill battle to cancel their purchase or receive a refund from FirstUSA and various FirstUSA representatives, frequently Todd Myers, would convince the consumers to not cancel their purchase, accept a lesser refund or even purchase additional products or services (i.e., an upsell), which they are told are necessary or will bolster the services or products initially purchased.

40. In fact, instead of providing refunds to consumers, on numerous occasions at the direction of Todd Myers, FirstUSA, or one of its affiliates, would provide consumers promissory notes but frequently failed to make the payments required thereunder.

41. FirstUSA, frequently at the direction of Todd Myers, would refuse to provide a consumer refund if the consumer publicly complained about FirstUSA.

D. Todd Myers' Role at FirstUSA

42. Todd Myers incorporated FirstUSA in 2013.

43. Todd Myers is an officer, specifically, the President of FirstUSA. As President of FirstUSA, he is responsible for managing and controlling FirstUSA's day-to-day operations.

44. During all times relevant to this action, Todd Myers has directly controlled and participated in the day-to-day activities of FirstUSA, including but not limited to:

- a. creating and enforcing the business practices of FirstUSA;
- b. determining the Products FirstUSA would sell to consumers;
- c. deciding what content would be included on FirstUSA's website;
- d. engaging other companies to provide leads to FirstUSA;
- e. hiring and firing of FirstUSA employees, including sales agents, and sales consultants for FirstUSA;
- f. overseeing FirstUSA's fulfillment of Products purchased by consumers;
- g. hiring vendors to perform services on behalf of FirstUSA, including vendors to provide fulfillment services;
- h. communicating with consumers regarding their complaints or requests for a refund from FirstUSA;
- i. determining FirstUSA's refund policies and processes;
- j. determining FirstUSA's response to a consumer complaint;
- k. deciding whether a consumer would receive a refund from FirstUSA;
- l. deciding whether FirstUSA would offer a promissory note in favor of the consumer in lieu of an actual refund; and
- m. deciding whether to actually make payments under the promissory notes to the consumers.

45. Todd Myers was, and continues to be, responsible for making FirstUSA's financial decisions, including but not limited to paying business expenses, controlling FirstUSA's bank accounts, and controlling the issuance and the amount of any refunds to consumers.

THE FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT

46. Section 501.204(1), Florida Statutes states that “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”

47. Section 501.203(8), Florida Statutes, defines “[t]rade or commerce” as:

the advertising, soliciting, providing, offering, or distributing, whether by sale, rental, or otherwise, of any good or service, or any property, whether tangible or intangible, or any other article, commodity, or thing of value, wherever situated. “Trade or commerce” shall include the conduct of any trade or commerce, however denominated, including any nonprofit or not-for-profit person or activity.

48. The provisions of FDUTPA shall be “construed liberally” to promote and “protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.” Fla. Stat. § 501.202.

49. A person that willfully engages in a deceptive or unfair act or practice is liable for a civil penalty of Ten Thousand Dollars (\$10,000.00) for each such violation, pursuant to Section 501.2075, Florida Statutes, and Fifteen Thousand Dollars (\$15,000.00) for each violation victimizing a senior citizen, pursuant to Section 501.2077, Florida Statutes. Willful violations occur when the person knew or should have known that the conduct in question was deceptive or unfair or prohibited by rule, pursuant to Section 501.2075, Florida Statutes.

COUNT I
FirstUSA's Violation of FDUTPA

50. Plaintiff, adopts, incorporates and re-alleges paragraphs 1 through 49 as if fully set forth herein.

51. As set forth above, FirstUSA has engaged and continues to engage in deceptive, unconscionable and unfair practices by knowingly (i) falsely promising that consumers will achieve certain financial results if they purchase the Products; (ii) misrepresenting the nature of the Products sold to consumers; (iii) making false or misleading material representations to consumers to solicit a purchase or keep a consumer from cancelling a purchase; and (iv) failing to fulfill the purchase of Products by consumers.

52. Through the actions and related business practices set forth in this Complaint, FirstUSA is engaging in representations, acts, practices or omissions that are material, and that are likely to mislead consumers, many of which are senior citizens, acting reasonably under the circumstances.

53. Through the actions and related business practices set forth in this Complaint, FirstUSA is committing acts or practices in trade or commerce that offend established public policy and are unethical, oppressive, unscrupulous or substantially injurious to consumers.

54. Through the actions and related business practices set forth in this Complaint, FirstUSA is engaging in acts or practices that are likely to cause substantial injury to consumers. This substantial injury is not reasonably avoidable by the consumers themselves and is not outweighed by countervailing benefits to consumers or competition.

55. Thus, FirstUSA is engaged in unfair or deceptive or unconscionable acts or practices in the conduct of any trade or commerce in violation of Section 501.204(1), Florida Statutes.

56. FirstUSA should be subject to civil penalties for willful violations of FDUTPA in the amount of Ten Thousand Dollars (\$10,000) for each violation pursuant to Section 501.2075, Florida Statutes, and Fifteen Thousand Dollars (\$15,000) for each violation that victimized or attempted to victimize, a senior citizen pursuant to Section 501.2077, Florida Statutes.

57. FirstUSA willfully engaged in and continues to engage in deceptive and unfair acts and practices in that FirstUSA knew or should have known that the methods, acts or practices alleged herein were and are unfair, deceptive, unconscionable and prohibited by law.

58. These above-described acts and practices of FirstUSA have caused substantial economic injury to the public.

59. Unless FirstUSA is permanently enjoined from engaging further in the acts and practices complained of herein, FirstUSA's actions will continue to result in irreparable injury to the public for which there is no adequate remedy at law.

COUNT II
Todd Myer's Violation of FDUTPA

60. Plaintiff, adopts, incorporates and re-alleges paragraphs 1 through 49 as if fully set forth herein.

61. Under FDUTPA, once corporation liability is established, an individual defendant may be individually liable if he participated directly in the deceptive or practices or acts or he possessed the authority to control them.

62. During all times relevant to this action, Todd Myers has been the President of FirstUSA and controlled the operations of FirstUSA.

63. Todd Myers has personal knowledge and control of FirstUSA's sales practices, including its telemarketing practices, fulfillment, customer service, customer refund policies, as well as FirstUSA's financial assets and bank accounts.

64. As further set forth above in Paragraphs 42-45, Todd Myers controls and participates in the day-to-day activities of FirstUSA, including the business practices as set forth in this Complaint.

65. Todd Myers is aware of incoming consumer complaints alleging that (i) FirstUSA made deceptive statements during sales calls, including material misrepresentations related to promises of income, and (ii) consumers did not receive the Products they purchased or the Products they thought they purchased.

66. Therefore, Todd Myers possesses the authority to control the unfair and deceptive acts referenced above. Because Todd Myers directly controls and participates in the unfair and deceptive business practices of FirstUSA, he can be held individually liable under FDUTPA.

67. Through the actions and related business practices set forth in this Complaint, Todd Myers is engaging in representations, acts, practices or omissions that are material, and that are likely to mislead consumers, many of whom are senior citizens, acting reasonably under the circumstances.

68. Through the actions and related business practices set forth in this Complaint, Todd Myers is committing acts or practices in trade or commerce that offend established public policy and are unethical, oppressive, unscrupulous or substantially injurious to consumers.

69. Through the actions and related business practices set forth in this Complaint, Todd Myers is engaging in acts or practices that are likely to cause substantial injury to consumers. This substantial injury is not reasonably avoidable by the consumers themselves and is not outweighed by countervailing benefits to consumers or competition.

70. Thus, Todd Myers is engaged in unfair, deceptive or unconscionable acts or practices in the conduct of trade or commerce in violation of Section 501.204(1), Florida Statutes.

71. Todd Myers should be subject to civil penalties for willful violations of FDUTPA in the amount of Ten Thousand Dollars (\$10,000) for each violation pursuant to Section 501.2075, Florida Statutes, and Fifteen Thousand Dollars (\$15,000) for each violation that victimized or attempted to victimize, a senior citizen pursuant to Section 501.2077, Florida Statutes.

72. At all times material to this action, Todd Myers has willfully engaged in and continues to engage in deceptive and unfair acts and practices in that he knew or should have known that the methods, acts or practices alleged herein were and are unfair, deceptive, unconscionable and prohibited by law.

73. Unless Todd Myers is permanently enjoined from engaging further in the acts and practices complained of herein, Todd Myers' actions will continue to result in irreparable injury to the public for which there is no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Office of the Attorney General, State of Florida, Department of Legal Affairs, respectfully requests this Court to:

I. Grant permanent injunction against FirstUSA and Todd Myers, their officers, agents, employees, attorneys and those persons in active concert or participation with them who receive actual notice of this injunction, prohibiting such persons from making false or misleading statements to consumers to solicit purchases or to retain business, among other injunctive relief;

- II. Enter a judgment in favor of the Attorney General against FirstUSA on Count I;
- III. Enter a judgment in favor of the Attorney General against Todd Myers on Count II;
- IV. Awarding such legal, equitable, or other relief against the Defendants, jointly and severally, as is just and appropriate pursuant to Section 501.207(3), Florida Statutes, including but not limited to restitution to customers and disgorgement of all ill-gotten gains;
- V. Assessing civil penalties against the Defendants, jointly and severally, in the amount of Ten Thousand Dollars (\$10,000.00) for each violation of Chapter 501, Part II, Florida Statutes, pursuant to Section 501.2075, Florida Statutes, and Fifteen Thousand Dollars (\$15,000.00) for each violation victimizing a senior citizen or handicapped persons, pursuant to Section 501.2077(2), Florida Statutes;
- VI. Awarding the Attorney General all expenses in bringing and maintaining this action, including reasonable attorneys' fees and costs pursuant to Sections 501.2105 and 501.2075, Florida Statutes, and as otherwise may be allowable by applicable statutes;
- VII. Waiving the posting of a bond by the Attorney General in this action;
- VIII. Granting such other and further relief as this Honorable Court deems just and proper, including, but not limited to, all other relief allowable under Section 501.207(3), Florida Statutes.

Dated: November 16, 2020.

Respectfully submitted,

ASHLEY MOODY
ATTORNEY GENERAL

/s/ Jennifer Hayes Pinder
JENNIFER HAYES PINDER
SENIOR ASSISTANT ATTORNEY GENERAL
Florida Bar No. 017325
Jennifer.Pinder@myfloridalegal.com

Office of the Attorney General
Department of Legal Affairs
3507 East Frontage Road, Suite 325
Tampa, Florida 33607
(813) 287-7950
(813) 281-5515 (facsimile)