

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Other Civil
(Consumer Protection)

State of Minnesota by its Attorney General,
Mike Hatch,

Court File No. _____

Plaintiff,

COMPLAINT

vs.

Capital One Bank and Capital One F.S.B.,

Defendants.

The State of Minnesota, by its Attorney General, Mike Hatch, alleges as follows:

INTRODUCTION AND PARTIES

1. Defendants Capital One Bank and Capital One F.S.B. (collectively “Capital One”) have violated Minnesota consumer protection laws by advertising a deal that does not exist--credit cards with low “fixed” interest rates.

2. Mike Hatch, the Attorney General of the State of Minnesota, is authorized under Minnesota Statutes Chapter 8, including Minn. Stat. §§ 8.01, 8.31, and 8.32, and under Minn. Stat. §§ 325F.67 and 325F.70 and has common law authority, including *parens patriae* authority, to bring this action on behalf of the State of Minnesota and its citizens, to enforce Minnesota’s consumer protection laws.

3. Capital One Bank is a Virginia corporation with its principal place of business at 11013 West Broad Street, Glen Allen, Virginia. Capital One Bank is a limited-purpose state-chartered credit card bank in Virginia that offers credit card products.

4. Capital One, F.S.B., is a federal savings bank with its principal place of business at 1680 Capital One Drive, McLean, Virginia. Capital One, F.S.B. offers consumer lending and deposit products, including credit cards.

5. As of September 30, 2004, Capital One's domestic credit card loans totaled \$46.1 billion. These loans generated net income of \$414.4 million for the three months ending September 30, an increase from the same period in 2003 of 50%.

JURISDICTION

6. This Court has personal jurisdiction over the defendants and, pursuant to Minn. Stat. §§ 8.31; 8.32, subd. 2(a); 325F.67; 325F.70, subd. 1; and 325D.45 (2004), jurisdiction over the subject matter of this action.

VENUE

7. Venue in Ramsey County is proper under Minn. Stat. § 542.09 (2004) because the cause of action arose, in part, in Ramsey County.

FACTS

CAPITAL ONE'S FALSE AND DECEPTIVE BRANDING AS A "LOW" AND "FIXED" RATE CREDIT CARD ISSUER

8. Capital One employs false, deceptive, and misleading television advertisements to market to Minnesotans a brand image that, unlike its competitors, it is as an issuer of credit cards with interest rates that remain "low" and "fixed." In fact, Capital One increases the interest rates charged to the substantial number of cardholders who default ("penalty rate repricing"), and retains the right to increase interest rates for no reason at all pursuant to a "change-in-terms" provision in the credit card contract ("change-in-terms repricing").

Television Advertisements

9. Capital One regularly runs television advertisements in Minnesota to promote its brand identity among both prime and subprime consumers as the credit card issuer with “low and fixed” interest rates. “Prime” consumers are those whom Capital One deems to be a lower credit risk due to the consumers’ higher credit ratings, while “subprime” or “underserved” consumers are those whom Capital One deems to be a higher credit risk based on their lower credit ratings due to a lack of credit history, past credit problems, or other reasons.

10. For instance, Capital One ran a series of three television advertisements for its “No-Hassle” credit card entitled “Catapult,” “Whale” and “Toys,” all of which advertised the card’s interest rate as “low” and “fixed,” and some of which advertised a specific “fixed” rate of “4.99%.” This trilogy of television advertisements used the same basic format, script, graphics and visual punch line to create the false impression among consumers that, unlike competitors’ credit cards, Capital One’s credit cards have interest rates that will not increase. Illustrative copies of the advertisements are found on the videotape attached as Exhibit A.

A. Catapult. “Catapult” is set in a sidewalk café in a business district. As two men finish dining, the first man takes out a competitor’s credit card and offers to pay for the meal because he’s “getting a really low rate” on his credit card. Taking out his Capital One card, the second man tells the first, “I hope it’s a low fixed rate like my Capital One No-Hassle card.” Puzzled, the first man asks, “low *and* fixed?” Visibly nervous, the first man then asks, “What’s going to happen to *my* rate?” As he finishes his question, Vikings representing Capital One’s rapacious competitors storm the café, position the arm of a catapult under his chair, and propel him high into the air, while the second man looks on in horror--a graphic illustration of competitors’ rising interest rates. A voiceover represents to consumers, “Get the Capital One No

Hassle card for the nation’s lowest fixed rates...,” while the top two-thirds of the screen is consumed with prominent representations, such as:

✓ Capital One
Nation’s Lowest Fixed Rate
4.99% APR
By Mail Offer Only

B. Whale. “Whale” is set at a resort swimming pool, where the large black dorsal fin of a killer whale glides unnoticed among the swimmers. Two men and a woman have just finished a meal at a poolside restaurant. Taking out a competitor’s credit card, the man in the middle offers to pay for lunch because he is “getting a really low rate on [his] credit card.” Holding up her Capital One card, the woman tells him she hopes his rate is “low *and* fixed...like my Capital One No-Hassle card.” Puzzled, the man replies, “low *and* fixed? Well, what’s going to happen to *my* rate?” As the man finishes his question, he is suddenly thrust high into the sky on the nose of the killer whale which has jumped out of the water directly beneath him. A voiceover represents to consumers, “Get the Capital One No Hassle card with the nation’s lowest fixed rates,” while water splashes over the side of the pool revealing thereon a prominent representation: “Nation’s Lowest Fixed Rates.”

C. Toys. “Toys” is set in a child’s playroom being vacuumed by a woman in the background. An animated male toy, “Racer,” enters the playroom in new boots. An animated female toy compliments Racer on his new boots. Racer tells her that he bought them with a competitor’s credit card, which he proudly displays, and he boasts about its “amazing low rate.” Producing a Capital One card, the female toy asks Racer if his card’s interest rate will “stay low like my Capital One No Hassle card?” Worried, Racer asks, “What is going to happen to *my* rate?,” after which he is immediately sucked up into the woman’s vacuum cleaner. A voiceover represents to consumers, “Get the Capital One No Hassle card with a rate that starts

low and stays low,” while the top three-fourths of the screen is consumed with a prominent representation above Capital One’s “No Hassle” logo:

Capital One
Starts Low
Stays Low

11. Capital One purports to qualify the overwhelming net impression of its advertisements that the rates on its credit cards remain “low” and “fixed” by placing momentary disclaimers on the television screen at the end of each advertisement, including phrases such as “terms subject to change without notice;” “additional terms and conditions apply, see your mailed invitation for more details;” or sometimes “this offer assumes the account will be kept in good standing.” Capital One’s qualifications are not only unreadable in that they appear for four to six seconds at the bottom of the television screen in a paragraph of blurry fine print, but their substance does not meaningfully alert consumers to the use of penalty-rate or change-in-terms repricing.

Capital One’s Interest Rates are Not “Low” and “Fixed”

12. In truth, there is no such “fixed” rate on Capital One credit cards. Capital One increases the supposedly “low” and “fixed” interest rates of Minnesota cardholders through the use of penalty rate repricing, and retains the right to do so through change-in-terms repricing.

13. *Penalty-Rate Repricing.* Capital One employs the practice of “penalty-rate repricing”--sometimes called “trip-wire pricing”--under which it may unilaterally increase a cardholder’s “low” and “fixed” interest rate by almost 400% as a “penalty” for his or her “default.”

14. Cardholders with the lowest initial rates (e.g., 4.99%) who default may be repriced to a rate of up to 19.8%, while those with higher initial rates who default may be

repriced to a rate of up to 25.9%. In some instances, Capital One applies a two-tiered repricing scheme under which a cardholder's first default may trigger repricing to an intermediate penalty rate of either 9.8% or 19.8%, while a subsequent default may trigger repricing to either 19.8% or 25.9% penalty rate.

15. Capital One's default or penalty conditions depend on the type of card. In some cases, cardholders may be held in default for making a single payment late--by even one day--exceeding their credit limit, or making a payment that is returned for any reason.

16. Capital One retains complete discretion to impose penalty rates upon defaulting cardholders, whom Capital One dubs "rule breakers." Capital One's exercise of its discretion turns on the cardholder's general credit profile, the existence and timing of the cardholder's default under *any* credit agreements with Capital One, other indications of the cardholder's account usage and performance, and other considerations.

17. Capital One has dramatically increased the "fixed rate" of a substantial number of consumers as a result of penalty-rate repricing.

18. *Change-in-Terms Repricing.* Capital One also may unilaterally change a cardholder's "low" and "fixed" interest rate--for any reason or no reason at all--through the practice of "change-in-terms repricing."

19. Capital One reserves to itself this broad authority in its "Customer Agreement," an exemplar copy of which is attached hereto as Exhibit C, as follows:

Change In Terms. We may amend or change any part of your Agreement, including the periodic rates...at any time....Changes to the annual percentage rate(s) will apply to your account balance from the effective date of the change, whether or not the account balance included items billed to the account before the change date and whether or not you continue to use the account....

20. Under its change-in-terms provision, Capital One purportedly may not only unilaterally increase a cardholder's interest rate, but may then apply that higher interest rate to

the cardholder's entire balance at the time of the increase, whether or not that balance includes charges incurred before the rate increase.

21. Capital One seeks to differentiate itself from its competitors by creating an impression that it is offering a credit card with "low" and "fixed" interest rates that will not increase, while the interest rates on the credit cards of other companies will inevitably increase suddenly and unexpectedly. In truth, there is no "fixed" rate on Capital One credit cards: Capital One imposes huge increases of up to four times the advertised rate on a substantial number of cardholders who are subject to its trip-wire repricing scheme, and includes in its credit card contract a provision allowing it to raise cardholder interest rates for any reason at any time.

22. Capital One's television advertisements are thus simply false. Capital One's television advertisements also mislead consumers, have the tendency and capacity to deceive consumers, or the likelihood to create consumer confusion or misunderstanding as to the interest rate on the credit card.

Written Solicitations

23. Capital One mailed written solicitations and applications to Minnesota consumers advertising credit cards with "low" and "fixed" interest rates. Capital One's written solicitation compound the false, deceptive and misleading representations in its television advertisements.

24. Capital One's written solicitations advertise credit cards with a single "low, fixed" interest rate with no introductory rate; cards with a "low" introductory rate followed by a "low fixed" rate; and cards with a "low, fixed" rate on balance transfers followed by a "fixed" or a variable rate on purchases or future balance transfers ("fixed-rate solicitations"). An exemplar copy of such a solicitation is attached hereto as Exhibit B.

25. Capital One sends substantively similar fixed-rate solicitations to Minnesota consumers, varying the credit limit, annual fee, or interest rate depending on the individual consumer's credit profile or credit score. For example, "prime" consumers may be offered cards with higher credit limits, lower interest rates, and no annual fees, while "subprime" consumers may be offered credit cards on less favorable terms.

26. Often including the same or similar slogans and logos as those used its television spots, Capital One's written solicitations further create the false, deceptive and misleading impression among Minnesota consumers that, unlike competitors' credit cards, Capital One's credit cards have interest rates on balance transfers and/or purchases that remain "low" and "fixed" as follows:

A. Capital One repeatedly and prominently represents in each solicitation that its rate is "low" and "fixed," often more than a dozen times in each solicitation.

B. Capital One graphically emphasizes its "low" and "fixed" rate by setting those terms apart in different type styles, faces and sizes, as well as in logos (e.g., "Capital One No Hassle Platinum Card" logo); icons (e.g., a bold-and-block-lettered "4.99% FIXED APR" atop an Ionic capital); and tabular boxes that compare Capital One's credit card rates and "savings" to those of competitors.

C. Capital One states or implies that its rates will never increase by representing that interest rates "are likely to go up soon," but "the rate on this card won't;" that consumers will enjoy the benefits of the "fixed" rate "in the future," "year after year," or "for life;" that consumers will "transfer balances for the last time" to the "fixed-rate" card; and other such representations

27. In the illustrative solicitation attached as Exhibit B, for instance:

A. Capital One graphically ties the “fixed-rate” offer in its television advertisement to the written solicitation by placing the same logo used in the television spot--a representation of “**FIXED 4.99% APR**” atop an Ionic capital--on the outside of the envelope.

B. Capital One describes its 4.99% interest rate as “low” thirteen times, and as “fixed” no less than seventeen times, including on both sides of the envelope, in the body of the text, in the application itself and elsewhere, including boxes comparing the interest rates and “savings” of Capital One’s credit cards with consumers’ other loans. Capital One represents in the solicitation:

- “THE LOWEST FIXED RATE IN THE NATION!”
- “Not only is the 4.99% fixed APR truly a breakthrough...it’s the low rate you’ve earned with your great credit record.”
- “You’ve earned this opportunity, so take advantage of this unbelievably low rate.”
- “Reply today for the unprecedented savings of this low fixed rate!”
- “According to research, some consumers believe they already have a 4.99% or lower fixed rate. Many of them don’t. But now you can.”
- “Start low and stay low! 4.99% fixed APR.”
- “[S]ave a lot of money with this great low 4.99% fixed APR.”
- “With our low 4.99% fixed APR, you’ll pay less interest.”
- “OUR CARD: **SAVE WITH A GREAT LOW RATE! 4.99% fixed APR** on purchases and balance transfers. Other Issuers: VARIABLE RATES As high as 15.9%.”
- “4.99% fixed APR is the lowest fixed rate in the nation of any major Platinum issuer on purchases and balance transfers. Don’t let this incredible offer pass you by.”

C. Capital One then bolsters these “low-and-fixed” representations by representing, directly or by implication, that the cardholder’s interest rate will never change. On the envelope itself, for instance, Capital One represents on the front that the “FIXED 4.99% APR” is “NOT an introductory rate!” and on the back, in ascending text, that “Interest rates are likely to go up SOON! **The rate on this card won’t.**” In the body of the solicitation, Capital One includes the same representation, and asks consumers to “Put this incredibly low rate to work...now and in the future, too.”

28. Capital One's written marketing pieces contains no language contradicting or otherwise qualifying its false, fraudulent and deceptive representations that its interest rates remain "low" and "fixed," with the exception of a subset of fixed-rate solicitations that promote a particular "fixed" rate on balance transfers "for life" or "for the life of the balance."¹

29. Capital One wholly omits or inadequately discloses the material fact that its "fixed-rate" credit cards are not fixed-rate. As to change-in-terms repricing, Capital One does not provide to consumers its Customer Agreement--which includes notice of the practice in densely worded fine-print--until after the consumer has successfully applied for and actually received a card with the alleged "low" and "fixed" interest rate. As to penalty-rate repricing, Capital One buries references to its penalty-rate repricing in the disclosures required under federal law--a separate, lengthy, densely-worded document that is physically segregated from Capital One's "low" and "fixed" representations in its written solicitations.

Inbound Telemarketing Scripts

30. Capital One's written solicitations direct Minnesota consumers to apply for its "low" and "fixed" interest rate credit cards by telephone, online or by mail.

31. Capital One handles consumers' credit card applications by telephone using inbound telemarketing scripts. When consumer applicants call Capital One, they are instructed to enter the reservation code from the written solicitation, the entry of which will cue the correct script for Capital One's telephone sales representative.

32. Each inbound telemarketing script has two parts--the sales script itself, which is used to obtain personal information from the applicant, and a "Rebuttals and Q-&As" script,

¹ Even in these limited circumstances, Capital One includes only a single sentence somewhere in the solicitation: "Rates are subject to change if you do not keep your account in good standing...."

which scripts answers to questions that applicants may ask. Capital One's inbound telemarketing scripts do not adequately disclose that its purportedly "fixed" rates are not fixed. Some of the scripts do not disclose at all Capital One's practice of penalty repricing. Other scripts state only that "a penalty APR may apply" if "your account does not remain in good standing," but even this incomplete disclosure is orally buried (and thus neutered) in a blizzard of other terms and conditions delivered after Capital One has taken the consumer's application.

33. If a consumer affirmatively asks Capital One what "fixed" means, moreover, Capital One evades the direct response that its interest rates are not truly fixed. Capital One responds to consumers who ask, "What does fixed mean?," with a representation comparable to those in its television advertisements and written solicitations:

Fixed means not introductory. Unlike most credit card companies, Capital One's fixed rate is not variable and will not go up and down as interest rates change.

Only if the customer "probes" another two times will Capital One concede that "we cannot guarantee that rates will stay the same forever," and that it "reserves the right to make changes to your account terms."

34. Capital One's inbound telemarketing scripts thus contribute further to the tendency and capacity to deceive consumers, or the likelihood of consumer confusion and misunderstanding, that interest rates on Capital One cards are "low" and "fixed."

Consumer Experiences

35. *Nicole Bourgeois.* Nicole Bourgeois and her husband, of Zimmerman, Minnesota, opened a credit card account with Capital One in July of 2003. Bourgeois had seen a Capital One television ad offering low, fixed-rate credit cards. Based on the ads, she understood the term "fixed" to mean that the low fixed rate would not change for the life of the card.

36. Bourgeois received a written solicitation from Capital One offering a fixed rate of 4.9%. Again, she understood that this offer was fixed for the life of the card. This offer was very attractive to Bourgeois and her husband because they had recently been married and wanted to consolidate their individual cards into a single joint credit card account with a low interest rate.

37. Bourgeois applied for the card by phone. She specifically asked the Capital One representative if the 4.9% low fixed rate would stay the same for the life of the card. Bourgeois did not want any surprises after going through the difficulty of canceling their other cards and transferring the balances. She was told the rate would stay low and fixed for the life of the card. The representative did not mention any default pricing terms. Bourgeois would not have followed through with the application if she had been told the rate could increase.

38. When Bourgeois received her March 2004 statement, she noticed the rate had been increased to more than 14%. She called Capital One for an explanation and was told she had made one late payment. Capital One refused to rescind the rate increase, even though Bourgeois had always paid on time and had a record of her timely payment to Capital One.

39. Bourgeois transferred her balance from the Capital One card to a new credit card and closed the Capital One account on April 2, 2004.

40. Bourgeois and her husband have excellent credit ratings and would never have moved their balances to the Capital One card if they had known that the supposedly “fixed” rate could change. Bourgeois feels she was misled by Capital One’s marketing scheme.

41. *Robert Stein.* Robert Stein, of Walker, Minnesota, had a similar experience with Capital One. Stein saw Capital One television ads prior to receiving a written solicitation for Capital One’s fixed-rate MasterCard. He found the prospect of a low fixed-rate card very

appealing. He believed that the term “low fixed rate” meant that the interest rate would stay at 4.9% for as long as he had the card.

42. Stein received a written solicitation for a fixed-rate Capital One credit card. Again, he believed that the rate was stay the same for the life of the card. Stein obtained his Capital One credit card in July 2003.

43. Stein later noticed on one of his monthly statements that his interest rate had increased to 6.9%. He contacted Capital One immediately to ask the reason for the increase. He was told his interest rate was increased because his payment was received two days late.

44. Stein had always made at least the minimum payment each month and usually paid the full balance due every couple months. He was very surprised to learn that his low “fixed” rate of 4.9% had been increased simply because he had been two days late on one payment.

45. Stein decided to go on an automatic payment program to avoid any further late payments. Capital One told him it would reevaluate his account in six months. After six months, Stein called to request the original 4.9% rate, but Capital One refused to lower his rate to 4.9%.

46. *Patsy Trusty*. Patsy Trusty lives in southern Minnesota. Trusty received a written solicitation from Capital One offering a MasterCard with a fixed rate of 4.9%. She understood the term “fixed” to mean the interest rate would remain at 4.9% as long as she had the card. Trusty is a distributor for Mary Kay, Inc., the cosmetics company. The low “fixed” rate offered by Capital One was very attractive to her because she uses a credit card to purchase inventory for her business. Trusty used the Capital One card almost exclusively for her Mary Kay business.

47. In a letter dated April 14, 2004 and received by Trusty on about April 21, 2004, Capital One lowered her credit limit. On April 16, 2004, before she had received written notice of the lower credit limit, Capital One imposed an “overlimit” fee. Capital One’s stated reason for the overlimit fee was that Trusty had “excessive recent credit card activity” and had high usage of other credit card accounts. In fact, Trusty had never exceeded her credit limit with Capital One or any other credit card or account.

48. After charging her for the unannounced credit limit fee, Capital One increased her interest rate to 7.9% on her May statement. Trusty called Capital One to obtain an explanation for the increase in her “fixed” interest rate, and to request that her “fixed” rate of 4.9% be restored. After being told to call back for a decision in a few days, she was told by an executive assistant at Capital One that the company was able to change her credit limit based on running credit reports. Trusty complained that she had her credit limit changed without notice, and the Capital One executive assistant told her that the company could do that, as well.

49. Trusty requested that Capital One return her rate to 4.9% fixed. The company called her back and told her that it would reduce the rate to 5.9% for one year, then would raise the rate. Capital One refused to return Trusty’s rate to the original “fixed” 4.9%.

50. Trusty believes that it is a “scam” to increase her supposedly fixed interest rate in this manner.

51. *Betty Ramsland.* Betty Ramsland, of Duluth, Minnesota, obtained a Capital One credit card in 2002. She had received a written solicitation offering a fixed-rate card at 8.9%.

52. During February 2004, Ramsland had her mail held when she went on vacation. A few months later, Ramsland noticed that her “fixed” rate had been increased from 8.9% to

14.04%. The rate continued to climb slightly every month thereafter, reaching 14.95% at the end of 2004.

53. When Ramsland discovered the increased interest rate, she called Capital One. The company would not tell her why her interest rate had been increased.

COUNT I: FALSE ADVERTISING

54. Plaintiff re-alleges all prior paragraphs of this Complaint.

55. Minn. Stat. § 325F.67 provides, in part, that:

Any person, firm, corporation, or association who, with intent to sell or in anywise dispose of merchandise, securities, services, or anything offered by such person, firm, corporation, or association, directly or indirectly, to the public, for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or any interest therein, makes, publishes, disseminates, circulates, or places before the public, or causes, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in this state, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, bill, label, price tag, circular, pamphlet, program, or letter, or over any radio or television station, or in any other way, an advertisement of any sort regarding merchandise, securities, service, or anything so offered to the public for use, consumption, purchase, or sale, which advertisement contains any material assertion, representation, or statement of fact which is untrue, deceptive, or misleading, shall, whether or not pecuniary or other specific damage to any person occurs as a direct result thereof, be guilty of a misdemeanor, and any such act is declared to be a public nuisance and may be enjoined as such.

56. Capital One's television advertisements for credit cards with interest rates that remain "low" and "fixed" when, in fact, the rates can be and often are dramatically increased are untrue, deceptive and misleading and thus constitutes multiple, separate violations of Minn. Stat. § 325F.67 (2004).

57. Capital One's business practices in marketing and selling, via television, direct mail, and inbound telemarketing, credit cards with interest rates that remain "low" and "fixed"

when, in fact, the rates can be and often are dramatically increased, are untrue, deceptive and misleading and thus constitute multiple, separate violations of Minn. Stat. § 325F.67 (2004).

COUNT II: CONSUMER FRAUD

58. Plaintiff re-alleges all prior paragraphs of this Complaint.

59. Minn. Stat. § 325F.69, subdivision 1 provides that:

The act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is enjoined as provided herein.

60. Capital One's television advertisements for credit cards with interest rates that remain "low" and "fixed" when, in fact, the rates can be and often are dramatically increased are fraudulent, false promises, misrepresentations, misleading statements and deceptive practices and thus constitutes multiple, separate violations of Minn. Stat. § 325F.69 (2004).

61. Capital One's business practices in marketing and selling, via television, direct mail, and inbound telemarketing, credit cards with interest rates that remain "low" and "fixed" when, in fact, the rates can be and often are dramatically increased, are fraudulent, false promises, misrepresentations, misleading statements and deceptive practices and thus constitute multiple, separate violations of Minn. Stat. § 325F.69 (2004).

COUNT III: UNIFORM DECEPTIVE TRADE PRACTICES ACT

62. Plaintiff re-alleges all prior paragraphs of this Complaint.

63. Minn. Stat. § 325D.44, subdivision 1 provides, in part, that:

Subdivision 1. A person engages in a deceptive trade practice when, in the course of business, vocation, or occupation, the person:

(5) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not

- have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;
- (7) represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
- (9) advertises goods or services with intent not to sell them as advertised;...or
- (13) engages in any other conduct which similarly creates a likelihood of confusion or misunderstanding.

64. Capital One's television advertisements for credit cards with interest rates that remain "low" and "fixed" when, in fact, the rates can be and often are dramatically increased, constitute multiple, separate violations of Minn. Stat. § 325D.44, subdivision 1(5), (7), (9) and (13) (2004), including:

- A. Falsely representing that Capital One credit card accounts have the characteristics, uses and/or benefits of "low" and "fixed" interest rates, in violation of subpart (5);
- B. Falsely representing that Capital One credit card accounts, in contrast to competitors' credit card accounts, are of a particular standard, quality, grade, or style with respect to "low" and "fixed" interest rates, in violation of subpart (7);
- C. Advertising credit card accounts with interest rates that remain "low" and "fixed" with the intent not to sell them as advertised, in violation of subpart (9);
- D. Creating a likelihood of confusion or misunderstanding among consumers that Capital One's interest rates on credit card accounts remain "low" and "fixed" when, in fact, they do not, in violation of subpart (13).

65. Capital One's business practices in marketing and selling, via television, direct mail, and inbound telemarketing, credit cards with interest rates that remain "low" and "fixed" when, in fact, the rates can be and often are dramatically increased, constitute multiple, separate violations of Minn. Stat. § 325D.44, subdivision 1(5), (7), (9) and (13) (2004), including:

- A. Falsely representing that Capital One credit card accounts have the characteristics, uses and/or benefits of "low" and "fixed" interest rates, in violation of subpart (5);

- B. Falsely representing that Capital One credit card accounts, in contrast to competitors' credit card accounts, are of a particular standard, quality, grade, or style with respect to "low" and "fixed" interest rates, in violation of subpart (7);
- C. Advertising credit card accounts with interest rates that remain "low" and "fixed" with the intent not to sell them as advertised, in violation of subpart (9);
- D. Creating a likelihood of confusion or misunderstanding among consumers that Capital One's interest rates on credit card accounts remain "low" and "fixed" when, in fact, they do not, in violation of subpart (13).

RELIEF

WHEREFORE, Plaintiff, the State of Minnesota, by its Attorney General, Mike Hatch, respectfully asks this Court to award judgment, jointly and severally, against defendants Capital One Bank and Capital One F.S.B. ("Capital One") as follows:

I. Declaring that Capital One's acts described in this Complaint constitute multiple, separate violations of Minn. Stat. § 325F.67; § 325F.69, subdivision 1; and § 325D.44, subdivision 1 (2004);

II. Enjoining Capital One, and its employees, officers, directors, agents, successors, assignees, affiliates, merged or acquired predecessors, parent or controlling entities, subsidiaries, and all other persons acting in concert of participation with it, from representing that the interest rates on credit card accounts subject to penalty rate repricing or change-in-terms repricing are "low" or "fixed," or violating in any other way Minn. Stat. § 325F.67; § 325F.69, subdivision 1; and § 325D.44, subdivision 1 (2004);

III. Awarding judgment against Capital One for civil penalties pursuant to Minn. Stat. § 8.31, subdivision 3 for each separate violation of Minn. Stat. § 325F.67; § 325F.69, subdivision 1; and § 325D.44, subdivision 1 (2004);

IV. Awarding judgment against Capital One for restitution under the *parens patriae* doctrine, Minn. Stat. § 8.31, the general equitable powers of this Court, and any other authority for all persons injured by Capital One's acts described in this Complaint;

V. Awarding judgment against Capital One for disgorgement of all profits derived as a result of each separate violation of Minn. Stat. § 325F.67; § 325F.69, subdivision 1; and § 325D.44, subdivision 1 (2004);

VI. Awarding plaintiff its costs, including costs of investigation and attorney's fees, as authorized by Minn. Stat. § 8.31, subdivision 3a (2004); and

VII. Granting such further relief as the Court deems appropriate and just.

Dated: _____

MIKE HATCH
Attorney General
State of Minnesota

MINN. STAT. § 549.211 ACKNOWLEDGMENT

The party on whose behalf the attached document is served acknowledges through its undersigned counsel that sanctions, including reasonable attorney fees and other expenses, may be awarded to the opposite party or parties pursuant to Minn. Stat. § 549.211 (2004).

Dated: _____

MIKE HATCH
Attorney General
State of Minnesota