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Ex-Phone Exec Placed on Hold

Technology: FTC alleges Lin Miao ran 'cram' bill scam.
By **NATALIE JARVEY**

Monday, December 23, 2013

Lin Miao burst onto the L.A. technology scene early this year when he announced that he was opening an incubator named Be Great Partners in a high-rise on the Miracle Mile and seeding it with \$6 million to invest in 500 startups.

That budding tech investment effort is suddenly in jeopardy, however, as Miao and a former partner face allegations by the Federal Trade Commission that their fortunes came at the expense of unwitting consumers who fell victim to mobile phone scams run by their former business. A judge last week froze some of Miao's assets, at least temporarily.

The FTC sued Tatto Inc., a mobile marketing firm Miao co-founded, and seven related businesses, accusing them of conducting scams to place charges on people's cell phone bills without their permission. Miao and Tatto co-founder Andrew Bachman were also named in the lawsuit.

The FTC claims that Miao made at least \$29 million from a practice called "cramming" in which his businesses would bill customers monthly for text message-based subscription services – such as celebrity news alerts or horoscopes – that those customers did not authorize.

Many of those people were unaware of the additional charges on their monthly phone bills, according to the FTC. When they did notice the charges, they had a difficult time canceling them and receiving refunds.

The lawsuit is part of a widespread FTC crackdown on cramming, which has become increasingly prevalent with the rise of mobile phone use, said Sandhya Brown, acting assistant director for the FTC's division of financial practices in Washington.

"Because we recognize that it's a serious risk, we are doing our best to effectively monitor and pursue crammers and anyone else that participates in the act of placing unauthorized charges on consumers' phone bills," she said.

In a filing, the FTC claims consumers have lost at least \$100 million to scams conducted by Tatto and its related businesses. The commission is requesting that Tatto and its related businesses stop charging people unless they opt-in for the service. It is also seeking disgorgement of profits they made from the alleged scams.

Miao and his attorney at Mitchell Silberberg & Knupp did not respond to a request for comment.

But in a Dec. 12 response to the FTC allegations, filed in the U.S. District Court in Los Angeles, Miao's attorneys argued the suit had no merit because Tatto and its related operations are no longer in business. They also denied that Tatto engaged in deceptive or unfair practices.

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Judge Dale S. Fischer last week extended a temporary restraining order and froze most of the assets of Miao, Bachman and their businesses until a scheduled Jan. 6 hearing.

Michael Mallow, chairman of the consumer protection defense department in the Century City office of Loeb & Loeb, said this is standard practice for the FTC, which wants to prevent Miao and Bachman, who serves as chairman, chief executive and president of Game Plan Holdings Inc., a publicly traded company in Boston, from moving money out of reach while the case is ongoing.

"The reason they request an asset freeze is to try to protect the assets so if there is an award for monetary relief to the consumers, there is some money to give back," he said.

Tatto beginnings

Miao co-founded Tatto with Bachman and two others in 2005 while they were students at Boston's Babson College. The company, which conducted mobile and online advertising campaigns, has previously been accused of scamming people.

Tatto, which was previously incorporated in Washington state, was sued by the state attorney general in 2008 for advertising a subscription called MyLuvCrush that promised to reveal the identity of a person's secret admirer. Instead, people were sent a text with the name of a fake person and then charged a \$10 subscription fee for monthly horoscopes. Tatto settled and agreed to stop the campaign, but was sued by the state again in 2009 for continuing to run the ads.

The FTC alleges that following those lawsuits, Miao and Bachman created six businesses to continue to run scams. Those businesses – Shaboom Media, Bune, Mobile Media Products, Chairman Ventures, Galactic Media and Virtus Media – were also named in the FTC's lawsuit.

In 2011, Tatto said that it was acquired by Hong Kong mobile game publisher Ozura World for \$60 million. In the court filing, Miao claims that Tatto is now defunct and it has no ties to Ozura.

The same year Miao sold Tatto, he embarked on a new venture, L.A.-based website Scambook, a complaint resolution site that aims to help consumers in their dealings with vendors that engage in cramming and other similar business practices – like Tatto allegedly did.

When Miao launched Be Great Partners earlier this year, Scambook was listed as the incubator's first portfolio company. Be Great has reported that it has since invested in 24 startups, service booking app Porter and movie ticket discount service DealFlicks. Porter and DealFlicks declined to comment.



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Incubator expansion

The incubator, known for throwing glitzy parties that double as startup showcases, is headquartered on the 21st floor of the former Variety building on Wilshire Boulevard. Miao's office, visited by two Business Journal reporters earlier this year, offered expansive views of the Hollywood Hills. One wall was adorned with a photo of Gordon Gekko, the unscrupulous corporate raider played by Michael Douglas in the 1980s movie "Wall Street."

If not as ambitious as Gekko's, Be Great's plans are nevertheless aggressive. It announced in September that it planned to open nine co-working facilities around town, creating 110,000 square feet of workspace for tech startups.

Jerome Chang, the founder of co-working facility Blankspaces, said launching that many facilities in a short period of time is very capital intensive. And operating co-working spaces is unlikely to make someone a fortune.

"Most people going into this business do it with the co-op mentality," he said. "They're looking to make a little margin to make it worth it but not looking to make a financial windfall."

It's unclear exactly how the asset freeze will affect Miao's new ventures. A spokeswoman for Be Great declined to comment. Legal experts said that if Miao is funding Be Great's expansion, the lawsuit could hinder those operations.

Miao acknowledged as much in his court filing.

"The lawsuit against the Totto defendants by the FTC has placed a halt to the unrelated companies' expansion plans, including new hires," the response stated.

The judge's order last week did unfreeze Be Great's assets, and she allowed Miao to transfer \$158,000 into its accounts to meet payroll and pay rent.

Be Great's direct investments in companies likely won't be affected, said Michael Chasalow, director of the small-business clinic at the USC Gould School of Law. If the FTC wins the case, it would only take control of those investments if Miao was funding them personally. The government then could take over Miao's position in those investments.

"I don't know that there's a huge risk of having to give the FTC the money back," he said of the funded businesses. "The FTC (would acquire) all of his rights. (It's) not going to be able to force something that wouldn't otherwise happen."

