

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

D.C.

DIVISION

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Case No. _____ Civ. _____

CLARENCE HADDOX
CLERK U. S. DIST. CT.
S. D. OF FLA - MIA

00-0514

CIV - GOLD

MAGISTRATE JUDGE
SIMONTON

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

AMERITEL PAYPHONE DISTRIBUTORS, INC.,

a Florida corporation;

and

ROY B. GOODMAN,

individually and as an officer of the corporation,

Defendants.

COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission ("FTC" or "the Commission"), for its complaint alleges:

1. The FTC brings this action under Sections 5(a), 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b) and 57b, to obtain temporary, preliminary, and permanent injunctive relief, rescission of contracts, restitution, disgorgement, appointment of a receiver, and other equitable relief for defendants' violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC's Trade Regulation Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" (the "Franchise Rule" or the "Rule"), 16 C.F.R. § 436.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 53(b) and 57b. This action arises under 15 U.S.C. § 45(a)(1).

3. Venue in the United States District Court for the Southern District of Florida is proper under 28 U.S.C. §§ 1391(b) and (c), and 15 U.S.C. § 53(b).

THE PARTIES

4. Plaintiff, the Federal Trade Commission, is an independent agency of the United States Government created by statute. 15 U.S.C. § 41 et seq. The Commission 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, as well as enforcement of the Franchise Rule, 16 C.F.R. § 436. The Commission is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act in order to secure such equitable relief as may be appropriate in each case, and to obtain consumer redress. 15 U.S.C. §§ 53(b) and 57b.

5. Defendant Ameritel Payphone Distributors, Inc. ("Ameritel"), a Florida corporation with its principal place of business at 11098 Biscayne Boulevard, Suite 201, Miami, Florida 33156, promotes and sells payphone business ventures. Ameritel transacts or has transacted business in the Southern District of Florida.

6. Defendant Roy B. Goodman is the President and sole shareholder of Ameritel. At all times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled or participated in the acts and practices of the corporate defendant, including

the acts and practices set forth in this complaint. He resides and transacts or has transacted business in the Southern District of Florida.

COMMERCE

7. At all times relevant to this complaint, the defendants have maintained a substantial course of trade in the offering for sale and sale of payphone business ventures, in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' BUSINESS ACTIVITIES

8. Since at least January 1997, and continuing thereafter, defendants have offered and sold payphone business ventures to consumers. The defendants have promoted their business ventures to prospective purchasers in classified advertisements in newspapers.

9. In their classified advertisements, defendants make representations about the earnings potential of their business venture, and urge consumers to call defendants' toll-free telephone number to learn more about the opportunity. For example, defendants' advertisements typically state:

"\$ AT&T - Bell PAYPHONES \$
Prime local sites. \$200k yr
pot'l. Lowest prices!
1-800-800-3470 24 hrs"

10. Consumers who call the defendants' toll-free telephone number are ultimately connected to defendants, or their employees or agents, who represent to consumers that in exchange for a payment, often in excess of \$6,000.00, consumers will receive what they need to get started in the business venture, including: (1) payphones and related equipment; (2) prime payphone locations; and (3) step-by-step assistance in establishing the business venture.

11. The defendants or their employees or agents also make representations about the earnings potential of the business venture, and the actual earnings of prior purchasers, without giving consumers access to the information they need to evaluate the claims. For example, the defendants or their employees or agents typically represent that their payphone locations average between \$200 and \$300 per payphone per month in coin deposits alone.

12. The defendants or their employees or agents additionally represent that profitable payphone locations are available in the consumers' local area, and that profitable locations will be obtained for the purchasers' payphones.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), provides that "unfair or deceptive acts or practices in or affecting commerce are hereby declared unlawful."

COUNT I

13. In numerous instances in the course of offering for sale and selling their business ventures, defendants or their employees or agents have represented, expressly or by implication, that consumers who purchase the business venture will earn in excess of \$200.00 per payphone per month in coin deposits alone.

14. In truth and in fact, few, if any, consumers who purchase the defendants' business ventures earn, or will earn, in excess of \$200.00 per payphone per month.

15. Therefore, defendants' representations as set forth in Paragraph 13 are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II

16. In numerous instances in the course of offering for sale and selling their business ventures, defendants or their employees or agents have represented, expressly or by implication, that consumers will be provided with profitable locations for their payphones.

17. In truth and in fact, few, if any, consumers who purchase the defendants' business venture are provided with profitable locations.

18. Therefore, defendants' representations as set forth in Paragraph 16 are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

THE FRANCHISE RULE

19. The business ventures sold by the defendants are franchises, as "franchise" is defined in Sections 436.2(a)(1)(ii), (a)(2) and (a)(5) of the Franchise Rule, 16 C.F.R. §§ 436.2(a)(1)(ii), (a)(2) and (a)(5).

20. The Franchise Rule requires a franchisor to provide prospective franchisees with a complete and accurate basic disclosure document containing twenty categories of information, including information about the litigation and bankruptcy history of the franchisor and its principals, the terms and conditions under which the franchise operates, and information identifying existing franchisees. 16 C.F.R. § 436.1(a)(1) - (a)(20). The pre-sale disclosure of this information required by the Rule enables a prospective franchisee to contact prior purchasers and take other steps to assess the potential risks involved in the purchase of the franchise.

21. The Franchise Rule additionally requires: (1) that the franchisor have a reasonable basis for any oral, written, or visual earnings or profit representations ("earnings claims") it

makes to a prospective franchisee, 16 C.F.R. § 436.1(b)(2), (c)(2) and (e)(1); (2) that the franchisor provide to prospective franchisees an earnings claim document containing information substantiating any earnings claims it makes, 16 C.F.R. § 436.1(b)-(e); and (3) that the franchisor, in immediate conjunction with any generally disseminated earnings claim, disclose additional information including the number and percentage of prior purchasers known by the franchisor to have achieved the same or better results. 16 C.F.R. § 436.1(e)(3)-(4).

22. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. 57a(d)(3), and 16 C.F.R. § 436.1, violations of the Franchise Rule constitute unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

VIOLATIONS OF THE FRANCHISE RULE

COUNT III

23. In connection with the offering of franchises, as “franchise” is defined in the Rule, 16 C.F.R. § 436.2(a), defendants have failed to provide prospective franchisees with accurate and complete basic disclosure documents within the time period required by the Franchise Rule, thereby violating Section 436.1(a) of the Rule, 16 C.F.R. § 436.1(a), and Section 5 of the FTC Act, 15 U.S.C. § 45.

COUNT IV

24. In connection with the offering of franchises, as “franchise” is defined in the Rule, 16 C.F.R. § 436.2(a), defendants or their employees or agents have made earnings claims within the meaning of the Rule, 16 C.F.R. § 436.1(b)-(c), but have failed to: (i) provide prospective franchisees with earnings claim documents within the time period required by the Franchise Rule; (ii) have a reasonable basis for such claims at the times they were made; or (iii) disclose the

information required by the Rule in immediate conjunction with such claims, thereby violating Sections 436.1(b)-(d) of the Rule, 16 C.F.R. § 436.1(b)-(d), and Section 5 of the FTC Act, 15 U.S.C. § 45.

COUNT V

25. In connection with the offering of franchises, as “franchise” is defined in the Rule, 16 C.F.R. § 436.2(a), defendants have generally disseminated earnings claims within the meaning of the Rule, 16 C.F.R. § 436.1(e), but have failed to disclose information required by the Franchise Rule in immediate conjunction with such claims, including the number and percentage of prior purchasers known by the defendants to have achieved the same or better results, have failed to have a reasonable basis for such claims at the times they were made, or have failed to provide prospective franchisees with earnings claim disclosures at the times required by the Rule whenever such claims are made, thereby violating Section 436.1(e) of the Rule, 16 C.F.R. § 436.1(e), and Section 5 of the FTC Act, 15 U.S.C. § 45.

CONSUMER INJURY

26. Consumers nationwide have suffered or will suffer substantial monetary loss as a result of defendants’ violations of Section 5(a) of the FTC Act and the Franchise Rule. Absent injunctive relief by this Court, defendants are likely to continue to injure consumers and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

27. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief, including consumer redress, disgorgement and restitution, to prevent and remedy any violations of any provision of law enforced by the Federal Trade Commission.

28. Section 19 of the FTC Act, 15 U.S.C. § 57b, authorizes this Court to grant such relief as the Court finds necessary to redress injury to consumers or other persons resulting from defendants' violations of the Franchise Rule, including the rescission and reformation of contracts, and the refund of money.

29. This Court, in the exercise of its equitable jurisdiction, may award ancillary relief to remedy injury caused by the defendants' law violations.

PRAYER FOR RELIEF

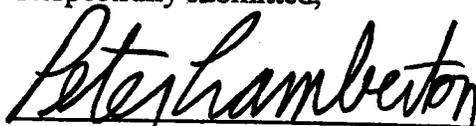
WHEREFORE, plaintiff requests that this Court, as authorized by Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and pursuant to its own equitable powers:

1. Award plaintiff such preliminary injunctive and ancillary relief, including a temporary restraining order and appointment of a receiver, 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;
2. Permanently enjoin the defendants from violating the FTC Act and the Franchise Rule, as alleged herein;
3. Award such relief as the Court finds necessary to redress injury to consumers resulting from the defendants' violations of the FTC Act and the Franchise Rule, including but

not limited to, rescission of contracts, the refund of monies paid, and the disgorgement of ill-gotten gains; and

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

Respectfully submitted,



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