

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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WESTERN DISTRICT OF NEW YORK
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FEDERAL TRADE COMMISSION,

Plaintiff,

v.

Civil No.

AMERICAN UNIVERSAL VENDING CORP.,
a New York corporation d/b/a UNIVERSAL
VENDING, INC.; 466733 ONTARIO
LIMITED d/b/a UNIVERSAL VENDING, INC.,
an Ontario corporation; Ontario Corporation
Number 1337481 d/b/a UNIVERSAL PAYPHONE
SYSTEMS, INC., an Ontario corporation, and
GEORGE KATSOULAKIS, also known as
CONSTANTIN KATSOULAKIS
and GEORGE KATS, individually and as an officer
of the corporations,

Defendants.

00 CV 0155E(sc)

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, 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 Western District of New York 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 American Universal Vending Corp., doing business as Universal Vending, Inc. ("Universal Vending USA"), a New York corporation with a place of business at 300 International Drive, Suite 100, Williamsville, NY 14221, and additional offices at 1585 Britannia Road East, Unit C1, Mississauga, Ontario L4W 2M4, has promoted and sold vending machine business ventures. Universal Vending transacts or has transacted business in the Western District of New York.

6. Defendant 466733 Ontario Limited, also doing business as Universal Vending, Inc. ("Universal Vending Canada"), an Ontario corporation with a place of business at 1585 Britannia Road East, Unit C1, Mississauga, Ontario L4W 2M4, and additional offices at 300 International Drive, Suite 100, Williamsville, NY 14221, has promoted and sold vending machine business ventures. Universal Vending transacts or has transacted business in the Western District of New York.

7. Defendant Ontario Corporation number 1337481, doing business as Universal Payphone Systems, Inc. ("Universal Payphone"), an Ontario corporation with a place of business at 1585 Britannia Road East, Unit C1, Mississauga, Ontario L4W 2M4, and additional offices at 300 International Drive, Suite 100, Williamsville, NY 14221 and 800 Boul Rene-Levesque Ouest, Bureau 2450, Montreal, Quebec H3B 4V7, has promoted and sold pay phone business ventures. Universal Payphone transacts or has transacted business in the Western District of New York.

8. Defendant George Katsoulakis, a/k/a Constantin Katsoulakis, a/k/a George Kats, is the President of Universal Vending USA, Universal Vending Canada, and Universal Payphone. 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 defendants, including the acts and practices set forth in this complaint. He transacts or has transacted business in the Western District of New York.

9. Defendants Universal Vending USA, Universal Vending Canada, and Universal Payphone are affiliated companies controlled in whole or in part by individual defendant Katsoulakis. They share office space and employees and cooperate and act in concert to carry out

the defendants' business practices as alleged herein. They constitute a common enterprise for purposes of this proceeding.

COMMERCE

10. At all times relevant to this complaint, the defendants have maintained a substantial course of trade in the offering for sale and sale of vending machine and pay phone 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

11. Since at least May 1998, and continuing thereafter, defendants have deceived consumers throughout the United States and Canada through the deceptive offering and sale of vending machine and pay phone business ventures. The defendants have promoted their business ventures to prospective purchasers in a variety of media, including classified advertisements in newspapers.

12. Defendants previously sold candy vending machine business ventures under the corporate name, International Vendcorp, Inc., which in August 1998 was ordered to cease and desist its violations of the State of Washington's business opportunity laws, and which in June 1998 was fined \$265,000 and ordered to pay over \$30,000 in restitution, costs, and attorney's fees, in an action brought by the State of Florida for violations of its business opportunity laws.

13. In their advertisements, defendants make representations about the earnings potential of their business ventures, and urge consumers to call defendants' toll-free telephone numbers to learn more about the opportunities. For example, defendants' classified newspaper advertisements typically state:

"COTTONELLE

3 Distributors needed in your area. Launch brand new product. \$60-90K/yr. potential. Min. invest. \$6,000 guaranteed. Free audio/video pkg. 800-600-2899. (24 hrs.) Universal Vending, Inc., 300 International Dr., Williamsville, NY"

and:

"Payphone
now you can own them
most financially secure home based bus. in the world
\$250K yr. Potential
Minimum investment \$10,000
Your investment is guaranteed
Serious inquiries only
Locations include 10 yr. Contract and installation
1-800-253-9779 (24 hrs)
All Canadian Company. Established since 1981."

14. Consumers who call the defendants' toll-free telephone numbers are ultimately connected to defendants, or their employees or agents, who represent to consumers that in exchange for a payment in excess of \$6,000 to Universal Vending USA or Universal Vending Canada (hereafter collectively "Universal Vending"), or in excess of \$10,000 to Universal Payphone, consumers will receive what they need to get started in the respective business venture, including: (1) vending machines or pay phones; (2) placement of vending machines or pay phones in profitable locations; (3) necessary supplies, including Cottonelle toilet seat covers for the vending machines; and (4) fulfillment of all necessary requirements to get purchasers' pay phone businesses up and running.

15. Contrary to defendants' representations, after purchasing defendants' vending machine business ventures, consumers first learn that defendants are not authorized to sell Cottonelle products to dispense in their machines. In addition, contrary to defendants'

representations, after purchasing defendants' pay phone business ventures, consumers first learn that defendants have not complied with necessary legal and technical requirements for setting up a pay phone business.

16. 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, defendants Universal Vending and Katsoulakis or their employees or agents typically represent that their vending machine business ventures average a minimum of \$15,20 per year, and guarantee purchasers a 100% return on their investments the first year. Defendants Universal Payphone and Katsoulakis or their employees or agents typically represent that their pay phones average \$500 per pay phone per month, and guarantee purchasers a 100% return on their investments within the first fourteen months.

17. The defendants or their employees or agents additionally represent that profitable vending machine or pay phone locations are available in the consumer's local area, and that profitable locations will be obtained for the purchasers' vending machines or pay phones.

18. When consumers receive the vending machines or pay phones and place them on location, they discover that the vending machines or pay phones do not generate the number of sales or the amount of profit that the defendants represented. As a result, few, if any, consumers who purchase the defendants' business ventures earn, or will earn, the income represented.

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VIOLATIONS OF SECTION 5 OF THE FTC ACT

19. 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

20. 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: (a) consumers who purchase the vending machine business venture will earn in excess of \$15,120 per year; and (b) consumers who purchase the pay phone business venture will earn in excess of \$500 per month per pay phone.

21. In truth and in fact: (a) few, if any, consumers who purchase the defendants' vending machine business ventures earn, or will earn, in excess of \$15,120 per year; and (b) few, if any, consumers who purchase the defendants' pay phone business ventures earn, or will earn, in excess of \$500 per month per pay phone.

22. Therefore, defendants' representations as set forth in Paragraph 19 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

23. 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 vending machines or pay phones.

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

25. Therefore, defendants' representations as set forth in Paragraph 22 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

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

27. 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.

28. 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).

29. 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

30. In connection with the offering of vending machine franchises, as "franchise" is defined in the Rule, 16 C.F.R. § 436.2(a), defendants American Universal Vending Corp., 466733 Ontario Limited, and George Katsoulakis, 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.

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COUNT IV

31. In connection with the offering of vending machine franchises, as "franchise" is defined in the Rule, 16 C.F.R. § 436.2(a), defendants American Universal Vending Corp., 466733 Ontario Limited, and George Katsoulakis, have made earnings claims within the meaning of the Rule, 16 C.F.R. § 436.1(b)-(c), but have failed to provide prospective franchisees with earnings claim documents within the time period required by the Franchise Rule, have failed to have a reasonable basis for such claims at the times they were made, or have failed to 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

32. In connection with the offering of vending machine franchises, as "franchise" is defined in the Rule, 16 C.F.R. § 436.2(a), defendants American Universal Vending Corp., 466733 Ontario Limited, and George Katsoulakis, have made 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

33. 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

34. 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.

35. 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.

36. 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, 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;

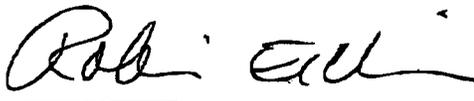
2. Permanently enjoin the defendants from violating the FTC Act and the Franchise Rule, as alleged herein;

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,

DEBRA A. VALENTINE
General Counsel



ROBIN E. EICHEN
THOMAS A. COHN
Attorneys for Plaintiff
Federal Trade Commission
Northeast Region
One Bowling Green, Suite 318
New York, New York 10004
Telephone: (212) 607-2803 or 607-2808
Facsimile: (212) 607-2822