

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
Ft. Lauderdale Division

Case No. _____ - Civ. _____ ; _____

CIV-GRAHAM

00-8126

FEDERAL TRADE COMMISSION,
Plaintiff,

v.

**TRANSWORLD ENTERPRISES, INC., a
Florida Corporation, dba ATM
International,**

**MARK GOLDSTEIN, aka MARK DAVIS,
individually,**

and

**JAMES A. MACKEY, JR., individually and
as an officer of the corporation,**

Defendants.

MAGISTRATE JUDGE
TURNOFF

X000022

CLARENCE MADDOX
CLERK U.S. DIST. CT.
S.D. OF FLA.-FTL

FILED BY _____
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**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 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 Transworld Enterprises, Inc. ("Transworld"), a Florida corporation with its principal place of business at 1600 South Dixie Highway, Boca Raton, Florida, promotes and sells Automated Teller Machine ("ATM") business ventures. Transworld transacts or has transacted business in the Southern District of Florida.

6. Defendant Mark Goldstein is a principal of Transworld and holds himself out as Marketing Director of Transworld. 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.

7. Defendant James A. Mackey Jr. is an officer of Transworld. 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

8. At all times relevant to this complaint, defendants have maintained a substantial course of trade in the offering for sale and sale of ATM 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

9. Since at least 1996, and continuing thereafter, defendants have offered and sold ATM business ventures to consumers. Defendants have promoted their business ventures to prospective purchasers in a variety of media, including advertisements on the radio and television.

10. In their advertisements, defendants make general representations about the profitability of their business venture, and urge consumers to call defendants' toll-free telephone number to learn more about the opportunity.

11. 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, typically of \$16,995, consumers may purchase a business venture that includes buying an ATM and accompanying services provided by defendants. Defendants, or their employees or agents, explain that consumers who purchase the business opportunity receive a surcharge fee whenever a cash withdrawal is made from their ATM and that this surcharge fee is the source of the revenue and profit to the ATM owner.

12. Defendants, or their employees or agents, also make a variety of written and oral 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, or their employees or agents, have represented that a machine that is used 600 times a month will generate a net annual profit of \$6,300, for a 37% return on money invested. If the same machine is used as many as 2,400 times a month, the consumer will net \$39,840 a year, for a 234% return.

13. Defendants, or their employees or agents, represent that they will provide the consumer with complete and ongoing support in all areas of the ATM business, including ATM maintenance, customer service, courier service, transaction processing, and providing monthly statements for all the consumer's accounts.

14. Defendants, or their employees or agents, refer potential purchasers to Steven Mazziotta at Location Concepts, Inc. or ATM Location Network, who, defendants represent, will provide purchasers with profitable locations at which their ATM will be installed. Mazziotta reiterates representations made by defendants, or their employees or agents, about the profit potential of the ATMs and further states that for between \$1,000 and \$2,000 he will obtain locations that will ensure purchasers receive a net profit.

15. After consumers sign a purchase agreement and send their payment to defendants to purchase one of defendants' ATM business ventures, consumers learn, for the first time, that defendants will not provide the promised support. Instead, they learn that they must sign additional contracts with, and pay at least \$1,000 to International Merchant Services, Inc., an ATM management company selected by defendants, before their ATM can be shipped, installed, and made operational. Purchasers who decline to sign the additional contracts or pay the additional money will not have their ATM shipped, installed, and made operational. Many consumers, having already paid thousands of dollars to

defendants and Mazziotta's location companies, decide to pay the extra fee and sign the contracts so their ATM business can commence.

16. Consumers who do sign the contracts and pay the money to the management company find that their ATM is not used the number of times, and does not produce the amount of revenue and profit, that the defendants represented.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

17. 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

18. 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 a net annual profit of between \$6,360 and~~ \$39,840.

19. In truth and in fact, few, if any, consumers who purchase the defendants' business ventures earn, or will earn a net annual profit of between \$6,360 and \$39,840.

20. Therefore, defendants' representations as set forth in Paragraph 18 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

21. 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 ATMs.

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

23. Therefore, defendants' representations as set forth in Paragraph 21 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 III

24. In numerous instances in the course of offering for sale and sale of ATM business ventures, defendants, or their employees or agents, have represented, expressly or by implication, that defendants will provide consumers all the support necessary in all areas of ATM business.

25. In truth and in fact, in most instances, defendants provide little or no support to purchasers of the ATM business venture. Rather, consumers must obtain such services from another company for an additional fee of \$1,000 or more.

26. Therefore, defendants' representations as set forth in Paragraph 24 are false and misleading, and constitute unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

THE FRANCHISE RULE

27. The 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).

28. 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~~ 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.

29. 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 earnings claim, disclose additional information including the number and percentage of prior purchasers known by the franchisor to have achieved the same results. 16 C.F.R. § 436.1(b)(5) and (c)(6).

30. 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 IV

31. 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 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 V

32. 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 provide prospective franchisees with earnings claim documents 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.

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

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, including a temporary restraining order with asset freeze, 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 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 defendants' violations of the FTC Act and 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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