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U.S. DISTRICT COURT
DISTRICT OF COLORADO

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GREGORY C. LANGHAM
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 06 - CV - 02423 -MSK-MEH

UNITED STATES OF AMERICA,

Plaintiff,

v.

VEND DIRECT, INC.,
a Colorado corporation; and

GARY LUCKNER, individually and as an
officer of the corporation,

Defendants.

COMPLAINT FOR CIVIL PENALTIES, CONSUMER REDRESS, PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("FTC" or "the Commission"), pursuant to Section 16(a)(1) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 56(a)(1), for its complaint alleges:

1. Plaintiff brings this action under Sections 5(a), 5(m)(1)(A), 13(b), 16(a), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), 56(a), and 57b, to secure civil penalties, consumer redress, a permanent injunction and other equitable relief for the 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" ("Franchise Rule" or "Rule"), 16 C.F.R. Part 436.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(m)(1)(A), 53(b), 56(a), and 57b. This action arises under 15 U.S.C. § 45(a).

3. Venue in the United States District Court for the District of Colorado is proper under 28 U.S.C. §§ 1391(b)-(c) and 1395(a), and 15 U.S.C. § 53(b).

DEFENDANTS

4. Defendant Vend Direct, Inc. ("Vend Direct"), a Colorado corporation with its principal place of business at 4610 South Ulster Street, Suite 150, Denver, Colorado 80237, promotes and sells vending machine business opportunities. Vend Direct transacts or has transacted business in the District of Colorado.

5. Defendant Gary Luckner is the President of Vend Direct. 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 or has transacted business in the District of Colorado.

COMMERCE

6. 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 business opportunities, in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

THE DEFENDANTS' BUSINESS PRACTICES

7. The defendants offer and sell vending machine business ventures. The defendants promote their business opportunities through classified advertisements in newspapers nationwide and through their Web site on the Internet, www.venddirect.net. The defendants' advertisements suggest the earnings potential of the business opportunity:

> ABSOLUTE GOLDMINE 30 Vend. Mach. Excel.
> Equip./Locs. $5995. 800-440-7761

In their advertisements and on their Web site, defendants urge consumers to call a toll-free telephone number to learn more about defendants' opportunity.

8. Consumers who call the defendants' toll-free telephone number are connected to defendants, or their employees or agents, who make representations about the earnings potential of the business venture. For example, defendants have represented that 30 vending machines can generate $3,000.00 in profit when they "empty out" (when the candy sells out), and that some machines will "empty" in a week or two. Defendants have also represented to prospective purchasers that they can make a 700 percent to 2000 percent return on their investment.

9. Defendants send written material to prospective purchasers. These promotional materials state that the vending machine business ventures that defendants sell are highly profitable. For example, one page of the promotional materials, with the heading "Success Stories," contains testimonials, allegedly from satisfied Vend Direct customers. One testimonial, supposedly from a couple in Georgia, reads, "We are retired and are now making over $3,000 per month on our vending route. We just went on a cruise and vending paid for it! Vend Direct is the best!" Another testimonial, from a woman in New Mexico, states, "I purchased a machine

from the Television Infomercial and my machine is making over $125.00 per week! Vend Direct is wonderful!" Another page of the promotional materials contains a profit chart, showing that 30 machines can generate $3,000.00 profit when emptied while 100 machines can produce $10,000.00 profit. The promotional materials also suggest a 700 percent return on investment.

10. Defendants fail to provide to prospective business venture purchasers an earnings claim document containing information substantiating their earnings claims, fail to have a reasonable basis for the earnings claims at the time they were made, and/or fail to disclose that materials, which constitute a reasonable basis for the claims, are available.

11. Defendants' Web site also represents that purchasers who buy defendants' vending machine business ventures will earn a substantial income. For example, under a link entitled "Show Me the Money," there is a profit calculator that generates the daily, weekly, monthly and annual sales after the viewer enters figures for the number of machines and the number of days the viewer thinks it will take for the machine to sell out of candy (the number of "Days to Empty"). The box under number of "Days to Empty" only permits the viewer to enter a number between one and 365. The Web site also states:

> Want a simple explanation of the Return on Investment (ROI) potential of Vend Direct's 4-in-1 machines? It's *phenomenal.* Each 4-in-1 carousel costs about **$40 to fill and yields you approximately $400** when fully emptied. That's **a 1000% return on your investment.**

(Emphasis and italics in original.)

Finally, the Web site has a "Quick Reference Table," which shows the profit that can be made with one, ten, twenty and forty vending machines.

12. In immediate conjunction with the earnings representations on the Web site,

defendants fail to disclose additional information, including the number and percentage of prior purchasers known by defendants to have achieved the same or better results.

13. The written material that defendants send to prospective purchasers includes a basic franchise disclosure document. This disclosure document, however, is incomplete or inaccurate because it fails to disclose, *inter alia*, information concerning other business venture purchasers.

THE FRANCHISE RULE

14. 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).

15. 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.

16. The Franchise Rule additionally requires that a franchisor:

(a) have a reasonable basis for any oral, written, or visual earnings claim it makes, 16 C.F.R. § 436.1(b)(2), (c)(2) and (e)(1);

(b) disclose, in immediate conjunction with any earnings claim it makes, and in a clear and conspicuous manner, that material which constitutes a reasonable basis for the earnings claim is available to prospective franchisees, 16 C.F.R. § 436.1(b)(2) and (c)(2);

(c) provide, as prescribed by the Rule, an earnings claim document containing information that constitutes a reasonable basis for any earnings claim it makes, 16 C.F.R. § 436.1(b) and (c); and

(d) clearly and conspicuously disclose, in immediate conjunction with any generally disseminated earnings claim, 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).

17. 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 I

Basic Disclosure Violations

18. In connection with the offering of franchises, as "franchise" is defined in Section 436.2(a) of the Franchise Rule, the defendants have violated Section 436.1(a) of the Rule and Section 5(a) of the FTC Act by failing to provide prospective franchisees with accurate and complete basic disclosure documents as prescribed by the Rule.

COUNT II

Earnings Disclosure Violations

19. In connection with the offering of franchises, as "franchise" is defined in Section

436.2(a) of the Franchise Rule, the defendants violate Sections 436.1(b) - (c) of the Rule and Section 5(a) of the FTC Act by making earnings claims to prospective franchisees while, *inter alia*: (1) lacking a reasonable basis for each claim at the time it is made; (2) failing to disclose, in immediate conjunction with each earnings claim, and in a clear and conspicuous manner, that material which constitutes a reasonable basis for the claim is available to prospective franchisees; and/or (3) failing to provide prospective franchisees with an earnings claim document, as prescribed by the Rule.

COUNT III

Generally Disseminated Earnings Claims Violations

20. In connection with the offering of franchises, as "franchise" is defined in Section 436.2(a) of the Franchise Rule, the defendants violate Section 436.1(e) of the Rule and Section 5(a) of the FTC Act by making generally disseminated earnings claims without, *inter alia*, disclosing, in immediate conjunction with the claims, information required by the Franchise Rule, including the number and percentage of prior purchasers known by the defendants to have achieved the same or better results.

CONSUMER INJURY

21. Consumers in the United States have suffered or will suffer substantial monetary loss as a result of the defendants' violations of Section 5(a) of the FTC Act and the Franchise Rule. Absent injunctive relief by this Court, the defendants are likely to continue to injure consumers and harm the public interest in the offer and sale of franchises.

THIS COURT'S POWER TO GRANT RELIEF

22. 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.

23. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended, and as implemented by 16 C.F.R. § 1.98(d) (1997), authorizes this Court to award monetary civil penalties of not more than $11,000 for each violation of the Franchise Rule. The defendants' violations of the Rule were committed with the knowledge required by Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

24. 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 the defendants' violations of the Franchise Rule, including the rescission and reformation of contracts, and the refund of money.

25. 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 5(a), 5(m)(1)(A), 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), and 57b, and pursuant to its own equitable powers:

1. Enter judgment against the defendants and in favor of the plaintiff for each violation alleged in this complaint;

2. Enter a permanent injunction to prevent future violations of the FTC Act

and the Franchise Rule by defendants;

3. Award plaintiff monetary civil penalties from each defendant for every violation of the Franchise Rule;

4. 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 by the defendants; and

5. 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.

Dated: November 30, 2006

Respectfully submitted,

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