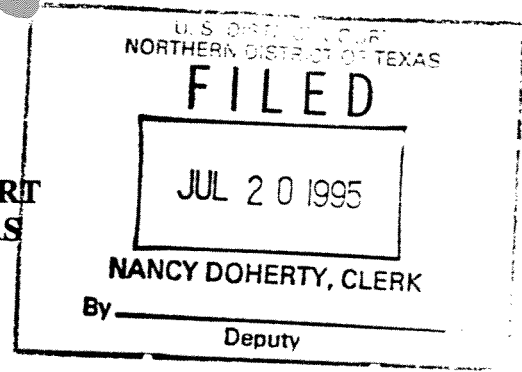


UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS



UNITED STATES OF AMERICA,

Plaintiff,

v.

JANI-KING INTERNATIONAL, INC.,
a corporation,

Defendant.

Civ. No.

395 - CV 1492 - G

**COMPLAINT FOR
CIVIL PENALTIES,
INJUNCTIVE AND
OTHER RELIEF**

X950068

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("FTC" or "the Commission"), for its complaint alleges:

1. The plaintiff brings this action under Sections 5(a)(1), 5(m)(1)(A), 9, 13(b), and 16(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 49, 53(b), and 56(a), to obtain monetary civil penalties, injunctive and other equitable relief for defendant's violations of the Commission'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. Part 436.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter under 28 U.S.C. §§ 1331, 1337(a), 1345 and 1355, and under 15 U.S.C. §§ 45(m)(1)(A), 49, 53(b), and 56(a). This action arises under 15 U.S.C. § 45(a)(1).

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

DEFENDANT

4. Defendant Jani-King International, Inc., ("Jani-King") is a Texas corporation with its office and principal place of business located within the Northern District of Texas at 4950 Keller Springs, Suite 190, Dallas, Texas 75248.

5. Defendant resides and/or transacts business in this District.

COMMERCE

6. At all times relevant to this complaint, the defendant has maintained a substantial course of trade in the offering for sale and sale of commercial cleaning franchises in or affecting interstate commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANT'S COURSE OF BUSINESS

7. Since at least 1974, the defendant has promoted, offered to sell and sold Jani-King franchises in the United States. In promoting and marketing the franchises, the defendant typically places advertisements in general circulation newspapers, or distributes

promotional material at franchise and business opportunity shows. The defendant charges consumers between \$6,500 and \$16,750 for the purchase of one of their commercial cleaning franchises, and promises purchasers significant assistance in operating the franchise, including, but not limited to, providing franchisees with cleaning contracts having a specified level of initial gross monthly billings.

8. The Jani-King business ventures described in Paragraph 7 are franchises, as "franchise" is defined in Section 436.2(a) of the Franchise Rule, 16 C.F.R. § 436.2(a).

THE FRANCHISE RULE

9. On December 21, 1978, the FTC promulgated the Franchise Rule, 16 C.F.R. Part 436, with a Statement of Basis and Purpose, 43 Fed. Reg. 59614. The Franchise Rule became effective on October 21, 1979, and has remained in full force and effect ever since.

10. 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."

11. 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).

12. The Franchise Rule requires a franchisor, within a specified time frame, to provide prospective franchisees with a complete and accurate basic disclosure document containing twenty categories of information, including information about the history of the franchisor, the identities of persons who exercise management and control over the

franchisor's corporation, the terms and conditions under which the franchisor operates, the franchisor's litigation and bankruptcy background, as well as specific information about other franchisees.

13. The Franchise Rule also requires that the franchisor have a reasonable basis for any oral, written, or visual earnings or profit representations made by a franchisor to a prospective franchisee, 16 C.F.R. § 436.1(b)(2), (c)(2), (e)(1), and that, if a franchisor makes such a representation, it provide an earnings claim document containing certain substantiating information to the prospective franchisee, 16 C.F.R. § 436.1(b)-(e).

14. The FTC permits franchisors to comply with the Franchise Rule by fully and completely complying with the disclosure requirements set forth in the Uniform Franchise Offering Circular ("UFOC") format. The version of the UFOC applicable to defendant's conduct as described herein was adopted by the Midwest Securities Commissioners' Association on September 2, 1975 and approved by the FTC on December 21, 1978 (43 Fed. Reg. 59722), as revised by the North American Securities Administrators Association and approved by the FTC on June 15, 1987 (52 Fed. Reg. 22686).

VIOLATIONS OF THE FRANCHISE RULE

COUNT I

15. In numerous instances, in connection with the offering and promotion of franchises, as "franchise" is defined in the Franchise Rule, 16 C.F.R. §§ 436.2(a)(1) and (2), the defendant has failed to provide prospective franchisees with specific items of information required by the Franchise Rule, including, but not limited to:

- (a) A complete and accurate disclosure of the franchisor's litigation history concerning violations of franchise law, fraud, or misrepresentation during the previous seven fiscal years (or the alternative requirements of Item III of the UFOC), thereby violating Section 436.1(a)(4) of the Franchise Rule; and
- (b) A disclosure of the names, addresses and telephone numbers of other existing franchisees (or the alternative requirements of Item XX of the UFOC), thereby violating Section 436.1(a)(16)(iii) of the Franchise Rule.

COUNT II

16. In numerous instances, in connection with the offering and promotion of franchises, as "franchise" is defined in the Franchise Rule, 16 C.F.R. §§ 436.2(a)(1) and (2), defendant has made oral, written, and visual earnings claims within the meaning of Sections 436.1(b)-(e) of the Franchise Rule, but has failed to provide the disclosures required by the Franchise Rule, such as an earnings claims document, and has failed to state a reasonable basis for such claims at the time they were made, (or has failed to comply with the alternative requirements of Item XIX of the UFOC), thereby violating Sections 436.1(b)-(e) of the Franchise Rule.

CIVIL PENALTIES, INJUNCTION AND EQUITABLE RELIEF

17. Defendant has violated the Franchise Rule as described above with respect to the offer and sale of janitorial franchises with knowledge as set forth in Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

18. Each failure to comply with the Franchise Rule in one or more of the ways described above constitutes a separate violation for which plaintiff seeks monetary civil penalties.

19. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), authorizes this Court to award monetary civil penalties of not more than \$10,000 for each violation of the Franchise Rule.

20. Under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), this Court is authorized to issue a permanent injunction against defendant's violating the FTC Act, as well as ancillary relief such as a preliminary injunction.

PRAYER

WHEREFORE, plaintiff requests this Court, pursuant to 15 U.S.C. §§ 45(a), 45(m)(1)(A), 49 and 53(b), and the Court's own equity powers, to:

- (1) Enter judgment against defendant and in favor of plaintiff for each violation alleged in this complaint;
- (2) Award plaintiff monetary civil penalties from the defendant for each violation of the Franchise Rule alleged in this complaint;
- (3) Permanently enjoin defendant from further violations of the Franchise Rule;

- (4) Order defendant to pay the costs of this action; and
- (5) Award plaintiff such additional relief as the Court may deem just and proper.

DATED: July 20, 1995

FOR THE UNITED STATES OF AMERICA

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