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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

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STEPHEN C. ... CLERK
U.S. DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF INDIANA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

T.E.M.M. MARKETING, INC.,
a corporation, and
RODNEY L. TURNER, and
BRIAN A. EDWARDS, and
MICHAEL D. MERRYMAN,
individually and as officers
of said corporation,

Defendants.

CIVIL NO. 1:98 CV 0300

**COMPLAINT FOR INJUNCTIVE
AND OTHER EQUITABLE RELIEF**

JUDGE

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), for its Complaint alleges as follows:

1. The Commission brings this action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to obtain preliminary and permanent injunctive relief against the defendants to prevent them from engaging in deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and to obtain other equitable relief, including rescission, restitution and disgorgement, as is necessary to redress injury to consumers and the public interest resulting from defendants' violations of the FTC Act.

JURISDICTION AND VENUE

2. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C. §§ 45(a) and 53(b) and 28 U.S.C. §§ 1331, 1337(a), and 1345.
3. Venue in the United States District Court for the Northern District of Indiana is proper under 15 U.S.C. § 53(b), as amended by the FTC Act Amendments of 1994, Pub. L. No. 103-312, 108 Stat. 1691, and 28 U.S.C. § 1391(b) and (c).

PLAINTIFF

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 enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits deceptive acts or practices in or affecting commerce. The Commission may initiate federal district court proceedings to enjoin violations of the FTC Act and to secure such other equitable relief as may be appropriate in each case, including redress and disgorgement. 15 U.S.C. § 53(b).

DEFENDANTS

5. Defendant T.E.M.M. MARKETING, INC., is an Indiana corporation with its principal place of business at 228-D East Collins Road, Fort Wayne, Indiana 46825. T.E.M.M. Marketing, Inc., also does business as:
 - a. DRUG ENFORCEMENT REVIEW;
 - b. *SPECIAL EDITION* DRUG ENFORCEMENT REVIEW;
 - c. HEALTH AND CHILD SAFETY DIGEST;
 - d. HEALTH AND CHILD SAFETY DIGEST COLORING BOOK;

- e. INDEPENDENT DRUG REVIEW;
- f. DER;
- g. D.E.R.;
- h. HACS;
- i. H.A.C.S.;
- j. H.A.C.S.D.;
- k. HACSD;

and possibly under other d/b/a's. T.E.M.M. Marketing, Inc., transacts business in this District.

6. Defendant **RODNEY L. TURNER** is President and an owner and director of defendant T.E.M.M. Marketing, Inc. At all times relevant to this Complaint, individually 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. Defendant Turner transacts business in this District.

7. Defendant **BRIAN A. EDWARDS** is Secretary and an owner and director of defendant T.E.M.M. Marketing, Inc. At all times relevant to this Complaint, individually 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. Defendant Edwards transacts business in this District.

8. Defendant **MICHAEL D. MERRYMAN** is Treasurer and an owner and director of defendant T.E.M.M. Marketing, Inc. At all times relevant to this Complaint, individually 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. Defendant Merryman transacts business in this District.

COMMERCE

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

DEFENDANTS' BUSINESS ACTIVITIES

10. Since at least 1991, defendants have engaged in a program of misrepresentation targeted at public-spirited businesses in several states. Defendants solicit businesses, including many small businesses, to advertise in publications defendants claim to publish and distribute. In numerous instances, defendants misrepresent that the business, or a named person at the business, previously ordered an advertisement for placement in defendants' publication. Defendants also send the business an envelope, "Cash on Delivery" (C.O.D.), containing a bill for an unordered advertisement. Many businesses pay for the C.O.D. because they believe it contains something they ordered, but upon opening the envelope they discover a receipt for an advertisement in one of defendants' publications that they never authorized. Defendants often misrepresent that they have incurred the cost of printing the advertisement in order to induce the business to pay for it. Many businesses are convinced by the above misrepresentations that they have ordered the advertisement, so they pay the defendants.
11. If a business refuses to pay for unordered advertising, defendants frequently threaten to turn the business' bill over to a collection agency, threaten to take legal action to collect payment, or threaten to report the debt to a credit bureau, thereby reinforcing the misrepresentation that the business has ordered the advertisement and is contractually obligated to pay for it. Many

businesses are convinced by these threats and, believing that their credit records may be adversely affected, pay the bill.

12. Contrary to defendants' representations, the business has not ordered the advertisement and is not obligated to pay for it.
13. In addition to misrepresenting that businesses have approved advertisements in defendants' publications, defendants represent that their publications — which have titles such as *Drug Enforcement Review* (also known as *DER*), and *Health and Child Safety Digest* (also known as *HACS* or *HACSD*) — are widely distributed to local children and students through the local schools and/or preschools and/or child care centers. Defendants also represent that the money paid for advertisements in their publications will support a local community-based program offered in conjunction with local schools and/or preschools and/or child care centers to educate children and students about the dangers of drug use and other important health and safety issues. Defendants thus represent that payment for an ad constitutes a donation or contribution.
14. Contrary to defendants' representations, defendants' publications containing the businesses' advertisements are often not widely distributed in the businesses' local community, and they are not widely distributed to local children through local schools, preschools and/or child care centers. Money paid by businesses to defendants for advertisements does not support a local community program offered in conjunction with local schools to educate children about the dangers of drugs or any other important health or safety issue. Payments made by businesses to defendants for advertisements in defendants' publications are not donations or contributions.

15. Defendants' representations have caused individual businesses to pay hundreds of dollars and more for advertising in defendants' publications.

COUNT ONE

16. In connection with the offering for sale and sale of advertisements, defendants have represented, expressly or by implication, that the business or a named person acting on behalf of the business previously authorized placement of the advertising in defendants' publications.
17. In truth and in fact, in numerous instances, the business or a named person acting on behalf of the business did not previously authorize placement of the advertising in defendants' publications.
18. Therefore, defendants' representations set forth in paragraph 16 are false and misleading and constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT TWO

19. In numerous instances in connection with the offering for sale and sale of advertisements, defendants have sent businesses C.O.D. packages containing bills for such advertisements and have threatened to take action to collect payment of such bills, thus representing, expressly or by implication, that such businesses have ordered the advertisements and are therefore obligated to pay for them.
20. In truth and in fact, in numerous instances, such businesses have not ordered the advertisements and therefore are not obligated to pay for them.

21. Therefore, defendants' representations 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 THREE

22. In numerous instances in connection with the offering for sale and sale of advertisements, defendants have represented, expressly or by implication, that payment for an advertisement in their publications constitutes a donation.
23. In truth and in fact, payment for an advertisement in defendants' publications does not constitute a donation.
24. Therefore, defendants' representation set forth in paragraph 22 is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT FOUR

25. In numerous instances in connection with the offering for sale and sale of advertisements, defendants have represented, expressly or by implication, that the publication containing the business' advertisements is widely distributed by and through local schools or preschools or child care centers to their students and/or attendees; and that local schools or preschools or child care centers are cooperating with or acting in conjunction with defendants to distribute their publications.
26. In truth and in fact, in numerous instances, defendants' publication containing the business' advertisement is not widely distributed by and through local schools or preschools or child

care centers; and the local schools or preschools or child care centers are neither cooperating with nor acting in conjunction with defendants to distribute their publication.

27. Therefore, defendants' representations set forth in paragraph 25 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 FIVE

28. In numerous instances in connection with the offering for sale and sale of advertisements, defendants have represented, expressly or by implication, that defendants have incurred the cost of printing a business' advertisement in reliance on the business' agreement to pay for the advertisement.
29. In truth and in fact, in numerous instances defendants have not incurred the cost of printing a business' advertisement in reliance on the business' agreement to pay for the advertisement.
30. Therefore, defendants' representations set forth in paragraph 28 are false and misleading and constitute deceptive acts and practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

31. Defendants' violations of Section 5 of the FTC Act, as set forth above, have caused and continue to cause substantial injury to consumers, namely the businesses defrauded by defendants' activities. Absent injunctive relief by this Court, defendants are likely to continue to injure consumers.

THIS COURT'S POWER TO GRANT RELIEF

32. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to issue a permanent injunction against defendants' violations of the FTC Act and, in the exercise of its equitable jurisdiction, grant such other relief as the Court may deem appropriate to halt and redress violations of the FTC Act, including restitution and disgorgement of unjust enrichment.

PRAYER FOR RELIEF

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

1. Award the Commission all temporary and preliminary injunctive and ancillary relief that 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, including, but not limited to, temporary and preliminary injunctions, appointment of a receiver, and an order freezing each defendant's assets.
2. Permanently enjoin the defendants from violating the FTC Act as alleged in this complaint;
3. Award all relief that the Court finds necessary to remedy the defendants' violations of Section 5(a) of the FTC Act, including, but not limited to, the refund of monies paid and the disgorgement of ill-gotten monies; and

4. Award the Commission the costs of bringing this action, as well as any other equitable relief that the Court may determine to be just and proper.

Date: Sept 25, 1998

Respectfully submitted,

DEBRA A. VALENTINE
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