

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 4:96CV02162SNL
JOSEPH HAYES,)	
individually, d/b/a Retail Sales)	
& Marketing, and as an officer)	
of Automated Guest Directories, Inc.,)	
)	
THELMA HAYES,)	
individually, d/b/a Retail Sales)	
& Marketing, and as an officer)	
of Automated Guest Directories, Inc.,)	
)	
ALLAN O'HEARN,)	
individually, d/b/a Retail Sales)	
& Marketing, and as an officer of)	
Automated Guest Directories, Inc.,)	
)	
ANN FOX,)	
individually, d/b/a Retail Sales)	
& Marketing, and as an officer of)	
Automated Guest Directories, Inc., and)	
)	
AUTOMATED GUEST DIRECTORIES, INC.,)	
a Nevada corporation,)	
)	
Defendants.)	

**COMPLAINT FOR PERMANENT INJUNCTION
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 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, to secure preliminary and permanent injunctive relief, rescission of contracts, restitution, disgorgement, and other equitable relief for defendants' unfair and deceptive acts and practices in violation 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. Part 436.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 53(b) and 57b.

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

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 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. The Commission is authorized to initiate federal district court proceedings to enjoin violations of the FTC Act in order to secure such equitable relief as may be appropriate in each case. 15 U.S.C. §§ 53(b) and 57b.

DEFENDANTS

5. Defendant Joseph Hays has conducted business as Retail Sales & Marketing and is an owner and officer of defendant Automated Guest Directories, Inc. He resides and has transacted business within the Eastern District of Missouri. 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 set forth in this complaint.

6. Defendant Thelma Hayes has conducted business as Retail Sales & Marketing and is an owner and officer of defendant Automated Guest Directories, Inc. She resides and has transacted business within the Eastern District of Missouri. At all times material to this complaint, acting alone or in concert with others, she has formulated, directed, controlled, or participated in the acts and practices set forth in this complaint.

7. Defendant Allan O'Hearn has conducted business as Retail Sales & Marketing and has been an officer of defendant Automated Guest Directories, Inc. He resides and has transacted business within the Eastern District of Missouri. 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 set forth in this complaint.

8. Defendant Ann Fox has conducted business as Retail Sales & Marketing and is an officer of defendant Automated Guest Directories, Inc. She resides and has transacted business within the Eastern District of Missouri. At all times material to this complaint, acting alone or in concert with others, she has formulated, directed, controlled, or participated in the acts and practices set forth in this complaint.

9. Defendant Automated Guest Directories, Inc. (“AGD”) is a Nevada corporation with its principal place of business at 1104 and 1105 Edgewater Point, Lake St. Louis, MO 63367. AGD promotes and sells business opportunities involving the sale of advertising space on automated guest directory boards placed in hotel lobbies. AGD has transacted business in the Eastern District of Missouri.

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

DEFENDANTS' COURSE OF BUSINESS

11. Since at least 1993, the defendants have been engaged in a scheme to promote, offer for sale, and sell business opportunities involving the sale of advertising space on directory boards placed in hotel lobbies. Each directory board contains 60 slots to hold advertisements of local businesses that would appeal to the hotel guests, such as restaurants and airline offices. Hotel guests can contact the advertised businesses by dialing a telephone attached to the board that has been pre-programmed with a code for each advertised business.

12. Purchasers of the defendant's business opportunity purportedly earn income by selling advertising space on the directory boards to local businesses. The defendants solicit consumers to purchase their business opportunity by misrepresenting that they provide a “turnkey” business (that is a pre-packaged business), complete with location assistance and sales support and by misrepresenting the earnings potential of their business opportunity.

13. The defendants began selling their business opportunities in Montana under the fictitious name Retail Sales & Marketing. The defendants then moved their operations to Nebraska. Without notice to existing business opportunity purchasers, the defendants then moved their operations to Missouri and began selling guest directory business opportunities under the name Automated Guest Directories, Inc.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

14. 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 unlawful. Misrepresentations and omissions of material facts made to induce a reasonable consumer to purchase a business opportunity are deceptive acts or practices that are prohibited by Section 5(a) of the Act.

COUNT I

15. In the course of offering for sale and selling automated guest directory business opportunities, the defendants have represented, directly or by implication, that purchasers can reasonably expect to achieve a specific level of earnings, such as \$91,800 annually.

16. In truth and in fact, few if any purchasers of the defendants' business opportunities attain the specific level of earnings represented by the defendants.

17. Therefore, defendants' representations as set forth in Paragraph 15 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

18. In the course of offering for sale and selling automated guest directory business opportunities, defendants have represented, directly or by implication, that they provide

purchasers with a complete“turnkey” business opportunity with ongoing support services, including but not limited to, the following:

- a. locating the automated guest directory boards in prime locations, such as Marriott, Sheraton, and Ramada hotels; and
- b. providing investors with a sales manager and training a sales force capable of obtaining advertisers for the directory boards.

19. In truth and in fact, in numerous instances, the defendants do not provide purchasers with a complete“turnkey” business opportunity with ongoing support services. In fact, in numerous instances the defendants:

- a. do not locate the automated guest directory boards in prime locations, such as Marriott, Sheraton, and Ramada hotels; and
- b. do not provide investors with a sales manager or train a sales force capable of obtaining advertisers for the directory boards.

20. Therefore, defendant’s 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).

THE FRANCHISE RULE

21. The business opportunities sold by the defendants are franchises, “a franchise” is defined in Section 436.2(a) of the Franchise Rule, 16 C.F.R. 436.2(a).

22. The Franchise Rule requires a franchisor to provide prospective franchisees with a complete and accurate basic disclosure statement containing twenty categories of information,

including information about the history of the franchisor, the terms and conditions under which the franchise operates, and information about other franchisees. 16 C.F.R. §§ 436.1(a)(1)-(a)(20). Disclosure of this information enables a prospective franchisee to assess potential risks involved in the purchase of the franchise.

23. The Franchise Rule additionally requires that the franchisor provide to prospective franchisees a document containing information substantiating any oral, written, or visual earnings or profit representations made by a franchisor to a prospective franchisee. 16 C.F.R. §§ 436.1(b)-(e).

24. 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

25. In numerous instances in connection with the offering of franchises, "franchise" is defined in the Franchise Rule, 16 C.F.R. § 436.2(a), the defendants have failed to provide prospective purchasers with a basic disclosure document, thereby violating Section 436.1(a) of the Franchise Rule, 16 C.F.R. § 436.1(a), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT IV

26. In numerous instances, in connection with the offering of franchises, as "franchise" is defined in the Franchise Rule, 16 C.F.R. § 436.2(a), the defendants made earnings claims within the meaning of the Rule, 16 C.F.R. §§ 436.1(b)-(d), but have failed to provide prospective franchisees with the earnings claim document required by the Franchise Rule, thereby violating

Sections 436.1(b)-(d) of the Rule, 16 C.F.R. §§ 436.1(b)-(d), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

27. Consumers in many areas of the United States have suffered substantial monetary loss as a result of defendant's unlawful acts or practices. Absent injunctive relief by this Court, defendants are likely to continue to injure consumers and harm the public interest.

THIS COURTS POWER TO GRANT RELIEF

28. 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.

29. 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 defendant's violations of the Franchise Rule, including the rescission and reformation of contracts, and the refund of money.

30. This Court, in the exercise of its equitable jurisdiction, may award other ancillary relief to remedy injury caused by the defendant's 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, in connection with the offering and promotion of business ventures, distributorships, business opportunities, and franchises;
3. Award such relief as the Court finds necessary to redress injury to consumers resulting from 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.

Dated: November ____, 1996

Respectfully submitted,

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General Counsel

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