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U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO, FLORIDA

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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

FEDERAL TRADE COMMISSION,  
Plaintiff,

v.

AMADA GUERRA, individually and doing  
business as AG Intercraft,

Defendant.

Case No. 6:04-cv-1395-ORL-18 KRS

COMPLAINT FOR PERMANENT  
INJUNCTION AND OTHER  
EQUITABLE RELIEF

Plaintiff, Federal Trade Commission ("FTC"), by its undersigned attorneys, 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, and the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. § 6101 *et seq.*, to secure a permanent injunction, rescission of contracts and restitution, disgorgement

of ill-gotten gains, and other equitable relief against Defendant for engaging in deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and for engaging in deceptive telemarketing acts or practices in violation of the FTC's Trade Regulation Rule entitled "Telemarketing Sales Rule" ("TSR"), 16 C.F.R. Part 310 as amended, in connection with the advertising, marketing and sale of work-at-home business opportunities.

### JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over Plaintiff's claims pursuant to 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c) and 6105(b) and 28 U.S.C. §§ 1331, 1337(a), and 1345.

3. Venue in the Middle District of Florida is proper under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b) and (c).

### THE PARTIES

4. Plaintiff **Federal Trade Commission** is an independent agency of the United States Government created by the FTC Act, 15 U.S.C. §§ 41 *et seq.* The FTC enforces the FTC Act, which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also enforces the TSR, which prohibits deceptive or abusive telemarketing acts or practices. The FTC may initiate federal district court proceedings, through its attorneys, to enjoin violations of the FTC Act and the TSR, and to secure such other equitable relief,

including rescission of contracts and restitution, and disgorgement of ill-gotten gains, as may be appropriate in each case. 15 U.S.C. §§ 53(b), 57b, and 6105(b).

5. Defendant **Amada Guerra** is an individual doing business as AG Intercraft (“AGI”), with her office and principal place of business in Orange City, Florida. 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. Amada Guerra resides in and transacts or has transacted business in the Middle District of Florida.

#### COMMERCE

6. At all times relevant to this complaint, Defendant has 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.

#### COURSE OF CONDUCT

7. Since at least April 2000, and continuing thereafter, Defendant has advertised, promoted and sold work-at-home business opportunities to consumers throughout the United States, specifically targeting Hispanic consumers. Defendant, either directly or through third parties, uses Spanish-language newspaper classified advertisements and magazine advertisements to promote her work-at-home business opportunities. A typical advertisement reads:

**NECESITAMOS ENSAMBLADORES PUEDE GANAR DE \$600 - \$800**  
Semanal. Enviamos material, tiempo completo o parcial. Llamenos lunes a sabado.  
1-386-532-3717.

The English translation of the advertisement reads "Need Assemblers. Earn \$600 - \$800 per week. Will provide materials. Work full time or part time. Call Monday through Saturday. 1-386-532-3717."

8. In numerous instances, when consumers call the number, Defendant's representatives explain that the work-at-home business opportunities involve assembling crafts such as beaded and decorated greeting cards, nativity scenes, Christmas ornaments, and decorative wooden churches. The telemarketers state that AGI will provide consumers with all of the necessary materials and instructions to assemble the particular craft. The telemarketers assure consumers that no experience is required, and lead consumers to believe the work is easy. Moreover, in some instances telemarketers tell consumers how many crafts they can expect to make in a week (*e.g.*, 20 - 30 dozen cards a week).

9. The telemarketers promise that AGI will pay consumers for assembled crafts. For example, the telemarketers state that AGI will pay \$50 for each two dozen greeting cards assembled and \$50 for each decorative church. They also reiterate earning claims of between \$600 and \$800 per week. The telemarketers also state that AGI will pay consumers for the cost of shipping assembled crafts back to AGI, further creating the impression in consumers' minds that they have nothing to lose.

10. The telemarketers state that in order to receive assembly-craft work, consumers must pay a fee of either \$96.75 (for consumers mailing a money order directly to AGI) or \$106.75 (when AGI mails the materials to consumers cash on delivery (COD)). The telemarketers refer to the fee as a "deposit" or "warranty deposit." The telemarketers explain that the fee will be fully refunded typically after consumers complete a minimum number of crafts. For example, the telemarketers tell consumers interested in making greeting cards that the company will refund the deposit once the consumers assemble five dozen cards. Telemarketers tell consumers interested in assembling wooden churches that the company will refund the deposit once the consumer assembles 40 units. These refund quotas, together with promises that no experience is necessary and the ease with which they can assemble a large number of crafts in one week, lead consumers to believe that it is easy to obtain a refund of the deposit.

11. Typically, approximately one week after paying the required deposit, consumers receive a package of materials from AGI. Upon receiving the initial materials and instructions, consumers learn, for the first time, that in order to receive a refund of their deposits they must assemble the required number of crafts within a set period of time, typically four weeks.

12. The instructions provided with the craft materials also inform consumers, for the first time, that they first must complete one piece and submit it to AGI for approval before assembling additional crafts.

13. AGI does not initially send sufficient material for consumers to assemble the required number of crafts to qualify for refund of the deposit. Typically only enough is sent to assemble a few crafts. (In the case of greeting cards, typically materials for assembling five cards are sent). In some cases consumers call AGI because not enough parts and pieces of the assembly project have been sent to make even one craft.

14. Most consumers experience great difficulty reaching AGI representatives by telephone. Frequently, consumers, who make toll calls to contact AGI, are put on hold for lengthy periods of time. In some instances, AGI fails to follow through with promises to send missing materials. In other instances consumers receive materials, but only after weeks of waiting.

15. The crafts to be assembled are highly detailed and elaborate crafts projects that cannot be completed quickly or easily by an average-skilled person. Even persons of significant experience and skill have difficulty assembling such crafts, and can only do so at length. Further, in numerous instances, AGI refuses to provide finished samples as guidance for consumers who request more guidance than AGI provides in the instruction manual and on blurry black and white photographs. In many, if not most, instances, Defendant rejects consumers' samples for reasons unrelated to the perfunctory instructions provided, and directs consumers to submit another sample.

16. Few, if any, of Defendant's work-at-home assemblers ever realize the earnings promised by Defendant. After hours of work, consumers find that AGI rejects their assembled crafts as unsatisfactory, with vague and unhelpful comments.

17. When consumers call AGI to complain, seek payment for finished crafts, or request refunds, they often experience great difficulty speaking with a representative. Frequently, consumers making toll calls to AGI are put on hold for lengthy periods of time, or are hung-up on. Defendant frequently refuses to pay for completed products or issue refunds to consumers unless consumers file complaints with governmental agencies or Better Business Bureaus.

18. In most cases AGI keeps consumers' deposits, keeps the products sent by consumers for approval, fails to pay consumers for the products submitted, claiming they are unsatisfactory, and fails to pay shipping costs.

#### **THE FEDERAL TRADE COMMISSION ACT**

19. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices in or affecting commerce. Misrepresentations or omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

#### **VIOLATIONS OF SECTION 5(a) OF THE FTC ACT**

#### **COUNT ONE**

20. In numerous instances, in the course of offering for sale and selling work-at-home business opportunities, Defendant or her employees or agents have represented,

expressly or by implication, that consumers who pay Defendant a fee are likely to earn a substantial level of earnings, such as \$600 to \$800 per week, assembling products at home for Defendant.

21. In truth and in fact, after paying Defendant a fee, few, if any, consumers are likely to earn a substantial level of earnings, such as \$600 to \$800 per week, assembling products at home for Defendant.

22. Therefore, the representation set forth in Paragraph 20 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 TWO**

23. In numerous instances, in the course of offering for sale and selling work-at-home business opportunities, Defendant or her employees or agents have represented, expressly or by implication, that consumers can easily obtain refunds of their initial deposits after assembling a specified number of crafts.

24. In truth and in fact, Defendant makes it nearly impossible for consumers to assemble the specified number of crafts so that the consumers cannot easily obtain refunds of their initial deposits.

25. Therefore, the representation set forth in paragraph 23 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).



## THE FTC'S TELEMARKETING SALES RULE

26. In 1994, Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C.

§§ 6101-6108. On August 16, 1995, the FTC adopted the TSR, 16 C.F.R. Part 310, which became effective on December 31, 1995. On January 29, 2003, the FTC amended the TSR by issuing a Statement of Basis and Purpose and the final amended TSR. 68 Fed. Reg. 4580, 4669. Except for specific provisions not alleged in this action, the amended TSR became effective March 31, 2003.

27. On or after December 31, 1995, the TSR prohibits telemarketers and sellers from misrepresenting, directly or by implication, in the sale of goods or services, any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer. 16 C.F.R. § 310.3(a)(2)(iii).

28. On or after December 31, 1995, the TSR prohibits telemarketers and sellers from misrepresenting, directly or by implication, in the sale of goods or services, any material aspect of the nature or terms of the seller's refund. 16 C.F.R. § 310.3(a)(2)(iv).

29. On or after December 31, 1995, except for certain specified types of transactions, the TSR exempted from the scope of the TSR telephone calls initiated by a customer in response to an advertisement through any media, other than direct mail solicitations. 16 C.F.R. § 310.6(e). On or after March 31, 2003, the amended TSR modified Section 310.6(e) (now renumbered as Section 310.6(b)(5)) to also exclude from this

exemption telephone calls initiated by a customer in response to an advertisement relating to business opportunities other than business arrangements covered by the Franchise Rule, 16 C.F.R. Part 436.

30. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), violations of the TSR 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).

31. Defendant is a “seller” or “telemarketer” engaged in “telemarketing,” as those terms are defined in the FTC Telemarketing Sales Rule. 16 C.F.R. §§ 310.2(z), (t) & (u). Defendant’s work-at-home business opportunity is not a business arrangement covered by the Franchise Rule, 16 C.F.R. Part 436.

### **VIOLATIONS OF THE TELEMARKETING SALES RULE**

#### **COUNT THREE**

32. Since at least April 1, 2003, in numerous instances, in the course of offering for sale and selling work-at-home business opportunities through telemarketing, Defendant or her employees or agents have misrepresented, directly or by implication, material aspects of the performance, efficacy, nature, or central characteristic of goods or services including, but not limited to, the representation that consumers who pay Defendant a fee are likely to earn a substantial level of earnings, such as \$600 to \$800 per week, assembling products at home for Defendant.

33. Defendant has thereby violated Section 310.3(a)(2)(iii) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(2)(iii).

#### **COUNT FOUR**

34. Since at least April 1, 2003, in numerous instances, in the course of offering for sale and selling work-at-home business opportunities through telemarketing, Defendant or her employees or agents have misrepresented, directly or by implication, material aspects of the nature or terms of Defendant's refund policy, including that consumers can easily obtain refunds of their initial deposits after assembling a specified number of products.

35. Defendant has thereby violated Section 310.3(a)(2)(iv) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(2)(iv).

#### **CONSUMER INJURY**

36. Consumers throughout the United States have suffered, and continue to suffer monetary losses as a result of Defendant's unlawful acts and practices. In addition, Defendant has been unjustly enriched as a result of her unlawful acts and practices. Absent injunctive relief by this Court, Defendant is likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

#### **THIS COURT'S POWER TO GRANT RELIEF**

37. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant a permanent injunction, rescission of contracts and restitution, disgorgement of ill-

gotten gains, and other equitable relief to prevent and remedy any violations of any provision of law enforced by the FTC.

38. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), authorize 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 TSR, including the rescission of contracts and restitution, and disgorgement of ill-gotten gains.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, the Federal Trade Commission, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and the Court's own equitable powers, requests that this Court:

(a) 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, including, but not limited to, temporary and preliminary injunctions and an order freezing assets;

(b) Permanently enjoin Defendant from violating the FTC Act and the Telemarketing Sales Rule as alleged herein;

(c) Award such equitable relief as the Court finds necessary to redress injury to consumers resulting from Defendant's violations of the FTC Act and the Telemarketing


Sales Rule including, but not limited to, rescission of contracts and restitution, and disgorgement of ill-gotten gains by Defendant; and

(d) Award plaintiff the costs of bringing this action and such other equitable relief as the Court may determine to be just and proper.

Dated: September 21, 2004

Respectfully submitted,

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General Counsel



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