IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Federal Trade Commission,

Plaintiff,

v.

Business Card Experts, Inc., **d/b/a BCE Media, Inc.,** a Minnesota corporation;
BCE, Inc., a Minnesota corporation;
Scott R. Boardman, individually and as an officer of Business Card Experts, Inc. and BCE, Inc.; and
Stewart P. Grandpre, individually and as an officer of Business Card Experts, Inc. and BCE, Inc.;

Defendants,

Kelley P. Boardman,

Relief Defendant.

Case No.
06-CV-4671 PJS/RLE

FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), for its complaint alleges:

1. The FTC brings this action under Sections 5(a), 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b) and 57b, to obtain temporary, preliminary, and

permanent injunctive relief, rescission of contracts, restitution, disgorgement, appointment of a receiver, and other equitable relief for defendants' violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC's Trade Regulation Rule entitled Telemarketing Sales Rule ("TSR" or "Rule"), 16 C.F.R. § 310.

JURISDICTION AND VENUE

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

3. Venue in the United States District Court for the District of Minnesota 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 - 58. 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, as well as enforcement of the TSR, 16 C.F.R. Part 310. The Commission is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and the TSR in order to secure such equitable relief as may be appropriate in each case, and to obtain consumer redress. 15 U.S.C. §§ 53(b) and 57b.

DEFENDANTS

5. Defendant Business Card Experts, Inc. ("Business Card Experts"), a Minnesota corporation with its principal place of business at 6130 Blue Circle Drive, Suite 300, Minnetonka, Minnesota 55343, promotes and sells business opportunities in which purchasers receive the right to sell full-color business cards and other print materials designed and manufactured by Business Card Experts or its contractors. At all times material to this complaint, Business Card Experts has transacted business in the District of Minnesota.

6. Defendant BCE, Inc. is a Minnesota corporation with its principal place of business at 6130 Blue Circle Drive, Suite 300, Minnetonka, Minnesota 55343. BCE, Inc. operates from the same location and has the same officers as Business Card Experts. At all times material to this complaint, BCE, Inc. has transacted business in the District of Minnesota.

7. Defendant Scott R. Boardman ("Boardman") is the Chief Executive Officer of Business Card Experts and a principal of BCE, Inc. He is a resident of Minnesota. At all times material to this complaint, acting alone or in concert with others, Boardman has formulated, directed, controlled or participated in the acts and practices of the corporate defendants, including the acts and practices set forth in this complaint. He has transacted business in the District of Minnesota.

8. Defendant Stewart P. Grandpre ("Grandpre") is the President of

Business Card Experts and a principal of BCE, Inc. He is a resident of Minnesota. At all times material to this complaint, acting alone or in concert with others, Grandpre has formulated, directed, controlled or participated in the acts and practices of the corporate defendants, including the acts and practices set forth in this complaint. He has transacted business in the District of Minnesota.

9. Relief Defendant Kelley P. Boardman ("Relief Defendant") is an individual who resides in Minnesota. She is the wife of defendant Scott R. Boardman. Individually or jointly with her spouse, she has received funds and other property that were derived unlawfully from consumers as a consequence of the acts and practices complained of herein, and she does not have a legitimate claim to those funds or property.

COMMON ENTERPRISE

10. Corporate defendants Business Card Experts and BCE, Inc. (hereafter, "BCE") have the same principals and telephone number, operate from the same location, and have operated as a common enterprise while engaging in the deceptive acts and practices and other violations of law alleged below. Individual defendants Scott Boardman and Stewart Grandpre have formulated, directed, controlled or had authority to control, or participated in the acts and practices of the corporate defendants that comprise the common enterprise.

COMMERCE

11. At all times relevant to this complaint, Defendants have maintained a substantial course of trade in the offering for sale and sale of business card dealership opportunities, in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' BUSINESS PRACTICES

12. BCE prints, designs, and sells business cards, brochures and other print materials for businesses. Individual defendants Grandpre and Boardman founded BCE in 2001, and began selling BCE business card dealerships in or around August of 2001.

13. BCE dealerships are business ventures in which purchasers pay an initial investment ranging from $10,000 to $25,000 to BCE for the right to sell color business cards and other print materials manufactured by BCE.

14. BCE aggressively promotes and solicits purchasers for its dealerships via telephone sales calls, on the Internet, and in print advertising found in magazines and the classifieds sections of both local and national newspapers. BCE's advertisements claim that purchasers of their business card dealerships will earn $150,000 in the first year of operation. For example, typical BCE advertisements state:

> **REPEAT INCOME**
> New product used by every
> business. Residuals. $10k

> inv. req. Returns $150K 1st
> yr.
> **800-330-3684** Free Video.
>
> and
>
> **BCE Business Opportunity Information:**
> Earn $150,000+ residuals 1st Year
> Join America's Hottest & Fastest Growing
> Business
> $$Huge Residual Income!!!
> **Be Your Own Boss...Own a Dealership**
> **Today**
> We're Changing the Billion-Dollar Business
> Card Industry Overnight!!! . . .
> We'll send you a FREE Information
> package and CD overview of the business.

15. BCE currently offers three levels of dealerships, with each more expensive level purporting to provide more extensive savings and services. For an investment of $10,000, prospective dealers can purchase the "Standard Dealership," which entitles them to production costs of $24.95 for each box of 500 business cards. For $19,995, prospective dealers can purchase the "Master Dealership," which includes training at BCE's headquarters, reduced production costs of $19.95 per box, as well as free Web site design and two sales kits for additional salespeople. For $24,995, BCE's "Master-Plus Dealership" includes everything in the Master Dealership plus production costs of $14.95 per box.

16. Consumers who call BCE's advertised toll-free number receive a return phone call from a telephone sales representative working for BCE. During

the course of this initial sales pitch or in subsequent telephone sales calls with prospective purchasers, the telephone sales representative working for BCE makes oral representations about the earnings potential of the business venture, including, for example, that prospective purchasers can earn six-figure incomes, recoup their investment within three to five months' time, and that most BCE dealers are very successful.

17. Following the initial telemarketing pitch, prospective purchasers receive a CD- ROM video and written materials that confirm the earlier representations made by BCE that its dealerships are highly profitable and successful.

18. In the video, BCE founders and owners, Grandpre and Boardman, reinforce the success and high earnings representations made by BCE's sales representatives and other marketing materials. For example, Grandpre claims that BCE signed up 1,700 customers during its first year in the Minneapolis market, with one sales representative signing up over 900 businesses in his first year. In addition, the video repeatedly features BCE distributor Carol Sutton, who claims earnings of "between $3,500 and $4,600 net per month."

19. The written materials include a sheet entitled "Answers to Questions," which states, "If you generate $100,000 or $700,000 or $1,000,000 you

keep all the profits!" The written materials also include "Income Projection Spread Sheets" for each of the three types of dealerships available for purchase, which estimate that dealers can make anywhere from $140,400 to $217,800 per year, depending on whether the dealer employs additional commissioned salespeople. These Income Projection Spread Sheets contain the following disclaimer: "The examples above are projections only and not guaranteed results. Each Dealer may obtain various results reflected by their own abilities." Nevertheless, BCE and its telephone sales representatives make repeated representations to prospective purchasers concerning the purported actual or potential sales, costs, income, or profits of their business card dealerships.

20. In fact, the earnings representations made by BCE are false and misleading.

21. Once a prospective dealer shows any interest in the business opportunity, a telephone sales representative working for BCE repeatedly contacts prospective purchasers by phone to try to sell a dealership. BCE representatives tell prospective purchasers that they must act quickly to buy a dealership, usually within one to two weeks of receipt of the sales materials, in order to take advantage of a special "promotion" that is being offered by the company for a limited time. In fact, this supposedly special promotion is

ongoing and is used to rush prospective purchasers into buying a dealership.

22. According to the terms of BCE's promotional offer, new dealers will receive a certain number of "free" boxes of printed business cards for a specified period of time, ranging from two to four months. BCE sales representatives use this promotion as an "un-advertised money back guarantee," and represent that new dealers will be able to sell all of these free boxes of cards, thereby recouping their entire initial investment. In fact, the benefits of this promotion are illusory, as new dealers are unable to sell enough business cards to recoup any significant portion of their considerable investment.

23. In fact, BCE has no reasonable basis for these success or earnings representations, as the vast majority of BCE dealers fail, and do not earn significant profits from their business ventures.

24. Telephone sales representatives working for BCE gain the confidence of prospective purchasers by providing them with the names and telephone numbers of purported "references." BCE sales representatives also claim, directly or by implication, that these references are current BCE dealers who will provide an accurate description of their experience as BCE dealers. BCE sales representatives claim, directly or by implication, that the experiences of these purported references are typical of BCE dealers. However, BCE's

representations about the references are false and misleading. In many instances, the references are actually employed or compensated directly by BCE and do not provide or represent the typical BCE dealership experience or earnings.

25. BCE, together with its sales representatives and purported references, represent to prospective purchasers that, if dealers work at their business full time, they can obtain orders for business cards from an average of three to five customers per day. In truth and in fact, purchasers who buy a dealership fail to obtain even a fraction of this number of customers per day and often have few or no customers after weeks, and even months, of operating their dealership full time.

26. BCE has no reasonable basis for its earnings representations, falsely represents that dealers will earn $150,000 in their first year of operation, and that the majority of consumers who purchase BCE dealerships have profitable and successful dealerships.

27. BCE falsely represents that its references can and will provide accurate and reliable accounts of their BCE dealership experiences and misrepresents material aspects of its investment opportunity.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

28. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce."

COUNT I

Misrepresentations Regarding Income

29. In numerous instances in the course of offering for sale and selling their business card dealerships, Defendants or their employees or agents, directly or indirectly, represent, expressly or by implication, that consumers who purchase the Defendants' business card dealerships are likely to earn substantial income.

30. In truth and in fact, consumers who purchase Defendants' business card dealerships are not likely to earn substantial income.

31. Therefore, Defendants' representations as set forth in Paragraph 29 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 II

Misrepresentations Regarding Dealer-References

32. In numerous instances, in the course of offering for sale and selling their business card dealerships, Defendants or their employees or agents, directly or indirectly, represent, expressly or by implication, that certain dealer-references are independent and can or will provide reliable, unbiased, or typical descriptions of the BCE dealership experience and earnings.

33. In truth and in fact, in numerous instances, the references and other

individuals are employed or compensated directly by Defendants, are not independent, and do not provide reliable, unbiased, or typical descriptions of the BCE dealership experience and earnings.

34. Therefore, Defendants' representations as set forth in Paragraph 32 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 TELEMARKETING SALES RULE

35. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108 ("Telemarketing Act"). On August 16, 1995, the FTC adopted the TSR, 16 C.F.R. Part 310, which became effective on December 31, 1995 ("Original TSR"). On January 29, 2003, the FTC issued a Statement of Basis and Purpose and an amended TSR ("Amended TSR") with the amendments relevant to this Complaint becoming effective on March 31, 2003. 68 Fed. Reg. 4580, 4669. Defendants' activities occurring prior to March 31, 2003 are governed by the Original TSR. Their activities occurring from March 31, 2003 to the present are governed by the Amended TSR.

36. Both the Original TSR and the Amended TSR prohibit misrepresentations by sellers or telemarketers, directly or by implication, of "any

material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitability." 16 C.F.R. § 310.3(a)(2)(vi).

37. Both the Original TSR and the Amended TSR also prohibit sellers or telemarketers from misrepresenting, directly or by implication, "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).

38. Both the Original TSR and the Amended TSR also prohibit sellers or telemarketers from "making a false or misleading statement to induce any person to pay for goods or services." 16 C.F.R. § 310.3(a)(4).

39. Defendants are "sellers" or "telemarketers" engaged in "telemarketing," as those terms are defined in the Original TSR, 16 C.F.R. §§ 310.2(r), (t), and (u), and the Amended TSR, 16 C.F.R. § 310.2(z), (bb), and (cc).

40. Defendants' business card dealership is an "investment opportunity" as defined in Section 310.2(j) of the Original TSR, 16 C.F.R. § 310.2(j), and is a business opportunity or "investment opportunity" as defined in Section 310.2(p) of the Amended TSR, 16 C.F.R. § 310.2(p).

41. 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).

42. Defendants' acts and practices are not exempt from the Original TSR under 16 C.F.R. § 310.6(e), or from the Amended TSR under 16 C.F.R. § 310.6(b)(5), which exclude certain calls initiated by customers in response to advertisements other than direct mail solicitations. The Original TSR exemption does not apply to customer-initiated calls in response to advertisements for "investment opportunities," 16 C.F.R. § 310.6(e), while the Amended TSR exemption does not apply to calls a customer makes in response to advertisements for "investment opportunities" and business opportunities not covered by the Franchise Rule. 16 C.F.R. § 310.6(b)(5). Calls made by customers in response to Defendants' advertisements regarding its business opportunity are not exempt from the Original TSR or the Amended TSR because Defendants' dealership is an investment opportunity or a business opportunity not covered by the Franchise Rule.

VIOLATIONS OF THE TELEMARKETING SALES RULE

COUNT III

Misrepresentations of Material Aspects of an Investment Opportunity

43. In numerous instances, in connection with telemarketing their business card venture, Defendants or their employees or agents have, directly or indirectly, misrepresented the risk, earnings potential, and profitability of their

business card dealerships by, among other things, falsely claiming that purchasers of Defendants' business card venture will earn over $100,000 per year and recoup their investments within three to five months.

44. Defendants have thereby violated Section 310.3(a)(2)(vi) of the Original TSR and the Amended TSR, 16 C.F.R. § 310.3(a)(2)(vi).

COUNT IV

Misrepresentations of Material Aspects of Goods or Services Sold

45. In numerous instances, in connection with telemarketing offers to sell their business card venture, Defendants or their employees or agents have, directly or by implication, misrepresented material aspects of the performance, efficacy, nature, or central characteristics of their business card dealerships by, among other things, falsely claiming that purchasers of Defendants' business card venture will earn over $100,000 per year, recoup their investments within three to five months, and that Defendants' dealer-references are independent purchasers of Defendants' business card venture who can and will provide reliable, unbiased or typical descriptions of the BCE dealership experience and earnings.

46. Defendants have thereby violated Section 310.3(a)(2)(iii) of the Original TSR and the Amended TSR, 16 C.F.R. § 310.3(a)(2)(iii).

COUNT V

Misrepresentations to Induce Payment for Goods or Services

47. In numerous instances, in connection with telemarketing offers to sell their business card venture, Defendants or their employees or agents have made false or misleading statements to induce consumers to pay for their business card dealerships by, among other things, falsely claiming that purchasers of Defendants' business card venture will earn over $100,000 per year, recoup their investments within three to five months, and that Defendants' dealer-references are independent purchasers of Defendants' business card venture who can and will provide reliable, unbiased or typical descriptions of the BCE dealership experience and earnings.

48. Defendants have thereby violated Section 310.3(a)(4) of the Original TSR and the Amended TSR, 16 C.F.R. § 310.3(a)(4).

COUNT VI

Disgorgement of the Assets of the Relief Defendant

49. The allegations set forth in paragraphs 1 through 48 are realleged and incorporated herein by reference.

50. Defendants have committed deceptive acts and practices against consumers in violation of Section 5(a) and the TSR in connection with the sale of their business card dealerships.

51. Relief Defendant Kelley P. Boardman has received funds or otherwise benefitted from funds that are directly traceable to the funds obtained from Defendants' consumers through Defendants' law violations.

52. The Relief Defendant does not have legal and equitable title to the consumers' funds, and will be unjustly enriched if she is not required to disgorge the funds or the value of the benefit she received as a result of Defendants' law violations.

53. The Relief Defendant should be required to disgorge the funds or the value of the benefit she received that is traceable to the Defendants' law violations.

54. By reason of the foregoing, the Relief Defendant holds the consumers' funds in a constructive trust for the benefit of the consumers.

CONSUMER INJURY

55. Consumers throughout the United States have suffered and continue to suffer substantial monetary loss as a result of Defendants' unlawful acts and practices. In addition, Defendants have been unjustly enriched as a result of their unlawful acts and practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

56. 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.

57. 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 Defendants' violations of the Telemarketing Sales Rule, including the rescission and reformation of contracts, and the refund of money.

58. This Court, in the exercise of its equitable jurisdiction, may award ancillary relief to remedy injury caused by Defendants' law violations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff 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 the Court:

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, including, but not limited to, a temporary restraining order, asset freeze, and appointment of a

receiver;

2. Enter a permanent injunction to prevent future violations of the FTC Act and the Telemarketing Sales Rule by Defendants;

3. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act and the Telemarketing Sales Rule, including but not limited to, rescission of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten gains;

4. Award such relief against Relief Defendant Kelley P. Boardman as the Court deems necessary, and return funds and other property that were derived from Defendants' law violations, including an order to disgorge all ill-gotten gains or proceeds received as a result of the acts and practices complained of herein, and/or an order imposing a constructive trust on any ill-gotten gains derived from the acts and practices complained of herein and passed to Relief Defendant; 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.

Respectfully submitted,

WILLIAM BLUMENTHAL
General Counsel

_/s/ Tracey L. Thomas__ Dated: _8/27/07___
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