

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	CIVIL NO. 1:97 CV 0131
v.)	
)	
IMAGE SALES & CONSULTANTS, INC.,)	
a corporation, and)	
MICHAEL DEWAYNE DAGUE,)	
individually and as an)	
officer of said corporation,)	
)	
Defendants.)	
)	

**COMPLAINT FOR
INJUNCTIVE AND OTHER
EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission ("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 unfair or 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 Image Sales & Consultants, Inc., is an Indiana corporation with its principal places of business at 3660 East Paulding Road, Fort Wayne, Indiana, 46816. Image Sales & Consultants, Inc., also does business as Image Marketing Company, ABC Sales & Marketing, Teens Against Drugs & Alcohol, Drug & Alcohol Control Handbook, Fire Prevention Awareness, Fire Prevention & Safety Coloring

Book, Fire Safety Advisor, Fire Prevention Informer, Fire Prevention Advisor, Drug Abuse Prevention, Child Safety Digest, Child Safety Activity Guide, Childrens Safety Network, Childrens Safety Protection, Crime Watch Advisor, Crime Watch Awareness, Crime Prevention Informer, Police Safety Digest, Labor Digest, and possibly under other d/b/a's. Image Sales & Consultants, Inc., transacts business in this District.

6. Defendant Michael Dewayne Dague is the President and sole shareholder of Image Sales & Consultants, Inc. At all times material 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. He transacts business in this District.

COMMERCE

7. 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

8. Since at least 1994, defendants have engaged in a program of misrepresentation targeted at public-spirited businesses in many states. Defendants solicit

businesses, including many small merchants, to participate in defendants' programs by advertising in publications defendants claim to publish and distribute. Defendants represent that advertising sponsorship for their publications, which have titles such as TEENS AGAINST DRUGS & ALCOHOL and FIRE PREVENTION & SAFETY AWARENESS COLORING BOOK, provides a meaningful opportunity for businesses to support important causes in their communities, such as child safety and preventing drug abuse. As further inducement for businesses to purchase advertising, defendants tell businesses that publications containing their advertising will be widely distributed in their local communities or that publications containing their advertising will be distributed to local organizations and specially targeted audiences within their communities.

9. Contrary to defendants' representations, publications containing the businesses' advertisements are not widely distributed in the businesses' community nor provided to local organizations or specially targeted audiences.
10. In addition to misrepresenting the distribution of these publications, defendants often obtain payment by misrepresenting to the business that it has already ordered the advertisement. This misrepresentation is conveyed in several ways; in numerous instances: (1)

defendants telephone a business and misrepresent to the business that an advertisement it agreed to place in defendants' publication is printed and must be paid for, even though the business has never agreed to an advertisement; (2) defendants obtain the name of a person at the business, and misrepresent that the person has previously authorized the advertisement; and (3) defendants convey the misrepresentation that an advertisement has been ordered by sending an air bill Cash on Delivery (C.O.D.) to the business. Many businesses pay the COD and, upon opening the air bill, discover an invoice for an advertisement in one of defendants' publications that they never authorized. Many businesses, convinced by the above misrepresentations that they must have pre-approved the advertisement, 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 for collection action, or threaten to take legal action to collect payment. Many businesses are convinced by these threats and pay the bill.
12. Defendants' representations have caused individual businesses to pay hundreds and even thousands of dollars for advertising in defendants' publications.

COUNT ONE

13. In numerous instances, in connection with the offering for sale and sale of advertisements, defendants have represented, expressly or by implication, that:

(a) the proceeds from the advertisements will be used for a local, civic purpose, or to defray the cost of printing and distributing the publications locally; and

(b) the publication in which the advertising is to appear will receive widespread local distribution, or will be distributed to community organizations or specially targeted audiences within the business's local community.

14. In truth and in fact, in numerous instances:

(a) the proceeds for the advertisements are not used for a local, civic purpose, or to defray the cost of printing and disseminating the publications locally; and

(b) the publication in which the advertising is to appear does not receive widespread local distribution and is not distributed to community organizations or specially targeted

audiences within the business's local community.

15. Therefore, defendants' representations set forth in paragraph 13 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 TWO

16. In numerous instances, 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' representation set forth in paragraph 16 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 THREE

19. In numerous instances in connection with the offering for sale and sale of advertisements, defendants have represented, expressly or by implication, that defendants incurred the cost of printing the publication in reliance on the business's authorization of and promise to pay for the advertisement.
20. In truth and in fact, in numerous instances, defendants have not incurred the cost of printing the publication in reliance on the business's authorization of and promise to pay for the advertisement.
21. Therefore, defendants' representations set forth in paragraph 19 are false or misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT FOUR

22. 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 businesses have ordered the advertisements billed to them by defendants.
23. In truth and in fact, in numerous instances, businesses have not ordered the advertisements billed to them by defendants.

24. Therefore, defendants' representations set forth in paragraph 22 are false or misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

25. 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. Absent injunctive relief by this Court, defendants are likely to continue to injure consumers.

THIS COURT'S POWER TO GRANT RELIEF

26. 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: _____

Respectfully submitted,

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Federal Trade Commission

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