

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

[REDACTED]

appointment of a receiver and other equitable relief for Defendants' violations of Section 5(a) of

FTC Act, 15 U.S.C. § 45(a)(1), FTC's Trade Regulation Rule entitled "Disclosure

Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures"

("Franchise Rule" or "Rule"), 16 C.F.R. Part 436.

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 is proper in the United States District Court for the Southern District of Florida pursuant to 28 U.S.C. §§ 1391(b) and (c), and 15 U.S.C. § 53(b).

PLAINTIFF

Teller Machine ("ATM") and bank card processing business ventures. Defendant Fidelity

transacts business in the Southern District of Florida

operation with its principal place of business located at 9744 W. Hill Street, Miami, Florida

COMMON ENTERPRISE

10. Corporate defendants Fidelity and Steinberg Group have operated as a common enterprise while engaging in the deceptive acts and practices and other violations of law alleged

below. Individual defendants Adam Steinberg, Andrew Steinberg, and Stephen Duffie have

formulated, directed, controlled or had authority to control, or participated in the acts of the corporate defendants that comprise the common enterprise.

COMMERCE

11. At all times relevant to this Complaint, Defendants have maintained a substantial ~~scope of business in the offering for sale and sale of ATM and credit card processing business~~

14. Defendants' Web site touts Defendants' ATM business opportunity as having

"high-profit potential" and providing consumers the opportunity to "rapidly build a lucrative operation." Defendants assert that "in 2003, the estimated size of the Automated Teller Machine Industry was over \$14 billion dollars," and Defendants claim that they have "created a proven system that can enable [the consumer] to get in on this virtual profiting monster." Defendants promise consumers a significant amount of business, avowing that, "by working together [with Defendants] those high-volume ATMs with the long lines will be yours!" Defendants proclaim

to consumers that "by simply setting up just 3 ATMs you will begin making IMMEDIATE

profits PLUS continuous residual income Even while you are sleeping! It is that easy!"

15. Defendants' Web site and advertisements list a toll-free telephone number and an e-mail address for consumers to contact for more information. Consumers who call or e-mail are put in touch with Defendants or their sales representatives, who, in subsequent telephone, e-mail, or face-to-face sales presentations explain Defendants' business opportunity in greater detail

already secured, or will secure within 45 days of purchase, retail locations in which to place the consumer's ATMs.

18. In the course of their sales presentations and communications, Defendants and their representatives, either expressly or by implication, also promise consumers that all of the consumer's ATMs will be installed and operational at those locations within 45 days of purchase.

19. In the course of their sales presentations and communications, Defendants and

consumer's ATMs will generate a minimum of 12 to 15 withdrawals each day, that a typical surcharge is set at or about \$2.00, and that consumers can therefore expect a daily gross income of \$24 to \$30 per ATM, which translates to a monthly gross income of \$720 to \$900 per ATM.

28. The "FTC Disclosure Statement" that Defendants provide to potential ATM distributorship purchasers is dated August 1, 2004, and has not been updated quarterly, as required by the Franchise Rule.

29. The disclosure statement described in Paragraph 28 contains several

misrepresentations and omissions in violation of the Franchise Rule

30. For example, the disclosure statement described in Paragraph 28 fails to disclose that Defendants Andrew Steinberg and Stephen Duffie are officers of Defendant Fidelity, in violation of the Franchise Rule.

31. The disclosure statement described in Paragraph 28 also fails to disclose that Defendant Fidelity has been sued at least three times by current or former distributors over the

franchise relationship in violation of the Franchise Rule

36. In the course of their sales presentations and communications, Defendants and

[REDACTED]

Defendants? ATM distributors without (a) disclosing in immediate conjunction with those

[REDACTED]

including a document entitled "FTC Disclosure Statement" that purportedly makes certain

45. The disclosure statement described in Paragraph 40 fails to disclose that Defendant Fidelity has been sued at least three times by current or former distributors over the franchise relationship, in violation of the Franchise Rule.

46. The disclosure statement described in Paragraph 40 fails to disclose that the Defendant Fidelity has been sued for fraud, conversion and unjust enrichment, in violation of the Franchise Rule.

47. The disclosure statement described in Paragraph 40 states that Defendants have operated and offered for sale their bank card processing distributorship program since May 2004, when, in fact, Defendants did not begin operating or offering for sale their bank card distributorships until mid-2006, in violation of the Franchise Rule.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

48. Section 5 of the FTC Act, 15 U.S.C. § 45(a)(1), prohibits "unfair or deceptive acts or practices in or affecting commerce."

or practices in or affecting commerce."

51. Therefore, Defendants' representations as set forth in Paragraph 49 of this Complaint 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
[Misrepresentations Regarding Placement of ATMs]

52. In numerous instances in the course of offering for sale and selling ATM distributorship business ventures, Defendants, directly or indirectly, represent, expressly or by implication, that Defendants have already secured, or will secure within 45 days of purchase, retail locations where consumers' ATMs will be placed.

53. In truth and in fact, at the time of offering for sale and selling ATM distributorship business ventures, Defendants have not already secured, nor do they secure within 45 days of purchase, retail locations for consumers' ATMs.

54. Therefore, Defendants' representations as set forth in Paragraph 52 of this Complaint 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 III
[Misrepresentations Regarding Operation of ATMs]

55. In numerous instances in the course of offering for sale and selling ATM



57. Therefore, Defendants' representations as set forth in Paragraph 55 of this Complaint 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 IV

[Misrepresentations Regarding Substantial Assistance with ATM Distributorships]

59 In numerous instances in the course of offering for sale and selling ATM



THE FRANCHISE RULE

61. The business ventures sold by Defendants are franchises, as "franchise" is defined in Section 436.2(a)(1)(ii), (a)(2), and (a)(5) of the Franchise Rule, 16 C.F.R. § 436.2(a)(1)(ii), (a)(2), and (a)(5).

62. Among other things, the Franchise Rule requires a franchisor to provide prospective franchisees with a complete, accurate, and current basic disclosure document containing twenty categories of information, including information about the business experiences of the franchisor's executive officers, information regarding litigation between the franchisor and current or former franchisees, information regarding franchisees who have

has required from franchisees information identifying existing franchisees, information

for the earnings claim is available to prospective franchisees. 16 C.F.R.

§ 436.1(b)(2) and (c)(2); and

- C. provide, as prescribed by the Rule, an earnings claim document containing information that constitutes a reasonable basis for any earnings claim it makes. 16 C.F.R. § 436.1(b) and (c).

64. 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 V

[Basic Disclosure Violations with Regard to Defendants' ATM and Bank Card Processing Distributorships]

65. In connection with the offering of franchises, as "franchise" is defined the Section

franchisees; and/or (3) failing to provide prospective franchisees with an earnings claim

CONSUMER INJURY

67. Consumers throughout the United States have suffered or will suffer substantial monetary loss as a result of Defendants' violations of Section 5(a) of the FTC Act and the Franchise Rule. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

68. 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.

69. 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 Franchise Rule, 16 C.F.R. § 436.1(a)-(c), and the FTC Act, 15 U.S.C. § 53(b).

Defendants' unlawful activities, appointing a receiver, freezing Defendants' assets, and granting Plaintiff immediate access to Defendants' business premises for the purpose of inspecting and copying business records;

2. Enter a permanent injunction to prevent future violations of the FTC Act and the Franchise Rule by Defendants;
3. Award such relief as this 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 or reformation of contracts, restitution, refund of monies paid, and disgorgement of ill-gotten monies; and

4. Award Plaintiff the costs of bringing this action, as well as such other and additional

JS 44 (Rev. 11/05)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating

I. (a) PLAINTIFFS

FEDERAL TRADE COMMISSION

INDIANY

DEFENDANTS

FIDELITY ATM, INC. · STEINBERG GROUP, INC. · ADAM