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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
Northwest Division

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U.S. DISTRICT COURT
N.D. OF ALABAMA

FEDERAL TRADE COMMISSION, Plaintiff, v. THOMAS E. RICHARDSON, an individual doing business as Mid-South Distributors, Defendant.	)	CV-06-S-4754-NW

COMPLAINT FOR INJUNCTIVE AND OTHER 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, and other equitable relief for Defendant's violations 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" ("Franchise Rule" or "Rule"), 16 C.F.R. § 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 in the United States District Court for the Northern District of Alabama is proper under 28 U.S.C. § 1391(b) and 15 U.S.C. § 53(b).

THE PARTIES

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 of practices in or affecting commerce, as well as enforcement of the Franchise Rule, 16 C.F.R § 436. The Commission is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act 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.

5. Defendant Thomas E. Richardson is an individual doing business as Mid-South Distributors. His principal place of business is 120 S. Poplar St., Florence, AL 35630. At all times material to this Complaint, he has formulated, directed, controlled, or participated in the acts and practices set forth in this Complaint. Thomas E. Richardson resides in and transacts or has transacted business in the Northern District of Alabama.

COMMERCE

6. At all times relevant to this Complaint, Defendant has maintained a substantial course of trade in the offering for sale and sale of greeting card business ventures, in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANT'S BUSINESS PRACTICES

7. Since at least 2004, and continuing thereafter, Defendant Thomas E. Richardson,

doing business as Mid-South Distributors, has engaged in a course of conduct to advertise, market, promote, offer to sell, and sell to consumers greeting card business opportunity ventures for substantial sums of money. These business ventures involve the placement and maintenance of display racks of greeting cards in retail locations, where members of the public can purchase them.

8. Defendant promotes these greeting card business opportunities to prospective purchasers through advertisements placed in classified sections of newspapers in several states in the Southeast. For example, typical advertisements state:

> Alabama based company
> will appoint 1 distributor to
> service and maintain es-
> tablished retail locations to
> market our award winning
> greeting card line 2-3 days
> per week with the opportu-
> nity to earn in excess of
> $2K monthly. No selling in-
> volved. Must be dedicated
> to owning and operating your
> own business. Serious in-
> quiries only. Call:
> **256-764-6635** Sun & Mon
> for complete details.
> **(Min. investment req'd)**

and

> **GREETING CARDS**
> Alabama based company will
> appoint 1 distributor to
> service & maintain 20
> established retail locations,
> for our award winning
> greeting card line. Must be

conscientious & dedicated to
owning and operating your own
business. $8 billion/year
industry. Potential $65K 1st
year. Serious inquiries Only.
256-764-6635 or
256-762-1719.
(min. investment required)

9. Prospective purchasers who call the numbers provided in the advertisements are connected to Defendant personally, who represents that, for their investment, purchasers will receive all that they need to operate a successful Mid-South Distributors business venture selling greeting cards, including: (1) an initial inventory of greeting cards, (2) display racks for the cards, and (3) locations in which Defendant would place the cards and racks for the purchaser.

10. Defendant sells different levels of investments in the business venture, but the least expensive package he offers costs $8,500.

11. After the initial telephone call, prospective purchasers typically talk to Defendant several more times by telephone, and they generally have at least one in-person meeting.

12. Defendant also promotes his business ventures through the use of an Internet Web site: www.greetingcards1.samsbiz.com. The Web site contains the following earnings representations, based on a purchaser's level of investment:

> Level 1 investment...10 locations [minimum investment]- $8500.00 [secured by inventory]
> Spend 30-40 hrs. a month. [Potential] $1000.00 a month
> *Based on sales of 20 cards sold per store each week.
>
> Level 2 investment...20 locations [minimum investment]- $15,000.00 [secured by inventory]
> Spend 40-50 hrs. a month. [Potential] $2000.00 a month
> *Based on sales of 20 cards sold per store each week.

Level 3 investment...30 locations [minimum investment]- $21,000.00 [secured by inventory]
Spend 40-50 hrs. a month. [Potential] $3000.00 a month
*Based on sales of 20 cards sold per store each week.

13. In the course of his initial sales pitch or in subsequent telephone calls and in-person meetings with prospective purchasers, Defendant makes oral representations about the earnings potential of the business venture. For example, Defendant typically represents that a prospective purchaser of 20 locations would earn "$2,500 minimum," average selling "seven cards per day per location at a profit of $1.30 per card," and that the prospective purchaser would "recover your investment within six months." Defendant also typically represents that the earnings projections contained on his Web site and made orally are "conservative."

14. Defendant represents to prospective purchasers that as part of the purchase price for the greeting card business venture, Defendant will provide them with high traffic, high volume and profitable locations in which to place the display racks and greeting cards.

15. During the course of his dealings with prospective purchasers, Defendant fails to give consumers a franchise disclosure document as required by the FTC's Franchise Rule, 16 C.F.R. § 436.

16. Defendant has no reasonable basis for his earnings representations, fails to provide prospective business venture purchasers with an earnings claim document containing information substantiating his earnings representations, and, in classified ads and on his Web site, fails to disclose additional information including the number and percentage of prior purchasers known by him to have achieved the same or better results.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

17. 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 1

Misrepresentations Regarding Income

18. In numerous instances in the course of offering for sale and selling greeting card business ventures, Defendant, directly or indirectly, represents, expressly or by implication, that consumers who purchase Defendant's business ventures are likely to earn substantial income.

19. In truth and in fact, consumers who purchase Defendant's business ventures are not likely to earn substantial income.

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 ventures sold by Defendant are franchises, as "franchise" is defined in Sections 436(a)(1)(ii) and (a)(2) of the Franchise Rule ("Rule"), 16 C.F.R. § § 436.2(a)(1)(ii) and (a)(2).

22. The Franchise Rule requires a franchisor to provide prospective franchisees with a complete and accurate basic disclosure document containing twenty categories of information, including a list of the total number of franchisees and the names, addresses, and telephone numbers of the ten franchisees closest to the prospective franchisee's intended location. 16 C.F.R. § 436.1(a)(16). If site selection by the franchisor is involved, the Rule also requires a

franchisor to disclose to prospective purchasers, for agreements entered into during the preceding fiscal year, the range of time that has elapsed between signing a franchise agreement and when locations have been selected. 16 C.F.R. § 436.1(a)(17). The pre-sale disclosure of this information required by the Rule enables a prospective franchisee to contact prior purchasers and take other steps to assess the potential risks involved in the purchase of the franchise.

23. The Franchise Rule additionally requires that a franchisor:

(a) have a reasonable basis for any oral, written, or visual earnings claim it makes, 16 C.F.R. § 436.1(b)(2), (c)(2) and (e)(1);

(b) disclose, in immediate conjunction with any earnings claim it makes, and in a clear and conspicuous manner, that material which constitutes a reasonable basis for the earnings claim is available to prospective franchisees, 16 C.F.R. § 436.1(b)(2) and (c)(2);

(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); and

(d) clearly and conspicuously disclose, in immediate conjunction with any generally disseminated earnings claim, additional information including the number and percentage of prior purchasers known by the franchisor to have achieved the same or better results, 16 C.F.R. § 436.1(e)(3)-(4).

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 2

Basic Disclosure Violation

25. In connection with the offering of franchises, as "franchise" is defined in Section 436.2(a) of the Rule, Defendant violates Section 436.1(a) of the Rule and Section 5(a) of the FTC Act by failing to provide prospective franchisees with accurate and complete disclosure documents within the time period prescribed by the Rule.

COUNT 3

Earnings Disclosure Violations

26. In connection with the offering of franchises, as "franchise" is defined in Section 436.2(a) of the Rule, Defendant violates Sections 436.1(b)-(c) of the Rule and Section 5(a) of the FTC Act by making earnings claims to prospective franchisees while, *inter alia*: (1) lacking a reasonable basis for each claim at the time it is made; (2) failing to disclose, in immediate conjunction with each earnings claim, and in a clear and conspicuous manner, that material which constitutes a reasonable basis for the claim is available to prospective franchisees; and/or (3) failing to provide prospective franchisees with an earnings claim document, as prescribed by the Rule.

COUNT 4

Advertising Disclosure Violations

27. In connection with the offering of franchises, as "franchise" is defined in Section 436.2(a) of the Rule, Defendant violates section 436.1(e) of the Rule and Section 5(a) of the FTC Act by making generally disseminated earnings claims without, *inter alia*, disclosing, in

immediate conjunction with the claims, information required by the Franchise Rule including the number and percentage of prior purchasers known by Defendant to have achieved the same or better results.

CONSUMER INJURY

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

THIS COURT'S POWER TO GRANT RELIEF

29. 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.

30. 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 violation of the Franchise Rule, including the rescission of contracts, and the refund of money.

31. This Court, in the exercise of its equitable jurisdiction, may award ancillary relief to remedy injury caused by 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 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, temporary and preliminary injunctions;

2. Enter a permanent injunction to prevent future violations of the FTC Act and the Franchise Rule by Defendant;

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

Respectfully submitted,

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U.S. DISTRICT COURT
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FEDERAL TRADE COMMISSION,

Plaintiff,

v.

THOMAS E. RICHARDSON, an individual doing business as Mid-South Distributors,

Defendant.

CV-06-S-4754-NW

PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER WITH ASSET FREEZE, ACCOUNTING, AND ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE

Plaintiff, the Federal Trade Commission ("Commission"), having filed its Complaint for a Permanent Injunction and Other Equitable Relief, moves this Court, pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), and Rule 65(b) of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 65(b), for an order, substantially in the form annexed, including, inter alia:

1. Temporarily restraining Defendant from further violations of Section 5 of the FTC Act, 15 U.S.C. § 45(a), as alleged in the complaint;

2. Temporarily restraining Defendant from further violations of the FTC's Trade Regulation Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" ("Franchise Rule" or "Rule"), 16

C.F.R. § 436;

3. Temporarily freezing Defendant's assets and imposing certain duties on asset holders;

4. Temporarily restraining Defendant from failing to maintain business records;

5. Requiring Defendant to provide immediately a copy of the attached temporary restraining order to each of his agents, employees and subsidiaries and to each person and entity through which Defendant conducts business;

6. Providing that this Order may be served by any means, including facsimile transmission, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of Defendant, or that may otherwise be subject to any provision of this Order. Service upon any branch or office of any financial institution or entity shall effect service upon the entire financial institution or entity.

7. Permitting consumer reporting agencies to furnish to Plaintiff consumer credit reports of the Defendant;

8. Requiring Defendant to provide customer sales information;

9. Requiring Defendant to provide accounting information, including a completed financial statement; and a full accounting of all assets and documents that are located inside or outside of the territory of the United States of America;

10. Requiring Defendant to repatriate to the United States all funds, documents or assets;

11. Temporarily prohibiting Defendant from interfering with such repatriation; and

12. Requiring Defendant to show cause why a preliminary injunction should not issue

extending the foregoing temporary relief until the merits of Plaintiff's allegations are finally adjudicated.

In support of its Motion, the Commission states that the Defendant has engages and continues to engage in acts and practices that violate 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" ("Franchise Rule"), 16 C.F.R. § 436. Further, the Commission submits herewith a Memorandum of Points and Authorities in support of this Motion and the Complaint filed in this matter. As set forth in these documents and accompanying exhibits, the Defendant is continuing to make false claims about his business venture. He also continues to fail to provide disclosures required by the Franchise Rule. Such continued acts and practices will result in further injury to consumers. Plaintiff is filing this Motion to halt immediately these acts and practices.

Dated: 11/27, 2006

Respectfully submitted,

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