

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

FILED

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CLERK
U.S. DISTRICT COURT
HARTFORD, CT

FEDERAL TRADE COMMISSION,)
)
Plaintiff,)
)
v.)
)
DAVID MARTINELLI, JR., individually and)
doing business as DP Marketing and)
Data Process Marketing, and)
)
DEANA PLOURDE, individually and)
doing business as DP Marketing and)
Data Process Marketing,)
)
Defendants.)

CIVIL NO.
399 CV 1272 CFD

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

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

1. The FTC 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 District of Connecticut is proper under 28 U.S.C. § 1391(b) and (c), and 15 U.S.C. § 53(b).

PLAINTIFF

4. Plaintiff, the FTC, 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 appropriate equitable relief in each case, including restitution for injured consumers and disgorgement. 15 U.S.C. § 53(b).

DEFENDANTS

5. Defendant DAVID MARTINELLI, JR. ("MARTINELLI"), an individual, does business as DP Marketing and Data Process Marketing. DP Marketing and Data Process Marketing are unincorporated entities. MARTINELLI conducts business from his residence located at 3 Dewey Avenue, Terryville, Connecticut, and from a mailbox located at P.O. Box 82, Thomaston, Connecticut, 06787. At all times material to this complaint, acting alone or in concert with others, MARTINELLI has formulated, directed, controlled, or participated in the

deceptive acts or practices set forth in this complaint. He resides and has transacted business in the District of Connecticut.

6. Defendant DEANA PLOURDE ("PLOURDE"), an individual, does business as DP Marketing and Data Process Marketing. PLOURDE conducts business from her residence located at 3 Dewey Avenue, Terryville, Connecticut, and from a mailbox located at P.O. Box 82, Thomaston, Connecticut, 06787. At all times material to this complaint, acting alone or in concert with others, PLOURDE has formulated, directed, controlled, or participated in the deceptive acts or practices set forth in this complaint. She resides and has transacted business in the District of Connecticut.

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 August 1997, defendants have disseminated or caused to be disseminated unsolicited commercial e-mail ("UCE" or "spam") and newspaper classified advertisements offering employment at \$9 or \$13.50 an hour. The representations contained in

defendants' UCE and classified advertisements include, but are not limited to, the following statements:

National Marketing Company seeks individuals to handle office duties from home. This is a full or part time position with a salary of \$13.50/hr. The position consists of processing applications for credit, loans or employment, as well as online customer service.

* * *

Expanding National [sic] Co. seeks full and part time office workers \$9.00 per hour No Exp. Nec

* * *

Telephone Clerk needed Imm. long term opp. \$9.00/hr No Exp. Nec.

* * *

National Company seeks customer service clerk. \$9.00/hr No Exp. Nec. For imd. placement call

* * *

Office work \$9.00/hr Full/Part time, No Exp. Nec

9. Consumers respond to the UCE or the classified advertisements either by telephoning the number listed or by visiting defendants' Internet web site. Both over the phone and on the Internet site, defendants represent to consumers that the job entails taking orders and applications over the telephone and that consumers will be paid the advertised hourly wage if

they complete an employment application and pay a registration fee. The registration fee varies between \$9.95 and \$28.72.

10. After collecting this fee, contrary to their representations, defendants do not provide employment for consumers. Instead, they send consumers a start-up kit which reveals that there are no jobs at a specific salary level. The start-up kit instructs consumers to place advertisements at consumers' expense, similar to the advertisements to which they had responded, in an attempt to recruit other new participants. Defendants also provide a telephone script to assist in recruiting. The promised "salary" is actually a payment for each new person successfully recruited, *i.e.*, each new person who pays defendants the registration fee.

11. Defendants' scheme functions as a work-at-home chain letter or pyramid scheme. As in any chain letter or pyramid scheme, each participant pays money to the scheme's promoter in exchange for the right to recruit new participants. Participants then receive benefits for each individual they recruit. Earnings are derived primarily from recruiting other participants into the program, not from the *bona fide* sale of products or services to end-users.

12. The structure of this chain work-at-home scheme places severe limitations upon the success of its participants. New participants can only make money if they recruit a substantial number of even newer participants. Eventually, the scheme will collapse due to exhaustion of the pool of possible recruits.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

COUNT ONE

13. In connection with the offering of work-at-home employment, defendants have represented, expressly or by implication, that they have actual job openings and that consumers

will earn the salaries specified in defendants' UCE, on their website, or in newspaper classified advertisements.

14. In truth and in fact, in numerous instances, defendants do not have actual job openings and consumers will not earn the salary specified in defendants' UCE, on their website, or in newspaper classified advertisements.

15. Therefore, defendants' representations as set forth in Paragraph 13 are false and misleading and constitute unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT TWO

16. In materials promoting work-at-home employment, defendants represent, expressly or by implication, that every person who pays DP Marketing the required registration fee can earn a substantial salary.

17. Defendants have failed to disclose that DP Marketing's structure ensures that, in numerous instances, participants cannot earn a substantial salary and that most participants will never even earn back their registration fee.

18. This additional information, described in paragraph 17, would be material to participants in deciding whether to participate in defendants' scheme.

19. In light of the representations made in paragraph 16, the defendants' failure to disclose the material information in paragraph 17, constitutes a deceptive act and practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT THREE

20. By furnishing DP Marketing participants with promotional materials and scripts to be used in recruiting new participants, that contain false and misleading representations, including but not limited to the false and misleading representations described in paragraphs 8-10, and 13 above, defendants have provided the means and instrumentalities for the commission of deceptive acts and practices.

21. Therefore, defendants' practices, as described above in paragraph 20, constitute deceptive acts and practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

22. Consumers in many areas of the United States have suffered substantial monetary loss as a result of defendants' unlawful acts or practices. 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

23. 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 FTC.

PRAYER FOR RELIEF

WHEREFORE, plaintiff 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:

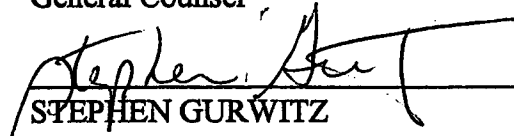
1. Award the Commission all temporary and preliminary injunctive and ancillary relief that may be necessary to avert the likelihood of consumer injury during the pendency of this action, and to preserve the possibility of effective final relief;

2. Permanently enjoin defendants from violating the FTC Act as alleged in this complaint; and

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

Dated: July 6, 1999

Respectfully submitted,
DEBRA A. VALENTINE
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