

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

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SEP 1 1998

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

Case No.: 98 C 543

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

MII INVESTMENT CORP.,  
d/b/a Moore's Industries, Inc.; and

GARY WARREN MOORE, individually and as  
an officer of the above-named corporation;

Defendants.

COMPLAINT FOR  
PERMANENT INJUNCTION  
AND OTHER EQUITABLE  
RELIEF

~~JUDGE HART~~

~~MAGISTRATE JUDGE GUZMAN~~

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

1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, to secure a permanent injunction, restitution, disgorgement, and other equitable relief for defendants' unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

**JURISDICTION AND VENUE**

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

3. Venue in the United States District Court for the Northern District of Illinois 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 et seq. 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. The Commission is authorized to initiate federal district court proceedings to enjoin violations of the FTC Act in order to secure such equitable relief as may be appropriate in each case. 15 U.S.C. § 53(b).

#### DEFENDANTS

5. Defendant MII Investment Corp. ("MII"), an Illinois corporation with its principal place of business at 185 East North Street, Bradley, Illinois 60915, has promoted and sold area distributorships for the sale of the Freedom Jet needleless insulin injection system. MII has transacted business in the Northern District of Illinois.

6. Defendant Gary Warren Moore is an officer and principal owner of MII. At all times material to this complaint, acting alone 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 has transacted business in the Northern District of Illinois.

## COMMERCE

7. At all times relevant to this complaint, the defendants have maintained a substantial course of trade in the offering for sale and sale of Freedom Jet area distributorships, in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

## DEFENDANTS' BUSINESS ACTIVITIES

8. From 1993 until at least 1995, the defendants have offered and sold area distributorships for the Freedom Jet needleless insulin injection system for home use by diabetics, for which they are the U.S. distributor. To induce potential distributors to pay as much as \$14,000 to purchase an area distributorship, the defendants have given them a description of the "Area Distributor Program" that promises profits of over \$300,000 a year.

## VIOLATIONS OF SECTION 5 OF THE FTC ACT

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

10. Misrepresentations of material fact to induce a reasonable consumer to purchase a franchise constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

## COUNT ONE

11. In the course of offering for sale and selling Freedom Jet area distributorships, defendants have represented, directly or by implication, that purchasers could reasonably expect to achieve a specific level of sales or earnings, such as sales of 47 Freedom Jets per month, profits of \$28,553.72 per month, or profits of over \$300,000 per year, or that such

figures were average estimates of the sales or earnings that purchasers could reasonably expect.

12. In truth and in fact, few if any purchasers ever attained the specific level of sales or earnings represented by the defendants. The defendants' sales and earnings representations were not average estimates of the sales or earnings purchasers could reasonably expect, and had no reasonable basis in fact in the actual sales or earnings of area distributors.

13. Therefore, defendants' representations as set forth in Paragraph 11 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**

14. The business ventures sold by the defendants are franchises, as "franchise" is defined in Section 436.2(a) of the Franchise Rule, 16 C.F.R. § 436.2(a).

15. The Franchise Rule requires a franchisor to provide prospective franchisees with a complete and accurate basic disclosure statement containing twenty categories of information, including information about the history of the franchisor, the terms and conditions under which the franchise operates, and information about other franchisees. 16 C.F.R. § 436.1(a)(1) - (a)(20). Disclosure of this information enables a prospective franchisee to assess potential risks involved in the purchase of the franchise.

16. The Franchise Rule additionally requires: (1) that the franchisor have a reasonable basis for any oral, written, or visual earnings or profit representations made by a franchisor to a prospective franchisee, 16 C.F.R. § 436.1(b)(2), (c)(2) and (e)(1); (2) that the franchisor provide to prospective franchisees a document containing information substantiating

the earnings claim, 16 C.F.R. § 436.1(b)-(e); and (3) that the franchisor, in immediate conjunction with any generally disseminated earnings claim, disclose the material basis (or the lack of such basis) for the earnings claim and include a warning that the earnings claim is only an estimate. 16 C.F.R. § 436.1(e)(3)-(4).

17. 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 TWO**

18. In numerous instances in connection with the offering of franchises, as "franchise" is defined in the Rule, 16 C.F.R. § 436.2(a), defendants have failed to provide prospective franchisees with accurate and complete disclosure documents within the time period required by the Franchise Rule, thereby violating Section 436.1(a) of the Rule, 16 C.F.R. § 436.1(a), and Section 5 of the FTC Act, 15 U.S.C. § 45.

#### **COUNT THREE**

19. In numerous instances in connection with the offering of franchises, as "franchise" is defined in the Rule, 16 C.F.R. § 436.2(a), defendants have made earnings claims within the meaning of the Rule, 16 C.F.R. § 436.1(b)-(e), but have failed to provide prospective franchisees the earnings claim document required by the Rule or have failed to disclose the information required by the Rule in immediate conjunction with such claims, thereby violating Sections 436.1(b)-(e) of the Rule, 16 C.F.R. § 436.1(b)-(e), and Section 5 of the FTC Act, 15 U.S.C. § 45.

## CONSUMER INJURY

20. 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, the defendants are likely to continue to injure consumers and harm the public interest.

## THIS COURT'S POWER TO GRANT RELIEF

21. 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.

22. 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, including the rescission and reformation of contracts, and the refund of money.

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

## PRAYER FOR RELIEF

WHEREFORE, plaintiff requests that this Court, as authorized by Section 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and pursuant to its own equitable powers:

1. Permanently enjoin the defendants from violating the Franchise Rule and the FTC Act, as alleged herein, in connection with the offering and promotion of business ventures, distributorships, business opportunities and franchises;

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

3. 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.

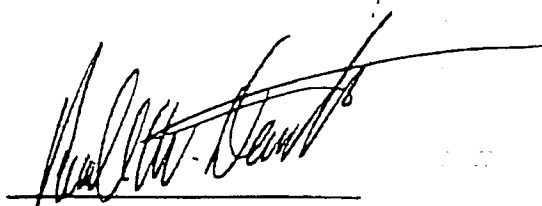
Respectfully Submitted,

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