02-21753

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
Case No. ___________

CIV-JORDAN

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

UNIVERSAL GREETING CARD CORP., a Florida corporation;

ROBERT RUFFEINO, individually and as an officer of the above Corporation;

EDWARD JACOBS; and

WAYNE HAMMOND,

Defendants.

MAGISTRATE JUDGE BROWN

COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE 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, appointment of a receiver, and other equitable relief for the defendants' 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 Southern District of Florida is proper under 28 U.S.C. §§ 1391(b) and (c), 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 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, 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 Universal Greeting Card Corporation ("Universal"), a Florida corporation with its principal place of business at 10800 Biscayne Boulevard, Suite 700, North Miami, Florida, 33161, promotes and sells greeting card business ventures. Universal has transacted business in the Southern District of Florida.

6. Defendant Robert Ruffeino is the sole officer of Universal. 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 resides or has transacted business in the Southern District of Florida.

7. Defendant Edward Jacobs is a salesman for Universal. At all times material to this complaint, acting alone or in concert with others, he has participated in the acts and practices set forth in this complaint. He resides or has transacted business in the Southern District of Florida.

8. Defendant Wayne Hammond is a reference for Universal. He represents to consumers that he has purchased, operated, and profited from, a business venture sold by Universal. At all times material to this Complaint, acting alone or in concert with others, he has participated in certain acts and practices set forth in this Complaint. He has transacted business or a substantial part of the events or omissions giving rise to any claim against him has occurred in the Southern District of Florida.

COMMERCE

9. At all times relevant to this Complaint, the defendants have 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.

THE DEFENDANTS' BUSINESS PRACTICES

10. Since at least October 2001, the principal defendants, Universal and Robert Ruffeino, have offered and sold greeting card business ventures to consumers. In exchange for a minimum initial payment of at least $10,600, purchasers of the business ventures offer, sell, or distribute greeting cards supplied by Universal.

11. Defendants Universal and Ruffeino promote their business ventures to prospective purchasers through classified advertisements in newspapers across the United States.

12. In their advertisements, defendants Universal and Ruffeino make representations about the earnings potential of their business venture, and urge consumers to call their toll-free telephone number to learn more about the opportunity. For example, their advertisements

typically state:

AAA GREETING CARD ROUTE
100 Top Locations (All Local)
$750 weekly
888-504-7664

13. Defendants Universal, Ruffeino, and Edward Jacobs, a Universal sales representative, represent to prospective business venture purchasers who call the toll-free telephone number that in exchange for a payment, ranging from $10,600 to $35,000, prospective purchasers will receive greeting cards, card display racks, and ongoing support, through which they are likely to derive substantial income. For example, these defendants typically represent that purchasers of Universal's 8-location plan, which consists of 8,000 cards and 8 card display racks for $12,000, will make $35,000 to $40,000 per year.

14. As a part of their sales pitch, defendants Universal, Ruffeino, and Jacobs represent that Universal or the locating company that Universal provides or recommends will secure profitable locations or sites for business venture purchasers' greeting card display racks.

15. Defendants Universal, Ruffeino and Jacobs also urge prospective purchasers to contact certain company-selected references, including defendant Wayne Hammond, who have purportedly purchased the Universal greeting card business venture. Defendants Universal, Ruffeino, and Jacobs lead prospective purchasers to believe that these references will provide reliable descriptions of their successful experiences with the Universal greeting card business venture.

16. Defendants Universal and Ruffeino also send a package of promotional materials to prospective purchasers. The package typically includes, among other things, sample greeting cards, a purchase order form and a disclosure document (the "basic disclosure document").

17. The basic disclosure document provides some, but not all, of the disclosures

required by the FTC's Franchise Rule, 16 C.F.R. Part 436.

18. In fact, some of the disclosures found in the basic disclosure document contradict defendants Universal, Ruffeino or their sales representatives' oral or written representations, including earnings representations.

19. Moreover, defendants Universal and Ruffeino have no reasonable basis for their earnings representations, fail to disclose additional information including the number and percentage of prior purchasers known by them to have achieved the same or better results, or fail to provide prospective business venture purchasers with an earnings claim document containing information substantiating their earnings representations.

20. In addition, Universal or the locating company that Universal provides or recommends is not likely to secure profitable locations or sites for business venture purchasers' greeting card display racks.

21. Further, the company-selected references have not purchased the Universal business venture. In fact, these references are employed by Universal and falsely describe their experiences with the Universal business venture to induce prospective purchasers to purchase it.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

22. 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 I

Misrepresentations Regarding Income

23. Paragraphs 1 through 22 are incorporated herein by reference.

24. In numerous instances, in the course of offering for sale and selling the Universal business venture, defendants Universal, Robert Ruffeino, and Edward Jacobs, directly or indirectly, represent, expressly or by implication, that consumers who purchase the Universal

business venture are likely to earn substantial income.

25. In truth and in fact, consumers who purchase the Universal business venture are not likely to earn substantial income.

26. Therefore, the defendants' representations as set forth in Paragraph 24 are false and misleading and constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II

Misrepresentations Regarding Assistance to Business Purchasers

27. Paragraphs 1 through 22 are incorporated herein by reference.

28. In numerous instances, in the course of offering for sale and selling the Universal business venture, defendants Universal, Robert Ruffeino and Edward Jacobs, directly or indirectly, represent, expressly or by implication, that Universal will provide purchasers with significant assistance in the operation of their businesses, including but not limited to, claims that Universal provides assistance in securing profitable locations or sites for business venture purchasers' greeting card display racks.

29. In truth and in fact, in numerous instances, Universal does not provide purchasers with significant assistance in the operation of their businesses.

30. Therefore, the defendants' representations as set forth in Paragraph 28 are false and misleading and constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT III

Misrepresentations Regarding Company-Selected References

31. Paragraphs 1 through 22 are incorporated herein by reference.

32. In numerous instances, in the course of offering for sale and selling the Universal

business venture, defendants Universal, Robert Ruffeino and Edward Jacobs, directly or indirectly, represent, expressly or by implication, that certain company-selected references have purchased the Universal business venture or will provide reliable descriptions of experiences with the Universal business venture.

33. In truth and in fact, in numerous instances, the company-selected references have not purchased the Universal business venture or do not provide reliable descriptions of experiences with the Universal business venture.

34. Therefore, the defendants' representations as set forth in Paragraph 32 are false and misleading and constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT IV

Acting as a Shill

35. Paragraphs 1 through 22 are incorporated herein by reference.

36. In numerous instances, in the course of assisting others in the offering for sale and selling of business ventures, defendant Wayne Hammond, directly or indirectly, represents, expressly or by implication, that he has purchased the Universal business venture or that he provides reliable descriptions of his experience with the Universal business venture.

37. In truth and in fact, the defendant has not purchased the Universal business venture or does not provide reliable descriptions of his experience with the Universal business venture.

38. Therefore, the defendant's representations as set forth in Paragraph 36 are false and misleading and constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

THE FRANCHISE RULE

39. The business ventures sold by the defendants are franchises, as "franchise" is defined in Sections 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).

40. The Franchise Rule requires a franchisor to provide prospective franchisees with a complete and accurate basic disclosure document containing twenty categories of information, including information about the litigation and bankruptcy history of the franchisor and its principals, the terms and conditions under which the franchise operates, and information identifying existing franchisees. 16 C.F.R. § 436.1(a)(1) - (a)(20). 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.

41. As a matter of policy, the FTC has authorized franchisors to comply with the Rule by furnishing prospective franchisees with disclosures in a format known as the Uniform Franchise Offering Circular ("UFOC"). Authorization to use the UFOC format to comply with the Rule's disclosure requirements was first granted by the Commission in the Final Interpretive Guides to the Rule, 44 Fed. Reg. 49966, 49970-71, and expressly requires adherence to the UFOC disclosure requirements in their "entirety." This conditional authorization has been ratified by the Commission following subsequent amendments to the UFOC requirements by the North American Securities Administrators Association, most recently on December 30, 1993. 58 Fed. Reg. 69224. Here, defendants Universal and Robert Ruffeino opted to utilize the UFOC format to make their disclosures.

42. Item 19 of the UFOC Guidelines requires the franchisor to disclose whether or not an earnings claim is made. Item 19 further requires that "[a]n earnings claim made in connection with an offer of a franchise must be included in full in the offering circular and must

have a reasonable basis at the time it was made" and that "[a]n earnings claim shall include a description of its factual basis and the material assumptions underlying its preparation and presentation." Item 19 recognizes an income multiplication table to be an earnings claim.

43. 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).

44. 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

45. Paragraphs 1 through 44 are incorporated herein by reference.

46. In connection with the offering of franchises, as "franchise" is defined in Section 436.2(a) of the Franchise Rule, defendants Universal and Robert Ruffeino violate Section 436.1(a) of the Rule and Section 5(a) of the FTC Act by failing to provide prospective franchisees with complete and accurate basic disclosure documents as prescribed by the Rule.

COUNT VI

Earnings Disclosure Violations

47. Paragraphs 1 through 44 are incorporated herein by reference.

48. In connection with the offering of franchises, as "franchise" is defined in Section 436.2(a) of the Franchise Rule, defendants Universal and Robert Ruffeino violate 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 times 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 and/or earnings disclosures, as prescribed by Item 19 of the UFOC Guidelines.

COUNT VII

Advertising Disclosure Violations

49. Paragraphs 1 through 44 are incorporated herein by reference.

50. In connection with the offering of franchises, as "franchise" is defined in the Rule, 16 C.F.R. § 436.2(a), defendants Universal and Robert Ruffeino make generally disseminated earnings claims within the meaning of the Rule, 16 C.F.R. § 436.1(e), but fail to disclose information required by the Franchise Rule in immediate conjunction with such claims, including the number and percentage of prior purchasers known by the defendants to have achieved the same or better results, fail to have a reasonable basis for such claims at the times they were made, or fail to provide prospective franchisees with earnings claim disclosures as prescribed by the Rule whenever such claims are made, thereby violating Section 436.1(e) of the Rule, 16 C.F.R. § 436.1(e), and Section 5 of the FTC Act, 15 U.S.C. § 45.

CONSUMER INJURY

51. Consumers nationwide have suffered or will suffer substantial monetary loss as a result of the defendants' violations of Section 5(a) of the FTC Act and the Franchise Rule. 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

52. 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.

53. 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

the defendants' violations of the Franchise Rule, including the rescission and reformation of contracts, and the refund of money.

54. This Court, in the exercise of its equitable jurisdiction, may award ancillary relief to remedy injury caused by the defendants' 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 pursuant to its own equitable powers:

1. Award plaintiff such preliminary injunctive and ancillary relief, including a temporary restraining order and appointment of a receiver, 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;

2. Permanently enjoin the defendants from violating the FTC Act and the Franchise Rule, as alleged herein;

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

Dated: June 12, 2002

Respectfully submitted,
William E. Kovacic
General Counsel

Delores Gardner Thompson, Maryland Bar
Gary L. Ivens, NY Bar, DC Bar # 415004
Attorneys for Plaintiff
FEDERAL TRADE COMMISSION
600 Pennsylvania Avenue, NW, Rm. 238
Washington, DC 20580
202-395-2264
202-395-3395 *fax*