

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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)
FEDERAL TRADE COMMISSION,)
6th Street & Pennsylvania Avenue, N.W.)
Washington, D.C. 20580,) Case No. _____
)
Plaintiff)
)
v.)
)
)
COMTEL COMMUNICATIONS GLOBAL NETWORK, INC.) COMPLAINT FOR
a Florida corporation;) PERMANENT
) INJUNCTION AND
MARC ZIMMERMAN, individually and as an officer) OTHER
of the corporate defendant;) EQUITABLE
) RELIEF
VICTORIA ZIMMERMAN, individually and as an officer)
of the corporate defendant;)
)
ERIC ZIMMERMAN, individually; and)
)
)
PHILIP BERGER, individually and as an officer of the)
of the corporate defendant,)
)
Defendants.)
)
)

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, preliminary injunctive relief, rescission of contracts, 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), and the FTC's Trade Regulation Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures ("the Franchise Rule" or "the Rule"), 16 C.F.R. Part 436.

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 Southern District of Florida 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) and 57b.

DEFENDANTS

5. Defendant ComTel Communications Global Network, Inc. ("ComTel"), a Florida corporation with its principal place of business at 3467 N.E. 163rd Street, North Miami Beach, Florida, promotes and sells pay phone business ventures. ComTel has transacted business in the Southern District of Florida.

6. Defendant Marc Zimmerman is an officer and director of ComTel. 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 Southern District of Florida.

7. Defendant Victoria Zimmerman is an officer and director of ComTel. At all times material to this complaint, acting alone or in concert with others, she 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. She has transacted business in the Southern District of Florida.

8. Eric Zimmerman is the technical advisor and consultant to ComTel. 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 Southern District of Florida.

9. Defendant Philip Berger is an officer and director of ComTel. 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 Southern District of Florida.

COMMERCE

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

DEFENDANTS' BUSINESS ACTIVITIES

11. Since at least 1994, the defendants have been engaged in a scheme to promote, offer to sell and sell pay phone business ventures. Defendants advertise their venture in newspapers across the country. The advertisements offer high traffic, secured and established pay phone routes with earnings of \$13,500 per month. For example, Defendant's promotional material states:

AT&T PAYPHONE ROUTE

45 AT&T payphones at hi-traffic
hotels, earns \$13,500/mo. Will
sell all or part
1-800-596-1475 24 hours

12. When consumers respond to the advertisements, they receive defendant's sales presentation for packages of pay telephone business ventures in prices ranging from \$12,756 to \$41,320. Defendants promise prospective purchasers of their business ventures "guaranteed" minimum income levels from the telephones and assure prospective purchasers that profitable locations are plentiful. After paying defendants thousands of dollars for the telephone business venture, purchasers' earnings do not come close to reaching the "guaranteed" minimum income levels.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

13. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices in or affecting commerce. Misrepresentations of material fact made to induce a reasonable consumer to purchase a franchise are deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

COUNT ONE

14. Paragraphs 1 through 13 are incorporated herein by reference.

15. In the course of offering for sale and selling pay phone business ventures, defendants have represented, directly or by implication, that purchasers can reasonably expect to achieve a specific level of earnings, such as guaranteed income of \$175.00 to \$250.00 per month per phone, or an annual income of \$18,000 to \$28,560, and that such figures are accurate estimates of the sales or income purchasers can reasonably expect.

16. In truth and in fact, few, if any, purchasers attain the specific level of earnings represented by the defendants, and such figures are not accurate estimates of the sales or income purchasers can reasonably expect.

17. Therefore, defendants' representations as set forth in Paragraph 15 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).

THE FRANCHISE RULE

18. 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).

19. 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.

20. The Franchise Rule additionally requires that: (1) that the franchisor provide to prospective franchisees a document containing information substantiating the earnings claim, 16 C.F.R. § 436.1(b)-(e); and (2) 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).

21. 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

22. Paragraphs 1 through 21 are incorporated herein by reference.

23. 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

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

25. 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 and 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

26. 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

27. Sections 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.

28. 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.

29. 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 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 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 Franchise Rule and the FTC Act, as alleged herein;

3. 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, rescission of contracts, 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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