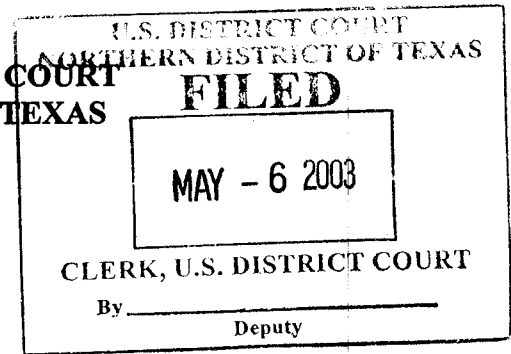


UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



)
FEDERAL TRADE COMMISSION,)
)
 Plaintiff,)
)
 v.)
)
END70 CORPORATION and)
)
DAMIEN ZAMORA,)
)
 Defendants.)

Civil No.
3 0307 - 0950 R

COMPLAINT FOR INJUNCTION AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), for its Complaint against *end70* Corporation and Damien Zamora, alleges:

1. The Commission brings this action under Sections 5(a), 13(b), and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a), 53(b), and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101-6108, as amended, to obtain preliminary and permanent injunctive relief, rescission or reformation of contracts, restitution, disgorgement, and other equitable relief for defendants' 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 "Telemarketing Sales Rule," 16 C.F.R. Part 310, as amended, in connection with the sale and offering for sale of the Internet Treasure Chest Home Business System.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c) and 6105(b), and 28 U.S.C. §§ 1331, 1337(a) and 1345.

3. Venue in the Northern District of Texas is proper under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b) and (c).

PLAINTIFF

4. Plaintiff Federal Trade Commission is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58, as amended. 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 also enforces the Telemarketing Sales Rule, 16 C.F.R. Part 310, as amended, which prohibits deceptive or abusive telemarketing practices. The Commission is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and the Telemarketing Sales Rule and to secure such equitable relief as is appropriate in each case, including restitution for injured consumers. 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).

DEFENDANTS

5. Defendant *end70* Corporation is a California corporation with its principal place of business at 610 Newport Center Drive #1450, Newport Beach, California 92660. Defendant *end70* Corporation also conducts business under the name Internet Treasure Chest (“ITC”). Defendant *end70* Corporation offers for sale and sells the Internet Treasure Chest Home Business System to the public. *End70* Corporation transacts or has transacted business in the Northern District of Texas.

6. **Defendant Damien Zamora** is an owner and officer of defendant *end70* Corporation. 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 defendant *end70* Corporation, including the acts and practices set forth in this complaint. Defendant Damien Zamora transacts or has transacted business in the Northern District of Texas.

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 March, 2001, defendants have marketed a home-based Internet business opportunity, the Internet Treasure Chest Home Business System (“ITC Home Business System”), through cable television infomercials and through their Internet website, www.itctv.com, to consumers throughout the United States.

9. Defendants’ infomercial and website promises that for \$59.95 purchasers will receive a complete, home-based Internet business, including a website to advertise products and accept orders, the ability to process consumer credit card charges, and access to inventory to fulfill orders. Consumers are told by ITC that they may choose from hundreds of products to sell from the ITC product warehouse. Defendants’ marketing includes numerous representations that the ITC Home Business System contains everything purchasers need to quickly and easily set up their own profitable, fully functional, worldwide Internet businesses. These representations include, but are not limited to, the following:

- (a) The secret to making more money that all these people have discovered is called the Internet Treasure Chest. It's an amazing Home Business System that contains virtually everything you need to quickly and easily get your very own worldwide Internet business up, running, stocked with products, able to accept credit cards and ready to take orders almost immediately. (infomercial)
- (b) Set up & Ready to Make Money in Minutes Guaranteed! (infomercial)
- (c) Starting an Internet business can cost hundreds even thousands of dollars. But the Internet Treasure Chest will give you everything you need to start your own exciting Internet Business including your own worldwide website all for the unbelievable price of only \$59.95. (infomercial)
- (d) Why spend hundreds even thousands of dollars to start an Internet Business? When the Internet Treasure Chest can give you everything you need to start your very own exciting Internet business, including your own worldwide Web Site, and over \$50 worth of FREE marketing bonuses . . . All for the unbelievable price of Only \$59.95! Plus S&H. (website)

10. Defendants' marketing fails to adequately disclose that there are significant, additional expenditures that consumers must make in order for them to maintain and operate fully functional Internet businesses. These additional expenditures add up to hundreds, or even thousands of dollars, and include the purchase of merchant accounts to process credit card orders, Internet domain name registration fees, monthly Internet hosting charges, monthly Internet access charges, and monthly fees to access the ITC product warehouse. Moreover, the websites sold by

defendants do not operate as promised unless the purchaser pays for substantial technical upgrades or special features.

11. Defendants' marketing also emphasizes the opportunity to earn or make substantial income using the ITC Home Business System. In infomercials and on their website, defendants feature testimonials from purchasers of the ITC Home Business System. In these testimonials, individuals describe their success with their ITC businesses and how much money they are making. These testimonials include, but are not limited to, the following:

- (a) You don't need a lot of money to start an Internet Business. In fact, we started out of our home and now we're on track to do \$1 Million in sales this year! (website)
- (b) We have actually generated up to \$30,000 in one month! (website)
- (c) We make more money, I have gotten engaged and I have more time for everything. To be honest with you I can't think of anything better than turning on my computer every morning. I made in one day over \$1500! (website)
- (d) At first I was skeptical. I thought it was another one of those get rich quick schemes. But it really works and you can really make money at it. We make up to \$500 a day now! (website)
- (e) Makes up to \$200,000 a Year! (infomercial)
- (f) Makes up to \$10,000 a Month! (infomercial)
- (g) Makes up to \$9,000 a Week! (infomercial)
- (h) Makes up to \$1,800 a Day! (infomercial)

12. The infomercial advertisements and the ITC website direct interested consumers to call a specified toll-free number to purchase the ITC Home Business System. Consumers may

also purchase directly through the ITC website. After consumers receive their ITC Home Business System packages, they must call or go online to activate their websites. After activation, ITC sales representatives tell consumers they must make numerous additional expenditures in order to be able to operate their new home business. The consumers may also receive additional calls from ITC sales representatives urging them to purchase even more features, upgrades, and services for substantially more money, including mentoring services, licensing, website design, and technical support.

13. Defendants offer a thirty-day, money-back guarantee. In many instances, if the purchaser does not select expedited shipping, the thirty-day guarantee period expires before the consumer receives his ITC Home Business System. As a result, many consumers are denied refunds. Purchasers who receive their ITC Home Business Systems prior to the expiration of the guarantee period are persuaded that the purchase of additional services will make their Internet businesses fully functional and successful. The purchases of additional services are not covered by a thirty-day money-back guarantee. These additional and much more expensive items are subject to ITC's "Upgrade Sales Policy," a three-day right of rescission that is not disclosed to consumers until after their upgrade purchases have been completed. In many cases, purchasers do not receive the products and services until five to seven days after their purchase, at which time it is too late to obtain a refund.

14. Relying upon defendants' representations, many consumers have purchased the ITC Home Business System for \$59.95. Many consumers were persuaded to purchase a variety of additional products, services, and upgrades in an attempt to make their businesses operational. Despite spending hundreds or even thousands of dollars, purchasers have been unable to

maintain and operate successful Internet businesses. They have been unable to make the substantial earnings promised by defendants.

VIOLATIONS OF SECTION 5(a) OF FTC ACT

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

16. Misrepresentations or omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

COUNT I

17. In numerous instances, in connection with the sale, offering for sale, or distribution of the Internet Treasure Chest Home Business System, defendants have represented, expressly or by implication, that purchasers will receive a complete, fully functional Internet home business for \$59.95.

18. In truth and in fact, purchasers do not receive a complete, fully functional Internet home business for \$59.95.

19. Therefore, the representations set forth in Paragraph 17 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).

COUNT II

20. In numerous instances, in connection with the sale, offering for sale, or distribution of the Internet Treasure Chest Home Business System, defendants have represented, expressly or by implication, that purchasers will receive a complete, fully functional Internet home business for \$59.95.

21. Defendants fail to adequately disclose that purchasers must pay substantial additional charges to make their Internet home business fully functional.

22. This additional information, described in Paragraph 21, would be material to consumers in deciding whether to purchase an Internet Treasure Chest Home Business System.

23. Defendants' failure to disclose the material information in Paragraph 21, in light of the representations made in Paragraph 20 constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT III

24. In numerous instances, in connection with the sale, offering for sale, or distribution of the Internet Treasure Chest Home Business System, defendants have represented, expressly or by implication, that purchasers of the Internet Treasure Chest Home Business System are likely to make substantial income.

25. In truth and in fact, in numerous instances, purchasers of the Internet Treasure Chest Home Business System do not make substantial income.

26. Therefore, the representations set forth in Paragraph 24 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).

VIOLATIONS OF THE FTC TELEMARKETING SALES RULE

27. The Commission promulgated the Telemarketing Sales Rule (16 C.F.R. Part 310) pursuant to Section 6102(a) of the Telemarketing Act, 15 U.S.C. § 6102(a). The Telemarketing Sales Rule became effective December 31, 1995. On March 31, 2003, amendments to the Telemarketing Sales Rule became effective.

28. Pursuant to the amendments to the Telemarketing Sales Rule, telephone calls initiated by a consumer in response to an advertisement relating to business opportunities, when the business opportunities are not covered by the Commission's Franchise Rule, are covered by the Telemarketing Sales Rule. 16 C.F.R. § 310.6(b)(5).

29. The Telemarketing Sales Rule prohibits sellers and telemarketers from misrepresenting the total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer. 16 C.F.R. § 310.3(a)(2)(i).

30. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), violations of the Telemarketing Sales 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).

31. Defendants are "sellers" or "telemarketers" engaged in "telemarketing," as those terms are defined in the Telemarketing Sales Rule, 16 C.F.R. § 310.2(z), (bb) and (cc).

COUNT IV

VIOLATIONS OF 16 C.F.R. § 310.3(a)(2)(i)

32. In numerous instances, in connection with the telemarketing sale of the Internet Treasure Chest Home Business System, defendants have misrepresented, directly or by implication, the total costs to purchase, receive, or use, goods or services that are the subject of the sales offer.

33. Defendants have thereby violated Section 310.3(a)(2)(i) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(2)(i).

CONSUMER INJURY

34. Consumers throughout the United States have suffered, and continue to suffer, substantial monetary loss as a result of defendants' unlawful acts and practices. In addition, defendants have been unjustly enriched as a result of their unlawful acts and practices. Absent injunctive relief, defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public.

THIS COURT'S POWER TO GRANT RELIEF

35. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes this Court to issue a permanent injunction against defendants' violations of the FTC Act and, in the exercise of its equitable jurisdiction, to order such ancillary relief as temporary and preliminary injunctions, consumer redress, rescission, restitution, disgorgement of profits resulting from defendants' unlawful acts or practices, and other remedial measures.

36. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), authorize this Court to grant to the FTC such relief as the Court finds necessary to redress injury to consumers or other persons resulting from defendants' violations of the Telemarketing Sales Rule, including the rescission and reformation of contracts and the refund of money.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Federal Trade Commission, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), and the Court's own equitable powers, requests that this 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, appointment of a receiver, and an order freezing assets;

2. Permanently enjoin the defendants from violating the FTC Act and the Telemarketing Sales 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 Telemarketing Sales Rule, including, but not limited to, rescission or reformation of contracts, restitution, refund of monies paid, and disgorgement of ill-gotten monies; and

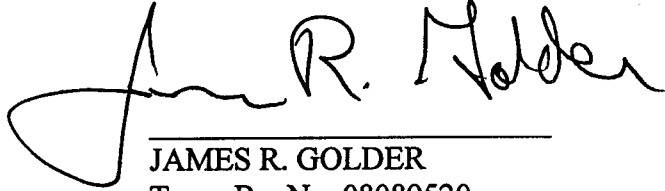
4. Award plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Dated: May 6, 2003

Respectfully submitted,

WILLIAM E. KOVACIC
General Counsel

BRADLEY M. ELBEIN
Director, Southwest Region



JAMES R. GOLDER
Texas Bar No. 08089520
DEBORAH W. DAWSON
New York Bar No. 1658889
FEDERAL TRADE COMMISSION
1999 Bryan Street, Suite 2150
Dallas, Texas 75201
(214) 979-9376 (Golder)
(214) 979-9395 (Dawson)
(214) 953-3079 (Facsimile)

**ATTORNEYS FOR PLAINTIFF
FEDERAL TRADE COMMISSION**