

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
Case No. _____ - CV- (_____)

FILED BY _____
02 JUN 12 AM 9:52
CLERK U.S. DISTRICT COURT
S.D. OF FLORIDA MIAMI

02-21754

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

ASSOCIATED RECORD DISTRIBUTORS, INC.,
a Florida corporation;

ALFREDO SUSI, individually and as an officer
or director of the above corporation;

RUSSELL MACARTHUR, individually and
as an officer or director of the above
corporation;

DAVID SIEGEL, individually and as an officer
or director of the above corporation; and

BRIAN MORGENSTERN, individually and as an
officer or director of the above corporation,

Defendants.

CIV-GRAHAM

MAGISTRATE JUDGE
GARBER

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 with 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 Associated Record Distributors, Inc. ("ARD" or "corporate defendant"), a Florida corporation with its principal place of business at 2999 NE 191 Street, Suite 601, Aventura, Florida, promotes and sells audio cassette and compact disc display rack business ventures. ARD has transacted business in the Southern District of Florida.

6. Defendant Alfredo Susi is the President and a shareholder of ARD. 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 Russell MacArthur is, or has held himself out as, a vice president of ARD. Since at least January 2002, 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.

8. Defendant David Siegel is or was a vice president and shareholder of ARD. From at least August 2001 through at least December 2001, acting alone or in concert with others, he 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.

9. Defendant Brian Morgenstern is or was an officer and shareholder of ARD. From at least August 2001 through at least December 2001, acting alone or in concert with others, he 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.

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 audio cassette and compact disc display rack 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

11. Since at least August 2001, and continuing thereafter, ARD and its president, defendant Alfredo Susi, have offered and sold audio cassette and compact disc display rack business ventures to consumers.

12. Until at least December 2001, defendants David Siegel and Brian Morgenstern were officers and shareholders of ARD and actively participated in ARD's promotion of its business ventures.

13. Since at least January 2002, defendant Russell MacArthur has held himself out as a vice president of ARD and has actively participated in ARD's promotion of its business ventures.

14. The defendants have promoted their business ventures to prospective purchasers in a wide variety of media, including classified advertisements in newspapers throughout the United States and widely distributed unsolicited commercial email ("UCE" or "spam").

15. In their classified advertisements, the defendants make representations about the earning potential of their business ventures. The defendants' advertisements urge consumers to call the defendants' toll-free telephone numbers to learn more about the defendants' business

ventures. For example, one of the defendants' classified newspaper advertisements states:

**ALL MAJOR
RECORD LABELS
Needs Local distributors for
Sony, Motown, Capitol,
\$100K potential. No selling.
High traffic location. Call 24
hrs. 1-888-315-HITS (4487)**

16. In their spam messages, the defendants make representations about the earning potential of their business ventures, and about the type of the music products they provide. For example, one of the defendants' spam messages states in the subject line "CALL 1-888-315-4487 & MAKE \$150,000 PER YEAR!" and in the text reads:

**What have you got to lose? Make the FREE call, and change your life!
This is so EASY, anyone can do it!
People just like you are making \$150,000 per year!
What are they doing? Going around to popular stores in their local area,
and restocking shelves of the HOTTEST SELLING products ever! What
products? You need to call to find out but here is a hint: They come
from companies like: Sony, Atlantic, Warner Bros, Universal, Polygram,
Electra, Etc... All the major record labels!**

**ENGLISH Call Toll FREE 1-888-315-4487 24 Hours
EN ESPANOL CALL TOLL FREE 1-888-666-5512**

**Products by Top 40 Recording Artists Like Britney, Nsync, Creed,
Michael Jackson, Streisand, Sinatra, The Beatles, Etc...**

ALL THE POPULAR ARTISTS!

**Imagine going around to stores in your local area, restocking a display,
and walking out of the store with CASH PROFITS!!! WE have
established stores available now in your area!!! All you do is restock the
displays ONCE A WEEK!!! What have you got to lose? Make the FREE
call, and change your life! We also offer ongoing support to all of our
distributors forever!**

**ENGLISH Call Toll FREE 1-888-315-4487 24 Hours
EN ESPANOL CALL TOLL FREE 1-888-666-5512**

No selling, Easy, Fast, and Fun For The Whole Family. And best of all, an all CASH business! Closing Out Areas Quickly! Only a specific number of distributors for each area. Call now to speak to a friendly Customer Service Rep And find out MORE NOW!

Don't miss out on this one! How can you lose by providing the HOTTEST SELLING products at the lowest retail prices in the country, in the best locations in your area? Call now to find out MORE!!! Sing the tune of Financial Freedom, call now!!!

ENGLISH Call Toll FREE 1-888-315-4487 24 Hours
EN ESPANOL CALL TOLL FREE 1-888-666-5512

Email is never sent unsolicited. Your name was purchased as an opt in open minded person looking to make more money. Best regards.
remove karen 8349487@bol.com.br

17. The defendants' classified advertisements and spam messages do not disclose the number and percentage of prior purchasers known by the defendants to have achieved the same or better results as the earnings claims made in the advertisements and spam messages, nor do they include any of the other disclosures prescribed by the Franchise Rule.

18. The defendants do not have a reasonable basis for the earnings claims that they make in their classified advertisements and spam messages.

19. Prospective purchasers who call the defendants' toll-free telephone numbers to learn more about the defendants' business ventures are ultimately connected to the defendants, or to the defendants' representatives. Over the course of what are often a series of telephone calls, written communications and/or in-person meetings with prospective purchasers, the defendants and their representatives attempt to convince consumers to purchase the defendants' business ventures.

20. The defendants and their representatives tell prospective purchasers, orally and in writing, that in exchange for payments, which range from approximately \$10,000 - \$30,000,

depending on the number of display racks and amount of stock purchased, ARD will provide consumers with what they need to operate their respective business ventures. According to the defendants and their representatives purchasers of the defendants' business ventures will receive: (1) display racks; (2) ongoing assistance from ARD and its staff, including support from a research department that uses scientific methods to identify the types of music that sell well in the demographic areas in which purchasers have located their display racks and shipment of the music that the ARD research department has identified as likely to be popular in each of the purchasers' locations; (3) a substantial inventory of compact discs and audio cassettes by the hottest selling popular recording artists including Britney Spears, 'Nsync, and Madonna, as well as other music that ARD has carefully selected based on ARD's analysis of what will sell well in the purchasers' locations; and (4) assistance, either directly or indirectly, in identifying locations to place purchasers' display racks that ARD guarantees will produce at least three or four sales a day.

21. Over the course of their sales pitches, the defendants and their representatives also make numerous representations to prospective purchasers to the effect that purchasers can expect to earn substantial income by operating the defendants' business ventures. For example, the defendants and their representatives typically tell consumers that purchasers can expect that each display rack will average 3 or 4 cassette or compact disc sales a day, resulting in a profit of approximately \$10-\$14 per day, or approximately \$75-\$100 per week, per display rack location. Defendants and their representatives often tell prospective purchasers that by working only part time, a purchaser of a business venture with 10 display racks can expect to make \$45,000-\$55,000 a year.

22. Neither the defendants nor their representatives have a reasonable basis for the earnings claims they make.

23. The defendants and their representatives fail 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.

24. The defendants and their representatives also fail to provide prospective franchisees with an earnings claim document, as prescribed by the Rule.

25. The defendants and their representatives often refer prospective purchasers to people they identify as satisfied purchasers of the defendants' business ventures. These allegedly satisfied purchasers typically tell consumers that they have purchased the defendants' business ventures, are currently operating the business ventures, and are making the amount of money that the defendants represented they would make.

26. In numerous instances, the references have either not purchased a business venture from the defendants, or have not had the type of success they describe to prospective purchasers.

27. As part of their attempt to sell their business ventures, the defendants and their representatives will often send a package of promotional material to prospective purchasers. This material typically includes, *inter alia*, a brochure, a purchase order form, and a disclosure document (the "basic disclosure document") that on its cover purports to be "Information for Prospective Business Opportunity Purchasers Required by the Federal Trade Commission."

28. The basic disclosure document provided by the defendants and their representatives fails to make all of the disclosures required by the Franchise Rule. For example, the basic disclosure document fails to list Russell MacArthur as a director or officer of the

company and fails to describe his business experience, or fails to describe MacArthur's bankruptcy history.

29. Additionally, some of the disclosures made in the basic disclosure document contradict the oral or written representations made by the defendants, their employees, or agents. For example, the defendants' basic disclosure document says that ARD was incorporated under the name J.A.P. International, Inc. less than three years ago, and has been selling the business ventures in question for less than a year. By contrast, the defendants' and their representatives have told prospective purchasers that ARD has been in the same line of business for three or more years.

30. Consumers who purchase the defendants' business ventures do not receive the type or quantity of products and services promised by the defendants and their representatives; they do not receive the business assistance or location placement promised by the defendants and their representatives; and they do not make the amount of income claimed as typical by the defendants and their representatives.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

31. 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

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

33. In numerous instances in the course of offering for sale and selling their business ventures, the defendants, directly or indirectly, represent, expressly or by implication, that

consumers who purchase the defendants' business ventures are likely to earn substantial income.

34. In truth and in fact, consumers who purchase the defendants' business ventures are not likely to earn substantial income.

35. Therefore, the defendants' representations as set forth in Paragraph 33 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

Failure to Deliver

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

37. In numerous instances in the course of offering for sale and selling their business ventures, the defendants, directly or indirectly, represent, expressly or by implication, that the defendants provide purchasers with a specific quantity of audio cassettes and compact discs of the "hottest-selling" music by today's "most popular" artists, such as Britney Spears and 'NSync.

38. In truth and in fact, in numerous instances, the defendants do not provide purchasers with either the quantity of audio cassettes and compact discs promised or with the "hottest-selling" music by the "most popular" artists.

39. Therefore, the defendants' representations as set forth in Paragraph 37 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 Assistance to Business Purchasers

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

41. In numerous instances in the course of offering for sale and selling their business ventures, the defendants, directly or indirectly, represent, expressly or by implication, that the defendants provide purchasers with significant assistance in the operation of their businesses, including but not limited to, claims that the defendants use demographic research to individually select and provide the music that will sell well in each purchaser's particular locations.

42. In truth and in fact, in numerous instances, the defendants do not provide purchasers with significant assistance in the operation of their businesses.

43. Therefore, the defendants' representations as set forth in Paragraph 41 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

Misrepresentations Regarding Company-Selected References

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

45. In numerous instances in the course of offering for sale and selling their business ventures, the defendants, directly or indirectly, represent, expressly or by implication, that certain company-selected references have purchased the defendants business ventures or will provide reliable descriptions of experiences with the defendants' business ventures.

46. In truth and in fact, in numerous instances, the defendants' references have not purchased the defendants' business ventures or do not provide reliable descriptions of experiences with the defendants' business ventures.

47. Therefore, the defendants' representations as set forth in Paragraph 45 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 V

Misrepresentations Regarding Placement of Display Racks

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

49. In numerous instances in the course of offering for sale and selling their business ventures, the defendants, directly or indirectly, represent, expressly or by implication, that the defendants or the locating services that the defendants recommend have obtained the consent of store owners in the prospective purchaser's geographic area for the placement of display racks.

50. In truth and in fact, in numerous instances, neither the defendants nor the locating companies that the defendants provide or recommend have obtained the consent of store owners in the prospective purchaser's geographic area for the placement of display racks.

51. Therefore, the defendants' representations as set forth in Paragraph 49 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

52. 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).

53. 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.

54. The Franchise Rule specifically prohibits franchisors from making any claim or representation that contradicts information required to be disclosed pursuant to Section 436.1 of the Rule. 16 C.F.R. § 436.1(f).

55. 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).

56. 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 VI

Basic Disclosure Violations

57. Paragraphs 1 through 56 are incorporated herein by reference.

58. In connection with the offering of franchises, as “franchise” is defined in Section 436.2(a) of the Franchise Rule, the defendants 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 VII

Disclosure of Contradictory Information

59. Paragraphs 1 through 56 are incorporated herein by reference.

60. In connection with the offering of franchises, as “franchise” is defined in Section 436.2(a) of the Rule, the defendants violate Section 436.1(f) of the Rule and Section 5(a) of the FTC Act by making claims or representations to prospective franchisees which are contradictory to the information required to be disclosed by Section 436.1 of the Rule.

COUNT VIII

Earnings Disclosure Violations

61. Paragraphs 1 through 56 are incorporated herein by reference.

62. In connection with the offering of franchises, as “franchise” is defined in Section 436.2(a) of the Franchise Rule, the defendants 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.

COUNT IX

Advertising Disclosure Violations

63. Paragraphs 1 through 56 are incorporated herein by reference.

64. In connection with the offering of franchises, as “franchise” is defined in Section 436.2(a) of the Franchise Rule, the defendants violate Section 436.1(e) of the Rule and Section 5(a) of the FTC Act by making generally disseminated earnings claims without, *inter alia*, disclosing, in immediate conjunction with the claims, information required by the Franchise Rule including the number and percentage of prior purchasers known by the defendants to have achieved the same or better results.

CONSUMER INJURY

65. 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

66. 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.

67. 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.

68. 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

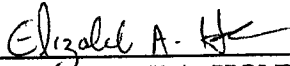
WHEREFORE, the plaintiff requests that this Court, as authorized by Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and pursuant to its own equitable powers:

1. Award the 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.

Respectfully submitted,

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General Counsel


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