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2005 APR -5 A 9:48

U.S. DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CV-S-05-0440-LDG-LRL

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

NETWORK SERVICES DEPOT, INC.;
NETWORK MARKETING, LLC, dba Network Services Marketing;
NET DEPOT, INC.;
NETWORK SERVICES DISTRIBUTION, INC.;
SUNBELT MARKETING, INC.;
CHARLES V. CASTRO;
ELIZABETH L. CASTRO; and
GREGORY HIGH;

Defendants; and

PHYLLIS WATSON,

Relief Defendant.

COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), for its Complaint, alleges as follows:

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 permanent injunctive relief, rescission of contracts, restitution, disgorgement, 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 District of Nevada 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 NETWORK SERVICES DEPOT, INC. ("NSD") is a California corporation with its principal place of business at 3000 East Birch St., Brea, CA. NSD

promotes and sells public access Internet kiosk business ventures, as described *infra.* NSD has transacted business in the District of Nevada.

6. Defendant NETWORK MARKETING, LLC ("NSM") is a California limited liability company with its principal place of business at 3000 East Birch St., Brea, CA. NSM promotes and sells public access Internet kiosk business ventures, as described *infra*. NSM does business as "Network Services Marketing." NSM has transacted business in the District of Nevada.

7. Defendant NET DEPOT, INC. ("Net Depot") is a Nevada corporation with its principal place of business at 3000 East Birch St., Brea, CA. Net Depot promotes and sells public access Internet kiosk business ventures, as described *infra.* Net Depot has transacted business in the District of Nevada.

8. Defendant NETWORK SERVICES DISTRIBUTION, INC. is a California corporation with its principal place of business at 3000 East Birch St., Brea, CA. Network Services Distribution, Inc. promotes and sells public access Internet kiosk business ventures, as described *infra.* Network Services Distribution has transacted business in the District of Nevada.

9. Defendant SUNBELT MARKETING, INC. ("Sunbelt") is a California corporation with its principal place of business at 3000 East Birch St., Brea, CA. Sunbelt promotes and sells public access Internet kiosk business ventures, as described *infra*. Sunbelt has transacted business in the District of Nevada.

10. At all times material to this Complaint, Defendants NSD, NSM, Net Depot, Network Services Distribution and Sunbelt ("corporate defendants") have acted as a common enterprise. The corporate defendants share officers, employees, offices, and a common goal to deceive the public into purchasing business opportunities.

11. Defendant CHARLES V. CASTRO is an owner, officer, director, or manager of the corporate defendants. 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 defendants, including the acts and practices set forth in

this Complaint. He has transacted business in the District of Nevada.

12. Defendant ELIZABETH L. CASTRO is an owner, officer, director, or manager of the corporate defendants. 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 defendants, including the acts and practices set forth in this Complaint. She has transacted business in the District of Nevada.

13. Defendant GREGORY HIGH is an officer, director, or manager of the corporate defendants. 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 defendants, including the acts and practices set forth in this Complaint. He has transacted business in the District of Nevada.

14. Relief Defendant PHYLLIS WATSON is a relative of Defendants Charles and Elizabeth Castro. Individually or jointly with others, she has received funds and other assets that were derived unlawfully from payments by consumers as a consequence of the acts and practices complained of herein, and she does not have a legitimate claim to such funds and other assets.

COMMERCE

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

DEFENDANTS' BUSINESS PRACTICES

The Internet Kiosk Business Ventures

16. Since at least September 2001, Defendants have promoted, offered for sale, and sold Internet kiosk business ventures for substantial sums. These business ventures include, but are not limited to, free-standing kiosks that house a computer and a

mechanism to accept payment, called "Internet kiosks." They are designed to allow the public to access the Internet, for a fee, from locations such as hotels, bowling alleys, restaurants, casinos, and convenience stores.

17. In or around late 2001, Defendants entered into a working arrangement with Edward Bevilacqua, an individual who operated Internet kiosk companies in Escondido, California, including Bikini Vending Corp., MyMart, Inc., and 360 Wireless Corp. (the "Bevilacqua companies"). Under this arrangement, the Bevilacqua companies were to purchase, find locations for, install, and manage Internet kiosks, and Defendants were to promote, offer for sale, arrange for the sale, and sell the business ventures to the public.

18. By purchasing an Internet kiosk business venture from Defendants, consumers purportedly receive ownership of an Internet kiosk bearing the trademark of Bikini Vending Corp. or MyMart, Inc. installed at a designated location, and the management and servicing of the Internet kiosk by the Bevilacqua companies.

19. Defendants offer the Internet kiosk business ventures under a tiered pricing system, with "Bordeaux," "Sterling," "Cobalt," "Platinum," "Titanium," and "Gold" programs. The programs vary by type of location and level of service that purchasers receive.

20. The programs also vary by the amount of income that Defendants represent purchasers will earn. Under each program, purchasers are promised a fixed minimum monthly payment from initial revenues generated by their Internet kiosks ("minimum monthly payment"), which varies by program, and an additional payment based on a percentage of the additional revenues generated after the deduction of various expenses and fees. Typical representations include but are not limited to the following:

> Gold . . . . Receive first $99.00 of revenue each month and $33% [sic] of gross revenue over $550.00 per month. All expenses paid from additional revenue.
>
> Platinum . . . . Receive first $44.00 of revenue each month and a $90.00 sinking fund. All expenses paid from additional revenue.
>
> Titanium . . . . Receive first $55.00 of revenue each month and a $90.00 sinking fund. All expenses paid from additional revenue.

(Exhibit 1)

21. Since at least 2002, consumers have purchased Internet kiosk business ventures from Defendants under this tiered pricing system. The sales transaction involves a series of agreements between or among the corporate defendants, the Bevilacqua companies, and the purchaser. Under these agreements, the corporate defendants acquires from the Bevilacqua companies, and then transfers to the purchaser, an Internet kiosk installed at a designated location. As part of this transaction, the purchaser enters into a business service agreement with the Bevilacqua companies.

22. After entering into these agreements, purchasers believe that they own Internet kiosk business ventures at the designated locations and that these businesses will be managed by the Bevilacqua companies.

23. By early 2004, consumers had purchased thousands of Internet kiosk business ventures from Defendants. The Bevilacqua companies, however, had installed fewer than 300 Internet kiosks at that time. The Bevilacqua companies had not installed, and did not have the right to install, Internet kiosks at many of the locations designated on the Defendants' agreements with purchasers.

24. Until early 2004, the Bevilacqua companies routinely sent purchasers their minimum monthly payments. The money, however, did not come from revenue generated by the purchasers' business ventures – it came instead from funds derived from new purchases of the Internet kiosk business ventures.

The Marketing of the Internet Kiosk Business Ventures

25. Since at least late 2001, Defendants have worked with the Bevilacqua companies to promote the Internet kiosk business ventures. For example, Defendants have developed promotional written materials and slide presentations. They have distributed these materials and others developed by the Bevilacqua companies to sales agents and consumers. Additionally, Defendants and the Bevilacqua companies have jointly hosted sales seminars for sales agents and prospective purchasers. They have held some of

these seminars at their offices in Southern California, and have paid the travel expenses of attendees.

26. In their agreements, promotional materials, slide presentations, and at their seminars, Defendants have made representations that purchasers will acquire ownership of an Internet kiosk business venture; that purchasers will earn substantial income; that purchasers will receive monthly payments derived from their business' revenue; and that Defendants have found or will find profitable locations for purchasers' Internet kiosks. Typical representations include, but are not limited to, the following:

a. **What are the 3 Most Important Factors for a Successful Vending Business?**

. . . .

1. Getting Good Locations

. . . .

20+ years of full time vending experience means that we are professionals: we know what a Good Location is, how to find it and how to sign it up

2. Keeping Good Locations

. . . .

3. Getting Rid of Bad Locations

. . . .

(Exhibit 1)

b. "**Well placed machines will do $1,000 per day.**"

(Exhibit 2, p. 4)

c.

The Best Program on the Market

Purchase Internet Station	($5,500)
AdaCom gain	$2,500
1st year tax savings (equipment)	$1,540
1st year revenue	$ 720
Total 1st year return	$4,760
1st year shortfall	($ 740)
3 year return	**$11,200**

(Exhibit 2, p. 29)

d. You Pick Your Location

• **Bowling Centers**
• **Convenience Stores & Retail Stores**
• **Domestic Hotel & Hospitality**
• **European Hotel & Hospitality**

Choice of 3 per Machine Purchased

(Exhibit 3, p.5)

e. **Locations**

• **Bowling Centers**
• **Domestic Hospitality**
  - **Howard Johnson's**
  - **Best Value Inns**
  - **Best Western**
  - **Wyndam Hotels**
• **Domestic Retail**
  - **Casinos**
  - **Department Stores**
  - **C-Stores**
    • **Allen's Food Mart**
    • **Circle C**
    • **7-Eleven**
    • **Gristenes**

(Exhibit 3, p.6)

f. "We take the guesswork out of being profitable."

(Exhibit 3, p. 32)

g. Management Options

• Titanium - Client receives 1st \$60
• Gold - Client receives 1st \$70
• Cobalt - Client receives 1st \$75
• Bordeaux - Client receives 1st \$75

• Client now receives 50% on revenues over \$500 per month!

(Exhibit 3, p. 33)

h. How You Profit

• Purchase an Internet Station \$6,300.
• Choose your Location from a list of 3.

- Select us as your management company.
- Receive first $70 of monthly income.
- Receive 50% of all revenue over $500 per month.

(Exhibit 3, p. 38)

VIOLATIONS OF SECTION 5 OF THE FTC ACT

27. 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

28. In numerous instances, in the course of promoting, offering for sale, and selling their Internet kiosk business ventures, Defendants, directly or indirectly, have represented, expressly or by implication, that:

a. At the time of purchase, consumers will acquire ownership of an Internet kiosk business venture.

b. By purchasing Defendants' Internet kiosk business ventures, consumers are likely to earn substantial income.

c. Purchasers will receive monthly payments that represent revenue generated by the Internet kiosk business ventures that they own.

d. Defendants have found or will find profitable locations at which to place Internet kiosks.

29. In truth and in fact, in many instances:

a. At the time of purchase, consumers do not acquire ownership of an Internet kiosk business venture.

b. By purchasing Defendants' Internet kiosk business ventures, consumers are not likely to earn substantial income.

c. Purchasers do not receive monthly payments that represent revenue generated by the Internet kiosk business ventures that they own.

d. Defendants have not found profitable locations at which to place Internet kiosks.

30. Therefore, Defendants' representations as set forth in Paragraph 28 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

Means and Instrumentalities

31. By providing sales agents and others with materials that contain false representations, including but not limited to the false representations described in Paragraph 28 above, to be used in recruiting new purchasers, Defendants have provided these persons with the means and instrumentalities for the commission of deceptive acts and practices.

32. Defendants' practices, as described in Paragraph 31, constitute deceptive acts and practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

THE FRANCHISE RULE

33. The Internet kiosk business ventures promoted, offered for sale, and sold by 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).

34. Defendants are franchisors as "franchisor" is defined in Sections 436.2(a)(1)(i) and (a)(1)(ii) of the Rule, 16 C.F.R. §§ 436.2(a)(1)(i) and (a)(1)(ii), and/or franchise brokers as "franchise broker" is defined in Sections 436.2(i) of the Rule, 16 C.F.R. §§ 436.2(j).

35. The Franchise Rule requires franchisors and franchise brokers to provide prospective franchisees with a complete and accurate basic disclosure document containing twenty categories of information, including information about the business experience of the franchisor and its principals, audited financial statements of the

franchisor, criminal and civil liabilities, the total number of franchises in operation, and the time lapses between the purchase of a franchise and site selection. 16 C.F.R. § 436.1(a)(1) - (a)(20).

36. The Franchise Rule additionally requires that franchisors and franchise brokers:

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).

37. 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 III

Basic Disclosure Violations

38. In connection with the promotion, offer for sale, or sale of franchises, as "franchise" is defined in Section 436.2(a) of the Rule, Defendants have violated Section 436.1(a) of the Rule and Section 5(a) of the FTC Act by failing to provide prospective

franchisees with accurate and complete disclosure documents within the time period prescribed by the Rule.

COUNT IV

Earnings Disclosure Violations

39. In connection with the promotion, offer for sale, or sale of franchises, as "franchise" is defined in Section 436.2(a) of the Franchise Rule, Defendants have violated 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 time 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 V

Advertising Disclosure Violations

40. In connection with the promotion, offer for sale, or sale of franchises, as "franchise" is defined in Section 436.2(a) of the Franchise Rule, Defendants have violated 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 Defendants to have achieved the same or better results.

CONSUMER INJURY

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

Franchise Rule. 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

42. 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.

43. 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.

44. This Court, in the exercise of its equitable jurisdiction, may award ancillary relief to remedy injury caused by 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, including, but not limited to, temporary and preliminary injunctions and an order freezing assets;

2. Permanently enjoin 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 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 Defendants; and

4. Award Plaintiff the costs of bringing this action and such other equitable relief as the Court may determine to be just and proper.

Dated: 3/31/05

Respectfully Submitted,

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