UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
Case No. ______ - CIV- (__________)

05-61682

CIV - LENARD

KLEIN

FILED BY: _____ D.C.
2005 OCT 19 AM 11:06
CLERK U.S. DIST. CT.
S.D. OF FL.-FTL.

FEDERAL TRADE COMMISSION, Plaintiff, v. USA BEVERAGES, Inc., a Florida corporation and New Mexico corporation; DILRAJ MATHAUDA a/k/a Dan Reynolds, individually and as a principal of USA Beverages, Inc.; SIRTAJ MATHAUDA, individually and as a principal of USA Beverages, Inc.; JEFF PEARSON a/k/a Paul Clayton, individually and as a principal of USA Beverages, Inc.; DAVID MEAD, individually and as an officer of USA Beverages, Inc.; and SILVIO CARRANO, individually and as an officer of USA Beverages, Inc., Defendants.	)

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), (c) and (d), and 15 U.S.C. § 53(b).

THE PARTIES

4. Plaintiff, the FTC, 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, and 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 USA Beverages, Inc. ("USA Beverages") is incorporated in New Mexico and Florida, and has its principal place of business in Escazu, Costa Rica. USA Beverages promotes and sells coffee display rack business ventures. USA Beverages maintains an office in Pompano Beach, Florida and has otherwise transacted business in the Southern District of Florida.

6. Defendant Dilraj Mathauda, who uses the alias "Dan Reynolds," is a principal of USA Beverages. Acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of USA Beverages, including the acts and practices set forth in this Complaint. He is a resident of Costa Rica. He has transacted business in the Southern District of Florida.

7. Defendant Sirtaj Mathauda is a principal of USA Beverages. Acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of USA Beverages, including the acts and practices set forth in this Complaint. He is a resident of Costa Rica. He has transacted business in the Southern District of Florida.

8. Defendant Jeff Pearson, who uses the alias "Paul Clayton," is a principal of USA Beverages. Acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of USA Beverages, including the acts and practices set forth in this Complaint. He is a resident of Costa Rica. He has transacted business in the Southern District of Florida.

9. Defendant David Mead is the president of USA Beverages. Acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of USA Beverages, including the acts and practices set forth in this Complaint. He is a

resident of New Mexico. He has transacted business in the Southern District of Florida.

10. Defendant Silvio Carrano is the Treasurer of USA Beverages. Acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of USA Beverages, including the acts and practices set forth in this Complaint. He is a resident of Costa Rica. He has transacted business in the Southern District of Florida.

COMMERCE

11. At all times relevant to this Complaint, the defendants have maintained a substantial course of trade in the offering for sale and sale of coffee 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

12. Since at least May 2005, and continuing thereafter, using the name "USA Beverages," defendants USA Beverages, Dilraj Mathauda, Sirtaj Mathauda, Jeff Pearson, David Mead and Silvio Carrano have offered and sold coffee display rack business ventures to consumers.

13. USA Beverages uses the tradename "Cafe Del Rey" for the coffee that it supplies to purchasers of its business ventures.

14. The defendants have promoted their business ventures to prospective purchasers through classified advertisements in newspapers throughout the United States.

15. In their classified advertisements, the defendants make representations about the earning potential of their coffee display rack 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 USA Beverages classified newspaper advertisements states:

> **COFFEE -- Coffee Superb Route Dist. Starbucks Type Product. Earn $2K Weekly 1-800-567-2806 24 hrs.**

16. Defendants also promote their business venture through a website at www.cafedelrey.net.

17. According to the website, USA Beverages is located in Las Cruces, New Mexico, has been in business since 1994, and has over 200 employees.

18. The website includes testimonials from alleged distributors touting their claimed successes as distributors for USA Beverages' coffee display rack business venture. For example, one of the testimonials states:

> **"USA Beverages, Inc.'s distributorship is a no-brainer. It makes sense to use their program. They guaranteed that I would make my money back in four months, I was able to recoup my investment in 2 months! My only regret was that I did not start with more racks."**
>
> **– S. Lind in Florida**

19. The website includes several toll-free numbers prospective purchasers can use to telephone the company.

20. Prospective purchasers who call the toll-free telephone numbers listed in the USA Beverages classified advertisements or on the USA Beverages website to learn more about the

USA Beverages business ventures are ultimately connected to USA Beverages sales representatives.

21. USA Beverages representatives tell prospective purchasers that USA Beverages is located in New Mexico. USA Beverages subsequently sends purchasers and prospective purchasers promotional material and correspondence indicating that the business is operated out of Las Cruces, New Mexico.

22. In fact, the defendants operate the business from Costa Rica, and all of the USA Beverages' telemarketing is done from Costa Rica.

23. By using an answering service to answer its New Mexico phone number, and Voice over Internet Protocol ("VoIP") service for its toll-free telephone numbers, USA Beverages can make and receive calls in Costa Rica, but claim to be in New Mexico.

24. Over the course of what are often a series of telephone calls, and written communications, the USA Beverages representatives attempt to convince consumers to purchase a USA Beverages coffee display rack business venture.

25. The USA Beverages representatives tell prospective purchasers that, in exchange for payments which range from approximately $18,000 - $85,000 – depending on the number of display racks and amount of coffee purchased – USA Beverages will provide consumers with what they need to operate a successful coffee display rack business. According to USA Beverages representatives and the literature they provide to would-be purchasers, USA Beverages provides purchasers of its business ventures with: (1) display racks; (2) ongoing assistance from USA Beverages and its staff, including an "Executive support staff and 1-800 support line"; (3) a substantial inventory of "specialty grade coffee" in both 2 ounce, and 12

ounce bags; and (4) assistance, either directly or indirectly, identifying locations in which to place purchasers' display racks for which purchasers can expect sales of at least four bags of coffee a day per location.

26. Over the course of their sales pitches, the USA Beverages representatives make numerous misrepresentations to prospective purchasers to the effect that purchasers can expect to earn substantial income by operating USA Beverages business ventures and that purchasers can expect that each coffee display rack will average sales of two 2 oz. bags of coffee and two 12 oz. bags of coffee per day, resulting in a gross profit of approximately $14.50 per day per display rack. The USA Beverages representatives tell consumers that a purchaser of 13 display racks at $18,000 can expect a $188.50 gross profit per day, or $1319.50 per week. According to the USA Beverages representatives, the distributor will have to pay the each retail location 20% of the gross profits from the coffee sales at that location, resulting in a $1055.60 net profit per week for 13 locations. For purchasers of more display racks, the USA Beverages representatives make even greater earnings claims.

27. USA Beverages representatives often refer prospective purchasers to people they identify as satisfied purchasers of USA Beverages business ventures. These allegedly satisfied purchasers typically tell consumers that they have purchased a USA Beverages coffee display rack business venture, are currently operating the business venture, and are making the amount of money that the defendants represented they would make.

28. In numerous instances, the references are simply employees of USA Beverages operating out of Costa Rica, and masquerading as satisfied purchasers by using cell phone numbers that make it appear that they are located in various parts of the United States.

29. In other instances, the references are shills who are paid by USA Beverages to claim that they are successful operators of USA Beverages coffee display rack business ventures, when such is not the case.

30. USA Beverages representatives often tell prospective purchasers that USA Beverages has already secured numerous retail locations in prospective purchasers' geographic areas for USA Beverages coffee display racks.

31. USA Beverages representatives refer prospective purchasers to someone they identify as an employee of Prime Time Marketing, Inc. ("Prime Time"), the locating service that works with USA Beverages. When speaking with prospective purchasers, the alleged Prime Time representative repeats the earnings claims made by the USA Beverages representatives and confirms that Prime Time already has numerous retail locations waiting for coffee display racks in the prospective purchasers' geographic areas.

32. In fact, neither the defendants nor Prime Time have lined up numerous retail locations in prospective purchasers' geographic areas that want to have USA Beverages coffee display racks.

33. As part of their attempt to sell the USA Beverages business ventures, the USA Beverages representatives 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" as "required by law."

34. The Franchise Rule requires sellers of franchises and business opportunities to provide a basic disclosure document containing certain specified material information.

35. The basic disclosure document provided by USA Beverages fails to make certain of the disclosures required by the Franchise Rule. Among other things, the disclosure document fails to disclose the names, employment history and litigation history of the individual defendants: Dilraj Mathauda, Sirtaj Mathauda, Jeff Pearson and Silvio Carrano, who are actually operating the company.

36. The disclosure document also fails to disclose that USA Beverages has been selling coffee display rack business ventures only since May 2005.

37. The disclosure document also fails to disclose the cost to begin operating a USA Beverages business venture and the company's refund policy.

38. The disclosure document also fails to include the required disclosure about USA Beverages' financial condition.

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

40. The defendants make generally disseminated earnings claims without, *inter alia*, disclosing, in immediate conjunction with the claims, the number and percentage of prior purchasers known by the defendants to have achieved the same or better results.

41. In addition, the defendants 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.

42. Indeed, the defendants do not have a reasonable basis for the earnings claims they and their sales representatives make with respect to the USA Beverages business ventures.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

43. 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

44. Paragraphs 1 through 43 are incorporated herein by reference.

45. In numerous instances, in the course of offering for sale and selling the USA Beverages business ventures, the defendants, directly or indirectly, represent, expressly or by implication, that consumers who purchase the USA Beverages business ventures are likely to earn substantial income.

46. In truth and in fact, consumers who purchase the USA Beverages business ventures are not likely to earn substantial income.

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 II

Misrepresentations Regarding Placement of Display Racks

48. Paragraphs 1 through 43 are incorporated herein by reference.

49. In numerous instances, in the course of offering for sale and selling the USA Beverages business ventures, the defendants, directly or indirectly, represent, expressly or by implication, that the defendants have already secured numerous retail locations in the prospective purchaser's geographic area for the placement of display racks.

50. In truth and in fact, in numerous instances, the defendants have not secured numerous retail locations 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).

COUNT III

Misrepresentations Regarding Company-Selected References

52. Paragraphs 1 through 43 are incorporated herein by reference.

53. 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 USA Beverages business ventures or will provide reliable descriptions of experiences with the USA Beverages business ventures.

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

55. Therefore, the defendants' representations as set forth in Paragraph 53 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

56. The business ventures sold by the defendants are franchises, as "franchise" is defined in Sections 436.2(a)(1)(i), (a)(1)(ii), (a)(2), and (a)(5) of the Franchise Rule, 16 C.F.R. §§

436.2(a)(1), (a)(2) and (a)(5).

57. 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.

58. 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).

59. 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 IV

Basic Disclosure Violations

60. Paragraphs 1 through 43 and 56 through 59 are incorporated herein by reference.

61. 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 V

Earnings Disclosure Violations

62. Paragraphs 1 through 43 and 56 through 59 are incorporated herein by reference.

63. 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 VI

Advertising Disclosure Violations

64. Paragraphs 1 through 43 and 56 through 59 are incorporated herein by reference.

65. 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

66. 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

67. 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 Commission.

68. 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.

69. 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, asset freeze, 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,

William Blumenthal
General Counsel

ELIZABETH A. HONE
RUSSELL DEITCH
Attorneys for Plaintiff
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580
Telephone: (202) 326-3207, 2585
Facsimile: (202) 326-3395
E-Mail: ehone@ftc.gov, rdeitch@ftc.gov

Dated: October 18, 2005