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9 ATTORNEYS FOR PLAINTIFF

10 UNITED STATES DISTRICT COURT
11 DISTRICT OF ARIZONA

12
13 FEDERAL TRADE COMMISSION,)

CV

14 Plaintiff,)

15 v.)

COMPLAINT FOR
INJUNCTION AND
OTHER EQUITABLE
RELIEF

16 CROOKED OAK INVESTMENTS, INC.; D.H.I.)
CORPORATION; HANDICAPPED INDUSTRIES)
17 MIDWEST, INC.; HANDICAPPED INDUSTRIES)
NORTHWEST, INC.; HANDICAPPED)
18 INDUSTRIES SOUTHEAST, INC.; LIGHTNING)
TREE, INC.; THE RIGHT PATH, INC.;)
19 STONE FULFILLMENT & SHIPPING COMPANY)
a Delaware corporation; corporations)
20 dba HANDICAPPED INDUSTRIES;)
DISADVANTAGED AND HANDICAPPED)
21 INDUSTRIES, CORP.; JOBS FOR THE)
DISADVANTAGED; WORKSHOP FOR THE)
22 DISADVANTAGED; RELIABLE HANDICAPPED)
WORKERS; BRUCE HOLLEY, INC.; B.H.)
23 INDUSTRIES; T.J. BEARD, INC.; and)
TERRY JEFF BEARD; CHRISTOPHER JAY)
24 COTTET; BENJAMIN WADE HOLLEY; BRUCE)
EDWARD HOLLEY; ROBERT JOSEPH HOLLEY;)
25 and JOANN PORTER; individuals;)

26 Defendants.)
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1 Plaintiff, the Federal Trade Commission ("Commission"),
2 by its undersigned attorneys, alleges as follows:

3 1. This is an action under Section 13(b) of the
4 Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b),
5 to secure a permanent injunction and other equitable relief,
6 including rescission, restitution and disgorgement, and
7 other equitable relief for defendants' acts or practices in
8 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

9 **JURISDICTION AND VENUE**

10 2. This Court has subject matter jurisdiction over
11 plaintiff's claim pursuant to 28 U.S.C. §§ 1331, 1337(a),
12 and 1345, and under 15 U.S.C. §§ 45(a) and 53(b).

13 3. Venue in this district is proper pursuant to 28
14 U.S.C. § 1391(b) & (c), as well as 15 U.S.C. § 53(b).

15 **THE PARTIES**

16 4. Plaintiff, the Federal Trade Commission, is an
17 independent agency of the United States Government created
18 by statute. 15 U.S.C. §§ 41, et seq. The Commission is
19 charged, inter alia, with the enforcement of Section 5(a) of
20 the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or
21 deceptive acts or practices in or affecting commerce. The
22 Commission is authorized, by its own attorneys, to initiate
23 federal district court proceedings to enjoin violations of
24 the FTC Act and to secure such equitable relief, including
25 consumer redress, as may be appropriate in each case. 15
26 U.S.C. § 53(b).

27 5. The defendants and other participants in the
28 activities described hereafter are sometimes be referred to

1 collectively as "Handicapped Industries," "the Handicapped
2 Industries enterprise," or "the enterprise."

3 6. Defendant CROOKED OAK INVESTMENTS, INC. ("Crooked
4 Oak"), is a corporation organized, existing and doing
5 business under and by virtue of the laws of the State of
6 Arizona. Its principal offices and places of business are
7 2200 West San Angelo, Unit 3026, Gilbert, Arizona, and 640
8 South River Drive, Tempe, Arizona. At all times relevant to
9 this complaint Crooked Oak has transacted business in this
10 district.

11 7. Defendants HANDICAPPED INDUSTRIES MIDWEST, INC.
12 ("HI Midwest"), HANDICAPPED INDUSTRIES NORTHWEST, INC. ("HI
13 Northwest"), and HANDICAPPED INDUSTRIES SOUTHEAST, INC. ("HI
14 Southeast"), are corporations organized, existing and doing
15 business under and by virtue of the laws of the State of
16 Arizona. Their principal offices and places of business are
17 640 South River Drive, Tempe, Arizona. At all times
18 relevant to this complaint, HI Midwest, HI Northwest, and HI
19 Southeast have transacted business in this district.

20 8. Defendant LIGHTNING TREE, INC. ("Lightning Tree"),
21 is a corporation organized, existing and doing business
22 under and by virtue of the laws of the State of Arizona.
23 Its principal office and place of business is 640 South
24 River Drive, Tempe, Arizona. At all times relevant to this
25 complaint, Lightning Tree has transacted and continues to
26 transact business in this district.

27 9. Defendant D.H.I. Corporation ("DHI"), is a
28 corporation organized, existing, and doing business under

1 and by virtue of the laws of the State of Arizona. Its
2 principal offices and places of business are 1321 E. Orange,
3 Tempe, Arizona, and 640 South River Drive, Tempe, Arizona.
4 At all times relevant to this complaint, DHI has transacted
5 business in this district.

6 10. Defendant THE RIGHT PATH, INC. ("The Right Path"),
7 is a corporation organized, existing, and doing business
8 under and by virtue of the laws of the State of Arizona.
9 Its principal office and place of business is 640 S. River
10 Drive, Tempe, Arizona. At all times relevant to this
11 complaint, The Right Path has transacted business in this
12 district.

13 11. Defendant STONE FULFILLMENT & SHIPPING COMPANY
14 ("Stone Fulfillment") is a corporation organized, existing,
15 and doing business under and by virtue of the laws of the
16 State of Delaware. Its principal office and place of
17 business is 640 River Drive, Tempe, Arizona. At all times
18 relevant to this complaint, Stone Fulfillment has transacted
19 and continues to transact business in this district.

20 12. Defendant Terry Jeff Beard individually or in
21 concert with others formulates, directs, and controls the
22 acts and practices of the Handicapped Industries enterprise
23 as set forth herein. He is an officer of defendant HI
24 Midwest and has held officer and director positions with
25 defendants HI Northwest and HI Southeast. At all times
26 relevant to this complaint, he has resided and transacted
27 business in this district.

1 13. Defendant Christopher Jay Cottet individually or in
2 concert with others formulates, directs, and controls the
3 acts and practices of the Handicapped Industries enterprise
4 as set forth herein. He holds various officer and director
5 positions with defendants HI Northwest, HI Southeast, and
6 DHI. At all times relevant to this complaint, he has resided
7 and transacted business in this district.

8 14. Defendant Benjamin Wade Holley individually or in
9 concert with others formulates, directs, and controls the
10 acts and practices of the Handicapped Industries enterprise
11 as set forth herein. He holds various officer, director,
12 and shareholder positions with defendants Crooked Oak, HI
13 Midwest, HI Northwest, HI Southeast, Lightning Tree, and The
14 Right Path. At all times relevant to this complaint, he has
15 resided and transacted business in this district.

16 15. Defendant Bruce Edward Holley individually or in
17 concert with others formulates, directs, and controls the
18 acts and practices of the Handicapped Industries enterprise
19 as set forth herein. He is an officer of defendant HI
20 Southeast and has held officer and director positions with
21 defendants HI Midwest, and HI Northwest. At all times
22 relevant to this complaint, he has resided and transacted
23 business in this district.

24 16. Defendant Robert Joseph Holley individually or in
25 concert with others formulates, directs, and controls the
26 acts and practices of the Handicapped Industries enterprise
27 as set forth herein. He holds officer and director
28 positions with defendant Lightning Tree. At all times

1 relevant to this complaint, he has resided and transacted
2 business in this district.

3 17. Defendant JoAnn Porter individually or in concert
4 with others formulates, directs, and controls the acts and
5 practices of the Handicapped Industries enterprise as set
6 forth herein. She holds officer and director positions with
7 defendant Crooked Oak. At all times relevant to this
8 complaint, she has transacted business in this district.
9 From time to time, she has also resided in this district.

10 18. At all times relevant to the complaint, the
11 individual defendants and corporate defendants Crooked Oak,
12 HI Midwest, HI Northwest, HI Southeast, Lightning Tree, DHI,
13 The Right Path, and Stone Fulfillment, and other persons,
14 partnerships, corporations or business entities have used
15 one or more of the following names or dbas in connection
16 with the Handicapped Industries enterprise: Handicapped
17 Industries; Disadvantaged and Handicapped Industries, Corp.;
18 Jobs for the Disadvantaged; Workshop for the Disadvantaged;
19 Reliable Handicapped Workers; T. J. Beard, Inc.; Bruce
20 Holly, Inc.; and BH Industries.

21 **COMMERCE**

22 19. At all times relevant to this complaint,
23 defendants' course of business, including the acts and
24 practices alleged herein, has been and is in or affecting
25 commerce, as "commerce" is defined in Section 4 of the FTC
26 Act, 15 U.S.C. § 44.

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1 DEFENDANTS' BUSINESS PRACTICES

2 20. Since at least January 1, 1994, and continuing
3 thereafter, defendants have maintained a substantial course
4 of trade in telemarketing household goods, such as light
5 bulbs, garbage bags, and room fresheners to consumers across
6 the country. Operating out of telemarketing offices in
7 Arizona, Colorado, Louisiana, Oklahoma, and Texas,
8 defendants' telemarketers place calls to consumers
9 throughout the United States.

10 21. Handicapped Industries' telemarketers identify
11 themselves as working for Handicapped Industries or a
12 similarly named company that often conjures up images of
13 handicapped and disabled workers. The telemarketers
14 represent that they have a handicap or disability, and that
15 most or all of the persons employed by Handicapped
16 Industries are handicapped or disabled. The telemarketers
17 also represent that the enterprise sells household items
18 such as light bulbs, garbage bags, room fresheners, or
19 pepper spray. They tell consumers that by purchasing one or
20 more of these items, they will help the handicapped or
21 disabled employees retain their jobs.

22 22. The products sold by Handicapped Industries usually
23 cost from two to ten or more times the prices charged by
24 local retail outlets. Typically, consumers purchase
25 products from Handicapped Industries because they believe
26 that by doing so they are helping the enterprises'
27 handicapped and disabled employees.

1 23. Once the order has been taken, consumers receive a
2 "verification" call from a Handicapped Industries
3 representative. If the purchase is verified, the product is
4 shipped to consumers from a company warehouse. The delivery
5 package contains an invoice, which consumers pay by sending
6 a check to a Handicapped Industries maintained post office
7 box.

8 VIOLATION OF SECTION 5 OF THE FTC ACT

9 COUNT ONE

10 24. In numerous instances, in the course of their
11 business as described above, defendants represent to
12 consumers, expressly or by implication, that:

- 13 1. all or most persons employed by Handicapped
14 Industries are handicapped or disabled, and
15 2. the purchase of goods from Handicapped
16 Industries will benefit such employees.

17 25. In truth and in fact:

- 18 1. there are few if any handicapped or disabled
19 persons employed by Handicapped Industries;
20 and
21 2. the purchase of goods from Handicapped
22 Industries does not benefit such employees.

23 26. Therefore, defendants' representation as alleged in
24 Paragraph 24, was, and is, false and misleading and
25 constitutes a deceptive act or practice in violation of
26 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

1 INJURY

2 27. Consumers have in fact been injured by defendants'
3 violations of Section 5(a) of the FTC Act. Defendants'
4 misrepresentations have misled consumers and induced them to
5 pay supra-competitive prices for defendants' household
6 products in the belief that by purchasing these products
7 consumers are helping the enterprises' numerous handicapped
8 and disabled employees. For the reasons set forth above,
9 defendants' customers have suffered substantial financial
10 injury. In addition, defendants' actions injure the image
11 and reputations of organizations that truly benefit the
12 handicapped and disabled, and those organizations who, in
13 fact, do provide employment to handicapped and disabled
14 persons.

15 THIS COURT'S POWER TO GRANT RELIEF

16 28. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b),
17 empowers this Court to issue injunctive and other equitable
18 relief for violations of the FTC Act and, in the exercise of
19 its equitable jurisdiction, to award redress to remedy the
20 injury to consumers, order disgorgement of profits resulting
21 from defendants' unlawful acts or practices, and issue other
22 ancillary equitable relief.

23 PRAYER FOR RELIEF

24 WHEREFORE, plaintiff requests that this Court:

25 (a) Enjoin defendants permanently from violating
26 Section 5(a) of the FTC Act in connection with the marketing
27 of their merchandise and obtaining payment from consumers;
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1 (b) Award such permanent relief as the Court finds
2 necessary to redress injury to defendants' customers
3 resulting from defendants' violations of Section 5(a) of the
4 FTC Act, including but not limited to rescission of
5 contracts or refund of money and disgorgement of unlawfully
6 obtained profits; and

7 (c) Award plaintiff the cost of bringing this action as
8 well as such other and additional equitable relief as the
9 Court may determine to be proper and just.

10 Respectfully submitted,

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12 Dated: _____

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14 JEROME M. STEINER, JR.
15 RAYMOND E. MCKOWN
16 ATTORNEYS FOR PLAINTIFF
17 FEDERAL TRADE COMMISSION
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