

1 DEBRA A. VALENTINE
General Counsel
2 Federal Trade Commission

3 RANDALL H. BROOK
KATHRYN C. DECKER
4 Federal Trade Commission
915 Second Ave., Suite 2896
5 Seattle, Washington 98174
(206) 220-4487 (Brook)
6 (206) 220-4486 (Decker)
(206) 220-6366 (fax)

7 JENNIFER LARABEE (Local counsel)
8 CA Bar No. 163989
Federal Trade Commission
9 10877 Wilshire Blvd, Suite 700
Los Angeles, CA 90024
10 (310) 824-4343
(310) 824 4380 (fax)

11 ATTORNEYS FOR PLAINTIFF
12

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

15 FEDERAL TRADE COMMISSION,

16 Plaintiff,

CV-99-13003-HLH
(Mcx)

17 v.

18 MODERN CONCEPT MARKETING, INC.,
19 a California corporation, and

20 JOSEPH MOADEB,
individually and as an officer of
21 MODERN CONCEPT MARKETING, INC.,
and

22 SAM JENKALA,
23 individually and as an officer of
MODERN CONCEPT MARKETING, INC.,

24 Defendants.
25

**FIRST AMENDED
COMPLAINT FOR
INJUNCTIVE AND
OTHER EQUITABLE
RELIEF**

1 Plaintiff, the Federal Trade Commission ("Commission"), by its
2 undersigned attorneys, alleges:

3 1. This is an action under Sections 13(b) and 19 of the Federal
4 Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the
5 Telemarketing and Consumer Fraud and Abuse Prevention Act
6 ("Telemarketing Act"), 15 U.S.C. §§ 6101-6108, to secure preliminary
7 and permanent injunctive relief including rescission of contracts,
8 restitution, disgorgement, and other equitable relief for defendants'
9 deceptive acts or practices in violation of Section 5(a) of the FTC
10 Act, 15 U.S.C. § 45(a), and the FTC's Trade Regulation Rule entitled
11 "Telemarketing Sales Rule", 16 C.F.R. Part 310, in connection with the
12 sale of nondurable office supplies.

13 JURISDICTION AND VENUE

14 2. This Court has jurisdiction over this matter pursuant to
15 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b), and 28 U.S.C.
16 §§ 1331, 1337(a), and 1345.

17 3. Venue in the United States District Court for the Central
18 District of California is proper under 15 U.S.C. § 53(b) and 28 U.S.C.
19 §§ 1391(b) and (c).

20 PLAINTIFF

21 4. Plaintiff Federal Trade Commission is an independent agency
22 of the United States Government created by statute. 15 U.S.C. §§ 41-
23 58. The Commission enforces Section 5(a) of the FTC Act, 15 U.S.C.
24 § 45(a), which prohibits unfair or deceptive acts or practices in or
25 affecting commerce. The Commission also enforces the Telemarketing
26 Sales Rule, 16 C.F.R. Part 310, which prohibits deceptive or abusive
27 telemarketing practices. The Commission may initiate federal district
28 court proceedings by its own attorneys to enjoin violations of the FTC

1 Act and the Telemarketing Sales Rule and to secure such equitable
2 relief as may be appropriate in each case, including restitution for
3 injured consumers. 15 U.S.C. §§ 53(b), 57b, and 6105(b).

4 **DEFENDANTS**

5 5. Defendant Modern Concept Marketing, Inc. is a California
6 corporation with its offices and principal place of business located
7 at 7154 Reseda Blvd, Reseda, California 91335. It does business under
8 the names Central Data Supply Co. and Supreme Business Products. It
9 transacts or has transacted business in the Central District of
10 California.

11 6. Defendant Joseph Moadeb is the principal owner and president
12 of the corporate defendant. Individually or in concert with others,
13 he has formulated, directed, controlled, or participated in the acts
14 and practices of the corporate defendant, including the various acts
15 and practices set forth herein. He resides in, and transacts or has
16 transacted business in, the Central District of California.

17 7. Defendant Sam Jenkala is the co-owner and vice president of
18 the corporate defendant. Individually or in concert with others, he
19 has formulated, directed, controlled, or participated in the acts and
20 practices of the corporate defendant, including the various acts and
21 practices set forth herein. He resides in, and transacts or has
22 transacted business in, the Central District of California.

23 **COMMERCE**

24 8. At all times material hereto, defendants have been engaged
25 in the business of offering for sale and selling, through
26 telemarketers, nondurable office supplies, including laser printer
27 toner cartridges and inkjet printer refills, in or affecting commerce,
28 as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

1 **DEFENDANTS' BUSINESS ACTIVITIES**

2 9. Since at least 1995 and continuing thereafter, defendants
3 have engaged in a plan, program, or campaign to sell nondurable office
4 supplies, including laser printer toner cartridges, inkjet printer
5 refills, and inkjet cartridges, via interstate telephone calls
6 throughout the United States.

7 10. Defendants primarily target businesses, including small
8 businesses and charitable or nonprofit entities such as churches and
9 schools, for unsolicited telephone sales. Their sales representatives
10 call prospective consumers and offer to sell them supplies for inkjet
11 and laser printers.

12 11. Defendants' sales representatives make various
13 representations to consumers, often varying them from one consumer to
14 the next. One set of representations concerns the origin and qualities
15 of their products. Typical representations may include that laser
16 toner cartridges are based on new technology giving two or three times
17 the normal life of standard cartridges and higher quality print
18 output. In some instances, they represent that the cartridges are new
19 and manufactured by Hewlett Packard or IBM Lexmark. In fact,
20 defendants' laser toner cartridges are typically "remanufactured" by
21 various companies other than Hewlett Packard or IBM Lexmark and use
22 both old and new parts. They are not based on new technology, and do
23 not provide multiples of a normal life span. In some cases they give
24 poorer print quality than new cartridges and may leak excessive
25 quantities of toner into the user's printer.

26 12. Defendants make similar representations about supplies for
27 inkjet printers, misleadingly comparing their own refill kits in price
28 and quality to new inkjet cartridges sold by other companies. These

1 kits often provide substantially poorer performance than new
2 cartridges while costing significantly more.

3 13. The long life claims are typically used to justify high
4 prices, if the consumer is given price information at all. For
5 example, defendants may convince some consumers to pay double the
6 normal price of a new, original manufacturer's brand laser cartridge
7 based on a claim that defendants' cartridge will supply double or
8 triple the number of pages.

9 14. The prices of defendants' products vary significantly from
10 consumer to consumer. They frequently are substantially higher than
11 prices the recipients would have paid for similar or better office
12 supplies available from their regular suppliers. Defendants also often
13 add a substantial and undisclosed charge for shipping and handling,
14 sometimes hundreds of dollars, to the invoiced price of their
15 products.

16 15. In some instances, defendants deliver a higher quantity of
17 products than the consumer ordered and charge accordingly.
18 Alternatively, they make additional shipments of products that the
19 consumer did not order. Rather than accept returns of the unordered
20 products, defendants may attempt to negotiate for payment of an amount
21 less than stated on the invoice but more than the consumer originally
22 agreed to.

23 16. Defendants often offer to send consumers a "free trial kit"
24 or promise the consumers that they can try defendants' products
25 without being obligated to pay for them for some stated period, and
26 without being obligated to pay at all if they are not satisfied with
27 the product. In fact, defendants often insist on payment immediately
28 and regardless of consumers' dissatisfaction. In some cases,

1 defendants ship additional merchandise to consumers who only agreed to
2 receive free trial kits, and they bill the consumers for the unordered
3 merchandise.

4 17. Defendants tell consumers they can easily return
5 unsatisfactory or unwanted products and readily obtain refunds.
6 However, defendants frequently fail to return consumers' complaint
7 calls, fail to issue return authorizations, and fail to accept returns
8 of unsatisfactory products, except when government agencies or Better
9 Business Bureaus forward the complaints to the defendants.

10 18. Defendants regularly send accounts created through the
11 deceptive and unlawful practices described above to collection
12 agencies like Dun & Bradstreet, even if the consumer has canceled the
13 order or otherwise disputed the alleged debt. The subsequent billing
14 notices or oral statements made by the collection agency on behalf of
15 defendants threaten the business credit rating of the consumers.

16 **VIOLATIONS OF SECTION 5 OF THE FTC ACT**

17 **COUNT I**

18 19. In numerous instances, in connection with the sale, offering
19 for sale, or distribution of nondurable office supplies, defendants
20 have represented, expressly or by implication, through, *inter alia*,
21 telephone calls, letters, invoices, packing slips, or shipment of
22 goods, that their laser toner cartridges provide two to three times
23 longer life than new, OEM (original equipment manufacturer) cartridges
24 from the consumer's printer manufacturer, e.g., Hewlett Packard and
25 IBM Lexmark.

26 20. In truth and in fact, defendants' remanufactured cartridges
27 do not provide two to three times longer life than new, OEM
28 cartridges.

1 21. Therefore, the representations set forth in Paragraph 18 are
2 false and misleading and constitute deceptive acts or practices in
3 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

4 **COUNT II**

5 22. In numerous instances, in connection with the sale, offering
6 for sale, or distribution of nondurable office supplies, including
7 laser toner cartridges and inkjet refills, defendants have
8 represented, expressly or by implication, through, *inter alia*,
9 telephone calls, letters, invoices, packing slips, or shipment of
10 goods, that consumers who agree to try defendants' supplies can return
11 those supplies, if dissatisfied, at no charge to the consumer and
12 without obligation to purchase the supplies.

13 23. In truth and in fact, consumers cannot return the supplies
14 if dissatisfied, at no charge and without obligation to purchase the
15 supplies.

16 24. Therefore, the representations set forth in Paragraph 20 are
17 false and misleading and constitute deceptive acts or practices in
18 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

19 **COUNT III**

20 25. In numerous instances, in connection with the sale, offering
21 for sale, or distribution of nondurable office supplies, including
22 laser toner cartridges and inkjet refills, defendants have
23 represented, expressly or by implication, through, *inter alia*,
24 telephone calls, letters, invoices, packing slips, or shipment of
25 goods, that consumers agreed to pay a certain price or order a certain
26 quantity of supplies from defendants.

27 26. In truth and in fact, in numerous instances, those consumers
28 did not agree to pay the certain price claimed by defendants or order

1 the quantity shipped by defendants and are therefore not obligated to
2 pay the amount charged by defendants.

3 27. Therefore, the representations set forth in Paragraph 22 are
4 false and misleading and constitute deceptive acts or practices in
5 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

6 **VIOLATIONS OF THE TELEMARKETING SALES RULE**

7 28. In the Telemarketing Act, 15 U.S.C. §§ 6101-6108, Congress
8 directed the Commission to prescribe rules prohibiting deceptive and
9 abusive telemarketing acts or practices. On August 16, 1995, the
10 Commission promulgated the Telemarketing Sales Rule, 16 C.F.R.
11 Part 310, with a Statement of Basis and Purpose, 60 Fed. Reg. 43842
12 (August 23, 1995). The Telemarketing Sales Rule became effective
13 December 31, 1995, and since then has remained in full force and
14 effect.

15 29. Telephone calls between a telemarketer and a business that
16 involve the retail sale of nondurable office supplies are subject to
17 the Telemarketing Sales Rule's prohibitions against deceptive and
18 abusive telemarketing acts or practices. 16 C.F.R. § 310.6(g). In
19 its Statement of Basis and Purpose for the Telemarketing Sales Rule,
20 the Commission stated that

21 the Commission's enforcement experience against deceptive
22 telemarketers indicates that office and cleaning supplies
23 have been by far the most significant business-to-business
24 problem area: such telemarketing falls within the
25 Commission's definition of deceptive telemarketing acts or
26 practices.

27 60 Fed. Reg. 43842, 43861 (Aug. 23, 1995).
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COUNT V

MATERIAL MISREPRESENTATIONS ABOUT GOODS AND REFUND POLICY

35. In numerous instances, in connection with the telemarketing of nondurable office supplies, including laser toner cartridges and inkjet refills, defendants have misrepresented, directly or by implication, (a) the total costs to purchase, receive, or use the offered goods, including, but not limited to, shipping and charging for larger quantities of products than the consumer ordered and billing the consumer for additional previously undisclosed and substantial shipping, insurance, or handling costs, thereby violating 16 C.F.R. § 310.3(a)(2)(i); (b) material aspects of the performance, efficacy, nature, or central characteristics of the offered goods, including, but not limited to, misrepresenting that defendants' laser toner cartridges and inkjet refills last longer or are of higher quality than those usually used by the consumer or are OEM products, thereby violating 16 C.F.R. § 310.3(a)(2)(iii); and (c) material aspects of the nature or terms of defendants' refund, cancellation, exchange, or repurchase policy, including, but not limited to, misrepresenting that consumers can return supplies with no further obligation if they are not satisfied, thereby violating 16 C.F.R. § 310.3(a)(2)(iv).

CONSUMER INJURY

36. Consumers throughout the United States have suffered substantial monetary loss as a result of defendants' unlawful acts or practices. In addition, defendants have been unjustly enriched as a result of their unlawful practices. Absent injunctive relief by this Court, defendants are likely to continue to injure consumers and to harm the public interest.

1 to, rescission of contracts, the refund of monies paid, and the
2 disgorgement of ill-gotten monies.

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

6
7 Dated: October 16, 2000

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9 Respectfully submitted,

10 DEBRA A. VALENTINE
11 General Counsel

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13 _____
14 RANDALL H. BROOK
15 KATHRYN C. DECKER
16 JENNIFER LARABEE
17 Attorneys for Plaintiff
18 Federal Trade Commission

CERTIFICATE RE SERVICE

1
2 x I am an attorney representing plaintiff Federal Trade Commission
3 in this matter. My business address is 915 2nd Ave. Ste 2896,
Seattle, WA 98174.

4 _____ I am employed by the plaintiff Federal Trade Commission. My
5 business address is 915 2nd Ave. Ste 2896, Seattle, WA 98174. I
6 am acting under the direction of one of the attorneys assigned to
this matter.

7 On October 16, 2000, I served a true and correct copy of the attached
8 document on each of the defendants in this matter by sending it via
U.S. mail and fax transmission to the following addresses.

9 Kenneth M. Barish
10 Kajan Mather and Barish
9777 Wilshire Blvd., Ste. 805
Beverly Hills, CA 90212

11 I certify that the foregoing is true and correct.

12 Executed on October 16, 2000, at Seattle, Washington.
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