02-21760

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
Case No. ___-CV-(______ CIV-JORDAN

MAGISTRATE JUDGE BROWN

FILED BY ______ D.C.
02 JUN 12 AM 11:33
CLARENCE MADDOX
CLERK U.S. DIST. CT.
S.D. OF FLA.-MIA.

FEDERAL TRADE COMMISSION,	)
Plaintiff,	)
v.	)
INSPIRED VENTURES, INC., a Florida corporation;	)
JESSE ALPER, individually and as an officer or director of the above corporation; and	)
VICTOR ALPER, individually, 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) 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 Inspired Ventures, Inc. ("Inspired Ventures" or the "corporate defendant"), a Florida corporation with its principal place of business at 10800 Biscayne Blvd. #300, Miami, Florida 33161, promotes and sells vending business ventures. Inspired Ventures has transacted business in the Southern District of Florida.

6. Defendant Jesse Alper is the sole director and executive officer of Inspired Ventures. 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 Victor Alper works at Inspired Ventures, which he holds out to consumers as a family owned and operated business, with his brother Jesse Alper. 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.

COMMERCE

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

9. Since at least January 2002 and continuing thereafter, Inspired Ventures and the Alper brothers have offered for sale business ventures involving candy vending machines, which are called "Sweet Tooth Sam, the Money Making Man."

10. The defendants promote Inspired Ventures and their Sweet Tooth Sam vending machines through a variety of advertising, including unsolicited commercial email ("spam"), web pages on the Internet, and classified advertisements in newspapers.

11. In their advertising, the defendants represent, expressly or by implication, that purchasers are likely to earn substantial income through a continuing commercial relationship with the defendants.

For instance, the defendants' spam states, in part:

> With our Sweet Tooth Sam Vending Program you will have an incredible all cash vending business with:
> * No Selling
> * 500% Profits
> * No Overhead
> * Minimum Start-up Cost
> * Prime Retail Locations - Risk Free
> * $71/hour Potential
> * Repeat Sales
> * Professional Ongoing Support
> * Factory Direct Prices on Machines and Candy
> * One-stop shopping for All Your Vending Needs

Moreover the defendants' classified advertisements, which appear in newspapers throughout the country, make claims such as:

> Business Opportunities (Franchises/Distributorship) - AMAZING 500% RETURN! Local vending route. $4000/mo. potential. Minimum investment required. FREE INFO. 1-800-483-8717.

12. Prospective purchasers who contact Inspired Ventures reach the defendants, who deliver sales pitches over the course of what are often a series of telephone calls and written communications. The defendants sell Sweet Tooth Sam "Plans" which require a minimum payment of thousands of dollars. The Beginner Plan of thirty Sweet Tooth Sam machines costs $11,900. Larger plans, such as the Master Plan of one hundred machines, cost up to $30,000. With these Plans, Inspired Ventures supplies the initial servings of the gum balls, nuts, raisins, or other candy that purchasers vend to the public, as well as offers the candy in bulk for re-order. The quoted prices for the plans do not include the cost of shipping the machines to the purchaser or the fees for placing the machines in retail locations. Victor Alper has offered the Beginner

Plan, complete with machines, candy, shipping, and locating fees, for the total upfront cost of approximately $14,000.

13. During the initial sales pitch or subsequent telephone conversations, the defendants make oral representations about prospective purchasers' income earning potential in the business ventures as well as the actual earnings of prior purchasers. For example, Victor Alper has claimed that investing $14,000 nets a return of $28,000 a year and has represented that such returns are "the average our vendors are hitting." Victor Alper has also claimed "it's not a get-rich quick scheme, but it is breaking even right around six months and doubling your money in about a year." These claims are false and misleading.

14. The defendants provide prospective purchasers with the names and telephone numbers of purported "references." The defendants represent that these references do not work for Inspired Ventures or will provide reports which accurately describe the business practices of Inspired Ventures. However, defendants' representations about the company-selected references are false and misleading.

15. The defendants provide the services of a "locator;" a person who the defendants represent is able to secure the retail outlets, accounts, sites, or locations for the vending machines. For example, the defendants' written materials refer to "a team of professional placement specialists" who will secure locations where the Sweet Tooth Sam machines will sell candy to members of the general public. Similarly, Victor Alper provides to prospective purchasers the names and telephone numbers of locators.

16. The defendants provide to prospective purchasers a sales package with written representations that purchasers are likely to earn substantial income. For example, their sales

brochure begins with "A Message from The President," which bears Jesse Alper's stylized signature and his purported photograph. In his Message, Jesse Alper represents to prospective purchasers that "I am convinced that whether you are manufacturing, distributing or servicing your own home-based route, vending will provide a substantial and consistent cash income."

17. A page of the defendants' sales brochure is captioned "Distributorship Programs...Where Should I Start, How Much Can I Make?" and presents an income multiplication table. The table purports to project a prospective purchaser's earnings based on the number of vending machines purchased multiplied by the "Industry average" number of vends per day. The defendants represent, falsely, that the information associated with their table was taken from the Census of the Industry by *Vending Times*.

18. The sales package that the defendants provide to prospective purchasers also includes form agreements, such as a purchase order for the vending machines and a form to re-order candy in bulk. The form agreements are between Inspired Ventures and the prospective purchaser and have been pre-printed with Jesse Alper's signature as President of Inspired Ventures. The defendants' sales package also includes wire instructions.

19. When prospective purchasers call Inspired Ventures to discuss the sales package, the defendants, without making further disclosures required by law, encourage prospective purchasers to complete and send in the form agreements and to wire funds.

20. The sales package that the defendants send to prospective purchasers includes a document entitled "Franchise Offering Circular." Item 19 of the defendants' Franchise Offering

Circular states:

> Inspired Ventures, Inc. does not furnish or authorize its salespersons to furnish any oral or written information concerning the actual or potential sales, costs, income or profits of an Inspired Ventures, Inc. business opportunity. Actual results vary from unit to unit and Inspired Ventures, Inc. cannot estimate the results of any particular business opportunity.

In reality, defendants and their agents do furnish information concerning the purported actual or potential sales, costs, income, or profits of an Inspired Ventures business opportunity to prospective purchasers.

21. For each earnings claim the defendants make, the defendants do not have a reasonable basis and do not disclose that material which constitutes a reasonable basis for that earnings claim is available to prospective purchasers.

22. The defendants' newspaper, web, and spam advertising does 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. The defendants' advertising also lacks language indicating that the earnings figures are only estimates and that a purchaser risks not doing as well.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

23. 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

24. Paragraphs 1 through 23 are incorporated herein by reference.

25. 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 defendants' business ventures are likely to earn substantial income.

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

27. Therefore, the defendants' representations as set forth in Paragraph 25 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 References

28. Paragraphs 1 through 23 are incorporated herein by reference.

29. In numerous instances in the course of offering for sale and selling their vending 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.

30. 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.

31. Therefore, the defendants' representations as set forth in Paragraph 29 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

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

33. The Franchise Rule requires a franchisor to provide prospective franchisees with a complete and accurate basic disclosure document containing twenty categories of information, including the name of any holding company, the recent business experience of the franchisor's current officers, a balance sheet examined by a qualified accountant, a description of any initial training offered, 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.

34. As a matter of policy, the FTC has authorized franchisors to comply with the Rule by furnishing prospective franchisees with disclosures in a format known as the Uniform Franchise Offering Circular ("UFOC"). Authorization to use the UFOC format to comply with the Rule's disclosure requirements was first granted by the Commission in the Final Interpretive Guides to the Rule, 44 Fed. Reg. 49966, 49970-71, and expressly requires adherence to the UFOC disclosure requirements in their "entirety." This conditional authorization has been ratified by the Commission following subsequent amendments to the UFOC requirements by the North American Securities Administrators Association, most recently on December 30, 1993. 58 Fed. Reg. 69224. Inspired Ventures has elected to use the UFOC disclosure format.

35. Item 19 of the UFOC Guidelines requires the franchisor to disclose whether or not an earnings claim is made. Item 19 further requires that "[a]n earnings claim made in connection with an offer of a franchise must be included in full in the offering circular and must have a reasonable basis at the time it was made" and that "[a]n earnings claim shall include a description of its factual basis and the material assumptions underlying its preparation and presentation." Item 19 recognizes an income multiplication table to be an earnings claim.

36. The Franchise Rule specifically prohibits franchisors from making any claim or representation that contradicts a required disclosure. 16 C.F.R. § 436.1(f).

37. 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).

38. 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

Claim or Representation That Contradicts a Required Disclosure

39. Paragraphs 1 through 38 are incorporated herein by reference.

40. In connection with the offering of franchises, as "franchise" is defined in Section 436.2(a) of the Rule, 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 IV

Earnings Disclosure Violations

41. Paragraphs 1 through 38 are incorporated herein by reference.

42. In connection with the offering of franchises, as "franchise" is defined in Section 436.2(a) of the Franchise Rule, 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, and/or earnings disclosures, as prescribed by Item 19 of the UFOC Guidelines.

COUNT V

Advertising Disclosure Violations

43. Paragraphs 1 through 38 are incorporated herein by reference.

44. In connection with the offering of franchises, as "franchise" is defined in Section 436.2(a) of the Franchise Rule, 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

45. 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

46. 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.

47. 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.

48. 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 the 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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