

FEDERAL TRADE COMMISSION
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CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
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UNITED STATES DISTRICT COURT
 DISTRICT OF ARIZONA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

BIGSMART.COM, L.L.C.; MARK TAHILIANI
 and HARRY TAHILIANI

Defendants.

CIV '01 046 C PIX ROS

CIVIL ACTION NO:

**COMPLAINT FOR
 PERMANENT INJUNCTION
 AND OTHER EQUITABLE
 RELIEF**

Plaintiff the Federal Trade Commission ("FTC" or "Commission") by its undersigned attorneys, allege:

- The FTC brings this action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to secure a permanent injunction, preliminary relief and other equitable relief against defendants for their unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over the FTC's claims pursuant to 15 U.S.C. §§ 45(a) and 53(b) and 28 U.S.C. §§ 1331, 1337(a) and 1345.
3. Venue in the District of Arizona is proper under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b) and (c).

PLAINTIFF

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 enforces 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. The Commission may initiate federal district court proceedings to enjoin violations of the FTC Act and to secure such equitable relief as is appropriate in each case. 15 U.S.C. § 53(b).

DEFENDANTS

5. Defendant Bigsmart.com L.L.C. ("Bigsmart"), a Nevada corporation with a principal place of business at 1201 South Alma School Road, Mesa, Arizona, has conducted business since at least February 2000.
6. Defendant Mark Tahiliani is an individual with a principal place of business at 1201 South Alma School Road, Mesa, Arizona, and is the co-founder of Bigsmart. Individually or in concert with others, he directs, controls or participates in the acts and practices of Bigsmart as set forth below.
7. Defendant Harry Tahiliani is an individual with a principal place of business at 1201 South Alma School Road, Mesa, Arizona, and is the co-founder of Bigsmart. Individually or in concert

with others, he directs, controls or participates in the acts and practices of Bigsmart as set forth below.

COMMERCE

8. At all times material to this complaint, defendants' course of business, including the acts and practices alleged herein, have been and are in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' BUSINESS PRACTICES

9. Since approximately February 2000, defendants have marketed Bigsmart "malls" that purportedly enable individuals to earn commissions from products purchased through the Internet. For the most part, Bigsmart malls are a collection of links to retail sites maintained by third-party merchants like Marthastewart.com and Barnesandnoble.com. There are four different mall "themes" that participants can chose from: sports, entertainment, health and an all-inclusive "mega" theme. Each mall is designed differently and offers a different selection of products and merchants in keeping with its theme.

10. Traffic is directed to malls through the personalized Bigsmart "welcome pages" that every member receives in exchange for a \$10 application fee and a \$99.95 "hosting" fee. It is not possible to access or buy products from a mall without first going through a member's welcome page.

11. Members receive compensation in two ways. First, when products are purchased through a member's mall ("Phase 1"). Second, by recruiting others to join the Bigsmart program ("Phase 2"). Under Phase 1 of this plan, commissions are generated when goods or services are purchased through a member's mall from one of two sources: (1) the Bigsmart "Superstore"; and

(2) third-party retail or "merchant" sites. When a customer purchases a product through the Superstore, that person is doing business directly with Bigsmat. Merchant site transactions, by contrast, are simply mediated through a Bigsmat mall. Bigsmat directs traffic to the merchant sites and receives a commission in return for visitors who purchase something, but has no part in the operation of that site.

12. Each product sold in the Superstore has a retail purchase value and a "Bigsmat Buck" value, both of which are set by Bigsmat. When Superstore products are purchased through a mall -- whether by the owner herself or by anyone else -- the owner receives a commission equal to 25% of the product's Bigsmat Buck value.

13. When goods or services are purchased from a merchant site, Bigsmat receives a commission from the merchant equal to a percentage of the total purchase price. Bigsmat allegedly keeps 30% of the commission for "costs" and distributes the remaining 70% to the member whose site facilitated the transaction and to others within the member's "organization."

14. An organization consists of a member and the member's "downline" and "upline." A downline is all individuals who have been recruited by a member and their successive generation of recruits. An "upline" is the person who sponsored a member, their sponsor, and so on. Every mall has a "left team" and a "right team." When a member sponsors a new mall it is assigned to one of these teams. Team members are placed one "level" below their sponsor in the compensation hierarchy where they are encouraged to build downlines of their own.

15. Under Phase 2 of the plan, members receive compensation by recruiting other Bigsmat members. To begin earning Phase 2 commissions, members must first "activate" and "qualify" their malls. Activation occurs upon the accumulation of 200 Bigsmat Bucks, which are earned

when goods or services are purchased from the Superstore via a member's mall. Qualification occurs after a member has personally sponsored two activated malls. Thus, members become eligible to receive Phase 2 commissions after their organization has generated a total of 600 Bigsmart Bucks.

16. Phase 2 compensation is measured in "unit sales" and "eCycle" bonuses. An eCycle is equivalent to 24 unit sales. Members receive credit for a unit sale for every 200 Bigsmart Bucks generated by their mall or by malls below them in their organization.

17. An eCycle bonus is worth a total of \$500 in Phase 2 commissions, paid out in six increments or "steps," as shown below:

<u>Step</u>	<u>Unit Sales</u>	<u>Commission</u>
Step 1	6	\$100
Step 2	9	\$75
Step 3	12	\$75
Step 4	15	\$75
Step 5	18	\$75
Step 6	24	\$100
	Total	\$500

18. Only a handful of products in the Superstore are worth 200 Bigsmart Bucks. The principal value of these products is to enable members to activate their mall. To the extent that a market exists for these products, it consists almost entirely of mall owners interested in accumulating enough "unit sales" so that their malls will become "activated" and "qualified," thereby enabling them to sponsor new members and earn the commissions associated with recruitment. There are few, if any, sales of these product to non-members.

19. Although the Superstore does sell brand name products, members are discouraged from purchasing these products because of their comparatively low Bigsmat Buck value. Thus, members who want to qualify to earn commissions as a result of people they recruit have the option of spending thousands of dollars on reasonably priced products, or \$200 on merchandise this is of questionable value but which is nevertheless worth 200 Bigsmat Bucks.

20. Defendants represent, expressly and by implication, that many persons who become Bigsmat members will make substantial amounts of money. They further represent that almost everyone will make some money.

21. The result of the structure and operation of the program is that financial gains to Bigsmat members are primarily dependent upon the continued, successive recruitment of other participants and retail sales are not required as a condition precedent to realization of such financial gains.

22. Because the compensation received by Bigsmat members is derived primarily from the recruitment of additional participants into the Bigsmat scheme and not from retail sales of products, substantial numbers of Bigsmat members will ultimately lose money.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

COUNT 1

23. In connection with the offering for sale of participation in the Bigsmat program, defendants represent, expressly or by implication, that consumers who become Bigsmat members will receive substantial financial gain.

24. In truth and in fact, in numerous instances, consumers who become Bigsmat members will not receive substantial financial gain.

25. Therefore, the representation set forth in paragraph 23 is false and misleading and

constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT 2

26. In connection with the offering for sale of the participation in the Bigsmart program, defendants represent, expressly or by implication, that all consumers who become Bigsmart members will receive financial gain.

27. In truth and in fact, not all consumers who participate in the Bigsmart program will receive financial gain.

28. Therefore, the representation set forth in paragraph 26 is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT 3

29. By furnishing Bigsmart members with promotional materials to be used in recruiting new participants that contain the above false and misleading representations, defendants have provided the means and instrumentalities for the commission of deceptive acts and practices.

30. Therefore, defendants' practices, as described in paragraph 29, constitute deceptive acts and practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT 4

31. Defendants represent that consumers who participate in the program will receive substantial income.

32. Defendants fail to disclose that, in numerous instances, consumers who participate will not receive substantial income.

33. This additional information, described in paragraph 32, would be material to consumers in deciding whether to participate in the Bigsmart program.

34. The defendants' failure to disclose the material information in paragraph 32, in light of the representations made in paragraph 31, constitute a deceptive act and practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT 5

35. As alleged in paragraphs 1 through 22, the Bigsmart program is an inherently unlawful scheme whose essential element is the payment by participants of money to the company in return for which they receive (1) the right to sell products, and (2) the right to receive in return for recruiting other participants into the program rewards which are unrelated to the sale of the product to the ultimate users.

36. This type of scheme, often referred to as a pyramid, is a deceptive act and practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

37. Defendants' violations of Section 5 of the FTC Act as set forth above, have caused and continue to cause substantial injury to consumers. Absent injunctive relief by this Court, defendants are likely to continue to injure consumers.

THIS COURT'S POWER TO GRANT RELIEF

38. 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 provisions of law enforced by the Federal Trade Commission.

PRAYER FOR RELIEF

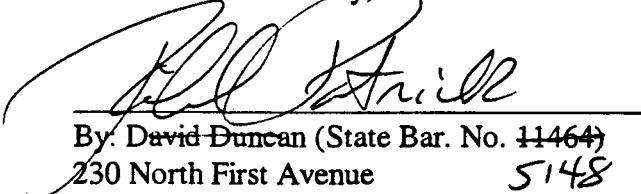
WHEREFORE plaintiff Federal Trade Commission pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers request that this Court:

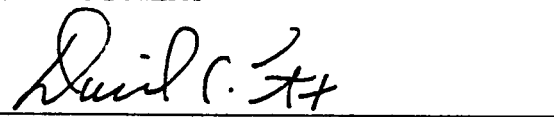
1. Award plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief;
2. Permanently enjoin defendants from violating the FTC Act as alleged herein;
3. Award such relief as the Court finds necessary to redress injury to consumers resulting from defendants' violations of the FTC Act as alleged herein, including but not limited to, rescission of contracts, the refund of monies paid, and the disgorgement of ill-gotten monies.
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,

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