

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CV-**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

VINYARD ENTERPRISES, also d/b/a
COMFORT CASTLE ENTERPRISES, a
Florida corporation,

SUNSHINE ADVERTISING & MARKETING,
INC., also d/b/a DYNAMIC DATA
SERVICES, a Florida corporation,

RAY A. THOMPSON, an individual and an
officer of one or more of the above-named
companies,

JUDITH LIVINGSTON, an individual, d/b/a
DIRECT BUSINESS SERVICES and
DYNAMIC DATA,

JASON LUNAN, an individual, d/b/a
DYNAMIC DATA EXPRESS and COMFORT
CASTLE ASSOCIATES,

Defendants.

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

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), for its complaint alleges as follows:

1. The Commission brings this action under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to obtain preliminary and permanent

injunctive relief, rescission of contracts, restitution, redress, disgorgement, and other equitable relief for Defendants' deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C.

§ 45(a).

JURISDICTION AND VENUE

2. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C. §§ 45(a) and 53(b) and 28 U.S.C. §§ 1331, 1337(a), and 1345.

3. Venue in the United States District Court for the Southern District of Florida 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 deceptive or unfair acts or practices in or affecting commerce. The Commission is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and to secure such other equitable relief as may be appropriate in each case, including redress and disgorgement. 15 U.S.C. § 53(b).

DEFENDANTS

5. Defendant Vinyard Enterprises, also d/b/a Comfort Castle Enterprises, is a Florida corporation with its principal place of business located at 7817 Alhambra Blvd., Miramar, Florida 33023.

6. Defendant Sunshine Advertising & Marketing, Inc., also d/b/a Dynamic Data Services, is a Florida corporation with its principal place of business located at 19335 NW 2nd

Avenue, Miami, Florida 33169.

7. Ray A. Thompson is the president of both Vinyard Enterprises and Sunshine Advertising & Marketing, Inc. At all times material to this complaint, acting alone or in conjunction with others, he has formulated, directed, controlled, or participated in the acts and practices alleged in this complaint. He transacts or has transacted business in the Southern District of Florida and throughout the United States.

8. Judith Livingston is an individual doing business as Direct Business Services and Dynamic Data, each an unincorporated entity and a registered fictitious business name (FBN). At all times material to this complaint, acting alone or in conjunction with others, she has formulated, directed, controlled, or participated in the acts and practices alleged in this complaint. She transacts or has transacted business in the Southern District of Florida and throughout the United States.

9. Jason Lunan is an individual doing business as Dynamic Data Express and Comfort Castle Associates, each an unincorporated entity and a registered FBN. At all times material to this complaint, acting alone or in conjunction with others, he has formulated, directed, controlled, or participated in the acts and practices alleged in this complaint. He transacts or has transacted business in the Southern District of Florida and throughout the United States.

COMMERCE

10. At all times relevant to this complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' BUSINESS PRACTICES

11. Since at least August 1997, Defendants, or agents acting on their behalf, have registered a series of FBNs, including but not limited to Dynamic Data Services, Dynamic Data Express, Dynamic Data, Direct Business Services, Comfort Castle Enterprises, and Comfort Castle Associates in Dade and Broward Counties, and rented a succession of post office boxes and commercial mailboxes for those FBNs in the greater Miami metropolitan area.

12. Since at least August 1997, Defendants, or agents acting on their behalf, have offered for sale or sold purported work-at-home mailing opportunities to consumers throughout the United States. Defendants have promoted their work-at-home opportunities to prospective purchasers through fliers delivered to consumers' residences.

13. The typical flier received by consumers references one of the Defendants' several FBNs as the promoter of the work-at-home opportunity. The flier does not provide a physical business premises address for Defendants, Defendants' staff persons' names, or Defendants' telephone number. Instead, the only contact information Defendants provide on the flier is one of the FBN post office boxes or commercial mailbox addresses to which consumers are instructed to send their payments.

14. Defendants' purported work-at-home opportunity consists of two or more tiers. First, Defendants send fliers directly to consumers' homes under one of the registered FBNs. Second, pursuant to Defendants' instructions, consumers who purchase Defendants' opportunity ("first tier purchasers") either recruit a second generation of purchasers ("second tier purchasers") by sending out fliers supplied by Defendants, or market Defendants' book reports on making money from home. Third, Defendants instruct second tier purchasers to either recruit

a third generation of purchasers (“third tier purchasers”) by sending out fliers supplied by Defendants, or market Defendants’ booklets on making money from home.

15. In the first tier, Defendants typically send one of two different types of fliers directly to consumers’ homes. One flier offers a work-at-home opportunity mailing catalogs. The other flier markets twelve book reports Defendants sell on money-making techniques.

16. In both fliers, Defendants represent, expressly or by implication, that first tier purchasers of their work-at-home opportunity are likely to earn a substantial amount of money working from home.

17. One example of the first type of flier Defendants typically mail to consumers offers a work-at-home opportunity mailing catalogs and states at the top:

\$5000 WEEKLY!!

**START TODAY! WE NEED YOU TO FOLD AND MAIL
OUR CATALOGS URGENTLY!!**

Make \$1,000.00 to \$5,000.00 Every Week...

Ten dollars for each catalog you mail...free postage...free catalog...no newspaper ads...no magazine ads...no bulletin board ads...Paychecks mailed to you every

Wednesday...advance paycheck forms included in your package.

\$\$You could be earning big paychecks in two weeks time...if you act now!

18. Defendants’ flier further states:

The more catalogs you mail for us, the more money we’ll pay you. Our rate is \$10.00 per catalog mailed, and your paycheck is one hundred percent **GUARANTEED!**

19. According to this flier, Defendants’ work-at-home opportunity costs anywhere between \$55 to \$195 depending upon which “Mailing Group” the first tier purchaser chooses to buy. The higher the registration fee, the more supplies Defendants will send to first tier purchasers, and purportedly the more money first tier purchasers will make.

20. Defendants' flier concludes by proclaiming:

Please note: As far as we know, as well as testimonies from our current and past mailers, this is the most honest and trustworthy program around for the average home worker. We deliver everything that we promise you. We mean every word that we say.

21. An example of the second type of flier Defendants typically mail to consumers offers a work-at-home opportunity mailing book reports and states at the top:

START EARNING GOOD MONEY TODAY

HERE IS YOUR OPPORTUNITY TO EARN EXTRA MONEY...NOW "YOU" TOO CAN EARN UP TO \$4500 OR MORE

MAILING REPORTS FROM HOME

"YOU" CAN EARN UP TO \$4,500 OR MORE

You'll Receive \$9.00 For Each Report You Stuff And Mail

Free Postage...Free Supplies * Just Follow Our Simple Instructions.

22. Defendants further explain in their flier that:

Your job is simply to stuff book reports into booklet envelopes, and mail them as per instructions. At \$9.00 per report, **if you're required to mail 150 stuffed booklet reports you'll receive \$1,350.** THE BEAUTY ABOUT THIS KIND OF WORK IS THAT YOU'LL BE PAID IN ADVANCE BEFORE YOU ARE REQUIRED TO MAIL ANY OF THE REPORTS.

23. According to the flier, Defendants charge a refundable registration fee of \$35 plus \$3 shipping and handling.

24. In numerous instances, first tier purchasers who pay Defendants' fees in response to Defendants' flier advertising a catalog mailing work-at-home opportunity do not receive catalogs to mail. Instead, first tier purchasers receive fliers to mail to new consumers recruiting those new consumers to work for Defendants by stapling booklets from home.

25. In numerous instances, first tier purchasers who pay Defendants' fees in response to

Defendants' fliers advertising a book report mailing work-at-home opportunity do not receive book reports to stuff and mail. Instead, first tier purchasers receive fliers to mail to consumers soliciting those consumers to purchase Defendants' book reports.

26. In numerous instances, Defendants send first tier purchasers of both the catalog and book report mailing work-at-home opportunities an instruction manual which, for the first time, informs first tier purchasers that Defendants do not pay them directly, but rather first tier purchasers only get paid if they successfully solicit second tier purchasers of Defendants' work-at-home opportunities.

27. Thus, the second tier to Defendants' work-at-home opportunity involves first tier purchasers sending Defendants' fliers to second tier purchasers.

28. In numerous instances, first tier purchasers send out Defendants' fliers to consumers advertising Defendants' book reports.

29. In numerous instances, first tier purchasers who send out Defendants' fliers to consumers advertising Defendants' book reports do not make any money from either Defendants' or other consumers.

30. In numerous instances first tier purchasers of Defendants' catalog mailing work-at-home opportunity send out Defendants' fliers advertising a similar work-at-home opportunity stapling booklets from home. An example of this flier outlines the job description by saying:

Your main job will be to put the pages in numerical order, place a booklet cover on the top of each set of pages and staple them together to form each booklet. After stapling the booklets, you'll then follow our instructions in our manual and mail the booklets as they are required, whether daily or weekly. Payment for all completed booklets are sent to you before you are required to ship them.

For this opportunity, Defendants' flier represents that Defendants will pay consumers \$5 to \$15

for each booklet consumers staple and mail, and that consumers can earn up to \$2250 per week stapling booklets from home. Defendants further represent that “**PAYMENT FOR ALL STAPLED BOOKLETS ARE [sic] GUARANTEED!**”

31. Defendants instruct second tier purchasers who purchase Defendants’ booklet-stapling opportunity to either send a \$39.00 registration fee plus \$3 shipping and handling directly to the Defendants, or to send \$20 to the first tier purchaser who mailed out the flier and \$22 directly to Defendants along with proof of payment to the first tier purchaser.

32. In numerous instances, Defendants do not send second tier purchasers booklets to staple. Instead, Defendants send second tier purchasers a flier to mail out to consumers.

33. The flier that Defendants send to second tier purchasers is two-sided. One side is an advertisement for booklets on making money from home. The other side is an advertisement to work directly for Defendants mailing out “special letters” from home.

34. The side of the flier that advertises Defendants’ work-at-home opportunity mailing “special letters” says on top:

**\$490.00 TO \$2900.00 WEEKLY
WORK PART-TIME...MAKE FULL-TIME INCOME!**

There are four different groups to choose from, and Defendants charge a registration fee of anywhere from \$49 for Group 1 to \$139 for Group 4. Defendants represent that they will pay third tier purchasers \$10 per special letter.

35. In numerous instances, Defendants send second tier purchasers, who pay Defendants’ fees, an instruction manual which, for the first time, informs second tier purchasers that Defendants do not pay them directly, but rather second tier purchasers only get paid if they successfully solicit third tier purchasers to either purchase Defendants’ booklets or join

Defendants' program.

36. Thus, a third tier to Defendants' work-at-home opportunity involves second tier purchasers sending Defendants' fliers to third tier purchasers.

37. In numerous instances, Defendants' fliers, whether sent directly by the Defendants or by a purchaser of Defendants' work-at-home opportunity, represent that consumers will make a substantial amount of money through Defendants' work-at-home opportunity.

38. In numerous instances, Defendants' fliers, whether sent directly by the Defendants or by a purchaser of Defendants' work-at-home opportunity, represent that Defendants will pay consumers directly for each piece of mail consumers send out.

39. In numerous instances, purchasers who mail out Defendants' fliers do not make a substantial amount of money.

40. In numerous instances, Defendants do not pay purchasers directly for each piece of mail purchasers send out.

VIOLATIONS OF THE FTC ACT

41. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices affecting commerce. Misrepresentations or omissions of material fact constitute deceptive acts or practices pursuant to Section 5(a) of the FTC Act. As set forth below, Defendants, individually or in concert with others, have violated Section 5 of the FTC Act in connection with the advertising, offering for sale, or selling of goods or services through the mail.

COUNT ONE

42. In numerous instances, in the course of offering for sale and selling a purported

work-at-home opportunity, Defendants represent, expressly or by implication, that consumers who purchase Defendants' purported work-at-home opportunity are likely to earn a substantial amount of money from Defendants' work-at-home opportunity.

43. In truth and in fact, consumers who purchase Defendants' purported work-at-home opportunity are not likely to earn a substantial amount of money from Defendants' work-at-home opportunity.

44. Therefore, Defendants' representation set forth in paragraph 42 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 TWO

45. In numerous instances, in the course of offering for sale and selling a purported work-at-home opportunity, Defendants represent, expressly or by implication, that they will pay consumers who purchase Defendants' purported work-at-home opportunity money for each piece of mail that consumers send out.

46. In truth and in fact, Defendants do not pay consumers who purchase Defendants' purported work-at-home opportunity money for each piece of mail that consumers send out.

47. Therefore, Defendants' representation set forth in paragraph 45 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 THREE

48. By furnishing consumers with fliers and catalogs that contain false and misleading

representations, including but not limited to the false and misleading representations described in paragraphs 30-34, Defendants have provided others with the means and instrumentalities for the commission of deceptive acts and practices.

49. Therefore, Defendants' practices, as set forth in paragraph 48, constitute deceptive acts and practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

50. Defendants' violations of Section 5 of the FTC Act, 15 U.S.C. § 45(a), as set forth above, have caused and continue to cause substantial injury to consumers across the United States. As a result of Defendants' deceptive acts or practices, consumers have suffered substantial monetary loss. 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 harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

51. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other relief to prevent and remedy Defendants' violations of the FTC Act, and in the exercise of its equitable jurisdiction, to award redress to remedy the injury to consumers, to order the disgorgement of monies resulting from Defendants' unlawful acts or practices, and to order other ancillary equitable relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the Federal Trade Commission, requests that this Court, as

authorized by Section 13(b) of the FTC Act, and pursuant to its own equitable powers:

1. Enter an order enjoining Defendants preliminarily and permanently from violating Section 5(a) of the FTC Act and freezing Defendants' assets;
2. Award Plaintiff such relief as the Court finds necessary to redress the injury to consumers caused by Defendants' violations of the FTC Act, including, but not limited to, rescission of contracts, restitution, disgorgement of ill-gotten gains, and the refund of monies paid; and
3. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may deem just and proper.

Dated: December ___, 2003

Respectfully submitted,

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