

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

FEDERAL TRADE COMMISSION,)
)
)
 Plaintiff,)
)
 v.)
)
 SOUTHWEST MARKETING CONCEPTS, INC.,)
 a corporation d/b/a The Journal) CIVIL ACTION NO.
 and The Journal - The Voice of)
 Law Enforcement,)
)
 and)
)
 STEPHEN T. INMON,)
 individually and as an officer)
 of the corporation,)
)
 Defendants.)
)

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff, the Federal Trade Commission ("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 against the defendants to prevent them from engaging in deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and to obtain other equitable relief, including rescission, restitution and disgorgement, as is necessary to redress injury to consumers and the public interest resulting from defendants' violations of the FTC Act.

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 Texas is proper under 15 U.S.C. § 53(b), as amended by the FTC Act Amendments of 1994, Pub. L. No. 103-312, 108 Stat. 1691, and 28 U.S.C. § 1391(b) and (c).

PLAINTIFF

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 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 other equitable relief as may be appropriate in each case, including redress and disgorgement. 15 U.S.C. § 53(b).

DEFENDANTS

5. Defendant Southwest Marketing Concepts, Inc., is a Texas corporation with its principal place of business at 2400 Central Parkway, Suite L, Houston, Texas 77092-7712. Southwest Marketing Concepts, Inc., also does business as The Journal and The Journal - The Voice of Law Enforcement. Southwest Marketing Concepts, Inc., transacts business in this District.

6. Defendant Stephen T. Inmon is the director and president of Southwest Marketing Concepts, Inc. At all times material to this complaint, individually 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 transacts business in this District.

COMMERCE

7. 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 ACTIVITIES

8. Since at least 1994, defendants have engaged in a program of misrepresentation targeted at public-spirited businesses in many states. Defendants solicit businesses, including many small businesses, to advertise in defendants' publication. Defendants represent advertising in their publication, The Journal or The Journal - The Voice of Law Enforcement, as a meaningful opportunity for businesses to support important causes, such as fighting crime and preventing drug abuse. As further inducement for businesses to purchase advertising, defendants in many cases tell businesses that defendants will contribute a portion of their advertising sales to law enforcement agencies or organizations for crime-prevention or civic projects, including projects in the community where the advertiser does business.

9. Contrary to defendants' representations, the proceeds of defendants' advertising sales are not contributed to law enforcement organizations or law enforcement or civic projects, in the business's community or elsewhere.

10. Defendants' representations have caused individual businesses to pay hundreds of dollars for advertising in defendants' publication.

11. In addition to misrepresenting that the use of proceeds from their advertising sales benefits law enforcement organizations

and civic projects, defendants often obtain payment by misrepresenting to the business that it has already ordered the advertisement. This misrepresentation is conveyed in several ways. In numerous instances:

(1) defendants telephone businesses and misrepresent to the business that an advertisement it agreed to place in defendants' publication is printed and needs to be paid for, even though the business has never agreed to an advertisement;

(2) defendants telephone businesses that have agreed to place an advertisement in defendants' publication and misrepresent that the business has authorized the insertion of the advertising in additional issues of defendants' publication; and

(3) defendants mail invoices and demands for payment to businesses, misrepresenting that payment is due for advertising, even though the business has not agreed to place the advertisement in defendants' publication.

Many businesses are convinced by the above misrepresentations that they have pre-approved the advertisement and pay the defendants.

12. If a business refuses to pay for unordered advertising, defendants frequently threaten to take action that will adversely affect the business's credit record. Many businesses are convinced by these threats, and, believing that their credit records may be adversely affected, pay the bill.

COUNT ONE

13. In numerous instances, in connection with the offering for sale and sale of advertisements, defendants have represented, expressly or by implication, that:

- a. the proceeds from the advertisements will be used for a law enforcement or civic purpose; and
 - b. the proceeds from the advertisements will be used for a law enforcement or civic purpose in the advertiser's community.
14. In truth and in fact, in numerous instances:
- a. the proceeds for the advertisements are not used for a law enforcement or civic purpose; and
 - b. the proceeds from the advertisements are not used for a law enforcement or civic purpose in the advertiser's community.

15. Therefore, defendants' representations set forth in Paragraph 13 above are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT TWO

16. In numerous instances, in connection with the offering for sale and sale of advertisements to businesses, defendants have represented, expressly or by implication, that:

- a. the business has authorized placement of the advertising in defendants' publication; and
- b. defendants incurred the cost of printing the advertisement in defendants' publication in reliance on the business's promise to pay for the advertisement.

17. In truth and in fact, in numerous instances:

- a. the business did not authorize placement of the advertising in defendants' publication; and
- b. defendants have not incurred the cost of printing the advertisement in the publication in reliance on the business's promise to pay for the advertisement.

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

COUNT THREE

19. In numerous instances in connection with the offering for sale and sale of advertisements to businesses, defendants have mailed invoices and demands for payment for advertisements and threatened to take action that will adversely affect the business's credit record, thus representing, expressly or by implication, that businesses have ordered the advertisements billed to them by defendants.

20. In truth and in fact, in numerous instances, businesses have not ordered the advertisements billed to them by defendants.

21. Therefore, defendants' representations set forth in Paragraph 19 are false and misleading and constitute deceptive acts and practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

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

THIS COURT'S POWER TO GRANT RELIEF

23. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to issue a permanent injunction against defendants' violations of the FTC Act and, in the exercise of its equitable jurisdiction, grant such other relief as the Court may deem

appropriate to halt and redress violations of the FTC Act, including restitution and disgorgement of unjust enrichment.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and pursuant to its own equitable powers:

1. Award the Commission all temporary and preliminary injunctive and ancillary relief that 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, including, but not limited to, temporary and preliminary injunctions, appointment of a receiver, and an order freezing each defendant's assets.

2. Permanently enjoin the defendants from violating the FTC Act as alleged in this complaint;

3. Award all relief that the Court finds necessary to remedy the defendants' violations of Section 5(a) of the FTC Act, including, but not limited to, the refund of monies paid and the disgorgement of ill-gotten monies; and

4. Award the Commission the costs of bringing this action, as well as any other equitable relief that the Court may determine to be just and proper.

DATE: _____

Respectfully submitted,

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