

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

**FERNANDO PACHECO, also known as
FRANK PACHECO,
individually and doing business as
E-SOLUTIONS and
E-SOLUTIONS 101**

Defendant.

Civil No.

COMPLAINT FOR INJUNCTIVE 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 permanent injunctive relief against the defendant to prevent him 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 in order to redress injury to consumers and the public interest resulting from the defendant’s violations of the FTC Act.

JURISDICTION AND VENUE

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

3. Venue in the United States District Court for the District of Rhode Island is proper under 15 U.S.C. § 53(b) 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 deceptive 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).

DEFENDANT

5. Defendant Fernando Pacheco, also known as Frank Pacheco, is an individual who does business as E-Solutions and E-Solutions 101. Defendant Pacheco resides at 2 Riverview Drive, North Providence, Rhode Island 02904. He conducts business from a Post Office Box located in Providence, Rhode Island. At all times material to this complaint, acting alone or in concert with others, defendant Pacheco has formulated, directed, controlled, or participated in the acts or practices set forth in this complaint. Defendant Pacheco resides and transacts or has transacted business in the District of Rhode Island.

COMMERCE

6. At all times relevant to this complaint, the defendant has 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.

DEFENDANT'S BUSINESS PRACTICES

7. Since at least September 2000, the defendant has promoted a “get rich quick” scheme through the use of unsolicited commercial email (“UCE” or “spam”) sent in bulk to numerous consumers throughout the country, and through the placement of advertisements in Internet newsgroups. The content and form of both the defendant’s email messages and Internet ads are virtually identical.

8. The scheme promoted by the defendant instructs a new recruit to mail a five dollar bill to four or five participants whose names and addresses appear in a numbered list in the message. Upon receipt of the cash payment, the participants email to the new recruit one of four or five different “reports” on how to engage in the scheme, i.e., how to send bulk spam and advertise for “free” on the Internet. In the email message or Internet ad, the new recruit who wants to participate in the scheme is instructed to enter his or her own name and address into position one on the list of participants, move every other participant’s name one entry level down on the list, and remove the participant that is in the last position on the list. After this revision is complete, and the new recruit receives each of the four or five reports from the other participants, he or she is instructed to forward the revised message to thousands of new names, using his or her own bulk spam or Internet ads.

9. In his UCE and Internet ads touting this scheme, the defendant has represented, expressly or by implication, that participants will receive substantial income by participating in the program, including, but not limited to, the following representations:

- A. “You can earn \$46,000 or more in the next 90 days sending e-mail. Seem impossible? Read on for details (no, there is no “catch”).”

- B. “If you would like to make \$46,000 in less than 90 days, please read the following program. . . THEN READ IT AGAIN!!!”
- C. “This method of raising capital REALLY WORKS 100% EVERY TIME. I am sure that you could use up to \$46,000 or more in the next 90 days.”

10. In reality, the vast majority of participants in the program achieve little or no financial success, or make very modest earnings.

11. The defendant promotes what is commonly known as a “chain letter” or pyramid scheme that necessarily enriches only a few initial participants at the expense of the majority of other participants. In a chain letter, each participant pays money to other participants preceding them in the chain, in exchange for the right to recruit new participants. Participants then receive benefits for each individual they recruit or who appears below them in the chain. Earnings in a chain letter scheme are derived primarily from recruiting other participants into the program, not from the *bona fide* sale of products or services to retail customers.

12. The structure of a chain letter places severe limitations upon the success of its participants. Participants can only make money if they recruit a substantial number of newer participants in levels below them. Eventually, chain letter schemes break down due to exhaustion of the pool of possible recruits. Those at the bottom of the chain, the majority of participants, lose money because there is no one left to recruit into positions below them in the chain.

13. In his UCE and Internet ads, the defendant also has represented, expressly or by implication, that the program is legal. For example, the defendant’s message includes the following representations:

- A. “THIS IS A LEGITIMATE, LEGAL, MONEY MAKING OPPORTUNITY.”
- B. “Due to the popularity of this letter on the Internet, a major nightly news program recently devoted an entire show to the investigation of the program described below. . . Their findings proved once and for all that there are absolutely no laws prohibiting the participation in this program.”
- C. “I checked with the U.S. Post Office (1-800-725-2161 24-hrs.) and confirmed that [this program] is indeed legal! After determining that the program was LEGAL and not a CHAIN LETTER, I decided, “WHY NOT!””

14. In fact, this program is a chain letter scheme that is illegal under a variety of federal statutes, including the FTC Act, 15 U.S.C. § 45, the Mail Fraud Statute, 18 U.S.C. § 1341, and the Lottery Statutes, 18 U.S.C. §§ 1301-02.

15. The defendant has continued to promote this program through spam and Internet ads even after receiving a warning letter from the FTC in or around September 2000, explicitly advising the defendant that the program was, in fact, illegal.

16. Through the sending of bulk spam and the posting of Internet advertisements, the defendant has solicited consumers nationwide, including consumers who reside in this district.

VIOLATIONS OF THE FTC ACT

17. 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 ONE

18. In numerous instances, the defendant represents, expressly or by implication, that consumers who participate in the chain letter program are likely to receive substantial income.

19. In truth and in fact, in numerous instances, consumers who participate in the chain letter program are not likely to receive substantial income.

20. Therefore, the representation set forth in paragraph 18 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

21. As alleged in paragraphs 7 through 12, the program promoted by the defendant is characterized by the payment of money by a new recruit to other participants in the program, in return for which the recruit obtains the right to receive income for recruiting others into the program.

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

COUNT THREE

23. In numerous instances, the defendant represents, expressly or by implication, that the program is legal.

24. In truth and in fact, the program is not legal.

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 FOUR

26. The defendant provides participants in the program with copies of the chain letter to be used in recruiting new participants. As described in Counts One, Two and Three above, that chain letter contains false and misleading representations.

27. By providing participants with the chain letter, the defendant has provided the means and instrumentalities for the commission of deceptive acts and practices.

28. Therefore, the defendant's practices, as described in paragraph 26, constitute deceptive acts and practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

29. Defendant's 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. Absent injunctive relief by this Court, the defendant is likely to continue to injure consumers and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

30. 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.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, the Federal Trade Commission, 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. Permanently enjoin the defendant from violating Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), as alleged in this complaint;
2. Award other equitable relief, including rescission of contracts, the refund of monies paid, and the disgorgement of ill-gotten monies, as is necessary in order to redress injury to consumers and the public interest resulting from defendant's violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a); and
3. 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: January 14, 2002

Respectfully submitted,

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