

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

Case No. _____ - Civ - _____

FEDERAL TRADE COMMISSION,)
)
)
Plaintiff,)
)
v.)
)
GREETING CARDS OF AMERICA, INC.,)
a Florida corporation;)
)
GERALD TOWBIN,)
also known as Alex Carr and John Grant,)
individually and as owner and operator of)
Greeting Cards of America;)
)
SUSAN TOWBIN,)
also known as Mary Grant and Sandy Grant,)
individually and as an officer of Greeting)
Cards of America;)
)
AMERICAN EAGLE PLACEMENTS,)
a Georgia company; and)
)
FORREST ADAMS,)
individually and as the owner and officer of)
American Eagle Placements,)
)
Defendants.)

COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission (“FTC” or “the Commission”), for its complaint against
GREETING CARDS OF AMERICA, INC., GERALD TOWBIN, SUSAN TOWBIN,

AMERICAN EAGLE PLACEMENTS, and FORREST ADAMS (collectively, “Defendants”) 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 permanent injunctive relief, rescission of contracts, restitution, disgorgement, and other equitable relief for 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” (the “Franchise Rule” or the “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 Greeting Cards of America, Inc., (“GCA”) is a Florida corporation with its principal place of business located at 7429 N.W. 4th St., Plantation, Florida 33317. GCA promotes and sells business ventures involving greeting cards. GCA transacts or has transacted business in the Southern District of Florida.
6. Defendant Gerald Towbin is the owner and operator of Greeting Cards of America, Inc. At all times material to this complaint, Towbin, acting alone or in concert with others, formulated, directed, controlled or participated in GCA’s acts and practices, including the acts and practices set forth in this complaint. He transacts or has transacted business in the Southern District of Florida.
7. Defendant Susan Towbin is an officer of Greeting Cards of America, Inc. At all times material to this complaint, Towbin, acting alone or in concert with others, formulated, directed, controlled or participated in GCA’s acts and practices, including the acts and practices set forth in this complaint. She transacts or has transacted business in the Southern District of Florida.
8. Defendant American Eagle Placements (“American Eagle”) is a Georgia company with its principal place of business at 5295 Highway 78, Suite D-189, Stone Mountain, Georgia 30087. At all times material to this complaint, American Eagle has participated in certain acts and practices set forth in this complaint. American Eagle transacts or has transacted business, or a substantial part of the events or omissions giving rise to any claim against it has occurred, in the Southern District of Florida.
9. Defendant Forrest Adams is the owner and an officer of American Eagle Placements. At all

times material to this complaint, Adams, acting alone or in concert with others, has participated in certain acts and practices set forth in this complaint. He transacts or has transacted business, or a substantial part of the events or omissions giving rise to any claim against him has occurred, in the Southern District of Florida.

COMMERCE

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

DEFENDANTS’ BUSINESS ACTIVITIES

11. Since at least early 2001 or before, Defendants GCA, Gerald Towbin, and Susan Towbin have offered and sold business ventures involving greeting cards and display racks for the cards.
12. Defendants promote their business ventures to prospective purchasers through a variety of media, including radio, the Internet, and newspapers.
13. In their advertisements, GCA, Gerald Towbin, and Susan Towbin make representations about the earnings potential of their business venture, and urge consumers to contact them through an on-line questionnaire or toll-free number. For example, their Internet advertisement states:

With just 30 locations selling only 10 cards per day you will earn \$135,000.00 per year. Imagine the potential with 50 or 100 locations!
And remember, WE FIND THE LOCATIONS FOR YOU.

14. Defendants GCA, Gerald Towbin, and Susan Towbin represent to prospective business venture purchasers that, in exchange for a payment, ranging from \$5,000 to \$50,000, purchasers will receive greeting cards, card display racks, and on-going support, through which

they are likely to derive substantial income. For example, these Defendants typically represent that purchasers of GCA's 10-location plan, which consists of 10,000 greeting cards and 10 card display racks for \$10,350, will make \$35,00-\$45,000 per year.

15. As part of their sales pitch, Defendants GCA, Gerald Towbin, and Susan Towbin represent that the locating company that they recommend, Defendant American Eagle, will secure profitable locations or sites for business venture purchasers' greeting cards and display racks.
16. Defendants GCA, Gerald Towbin, and Susan Towbin also send a package of promotional materials to prospective purchasers. The package typically includes, among other things, sample greeting cards, promotional brochures and pamphlets, and a disclosure document (the "basic disclosure document").
17. The promotional brochure typically states:

The Bottom Line . . . No matter How you do the numbers,
\$\$ It's a Moneymaker!!! \$\$

Greeting Cards of America provides the three basic components of a successful business: **A great product, displayed effectively, and revenue productive locations to sell them in.**

An average high traffic location can sell 8-10 cards per day and of course, many more on holidays.

Realistically, no one can guarantee the "exact" profit in *any business*, however as an average distributor, you can probably *Triple* your investment within the first year of business.

As we all know . . . "Location is the key" to any Retail Business and the Footwork is Done for You!!!

These are high traffic, high volume existing businesses, such as chain supermarkets, large pharmacies, gift shops and card shops

in malls, hotels, convenience storesThe list goes on and on.

Once the locations are set up, the business pretty much runs itself.
In case of an under productive location, the marketing company can relocate that display unit at no cost to you.

18. The basic disclosure document in Defendants GCA, Gerald Towbin, and Susan Towbin's promotional packet provides a few, but not all, of the disclosures required by the FTC's Franchise Rule, 16 C.F.R. Part 436.
19. For example, the basic disclosure document fails to correctly identify the directors and executive officers of the corporate defendant and their business experience, as required by the Franchise Rule. During 2001, the disclosure document sent to consumers listed Ron Chocolaad as the CEO of GCA when he, in fact, was nothing more than a telemarketer for GCA. Similarly, since late 2001, the disclosure document has listed Alex Carr as CEO of GCA, although Alex Carr is, in fact, an alias used by Gerald Towbin.
20. In addition, Defendants' basic disclosure document often fails to provide a statement disclosing the names, addresses and telephone numbers of previous customers of GCA, as required by the Franchise Rule. Similarly, at other times, the statement disclosing customer names is incomplete and often illegible.
21. Moreover, Defendants GCA, Gerald Towbin, and Susan Towbin have no reasonable basis for their earnings representations, fail to disclose additional information including the number and percentage of prior purchasers known by them to have achieved the same or better results, or fail to provide prospective business venture purchasers with an earnings claim document containing information substantiating their earnings representations.

22. Defendants GCA, Gerald Towbin, and Susan Towbin also urge prospective purchasers to contact certain company-selected references, who have purportedly purchased the GCA greeting card business venture. Defendants GCA, Gerald Towbin, and Susan Towbin lead prospective purchasers to believe that these references will provide reliable descriptions of their successful experiences with GCA's greeting card business venture.
23. Defendants Gerald Towbin and Susan Towbin often pose as references for GCA using the aliases John Grant and Mary or Sandy Grant, who are purportedly purchasers from Chicago, Illinois. When prospective purchasers call for the Grants, they call a Chicago telephone number that is answered by an answering service, and the call is then directed to the Towbins in Florida.
24. Prospective purchasers are directed by GCA to call a locating company, Defendant American Eagle, to arrange for the location of the display racks and greeting cards.
25. Defendant American Eagle and its president, Defendant Forrest Adams, tell prospective purchasers that they will secure profitable locations. However, after paying money to American Eagle, American Eagle and Forrest Adams are unlikely to secure profitable locations or sites for the purchasers' greeting cards and display racks.
26. Defendants American Eagle and Forrest Adams also often reaffirm the earnings claims made by GCA salespeople.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

27. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), provides that "unfair or deceptive acts or practices in or affecting commerce are hereby declared unlawful."

COUNT I

Misrepresentations Regarding Income

28. In numerous instances, in the course of offering for sale and selling the GCA business venture, Defendants GCA, Gerald Towbin, Susan Towbin, American Eagle, and Forrest Adams, directly or indirectly, represent, expressly or by implication, that consumers who purchase the GCA business opportunity are likely to earn substantial income.
29. In truth and in fact, consumers who purchase the GCA business venture are not likely to earn substantial income.
30. Therefore, Defendants' representations as set forth in Paragraph 28 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 II

Misrepresentations Regarding Assistance to Business Purchasers

31. In numerous instances, in the course of offering for sale and selling the GCA business venture, Defendants GCA, Gerald Towbin, Susan Towbin, American Eagle, and Forrest Adams, directly or indirectly, represent, expressly or by implication, that GCA and American Eagle will provide consumers with significant assistance in the operation of their business, including, but not limited to, claims that GCA and American Eagle will aid in securing profitable locations or sites for the consumers' greeting cards and display racks.
32. In truth and in fact, in numerous instances, GCA and American Eagle do not aid consumers in securing profitable locations or sites for their greeting cards and display racks.

33. Therefore, the Defendants' representations as set forth in Paragraph 31 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 III

Acting As Shills

34. In numerous instances, in the course of offering for sale and selling the GCA business venture, Defendants Gerald Towbin and Susan Towbin, using aliases, such as "John and Mary Grant," directly or indirectly, represent, expressly or by implication, that they have purchased the GCA business venture or that they provide reliable descriptions of their experience with the GCA business venture.
35. In truth and in fact, Defendants Gerald Towbin and Susan Towbin have not purchased the GCA business venture or do not provide reliable descriptions of their experiences with the GCA business venture.
36. Therefore, the Defendants' representations as set forth in Paragraph 34 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).

THE FRANCHISE RULE

37. The business ventures sold by Defendants are franchises, as "franchise" is defined in Sections 436.2(a)(1)(ii), (a)(2), and (a)(5) of the Franchise Rule, 16 C.F.R. § 436.2(a)(1)(ii), (a)(2), and (a)(5).
38. The Franchise Rule requires a franchisor to provide prospective franchisees with a complete and

accurate basic disclosure document containing twenty categories of information, including identity and experience information about the directors and executive officers of the franchisor as well as the identity of previous franchisees. 16 C.F.R. §§ 436.1(a)(2) and (a)(16). 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.

39. The Franchise Rule additionally requires: (1) that the franchisor have a reasonable basis for any oral, written, or visual earnings or profit representation (“earnings claim”) it makes to a prospective franchisee; (2) that the franchisor provide to prospective franchisees an earnings claim document containing information substantiating any earnings claims it makes; and (3) that the franchisor, in immediate conjunction with any generally disseminated earnings claim, disclose 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(b), (c), and (e).
40. 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 IV

Earnings Claims Disclosure Violations

41. In connection with the offering of franchises, as “franchise” is defined in Sections 436.2(a)(1)(ii), (a)(2), and (a)(5) of the Franchise Rule, 16 C.F.R. § 436.2(a)(1)(ii), (a)(2), and (a)(5), Defendants

GCA, Gerald Towbin, and Susan Towbin made earnings claims within the meaning of the Rule, Sections 436.1(b), (c), and (e). Defendants GCA, Gerald Towbin, and Susan Towbin violated Sections 436.1(b), (c), and (e) of the Rule, 16 C.F.R. §§ 436.1(b), (c), and (e), and Section 5 of the FTC Act, 15 U.S.C. § 45 by, inter alia: (1) failing to disclose certain information required by the Franchise Rule in immediate conjunction with such claims, including the number and percentage of prior purchasers known by Defendants to have achieved the same or better results; (2) failing to have a reasonable basis for such claims at the times they were made; (3) failing to disclose, in a clear and conspicuous manner, that material which constitutes a reasonable basis for the earnings claim is available to the prospective purchasers; (4) failing to provide material which constitutes a reasonable basis for any earnings claim to prospective purchasers; or (5) failing to provide prospective franchisees with earnings claim disclosures at the times required by the Rule.

COUNT V

Purchaser Information and Corporate Information Disclosures

42. In connection with the offering of franchises, as “franchise” is defined in Sections 436.2(a)(1)(ii), (a)(2), and (a)(5) of the Franchise Rule, 16 C.F.R. § 436.2(a)(1)(ii), (a)(2), and (a)(5), Defendants GCA, Gerald Towbin, and Susan Towbin failed to disclose information required by Sections 436.1(a)(2) and (a)(16) of the Franchise Rule, including the business experience for the last five years of the current directors and executive officers as well as the names, addresses, and telephone numbers of all business venture purchasers, thereby violating Section 436.1(a) of the Rule, 16 C.F.R. § 436.1(a), and Section 5 of the FTC Act, 15 U.S.C. § 45.

CONSUMER INJURY

43. Consumers nationwide have suffered or will suffer substantial monetary loss as a result of Defendants' violations of Section 5(a) of the FTC Act and the Franchise Rule. 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

44. 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.
45. 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 Defendants' violations of the Franchise Rule, including the rescission and reformation of contracts, and the refund of money.
46. This Court, in the exercise of its equitable jurisdiction, may award ancillary relief to remedy injury caused by Defendants' law violations.

PRAYER FOR RELIEF

WHEREFORE, 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 Plaintiff such preliminary injunctive relief and ancillary relief, including a temporary restraining order, asset freeze, 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 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; and
4. Such other and additional relief as the Court may determine to be just and proper.

Dated: April ____, 2003

Respectfully submitted,

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