

Sealed

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

Case No. _____ - Civ -

05-20402

CIV.-SEITZ

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

SUN RAY TRADING, INC.,
a Florida Corporation;

SR & ASSOCIATES, INC.,
a Florida Corporation;

ROLANDO GALVEZ-GARCIA,
also known as ROLANDO GALVEZ,
individually, and as an officer of
one or more of the above corporations;

ANNEELISES FLORES ADINO,
also known as ANNIELISES FLORES,
ANNIELISES H. FLORES, ANNIE FLORES,
and ANNY FLOREZ,
individually, and as an officer of
one or more of the above corporations; and

KOSTADIN OSVALDO MARTE TAVAREZ,
also known as KOSTADIN MARTE,

Defendants.

**MAGISTRATE JUDGE
BANDSTRA**

FILED By _____ D.C.
INTAKE
FEB 10 2005
CLARENCE MADDOX
CLERK U.S. DIST. CT.
S.D. OF FLA. - MIAMI

COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission ("FTC" or "the Commission") for its Complaint alleges:

1. The FTC brings this action under Sections 5(a), 13(b) and 19 of the Federal Trade

Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a), 53(b) and 57b, and Section 7(a) of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 ("CAN-SPAM Act"), 15 U.S.C. § 7706(a), to obtain temporary, 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), and Section 5(a) of the CAN-SPAM Act, 15 U.S.C. § 7704(a).

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, 15 U.S.C. §§ 53(b) and 57b. This action arises under 15 U.S.C. §§ 45(a)(1) and 7706(a).

3. Venue in the United States District Court for the for the Southern District of Florida is proper under 28 U.S.C. §§ 1391(b) and (c), and 15 U.S.C. § 53(b).

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 is charged, *inter alia*, with enforcement of 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 FTC is also charged with enforcing various provisions of the CAN-SPAM Act as if the violation of the CAN-SPAM Act "were an unfair or deceptive act or practice proscribed under Section 18(a)(1)(B) of the [FTC] Act." 15 U.S.C. § 7706(a). The Commission is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and the CAN-SPAM Act in order to secure such other equitable relief as may be appropriate in each case, and to obtain consumers redress.

15 U.S.C. § 53(b) and 7706(a).

DEFENDANTS

5. Defendant Sun Ray Trading, Inc. ("Sun Ray Trading"), a Florida corporation using a mailing address at 12717 W. Sunrise Boulevard, Sunrise, Florida 33323, promotes and sells envelope stuffing employment opportunities. Sun Ray Trading transacts or has transacted business in the Southern District of Florida and throughout the United States.

6. Defendant SR & Associates, Inc. ("SR & Associates"), a Florida corporation using a mailing address at 318 Indian Trace, #634, Weston, Florida 33326, promotes and sells envelope stuffing employment opportunities. SR & Associates transacts or has transacted business in the Southern District of Florida and throughout the United States.

7. Defendant Rolando Galvez-Garcia, also known as Rolando Galvez, is an officer of Defendants Sun Ray Trading and SR & Associates. At all times material to this Complaint, acting alone or in concert 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.

8. Defendant Anneelises Flores Adino, also known as Annielises Flores, Annielises H. Flores, Annie Flores, and Anny Florez, is an officer of Defendant Sun Ray Trading. At all times material to this Complaint, acting alone or in concert 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.

9. Defendant Kostadin Osvaldo Marte Tavaréz, also known as Kostadin Marte, at all times material to this Complaint, acting alone or in concert with others, has formulated, directed,

01/10/00 11:50 FAX 404 336 1378 ATLANTA FC 020/033

controlled, or participated in the acts and practices alleged in this Complaint. He transacts or has transacted business in the Southern District of Florida.

COMMERCE

10. At all times relevant to this Complaint, Defendants have maintained a substantial course of trade in the offering for sale and sale of envelope stuffing employment opportunities, in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFINITIONS

11. "Commercial electronic mail message" means any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (including the content on an Internet website operated for commercial purposes). 15 U.S.C. § 7702(2).

12. "Initiate," when used with respect to a commercial e-mail message, means to originate or transmit such message or to procure the origination or transmission of such message. 15 U.S.C. § 7702(9).

13. "Procure," when used with respect to the initiation of a commercial e-mail message, means intentionally to pay or provide other consideration to, or induce, another person to initiate such a message on one's behalf. 15 U.S.C. § 7702(12).

14. "Protected computer" means a computer which is used in interstate or foreign commerce or communication, including a computer located outside the United States that is used in a manner that affects interstate or foreign commerce or communication of the United States. 15 U.S.C. § 7702(13); 18 U.S.C. § 1030(e)(2)(B).

DEFENDANTS' BUSINESS PRACTICES

15. Since at least June 2003, and continuing thereafter, Defendants have offered for sale and sold envelope stuffing employment opportunities to consumers throughout the United States. Defendants have promoted these envelope stuffing employment opportunities to prospective purchasers through unsolicited commercial e-mail or "spam" and through their Internet websites www.sunrayworkers.com and www.srandassociates.biz.

Defendants' Illegal Spamming Practices

16. Defendants have marketed their envelope stuffing employment opportunities by initiating commercial electronic mail ("e-mail") messages to protected computers. The sole purpose of these e-mail messages is the commercial advertisement or promotion of Defendants' envelope stuffing employment opportunities.

17. From January 1, 2004 to September 2004, consumers forwarded hundreds of e-mail messages initiated by Defendants to the staff at the FTC's Southeast Region and to the FTC's spam database at spam@uce.gov or uce@ftc.gov.

18. In numerous instances, since at least January 1, 2004, and continuing thereafter, commercial e-mail messages initiated by Defendants to protected computers utilize subject headings containing information that is likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message.

19. For example, commercial e-mail messages initiated by Defendants have included deceptive subject headings such as:

- A. "Homeworkers Needed Today. Earn 550 dollars or More," "Make 10 Dollars For Every Letter You Mail," "Earn \$550 or More Stuffing

01/10/00 11:00 FAX 404 350 1378 ATLANTA FIC 0227033

Envelopes!," "Make Ten Dollars for Each Circular You Mail," and "Hello, Earn \$\$\$\$ from home," where the contents or subject matter of the e-mail does not pertain to a legitimate money-making opportunity in which consumers can earn a substantial amount of money; and

- B. "Earn a Big Paycheck from Home Now!," "We need Homeworkers. Be one and Earn," "Earn paychecks from Home Every Week," "Big Paychecks coming; Act now," and "Where will we send the paychecks," where the contents or subject matter of the e-mail does not pertain to a legitimate employment opportunity.

20. When consumers open the e-mail messages initiated by Defendants, there is no substantive message regarding the representations made in the subject headings, but instead, there is a hyperlink to Defendants' websites. Thus, to obtain any information pertaining to the money-making or employment opportunity represented in the subject headings of the e-mail messages, consumers must access Defendants' websites via the hyperlink contained in the e-mail messages.

Defendants' Fraudulent Envelope Stuffing Employment Opportunity

21. Defendants have primarily marketed their envelope stuffing employment opportunities through their Internet websites, which consumers can access either by clicking on the hyperlink in Defendants' e-mail messages or by finding the websites directly on the Internet.

22. To induce consumers to purchase Defendants' envelope stuffing employment opportunities, Defendants' websites represent that they are offering consumers a legitimate employment opportunity through which consumers are likely to earn a substantial amount of

money by inserting circulars into envelopes and mailing them. For instance, Defendants' websites typically state:

EARN \$550. 00 TO \$3000.00 OR MORE!

WE NEED YOU TO FOLD AND MAIL OUR CATALOG CIRCULARS IMMEDIATELY!

TEN Dollars for EACH Circular You Mail!

Paychecks mailed to you every Wednesday!

Advance Paycheck Forms included in your Package!

You Could be Earning BIG PAYCHECKS Within TWO WEEKS . . . If you Act NOW!

Congratulations Friend,

We have selected you to be one of our new catalog circular mailers. You can earn from \$550.00 to \$3,000.00 and your paycheck is mailed to you promptly every Wednesday. If you accept our offer today and follow our instructions your first paycheck will be in your hands in approximately ten days time, following our instructions!

* * * *

(Emphasis in original)

23. Defendants' websites also state that consumers are likely to earn \$10.00 for each

"special advertising circular" they stuff into an envelope and mail:

Our printing and publishing company is in the process of hiring home workers. We desperately need home workers each week to stuff and mail out our special advertising circulars. We have so much on hand that we are paying home workers \$10.00 for EACH letter stuffed and returned to us as per our instructions.

There is no limit to the number of letters that you can stuff and mail for our company. If we receive 55 letters stuffed and mailed out by you [sic] will be paid \$550.00

75 letters.....	\$750.00
95 letters.....	\$950.00
300 letters.....	\$3,000.00

The More Letters you Stuff and Mail the MORE MONEY You Can Make!

* * * *

02/10/00 11:37 FAX 404 656 1579 ATLANTA PIC 0247055

Your only job is to place our special advertising circulars into envelopes and then mail them out. For this you will receive a payment of \$10.00 per envelope from US!

* * * *

WHY DO WE PAY SUCH A HIGH RATE AS \$10.00 PER LETTER STUFFED AND RECEIVED?

First, the number of people who respond to our special letters, once they are mailed out, is very high. Second, they like what we offer and are willing to pay for the opportunities that we offer. These two facts allow us to easily afford to pay \$10.00 per letter stuffed and mailed. Also, we want you to be happy with your new income level so you'll continue to work for us which will allow us to continue making money.

24. Defendants' websites also promise that consumers will be reimbursed by Defendants for their out-of-pocket postage costs incurred to mail out the "special advertising circulars:"

Your initial postage cost is reimbursable. That means its free! So keep this in mind when you select an income group.

* * * *

*Please Note: This is the most honest and trustworthy program around for the average home worker. We deliver everything that we promise to you. We mean every word we state. There is no advertising required, postage is reimbursable, special advertising circulars, envelopes and mailing labels are provided. Every week another package can be shipped with your paycheck so you never run out of work.

25. Defendants' websites explain how consumers can choose the amount of money that they wish to earn depending upon the number of envelopes that they are able to stuff and mail:

For your convenience, we have established 5 different groups. You can choose the group that you want to work under. Each group carries different earnings potential and a different number of starting supplies.

The Earning Potential of

02/10/00 11:07 AM 404 000 1070 ATLANTA PIC 02/10/00

Group #1 is \$550.00 Weekly
Group #2 is \$750.00 Weekly
Group #3 is \$950.00 Weekly
Group #4 is \$3000.00 Weekly! . . . This is the Most Popular Group.
Group #5 is for established mailers who start in **Group #4** and get promoted after receiving their first \$3000.00 in pay.

Once you're in **Group #5** you have the potential to earn \$5000.00 but you must start in **Group #4** if you want to be promoted to **Group #5**. We will leave it up to you to choose your own starting group.

For example, if you start in **Group #3**, we will send you a large priority package containing 95 envelopes, letters, and customer mailing labels along with our easy to follow instructions. If you choose **Group #4**, we send you 300 envelopes, letters and customer mailing labels.

When you are promoted to **Group #5**, we will send you a large package with 500 of each item to be stuffed and mailed for payment.

(Emphasis in original).

26. To purchase the envelope stuffing employment opportunity, Defendants' websites direct consumers to register by filling out the "Program Selection Form." This form permits consumers to purchase various quantities of advertising circulars, envelopes, and address labels by choosing among the "Income Groups" listed in the website. The fee for each Income Group depends upon the number of advertising circulars, envelopes, and address labels that are supplied. The Program Selection Form lists the fee schedule as follows:

Please decide which group you would like to join and register to receive one of the following packages.

Income Group #1: (\$550.00) Fee is \$55.00 plus \$10 S&H

You will receive 55 letters, 55 envelopes and 55 customer mailing labels.

Income Groups #2: (\$750.00) Fee is \$75.00 plus \$10 S&H

You will receive 75 letters, 75 envelopes and 75 customer mailing labels.

Income Groups #3: (\$950.00) Fee is \$95.00 plus \$10 S&H

You will receive 95 letters, 95 envelopes and 95 customer mailing labels.

Income Group #4: (\$3,000.00) Fee is \$300.00
NOW ONLY \$150.00 plus \$10 S&H

You will receive 300 letters, 300 envelopes and 300 customer mailing labels.

(Emphasis in original).

27. Consumers who complete the Program Selection Form and pay a registration fee ranging from \$65.00 to \$160.00 to Defendants, typically receive a package of supplies that contains the quantity of address labels, envelopes, and the "special advertising circulars" corresponding to the program selected by the consumer as well as instructions to process the envelopes.

28. When consumers receive Defendants' package, they learn for the first time that the "special advertising circulars" to be stuffed into envelopes and mailed are direct mail solicitations for another similar work-at-home, envelope stuffing employment opportunity that can be purchased from Defendants. For example, Defendants' "special advertising circulars" state "\$1000 WEEKLY SALARY, OR MORE WORKING PART-TIME FROM HOME! GUARANTEED!!" and invite new consumers to send Defendants \$76.00 to enroll in this new envelope stuffing employment opportunity.

29. In addition, when consumers read the instructions in Defendants' package, they learn for the first time that Defendants will not pay consumers \$10.00 plus postage costs for each envelope they mail. Instead, consumers learn that Defendants will pay \$10.00 per envelope and reimbursement for postage only when the addressees, to whom the "special advertising circulars"

have been mailed, respond to the direct mail solicitation and actually purchase Defendants' new envelope stuffing employment opportunity for themselves.

30. Few, if any, consumers receive even a single paycheck from Defendants for the envelopes that they process and mail. In addition, few, if any, consumers receive any payment or reimbursement from Defendants for their out-of-pocket postage costs to mail the envelopes as promised.

31. Many consumers attempt to contact Defendants to complain that they have not received payment for processing envelopes and reimbursement for postage costs. These attempts generally prove fruitless. Consumers are unable to reach Defendants by telephone because no number is provided for Defendants in any of their materials or in any telephone directories. Consumers are also unable to communicate with Defendants by postal mail or e-mail because Defendants typically do not respond to consumers' letters and e-mails to them.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

32. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices in or affecting commerce. Misrepresentations or omissions of material fact that are likely to mislead consumers acting reasonably under the circumstances constitute deceptive acts or practices prohibited by Section 5(a) of the Act, 15 U.S.C. § 45(a).

33. As set forth below, Defendants, individually or in concert with others, have violated Section 5(a) of the FTC Act in connection with the advertising, offering for sale and selling of envelope stuffing employment opportunities.

COUNT I

34. In numerous instances, in the course of offering for sale and selling envelope

stuffing employment opportunities, Defendants represent, expressly or by implication, that consumers who purchase Defendants' envelope stuffing employment opportunities are likely to earn a substantial amount of money, such as \$550.00 to \$3,000.00 per week, from Defendants' envelope stuffing employment opportunities.

35. In truth and in fact, consumers who purchase Defendants' envelope stuffing employment opportunities are not likely to earn a substantial amount of money, such as \$550.00 to \$3,000.00 per week, from Defendants' envelope stuffing employment opportunities.

36. Therefore, 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).

COUNT II

37. In numerous instances, in the course of offering for sale and selling envelope stuffing employment opportunities, Defendants represent, expressly or by implication, that Defendants will pay \$10.00 per envelope for all or many of the envelopes stuffed and mailed by consumers.

38. In truth and in fact, Defendants do not pay consumers \$10.00 per envelope for all or many of the envelopes stuffed and mailed by consumers.

39. Therefore, Defendants' representations, as set forth in Paragraph 37, 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

40. In numerous instances, in the course of offering for sale and selling envelope stuffing employment opportunities, Defendants represent, expressly or by implication, that Defendants will pay the cost of postage spent by consumers to mail Defendants' "special advertising circulars."

41. In truth and in fact, Defendants do not pay the cost of postage spent by consumers to mail Defendants' "special advertising circulars."

42. Therefore, Defendants' representations, as set forth in Paragraph 40, 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 IV

43. By furnishing consumers with advertising circulars that contain false and misleading representations, Defendants provide others with the means and instrumentalities for the commission of deceptive acts and practices.

44. Therefore, Defendants' practices, as set forth in Paragraph 43, constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

VIOLATIONS OF THE CAN-SPAM ACT

45. The CAN-SPAM Act, 15 U.S.C. § 7701 *et seq.*, became effective on January 1, 2004, and has since remained in full force and effect.

46. Section 5(a)(2) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(2), states:

Prohibition of deceptive subject headings.— It is unlawful for any person to initiate the transmission to a protected computer of a commercial electronic mail message if such person has actual knowledge, or knowledge fairly implied on the

basis of objective circumstances, that a subject heading of the message would be likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message (consistent with the criteria used in enforcement of section 5 of the Federal Trade Commission Act (15 U.S.C. 45)).

47. Section 7(a) of the CAN-SPAM Act, 15 U.S.C. § 7706(a), states:

[T]his Act shall be enforced by the [Federal Trade] Commission as if the violation of this Act were an unfair or deceptive act or practice proscribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

48. Section 7(e) of the CAN-SPAM Act, 15 U.S.C. § 7706(e), states:

Notwithstanding any other provision of this Act, . . . through an order to cease and desist or an injunction, with . . . section 5(a)(2), . . . neither the [Federal Trade] Commission nor the Federal Communications Commission shall be required to allege or prove the state of mind required by such section or subparagraph.

COUNT V

49. In numerous instances, Defendants have initiated the transmission to protected computers of commercial e-mail messages containing subject headings likely to mislead recipients, acting reasonably under the circumstances, about material facts regarding the contents or subject matter of the messages, including but not limited to the following examples of subject headings used in Defendants' e-mail messages:

- A. "Homeworkers Needed Today. Earn 550 dollars or More," "Make 10 Dollars For Every Letter You Mail," "Earn \$550 or More Stuffing Envelopes!," "Make Ten Dollars for Each Circular You Mail," and "Hello, Earn \$\$\$\$ from home," representing, expressly or by implication, that the contents or subject matter of the e-mail pertains to a legitimate money-making opportunity in which consumers are likely to earn a substantial

amount of money; and

- B. “Earn a Big Paycheck from Home Now!,” “We need Homeworkers. Be one and Earn,” “Earn paychecks from Home Every Week,” “Big Paychecks coming; Act now,” and “Where will we send the paychecks,” representing, expressly or by implication, that the contents or subject matter of the e-mail pertains to a legitimate employment opportunity.

50. In truth and in fact, the contents or subject matter of Defendants’ e-mail messages:

- A. Does not pertain to a legitimate money-making opportunity in which consumers are likely to earn a substantial amount of money; and
- B. Does not pertain to a legitimate employment opportunity.

51. Therefore, Defendants’ acts or practices, as described in paragraph 49, violate Section 5(a)(2) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(2), as modified by Section 7(e) of the CAN-SPAM Act, 15 U.S.C. § 7706(e).

CONSUMER INJURY

52. 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 Section 5(a)(2) of the CAN-SPAM Act. 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

53. Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Section 7(a) and (d) of the CAN-SPAM Act, 15 U.S.C. § 7706(a) and (d), empower this Court to grant injunctive and other ancillary relief, including consumer redress, disgorgement and restitution, to

prevent and remedy violations of the law alleged in this complaint.

54. 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 Section 7(a) of the CAN-SPAM Act, 15 U.S.C. § 7706(a), and pursuant to its own equitable powers:

1. Award Plaintiff such preliminary injunctive and ancillary relief, including, but not limited to, a temporary restraining order, 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 Section 5(a) of the FTC Act and Section 5(a) of the CAN-SPAM 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 and the CAN-SPAM Act, including but not limited to, rescission of contracts, the refund of monies paid, and the disgorgement of ill-gotten gains by Defendants; and
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.

Dated: 2/8/05

Respectfully submitted,

John D. Graubert
Acting General Counsel



Barbara E. Bolton
Special Florida Bar No. A5500848
Ronald E. Laitsch
Special Florida Bar No. A5500103
Federal Trade Commission
225 Peachtree Street, Suite 1500
Atlanta, Georgia 30303
Telephone: (404)656-1362
Facsimile: (404) 656-1379
E-Mail: bbolton@ftc.gov