UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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Case No. 05-61559 CIV-MARRA

MAGISTRATE JUDGE
SELTZER

FEDERAL TRADE COMMISSION, **Plaintiff,** **v.** **TRANSNET WIRELESS CORPORATION,** **a Florida corporation,** **NATIONWIDE CYBER SYSTEMS, INC.,** **a Florida corporation,** **PAUL PEMBERTON,** **individually, and as owner, officer, or manager of one or more of the above-listed corporations,** **FARRIS PEMBERTON,** **individually, and as owner, officer, or manager of one or more of the above-listed corporations, and** **BRADLEY CARTWRIGHT,** **individually, and as an owner, officer, or manager of one or more of the above-listed corporations,** **Defendants,** **and** **MARGARET PEMBERTON,** **Relief Defendant.**	**COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF**

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

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, to secure 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" ("Franchise Rule"), 16 C.F.R. Part 436.

JURISDICTION AND VENUE

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

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).

PLAINTIFF

4. Plaintiff, FTC, is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41 et seq. The FTC 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. The FTC is authorized to initiate federal district court proceedings 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), 57b.

DEFENDANTS

5. Defendant TRANSNET WIRELESS CORPORATION ("TRANSNET") is a

Florida corporation with its principal place of business at 100 South Pine Island Road, Suite 200, Plantation, Florida 33324. Defendant TRANSNET promotes and sells public access Internet kiosk business ventures. TRANSNET transacts or has transacted business in the Southern District of Florida.

6. Defendant NATIONWIDE CYBER SYSTEMS, INC., ("NATIONWIDE") is a Florida corporation with its principal place of business at 6030 Hollywood Blvd., Suite 140, Hollywood, Florida 33024. Defendant NATIONWIDE promotes and sells public access Internet kiosk business ventures. NATIONWIDE transacts or has transacted business in the Southern District of Florida.

7. Defendant BRADLEY CARTWRIGHT is an officer, director, manager, and/or owner of corporate defendant TRANSNET. 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 of NATIONWIDE and TRANSNET, including the deceptive acts and practices set forth in this Complaint. He resides in or transacts or has transacted business in the Southern District of Florida.

8. Defendant PAUL PEMBERTON is an officer, director, manager, and/or owner of corporate defendants NATIONWIDE and TRANSNET. 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 of NATIONWIDE and TRANSNET, including the deceptive acts and practices set forth in this Complaint. He resides in or transacts or has transacted business in the Southern District of Florida.

9. Defendant FARRIS PEMBERTON is an officer, director, manager, and/or owner

of corporate defendant NATIONWIDE. 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 of NATIONWIDE, including the deceptive acts and practices set forth in this Complaint. He resides in or transacts or has transacted business in the Southern District of Florida.

10. Relief Defendant MARGARET PEMBERTON is an individual who has received funds that can be traced directly to the corporate defendants' deceptive acts and practices, and she has no legitimate claim to those funds. She resides in or transacts or has transacted business in the Southern District of Florida.

COMMERCE

11. At all times material to this complaint, the 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

12. Since at least 2001, the Defendants have engaged in a course of conduct to advertise, market, promote, offer to sell, and sell to consumers business opportunity ventures for substantial sums of money. These business ventures involve public access Internet kiosks (also known as Internet terminals), which are free-standing kiosks that house a computer with a vending slot. They are designed to allow customers to use the computer to access the Internet, for a fee, from public locations, such as hotels, airports, coffee houses, malls, hospitals, and bookstores.

13. Defendants promote their business ventures to prospective purchasers through a

variety of means, including radio and television advertisements, an Internet web page, written marketing materials, and telephonic and in-person sales pitches. Through one or more of these means, the Defendants lure potential purchasers into buying a business venture by misrepresenting (1) the amount of money the potential purchaser can reasonably expect to earn with the business venture and (2) the availability and profitability of locations for the kiosks. For example, their radio advertisement states:

> "Would you like to own your own business and enjoy financial independence?. . .There is no technical knowledge required. You get everything you need to own and operate your own business. . . . You simply receive a monthly check for all the wireless revenue generated at your location. . . .There is unlimited income potential. . . . Prime locations are available now."

14. In their written promotional materials and in their sales pitches, Defendants have represented to prospective business venture purchasers that they can reasonably expect to earn a substantial income or to achieve a specific level of earnings; for example, many prospective purchasers are told that they can earn revenues of between $1000 to $2000 per month per kiosk. In addition, Defendants often tell consumers that such figures are low or average estimates of the sales or earnings that they can reasonably expect to earn through their purchase of Defendants' business venture.

15. Defendants also tell consumers that prime locations in which to place the Internet kiosks are available in their areas and that Defendants offer a program to find those locations for the purchasers of their business venture. For example, one of Defendants' brochures states:

> Keep in mind there is limited availability and the best locations won't last long! Don't delay! Transnet offers a location assistance program that will assist you in securing the most profitable locations available in your area.

16. Defendants also make claims about both earnings potential and the availability of locations in telephone conversations with consumers, including statements such as:

— Getting locations at this point is easy; prime locations are available.
— Locations include convention centers, military bases, hotels, malls, hospitals – high-traffic, high-volume locations.
— I will give you an example on how our machines generate income. . . $1415 net profit per month per machine; $16,980 per year net profit per machine.
— That is a 142% return on investment in the first year, not including any other income from selling calling cards and from advertising.
— With 10 machines, you are looking at a substantial income.

17. In numerous instances, Defendants tell prospective purchasers that the Internet terminals will be delivered and installed at a profitable location within 2 weeks to 45 days after purchase. Defendants rarely deliver the Internet terminal to any business location within that time period, and when Defendants do deliver, they rarely, if ever, deliver to a profitable location.

18. Defendants also urge prospective purchasers to contact certain company-selected references, who have purportedly purchased the Nationwide or Transnet business venture. Defendants lead prospective purchasers to believe that these references will provide reliable descriptions of their successful experiences with Defendants' business venture. In numerous instances, Defendants pay people to provide references and fail to inform prospective purchasers that the Defendants pay these references for their statements.

19. When consumers purchase an Internet kiosk business venture from Defendants, they pay from approximately $10,000 to $15,000 for each kiosk. Many consumers have purchased multiple kiosks.

20. In numerous instances, consumers discover, after their purchase, that earnings in the amounts represented by Defendants cannot be made through Defendants' business venture.

They also discover that Defendants do not have prime locations available for their kiosks. Consumers often lose their entire investment.

21. Defendants provide a disclosure document to prospective purchasers, as required by the FTC's Franchise Rule, 16 C.F.R. Part 436. This basic disclosure document, contained in Defendants' promotional packet, fails to provide all of the necessary disclosures.

22. The basic disclosure document does not disclose, for example, the following: (1) the correct identity of the directors and executive officers of the corporate defendants as well as their business experience and litigation history; (2) the names and addresses of any previous purchasers of Defendants' business venture; and (3) any information regarding the range of time that has elapsed between the signing of the franchise agreement and site selection.

23. In addition, Defendants have no reasonable basis for their earnings representations.

24. Moreover, Defendants fail to provide prospective business venture purchasers with an earnings claim document containing information substantiating their earnings representations.

25. Furthermore, Defendants fail to disclose additional information including the number and percentage of prior purchasers known by them to have achieved the same or better results.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

26. 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 ONE

Misrepresentations Regarding Earnings

27. In numerous instances, in the course of offering for sale and selling their business ventures, the Defendants represent, expressly or by implication, that consumers who purchase Defendants' business venture are likely to earn substantial income.

28. In truth and in fact, consumers who purchase Defendants' business venture are not likely to earn substantial income.

29. Therefore, Defendants' representations set forth in Paragraph 27 are false or 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

Misrepresentations Regarding Locations

30. In numerous instances, in the course of offering for sale and selling their business ventures, Defendants represent, expressly or by implication, that Defendants will provide purchasers with profitable locations in which to place the purchasers' kiosks.

31. In truth and in fact, in numerous of these instances, Defendants do not provide purchasers with profitable locations in which to place the purchasers' kiosks.

32. Therefore, Defendants' representations set forth in Paragraph 30 are false or 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

33. The business opportunity ventures sold by Defendants are franchises, as

"franchise" is defined in Section 436.2(a) of the Franchise Rule, 16 C.F.R. § 436.2(a).

34. The Franchise Rule requires a franchisor to provide prospective franchisees with a complete and accurate basic disclosure statement containing 20 categories of information, including (1) the identity information, business experience, and litigation history of the executive officers, (2) the names, addresses, and telephone numbers of other franchisees, and (3) a statement disclosing the range of time that has elapsed between the signing of the franchise agreement and site selection. 16 C.F.R. §§ 436.1(a)(1)-(20), including §§ 436.1(a)(2-4), (a)(16), and (a)17. The pre-sale disclosure of this information enables a prospective franchisee to contact prior purchasers and take other steps to assess any potential risks involved in the purchase of the franchise.

35. The Franchise Rule additionally requires that, *inter alia*: (1) 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) the franchisor provide to prospective franchisees an earnings claim document containing information substantiating any earnings claim it makes; and (3) the franchisor 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).

36. 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 THREE

Basic Disclosure Violations

37. In numerous instances, in connection with the offering and promotion of franchises, as "franchise" is defined in the Franchise Rule, 16 C.F.R. § 436.2(a), Defendants have failed to provide to prospective franchisees accurate and complete disclosure documents, including, but not limited to, by failing to disclose (1) the identity information, business experience, and litigation history of the executive officers, (2) the names, addresses, and telephone numbers of previous purchasers of Defendants' franchises, and/or (3) a statement disclosing the range of time that has elapsed between the signing of the franchise agreement and site selection, thereby violating Section 436.1(a) of the Rule, 16 C.F.R. § 436.1(a), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT FOUR

Earnings Disclosure Violations

38. In numerous instances, in connection with the offering and promotion of franchises, as "franchise" is defined in the Franchise Rule, 16 C.F.R. § 436.2(a), Defendants have made earnings claims within the meaning of the Franchise Rule, 16 C.F.R. §§ 436.1(b)-(e), but fail to (1) 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) have a reasonable basis for such claims at the times they were made; (3) provide material which constitutes a reasonable basis for any earnings claim made to prospective purchasers; and/or (4) provide prospective franchisees with earnings

claim disclosures at the times required by the Rule, thereby violating Sections 436.1(b), (c), and (e) of the Rule, 16 C.F.R. §§ 436.1(b), (c), and (e), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

39. Consumers in many areas of the United States have suffered, and continue to suffer, substantial monetary loss as a result of the Defendants' unlawful acts or practices. In addition, defendants have been unjustly enriched as a result of their unlawful acts and practices. Absent injunctive relief, defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public.

THIS COURT'S POWER TO GRANT RELIEF

40. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief, including redress, disgorgement, and restitution, to prevent and remedy any violations of any provision of law enforced by the FTC.

41. 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 resulting from the Defendants' violations of the Franchise Rule, including the rescission and reformation of contracts and the refund of money.

42. This Court, in the exercise of its equitable jurisdiction, may award other ancillary relief to remedy injury caused by the 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 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 engaging in the business of selling business opportunities and other investments and 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 the 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 monies; 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: September 26, 2005

Respectfully submitted,

WILLIAM BLUMENTHAL
General Counsel

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