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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 _____)
12)
13 **FEDERAL TRADE COMMISSION,**)

14) Civil No.
15 Plaintiff,)

16) **COMPLAINT FOR**
17 v.) **INJUNCTIVE AND**

18) **OTHER EQUITABLE**
19 **JOHN LUTHERAN,**) **RELIEF**

20)
21 Defendant.)
22 _____)
23

24 Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), for its Complaint
25 alleges as follows:

26 1. The Commission brings this action under Section 13(b) of the Federal Trade
27 Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to obtain permanent injunctive relief against
28 the defendant to prevent him from engaging in deceptive acts or practices in violation of
29 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and to obtain other equitable relief, including
30 rescission, restitution, and disgorgement, as is necessary in order to redress injury to consumers
31 and the public interest resulting from the defendant’s violations of the FTC Act.

32 **JURISDICTION AND VENUE**

33 2. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C. § 53(b) and
34 28 U.S.C. §§1331, 1337(a), and 1345.

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

3 **PLAINTIFF**

4 4. Plaintiff, the Federal Trade Commission, is an independent agency of the United
5 States Government created by statute. 15 U.S.C. §§ 41 *et seq.* The Commission enforces
6 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits deceptive acts or practices in or
7 affecting commerce. The Commission is authorized to initiate federal district court proceedings,
8 by its own attorneys, to enjoin violations of the FTC Act and to secure such other equitable relief
9 as may be appropriate in each case, including redress and disgorgement. 15 U.S.C. § 53(b).

10 **DEFENDANT**

11 5. Defendant John Lutheran, an individual, resides at 4424 44th Street, Apartment
12 107, San Diego, California 92115. Defendant Lutheran conducts business from a Post Office
13 Box located in San Diego. At all times material to this complaint, acting alone or in concert with
14 others, defendant Lutheran has formulated, directed, controlled, or participated in the acts or
15 practices set forth in this complaint. Defendant Lutheran resides and transacts or has transacted
16 business in the Southern District of California.

17 **COMMERCE**

18 6. At all times relevant to this complaint, the defendant has maintained a substantial
19 course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act,
20 15 U.S.C. § 44.

1 **DEFENDANT’S BUSINESS PRACTICES**

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

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

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

- 21 A. “Making over half million dollars every 4 to 5 months from your home for
22 an investment of only \$25 U.S. Dollars expense one time.”
23

- 1 B. "BE A MILLIONAIRE LIKE OTHERS WITHIN A YEAR!!!"
2
3 C. "If you would like to make at least \$500,000 every 4 to 5 months easily
4 and comfortably, please read the following program. . . THEN READ IT
5 AGAIN!!!"
6
7 D. "There is NO LIMIT to the income you can generate from this business!!!"
8

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

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

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

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

- 1
2 A. “Due to the popularity of this letter on the Internet, a major nightly news
3 program recently devoted an entire show to the investigation of the
4 program described below. . . Their findings proved once and for all that
5 there are absolutely NO laws prohibiting the participation in this
6 program.”
7
8 B. “You have just received information that can give you financial freedom
9 for the rest of your life, with NO RISK and JUST A LITTLE BIT OF
10 EFFORT.”
11

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

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

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

20 **VIOLATIONS OF THE FTC ACT**

21 17. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts
22 or practices in or affecting commerce.

23 **COUNT ONE**

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

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

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

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

5 **CONSUMER INJURY**

6 29. Defendant’s violations of Section 5 of the FTC Act, 15 U.S.C. § 45(a), as set forth
7 above, have caused and continue to cause substantial injury to consumers. Absent injunctive
8 relief by this Court, the defendant is likely to continue to injure consumers and harm the public
9 interest.

10 **THIS COURT’S POWER TO GRANT RELIEF**

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

15 **PRAYER FOR RELIEF**

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

- 19 1. Permanently enjoin the defendant from violating Section 5(a) of the FTC Act,
20 15 U.S.C. § 45(a), as alleged in this complaint;
- 21 2. Award other equitable relief, including rescission of contracts, the refund of
22 monies paid, and the disgorgement of ill-gotten monies, as is necessary in order to redress injury

1 to consumers and the public interest resulting from defendant's violations of Section 5(a) of the
2 FTC Act, 15 U.S.C. § 45(a); and

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

5
6 Date: January 14, 2002

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8 Respectfully submitted,

9
10 William E. Kovacic
11 General Counsel

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