

BRETT L. TOLMAN, United States Attorney (USB #8821)
JOHN K. MANGUM, Assistant United States Attorney (USB #2072)
185 South State St., Suite 300
Salt Lake City, UT 84111
Phone: (801) 524-5682

C. FREDERICK BECKNER III
Assistant Attorney General
Civil Division

MARY B. MURPHY
Office of Consumer Litigation
U.S. Department of Justice
P.O. Box 386
Washington, D.C. 20044
Phone: (202) 353-1982
Fax: (202) 514-8742

Attorneys for the United States of America

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, NORTHERN DIVISION

_____)	
UNITED STATES OF AMERICA,)	
)	
PLAINTIFF,)	Civil Action No.: 1:06CV152 DAK
)	
v.)	
)	
UNIVERSAL ADVERTISING, INC.,)	COMPLAINT FOR CIVIL
a Utah corporation; and)	PENALTIES, CONSUMER
)	REDRESS, PERMANENT
PAUL E. PORTER, individually and as an)	INJUNCTION AND OTHER
officer of UNIVERSAL ADVERTISING,)	EQUITABLE RELIEF
INC.,)	
)	
DEFENDANTS.)	
_____)	

Plaintiff, the United States of America, acting upon notification and authorization to the

Attorney General by the Federal Trade Commission (“FTC” or “the Commission”), pursuant to Section 16(a)(1) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 56(a)(1), for its complaint alleges:

1. Plaintiff brings this action under Sections 5(a), 5(m)(1)(A), 13(b), 16(a), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), 56(a), and 57b, to secure civil penalties, consumer redress, a permanent injunction and other equitable relief for the 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” or “Rule”), 16 C.F.R. Part 436.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(m)(1)(A), 53(b), 56(a), and 57b. This action arises under 15 U.S.C. § 45(a).

3. Venue in the United States District Court for the District of Utah is proper under 28 U.S.C. §§ 1391(b)-© and 1395(a), and 15 U.S.C. § 53(b).

DEFENDANTS

4. Defendant Universal Advertising, Inc. (“Universal”), a Utah corporation with its principal place of business at 25 South Main Street, Suite 120, Centerville, Utah 84014, promotes and sells business opportunities consisting of what it calls “Profit Centers,” which are display racks for business cards and brochures. Universal transacts or has transacted business in the District of Utah.

5. Defendant Paul E. Porter is the President of Universal. 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 the corporate defendant, including the acts and practices set forth in this complaint. He resides or has transacted business in the District of Utah.

COMMERCE

6. At all times relevant to this complaint, the defendants have maintained a substantial course of trade in the offering for sale and sale of business opportunities consisting of display racks for business cards and brochures, in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

THE DEFENDANTS’ BUSINESS PRACTICES

7. The defendants offer and sell business card and brochure display rack business opportunities. Purchasers of Universal’s business venture sign up business owners, who pay Universal’s purchasers monthly fees to display their business cards and/or brochures in the Profit Centers. Each Profit Center has 33 compartments for business cards and three compartments for brochures. The defendants promote their business ventures through print advertisements in magazines and through their Web site on the Internet, www.universaladsinc.com. In their advertisements and on their Web site, defendants urge consumers to call a toll-free telephone number to learn more about defendants’ opportunity.

8. Consumers who call the defendants’ toll-free telephone number are connected to defendants, or their employees or agents, who make representations about the earnings potential of the business venture. For example, defendants have represented that one Profit Center could generate over \$5,000 per year from business owners who pay at least \$10 per month to display their business cards and \$30 per month to display their brochures.

9. Defendants send written material to some prospective purchasers. These promotional materials state that the display rack business ventures that defendants sell are highly profitable. For example, one page, with the heading “Cash Flow Worksheet,” suggests that a prospective purchaser could earn as much as \$75,600.00 per year with ten Profit Centers, and as much as \$378,000.00 per year with 50 Profit Centers.

10. The written material that Universal sends to some prospective purchasers includes a page entitled “Receipt of the Offering Circular of Universal Advertising, Inc., Required by Law,” that purchasers must sign, acknowledging receipt of a financial statement and purchase agreement. Defendants fail to provide, however, an adequate Offering Circular or a complete basic franchise disclosure document.

11. Defendants fail to provide to prospective business venture purchasers an earnings claim document containing information substantiating their earnings claims, fail to have a reasonable basis for the earnings claims at the time they were made, and/or fail to disclose that materials, which constitute a reasonable basis for the claims, are available.

12. Universal’s Web site states the following:

Each Profit Center can generate \$5,040/year*
10 Profit Centers can generate \$50,400/year*
20 Profit Centers can generate \$100,800/year*

13. The asterisk is explained in small print at the bottom of the Web page in a footnote that states that the figures are calculated by charging \$10 per month for business cards and \$30 per month for brochures. The note adds, though, that in an informal survey that Universal conducted, the majority of its purchasers (sixty-nine percent) charged between \$11 and \$40 per month for business cards, while ninety percent charged between \$30 and \$75 per month

for brochures. The note also states that Universal makes no warranties, representation or guarantee that the purchaser will achieve the same or similar results. Despite this purported disclaimer, however, Universal does represent – repeatedly, throughout its Web site – that a purchaser will earn a substantial income with the Profit Centers.

14. The Web site also contains – under a link entitled “Show Me the Money!” – a profit calculator. This profit calculator generates the annual income to be expected after the viewer enters the total number of Profit Centers. Entering “30” in the box for total number of Profit Centers, for example, shows an annual income of \$151,200.00.

15. In immediate conjunction with the earnings representations on the Web site, defendants fail to disclose additional information, including the number and percentage of prior purchasers known by defendants to have achieved the same or better results.

THE FRANCHISE RULE

16. The business ventures sold by the 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).

17. The Franchise Rule requires a franchisor to provide prospective franchisees with a complete and accurate basic disclosure document containing twenty categories of information, including information about the litigation and bankruptcy history of the franchisor and its principals, the terms and conditions under which the franchise operates, and information identifying existing franchisees. 16 C.F.R. § 436.1(a)(1) - (a)(20). 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.

18. The Franchise Rule additionally requires that a franchisor:
- (a) have a reasonable basis for any oral, written, or visual earnings claim it makes, 16 C.F.R. § 436.1(b)(2), (c)(2) and (e)(1);
 - (b) disclose, in immediate conjunction with any earnings claim it makes, and in a clear and conspicuous manner, that material which constitutes a reasonable basis for the earnings claim is available to prospective franchisees, 16 C.F.R. § 436.1(b)(2) and (c)(2);
 - (c) provide, as prescribed by the Rule, an earnings claim document containing information that constitutes a reasonable basis for any earnings claim it makes, 16 C.F.R. § 436.1(b) and ©; and
 - (d) clearly and conspicuously disclose, in immediate conjunction with any generally disseminated earnings claim, 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(e)(3) - (4).

19. 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 I

Basic Disclosure Violations

20. In connection with the offering of franchises, as “franchise” is defined in Section 436.2(a) of the Franchise Rule, the defendants have violated Section 436.1(a) of the Rule and Section 5(a) of the FTC Act by failing to provide prospective franchisees with accurate and complete basic disclosure documents as prescribed by the Rule.

COUNT II

Earnings Disclosure Violations

21. In connection with the offering of franchises, as “franchise” is defined in Section 436.2(a) of the Franchise Rule, the defendants violate Sections 436.1(b) - © of the Rule and Section 5(a) of the FTC Act by making earnings claims to prospective franchisees while, *inter alia*: (1) lacking a reasonable basis for each claim at the time it is made; (2) failing to disclose, in immediate conjunction with each earnings claim, and in a clear and conspicuous manner, that material which constitutes a reasonable basis for the claim is available to prospective franchisees; and/or (3) failing to provide prospective franchisees with an earnings claim document, as prescribed by the Rule.

COUNT III

Generally Disseminated Earnings Claims Violations

22. In connection with the offering of franchises, as “franchise” is defined in Section 436.2(a) of the Franchise Rule, the defendants violate Section 436.1(e) of the Rule and Section 5(a) of the FTC Act by making generally disseminated earnings claims without, *inter alia*,

disclosing, in immediate conjunction with the claims, information required by the Franchise Rule, including the number and percentage of prior purchasers known by the defendants to have achieved the same or better results.

CONSUMER INJURY

23. Consumers nationwide have suffered and will suffer substantial monetary loss as a result of the defendants' violations of Section 5(a) of the FTC Act and the Franchise Rule. Absent injunctive relief by this Court, the defendants are likely to continue to injure consumers and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

24. 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.

25. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended, and as implemented by 16 C.F.R. § 1.98(d) (1997), authorizes this Court to award monetary civil penalties of not more than \$11,000 for each violation of the Franchise Rule. The defendants' violations of the Rule were committed with the knowledge required by Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

26. 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 the defendants' violations of the Franchise Rule, including the rescission and reformation of

contracts, and the refund of money.

27. This Court, in the exercise of its equitable jurisdiction, may award ancillary relief to remedy injury caused by the defendants' law violations.

PRAYER FOR RELIEF

WHEREFORE, plaintiff requests that this Court, as authorized by Sections 5(a), 5(m)(1)(A), 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), and 57b, and pursuant to its own equitable powers:

1. Enter judgment against the defendants and in favor of the plaintiff for each violation alleged in this complaint;
2. Enter a permanent injunction to prevent future violations of the FTC Act and the Franchise Rule by defendants;
3. Award plaintiff monetary civil penalties from each defendant for every violation of the Franchise Rule;
4. 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 gains by the defendants; and
5. 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: December 6, 2006

OF COUNSEL:
AMERICA
LOIS C. GREISMAN
Associate Director for Marketing Practices
FEDERAL TRADE COMMISSION

Hillary A. Davidson
Attorney
Federal Trade Commission
600 Pennsylvania Ave., N.W., Rm. 286
Washington, D.C. 20580
PHONE: (202) 326-2384
FAX: (202) 326-3395

Respectfully submitted,

FOR THE UNITED STATES OF
PETER D. KEISLER
Assistant Attorney General
Civil Division
U.S. DEPARTMENT OF JUSTICE

Brett L. Tolman,
United States Attorney

/s/ John K. Mangum
JOHN K. MANGUM
Assistant U.S. Attorney
for the District of Utah

EUGENE M. THIROLF
Director
Office of Consumer Litigation

/s/ Mary B. Murphy (by JKM w/ permission)
MARY B. MURPHY
Trial Attorney
Office of Consumer Litigation
U.S. Department of Justice
P.O. Box 386
Washington, D.C. 20044
PHONE: (202) 353-1982
FAX: (202) 514-8742
E-MAIL: Mary.Murphy@usdoj.gov