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Judge McMahon
99 CIV 1693

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK
WHITE PLAINS DIVISION**

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	CIV-99-_____
v.)	
)	COMPLAINT FOR
FIVE STAR AUTO CLUB, INC.)	INJUNCTIVE AND
a corporation,)	OTHER EQUITABLE
)	RELIEF
MICHAEL R. SULLIVAN,)	
individually and as an officer of the)	
corporate defendant, and)	
)	
ANGELA C. SULLIVAN,)	
individually and as an officer of the)	
corporate defendant,)	
Defendants.)	

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

1. The Commission brings this action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to obtain preliminary and permanent injunctive relief against the defendants to prevent them from engaging in deceptive acts or practices in

violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and to obtain other equitable relief, including rescission, restitution, and disgorgement, as is necessary to redress injury to consumers and the public interest resulting from defendants' violations of the FTC Act.

JURISDICTION AND VENUE

2. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C. §§ 45(a) and 53(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.

3. Venue in the Southern District of New York is proper under 28 U.S.C. § 1391(b) and (c), and 15 U.S.C. § 53(b).

PLAINTIFF

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 enforces 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. The Commission may initiate federal district court proceedings to enjoin violations of the FTC Act and to secure appropriate equitable relief in each case, including restitution for injured consumers and disgorgement. 15 U.S.C. § 53(b).

DEFENDANTS

5. Defendant Five Star Auto Club, Inc. ("Five Star") is a Delaware corporation located at 3 Dodge Street, Building A, Poughquag, NY, 12570. Its marketing headquarters recently moved from Laughlin, Nevada, to Muscle Shoals, Alabama. Five Star has marketed memberships and consultancies in a purported automobile leasing scheme throughout the United States and Canada since April 1997. Five Star transacts business in the Southern District of New York.

6. Defendant Michael R. Sullivan ("M. Sullivan") is the founder, president and treasurer of Five Star. Individually or in concert with others, M. Sullivan formulates, directs, controls, or participates in the acts and practices of Five Star as detailed below, and has done so at all times pertinent to this action. He resides and transacts business in the Southern District of New York.

7. Defendant Angela C. Sullivan ("A. Sullivan") is the vice president and secretary of Five Star. Individually or in concert with others, A. Sullivan formulates, directs, controls, or participates in the acts and practices of Five Star as detailed below, and has done so at all times pertinent to this action. She resides and transacts business in the Southern District of New York.

COMMERCE

8. At all times material to this complaint, 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.

COURSE OF CONDUCT

9. Defendants claim to have developed an innovative leasing concept that allows everyone to drive his/her "dream vehicle" for no more than \$100/month, regardless of the price of the vehicle, and earn a substantial monthly income. In fact, defendants have simply developed a pyramid scheme that enriches the defendants at the expense of the participants in their scheme. The majority of participants will neither receive a \$100/month lease nor earn a substantial income through Five Star.

10. In pyramid schemes, each participant pays money to the scheme's promoter in exchange for the right to recruit new participants. Participants then receive benefits for each individual they recruit or who appears below them in their pyramid (commonly referred to as a "downline"). Earnings in a pyramid scheme are derived primarily from recruiting other participants into the program, not from the *bona fide* sale of products or services.

11. The structure of a pyramid scheme places severe limitations upon the success of its participants. Participants can only make money if there are greater numbers of participants in levels below them. Eventually, pyramid schemes break down due to exhaustion of the pool of possible recruits. Those at the bottom of the pyramid, the majority of the participants, lose money because there is no one left to recruit into positions below them on the pyramid.

12. Participants may enter Five Star at three different positions: consultants, members, and member/consultants. Consultants pay an annual fee of \$95 in exchange for the right to sell memberships and earn monetary commissions on these sales. Members pay a \$395 annual fee plus an additional \$100/month to participate in the Vehicle Incentive Program ("VIP"). VIP participants are entitled to recruit new members, and thus become eligible for the \$100/month automobile lease ("VIP lease"), but do not earn commissions. Member/consultants pay a \$490 annual fee plus \$100/month in exchange for all the rights of both members and consultants.

13. In order to qualify for a VIP lease, in addition to the payments outlined in paragraph 12, a member must recruit a "primary group" of new members, the size of which depends on the value of the vehicle a member wants to obtain. Additionally, the member's

"primary group" must in turn recruit a "secondary group" containing three times as many members as the "primary group."

14. To qualify to lease the least expensive vehicle available (a \$12,000 automobile) through the VIP program, a member must establish a downline of 12 new members (three primary group members and nine secondary group members). It, therefore, takes a minimum of twelve paying members to support each member who qualifies for a VIP lease.

15. Five Star consultants receive a \$100 commission on each new membership they personally sell and a \$20/month commission for each \$100 monthly payment made by their secondary group. If the primary group contains 20 or more members, the monthly commission rises to \$40 for each \$100 monthly payment made by a secondary group member.

16. Defendants represent that Five Star participants will receive substantial incomes and qualify for VIP leases. These representations are made orally and writing, including electronic writing on the Internet, and include but are not limited to the following:

- a. A participant can make \$16,000/month, \$24,000/month, \$32,000/month or \$80,000/month;
- b. "YOU COULD EARN \$1,000's . . . every month from your effort 'working smart' for only 30 or 60 days";
- c. "But how much value is it to work, say, 60 days time and have the dream vehicle of your choice and enough checks coming in every month where you do not even have to work again?"; and--
- d. "The Five Star Auto Club . . . makes it possible for everyone to drive their 'Dream Vehicle' for 'Free'."

17. Defendants promote their pyramid scheme on the Internet, through print advertisements, displays, brochures, conferences and video tapes. Defendants sell an array of these promotional materials to participants and require participants to use their approved promotional materials exclusively in recruiting downline.

18. Defendants' promotional materials do not disclose the true nature of Five Star's structure.

DEFENDANTS' VIOLATIONS OF THE FTC ACT

COUNT I

19. In connection with the offering for sale of memberships in Five Star, defendants represent, expressly or by implication, that consumers who pay Five Star a specific sum, such as \$95/year, will receive a substantial monthly income, such as \$16,000/month, in return.

20. In truth and in fact, in numerous instances, consumers who pay Five Star a specific sum, such as \$95/year, will not receive a substantial monthly income, such as \$16,000/month, in return.

21. Therefore, the representation set forth in paragraph 19 is false and misleading and constitutes a deceptive act and practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II

22. In connection with the offering for sale of memberships in Five Star, defendants represent, expressly or by implication, that everyone who participates in Five Star can qualify for a VIP lease.

23. In truth and in fact, everyone who participates in Five Star cannot qualify for a VIP lease.

24. Therefore, the representation set forth in paragraph 22 is false and misleading and constitutes a deceptive act and practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT III

25. By furnishing Five Star consultants, members and member/consultants with promotional materials to be used in recruiting new participants, that contain false and misleading representations, including but not limited to the false and misleading representations described in paragraphs 19 and 22 above, defendants have provided the means and instrumentalities for the commission of deceptive acts and practices.

26. Therefore, defendants' practices, as described in paragraph 25, constitute deceptive acts and practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT IV

27. In materials promoting Five Star's scheme, defendants represent, expressly or by implication, that everyone who purchases a membership in Five Star can qualify for a VIP lease, and that any Five Star consultant can earn a substantial monthly income.

28. Defendants fail to disclose that Five Star's structure ensures that, in numerous instances, participants will neither qualify for a VIP lease nor earn a substantial monthly income.

29. This additional information, described in paragraph 28, would be material to participants in deciding whether to participate in Five Star's scheme.

30. The defendants' failure to disclose the material information in paragraph 28, in light of the representations made in paragraph 27, constitutes a deceptive act and practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

31. Defendants' violations of Section 5 of the FTC Act, as set forth above, have caused and continue to cause substantial injury to consumers. Absent injunctive relief by this Court, defendants are likely to continue to injure consumers.

THIS COURT'S POWER TO GRANT RELIEF

32. 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.

PRAYER FOR RELIEF

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

1. Award the Commission all temporary and preliminary injunctive and ancillary relief that 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;

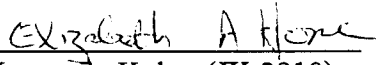
2. Permanently enjoin defendants from violating the FTC Act as alleged in this complaint; and

3. Award all relief that the Court finds necessary to remedy the defendants' violations of Section 5(a) of the FTC Act, including, but not limited to, the refund of monies paid and the disgorgement of ill-gotten gains.

Dated: March 8, 1999

Respectfully submitted,

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