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FEDERAL TRADE COMMISSION

7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 FEDERAL TRADE COMMISSION,) CV
11)
12 Plaintiff,)
13 v.) COMPLAINT FOR INJUNCTION AND
14) OTHER EQUITABLE RELIEF
15)
16 ARTMART PUBLICATIONS, INC., a)
California corporation; and)
17 ARTHUR NIDETZ, an individual,)
18)
19 Defendants.)
20)

21 Plaintiff, the Federal Trade Commission ("Commission"),
22 for its complaint alleges:

23 1. The Commission brings this action under Section 13(b) of
24 the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b),
25 to obtain permanent injunctive relief, rescission of contracts,
26 restitution, disgorgement, and other equitable relief for
27 Defendants' deceptive acts or practices in violation of Section
28 5(a) of the FTC Act, 15 U.S.C. § 45(a).

JURISDICTION AND VENUE

29 2. Subject matter jurisdiction is conferred upon this Court
30 by 15 U.S.C. §§ 45(a), 53(b), and 28 U.S.C. §§ 1331, 1337(a), and
31 1345.

1 maintained a substantial course of trade in or affecting commerce,
2 as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C.
3 § 44.

4 DEFENDANTS' COURSE OF CONDUCT

5 8. Since at least 1998 and continuing thereafter,
6 Defendants have engaged in a plan, program or campaign to sell
7 advertising space and advertisements in various publications to
8 numerous businesses, governmental entities, schools and nonprofit
9 organizations (referred to herein as "consumers") throughout the
10 United States. Defendants have used, *inter alia*, interstate
11 telephone calls and the United States mails to carry out their
12 plan, program or campaign.

13 9. Defendants' publications include, without limitation,
14 *Black American Digest*, *Black American Journal*, *Veterans Voice* and
15 *Saludos Amigos*, each of which is, by its title, ostensibly
16 oriented toward a specific demographic group, such as a particular
17 ethnic or social group or community.

18 10. The advertisements that Defendants publish typically do
19 not focus on the products or services that are sold or offered by
20 the businesses or other organizations featured in the
21 advertisements. Instead, the theme of the advertisements is the
22 organization's commitment to equal opportunity principles and to
23 the particular demographic group to which the publication is
24 seemingly directed. For example, the following text appears in
25 the Fall 2000 issue of *Saludos Amigos*:

26 "We Proudly Salute The Spanish Community
27 [name, address of company] Equal Opportunity
28 Employer Regardless of Race, Creed, Color,

1 Gender, Age, Religion, National Origin,
2 Veteran Status or Disability"

3 11. The cost of Defendants' advertisements typically ranges
4 from \$500 to \$5,000. Circulation of each of Defendants'
5 publications is relatively small, ranging from 1,500 to 3,000.
6 Defendants in fact do not sell subscriptions. They merely send
7 their publications to various organizations, primarily to various
8 schools, colleges and universities across the country.
9 Circulation or dissemination of Defendants' publications is not
10 targeted to the demographic group to which the title of the
11 publication refers.

12 12. Defendants' scheme consists of various illegitimate
13 methods of obtaining payment from consumers. Frequently,
14 consumers receive an invoice from Defendants without having had
15 any prior contact with Defendants. The Defendants misrepresent on
16 invoices that they send to consumers that the consumer owes money
17 to Defendants for one or more advertisements that the consumer in
18 fact had never agreed to place. In some instances, the first
19 invoice is stamped "Past Due." Often Defendants, through their
20 telemarketers, place a follow-up call after sending a consumer an
21 invoice and misrepresent that a current or former manager had
22 already purchased the advertisements that have been, or are soon
23 to be, published and that Defendants are simply collecting payment
24 for the advertisements. In some instances Defendants have
25 obtained the name of a current or former manager and use that name
26 to create the appearance of having communicated with that person.

27 13. By using such titles as *Black American Digest*, *Saludos*
28 *Amigos* and *Veterans Voice*, Defendants misrepresent, expressly or

1 by implication, that the publications are directed to and reach
2 members of the specific demographic group to which the titles
3 refer. Defendants do not disclose to purchasers of the
4 advertising that their advertisements will not likely be read by
5 or widely distributed to members of the specific demographic group
6 seemingly targeted by the publication.

7 **VIOLATIONS OF SECTION 5 OF THE FTC ACT**

8 **COUNT I**

9 **Misrepresentations that Consumers Owe Money**

10 14. In numerous instances, in connection with the sale,
11 offering for sale, or marketing of advertisements to businesses,
12 governmental entities, schools, and/or nonprofit organizations,
13 Defendants have represented, expressly or by implication, that the
14 business, governmental entity, school, or nonprofit organization
15 has purchased or agreed to purchase and place advertisements in
16 one or more of Defendants' publications, and therefore owes money
17 to Defendants.

18 15. In truth and in fact, in numerous instances, businesses,
19 governmental entities, schools, or nonprofit organizations to
20 which Defendants have made this representation have not purchased
21 or agreed to purchase and place advertisements in one or more of
22 Defendants' publications, and do not owe money to Defendants.

23 16. Therefore, Defendants' representations as set forth in
24 Paragraph 14 are false and misleading and constitute deceptive
25 acts or practices in violation of Section 5(a) of the FTC Act, 15
26 U.S.C. § 45(a).

1 COUNT II

2 **Misrepresentation of Readership**

3 17. In numerous instances, in connection with the sale,
4 offering for sale, or marketing of advertisements in publications
5 that bear such titles as *Black American Digest*, *Saludos Amigos* and
6 *Veterans Voice*, Defendants have represented, expressly or by
7 implication, that circulation or dissemination of the publication
8 is targeted to the specific demographic group to which the title
9 of the publication refers.

10 18. In truth and in fact, circulation or dissemination of
11 Defendants' publications is not targeted to the specific
12 demographic group to which the title of the publication refers.

13 19. Therefore, Defendants' representation as set forth in
14 Paragraph 17 is false and misleading and constitutes a deceptive
15 act or practice in violation of Section 5(a) of the FTC Act, 15
16 U.S.C. § 45(a).

17 **CONSUMER INJURY**

18 20. Consumers throughout the United States have suffered and
19 continue to suffer substantial monetary loss as a result of
20 Defendants' unlawful acts or practices. In addition, Defendants
21 have been unjustly enriched as a result of their unlawful
22 practices. Absent injunctive relief by this Court, Defendants are
23 likely to continue to injure consumers, reap unjust enrichment,
24 and harm the public interest.

25 **THIS COURT'S POWER TO GRANT RELIEF**

26 21. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b),
27 empowers this Court to grant injunctive and other ancillary
28 relief, including consumer redress, disgorgement, and restitution,

1 to prevent and remedy any violations of any provision of law
2 enforced by the Commission.

3 22. This Court, in the exercise of its equitable
4 jurisdiction, may award other ancillary relief to remedy injury
5 caused by Defendants' law violations.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, plaintiff Federal Trade Commission requests,
8 pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and
9 the Court's own equitable powers, that the Court:

10 1. Award plaintiff such temporary and preliminary
11 injunctive and ancillary relief as may be necessary to avert the
12 likelihood of consumer injury during the pendency of this action
13 and to preserve the possibility of effective final relief;

14 2. Permanently enjoin Defendants from violating the FTC Act
15 as alleged herein;

16 3. Award such relief as the Court finds necessary to
17 redress injury to consumers resulting from Defendants' violations
18 of the FTC Act, including but not limited to rescission or
19 reformation of contracts, restitution, the refund of monies paid,
20 and the disgorgement of ill-gotten monies; and

21 4. Award plaintiff the costs of bringing this action, as
22 well as such other and additional relief as the Court may
23 determine to be just and proper.

24 Respectfully Submitted,

25
26 Dated: _____, 2003

27 _____
28 Barbara Y.K. Chun
Attorney for Plaintiff Federal
Trade Commission