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12 **UNITED STATES DISTRICT COURT FOR THE**  
13 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

14 **FEDERAL TRADE COMMISSION,**

15 **Plaintiff,**

16 **v.**

17 **WORLD TRADERS ASSOCIATION,**  
18 **INC., a Nevada corporation;**  
19 **UNITED TRADERS ASSOCIATION,**  
20 **INC., a Nevada corporation;**  
21 **INTERNATIONAL MERCHANDISE**  
22 **GROUP, INC., a Nevada corporation;**  
23 **TRANS-GLOBAL CONNECTION,**  
24 **INC. a Nevada corporation;**  
25 **MUSKETEER PARTNERS, INC., a**  
26 **Nevada corporation;**  
27 **FULFILLMENT OPTIONS, INC., a**  
28 **Nevada corporation;**  
**INTERNATIONAL ASSOCIATES**  
**WORLDWIDE, INC., a Delaware**  
**corporation;**  
**MAGNA DELTA, LLC, an**  
**unincorporated entity;**  
**OFFICE OPTIONS, LLC, a Nevada**  
**limited liability company;**

**CASE NO. CV 05-591 AHM (CTx)**  
**Hon. A. Howard Matz**

**[PROPOSED]**

**AMENDED COMPLAINT FOR**  
**INJUNCTIVE AND OTHER**  
**EQUITABLE RELIEF**

1 **JUDITH TAKALA FIDLER,**  
2 **individually and as officer or director of**  
3 **one or more of the above corporations;**  
4 **SHELDON FIDLER, individually and**  
5 **as de facto officer or director of one or**  
6 **more of the above corporations;**  
7 **SHANNON HOLDEN, individually and**  
8 **as officer or director of one or more of**  
9 **the above corporations;**  
10 **JAIME KLOTTHOR, individually and**  
11 **as officer or director of one or more of**  
12 **the above corporations;**  
13 **JENNIFER KLOTTHOR, individually**  
14 **and as officer or director of one or more**  
15 **of the above corporations; and**  
16 **SCOTT RINALDO, individually and as**  
17 **officer or director of one or more of the**  
18 **above corporations,**

19 **Defendants.**

20 Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), for its  
21 Complaint alleges:

22 1. The FTC brings this action under Sections 5(a), 13(b) and 19 of the FTC  
23 Act, 15 U.S.C. §§ 45(a), 53(b) and 57b, to obtain temporary, preliminary, and  
24 permanent injunctive relief, rescission of contracts, restitution, disgorgement,  
25 appointment of a receiver, and other equitable relief for defendants’ violations of  
26 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC’s Trade Regulation Rule  
27 entitled “Disclosure Requirements and Prohibitions Concerning Franchising and  
28 Business Opportunity Ventures” (“Franchise Rule” or “Rule”), 16 C.F.R. § 436.

### **JURISDICTION AND VENUE**

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

32 3. Venue in the United States District Court for the Central District of

1 California is proper under 28 U.S.C. §§ 1391(b) and (c), and 15 U.S.C. § 53(b).

2 **THE PARTIES**

3 4. Plaintiff, the Federal Trade Commission, is an independent agency of the  
4 United States Government created by statute. 15 U.S.C. §§ 41 *et seq.* The  
5 Commission is charged, *inter alia*, with enforcement of Section 5(a) of the FTC Act,  
6 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting  
7 commerce, as well as enforcement of the Franchise Rule, 16 C.F.R. § 436. The  
8 Commission is authorized to initiate federal district court proceedings by its own  
9 attorneys, to enjoin violations of the FTC Act in order to secure such equitable relief  
10 as may be appropriate in each case, and to obtain consumer redress. 15 U.S.C. §§  
11 53(b) and 57b.

12 **Corporate Defendants**

13 5. Defendant World Traders Association, Inc. (“WTA”) is a Nevada  
14 corporation incorporated on June 27, 1996. Its principal place of business is at 3083  
15 Lima Street, Burbank, California. From at least 2001 through at least February 2003,  
16 WTA marketed and sold surplus distribution business opportunities. WTA transacts  
17 or has transacted business in the Central District of California.

18 6. Defendant United Traders Association (“UTA”) is a Nevada corporation  
19 with its principal place of business at 2950 E. Flamingo Road, Las Vegas, Nevada.  
20 UTA was incorporated on August 30, 1996. From at least December 1998 through  
21 2001, UTA marketed and sold surplus distribution business opportunities. UTA  
22 transacts or has transacted business in the Central District of California.

23 7. Defendant International Merchandise Group, Inc. (“IMG”) is a Nevada  
24 corporation incorporated on September 1, 1999. IMG’s principal place of business is  
25 at 3083 Lima Street, Burbank, California. IMG also uses a business address at 1600  
26 Broadway, Suite 2400, Denver, Colorado. From at least March 2003 through at least  
27 March 2004, IMG marketed and sold surplus distribution business ventures. IMG

1 transacts or has transacted business in the Central District of California.

2 8. Defendant Trans-Global Connection, Inc. (“TGC”), d/b/a The Global  
3 Connection, is a Nevada corporation incorporated on December 15, 1999, with its  
4 principal place of business at 7950 E. Acoma Drive, Scottsdale, Arizona. From at  
5 least April 2004 and continuing to the present, TGC has marketed and sold surplus  
6 distribution business ventures. TGC transacts or has transacted business in the  
7 Central District of California.

8 9. Defendant Musketeer Partners, Inc. (“MP”) is a Nevada corporation  
9 incorporated on May 22, 1997. Its principal place of business is at 3083 Lima Street,  
10 Burbank, California. From at least June 2003 and continuing to the present, MP has  
11 marketed and sold Internet-based surplus goods business opportunities and  
12 advertisement of other name-brand websites. MP transacts or has transacted business  
13 in the Central District of California.

14 10. Defendant Fulfillment Options, Inc. (“Fulfillment”) is a Nevada  
15 corporation incorporated on February 19, 1999. Fulfillment’s principal place of  
16 business is at 3083 Lima Street, Burbank, California. Fulfillment maintains two bank  
17 accounts to which WTA, IMG, TGC, and MP have transferred substantial proceeds  
18 from the sale of their business opportunities, and from which Fulfillment pays  
19 business expenses and commissions for the other corporate defendants. Fulfillment  
20 transacts or has transacted business in the Central District of California.

21 11. International Associates Worldwide, Inc. (“IAW”) is a Delaware  
22 corporation incorporated on December 15, 1999. IAW’s principal place of business  
23 is at 3083 Lima Street, Burbank, California. From at least January 2005 and  
24 continuing to the present, IAW has marketed and sold surplus distribution business  
25 ventures. IAW transacts or has transacted business in the Central District of  
26 California.

27 12. Magna Delta, LLC (“Magna Delta”) is an unincorporated entity  
28

1 controlled by defendants Sheldon Fidler and Judith Takala Fidler. Magna Delta's  
2 principal place of business is at 3083 Lima Street, Burbank, California. From at least  
3 December 2004 and continuing to the present, Magna Delta has been involved with  
4 advertising and processing leads for the other corporate defendants. Magna Delta  
5 transacts or has transacted business in the Central District of California.

6 13. Office Options, LLC ("Office Options") is a Nevada limited liability  
7 company formed on October 6, 2004. From at least December 2004 and continuing  
8 to the present, Office Options has performed certain management and leasing  
9 functions for the other corporate defendants. Office Options' principal place of  
10 business is at 3083 Lima Street, Burbank, California. Office Options transacts or has  
11 transacted business in the Central District of California.

#### 12 Individual Defendants

13 14. Defendant Judith Takala Fidler ("Takala") is the President, Secretary,  
14 and Treasurer of UTA, IMG, and TGC. Takala and her husband, defendant Sheldon  
15 Fidler, own IAW, Magna Delta, and Office Options. Until February 2003, Takala  
16 served as President, Secretary, Treasurer, and Director of Fulfillment. Takala also  
17 presently serves as the Registered Agent for MP and is a signatory on bank accounts  
18 belonging to WTA, UTA, IMG, MP, TGC, and Fulfillment. At all times material to  
19 this Complaint, acting alone or in concert with others, Takala has formulated,  
20 directed, controlled, or participated in the acts and practices of WTA, UTA, IMG,  
21 TGC, MP, IAW, Magna Delta, and Office Options, including the acts and practices  
22 set forth in this Complaint. She resides or has transacted business in the Central  
23 District of California.

24 15. Defendant Sheldon Fidler ("Fidler") is a direct or beneficial owner of the  
25 corporate defendants and is the spouse of defendant Takala. At all times material to  
26 this Complaint, acting alone or in concert with others, Fidler has formulated, directed,  
27 controlled, or participated in the acts and practices of the corporate defendants,

1 including the acts and practices set forth in this Complaint. He resides or has  
2 transacted business in the Central District of California.

3 16. Defendant Shannon Holden (“Holden”) was the President, Secretary,  
4 Treasurer, and Director of TGC from at least December 2003 through at least July  
5 2004, and continues to hold herself out as a principal of TGC. During this period,  
6 acting alone or in concert with others, Holden formulated, directed, controlled, or  
7 participated in the acts and practices of TGC, including the acts and practices set  
8 forth in this Complaint. She resides or has transacted business in the Central District  
9 of California.

10 17. Defendant Jaime Klotthor is the President, Secretary, and Treasurer of  
11 MP and the Treasurer and Director of Fulfillment. Jaime Klotthor is one of Takala’s  
12 and/or Fidler's daughters. At all times material to this Complaint, acting alone or in  
13 concert with others, Jaime Klotthor has formulated, directed, controlled, or  
14 participated in the acts and practices of MP and Fulfillment, including the acts and  
15 practices set forth in this Complaint. She resides or has transacted business in the  
16 Central District of California.

17 18. Defendant Jennifer Klotthor is the President and Secretary of  
18 Fulfillment. She also serves as a signatory on bank accounts belonging to WTA,  
19 IMG, MP, TGC, and Fulfillment. Jennifer Klotthor is one of Takala’s and/or Fidler's  
20 daughters. From at least July 2001 and continuing to the present, acting alone or in  
21 concert with others, Jennifer Klotthor has formulated, directed, controlled, or  
22 participated in the acts and practices of WTA, IMG, MP, TGC, Fulfillment, IAW,  
23 Magna Delta, and Office Options, including the acts and practices set forth in this  
24 Complaint. She resides or has transacted business in the Central District of  
25 California.

26 19. Defendant Scott Rinaldo (“Rinaldo”) is the President, Secretary, and  
27 Treasurer of WTA and a signatory on UTA’s bank account. At all times material to  
28

1 this Complaint, acting alone or in concert with others, Rinaldo has formulated,  
2 directed, controlled, or participated in the acts and practices of WTA, including the  
3 acts and practices set forth in this Complaint. He resides or has transacted business in  
4 the Central District of California.

#### 5 COMMON ENTERPRISE

6 20. Corporate defendants WTA, UTA, IMG, TGC, MP, Fulfillment, IAW,  
7 Magna Delta, and Office Options have operated as a common enterprise while  
8 engaging in the deceptive acts and practices and other violations of law alleged  
9 below. Individual defendants Takala, Fidler, Holden, Jaime Klotthor, Jennifer  
10 Klotthor, and Rinaldo have formulated, directed, controlled or had authority to  
11 control, or participated in the acts and practices of the corporate defendants that  
12 comprise the common enterprise.

#### 13 COMMERCE

14 21. At all times relevant to this Complaint, the defendants have maintained a  
15 substantial course of trade in the offering for sale and sale of surplus distribution  
16 business ventures, in or affecting commerce, as “commerce” is defined in Section 4 of  
17 the FTC Act, 15 U.S.C. § 44.

#### 18 THE DEFENDANTS’ BUSINESS PRACTICES

19 22. Since at least 1996 and continuing thereafter, defendants have marketed  
20 and sold a surplus distribution business opportunity to consumers across the nation.  
21 Purchasers of the venture offered by WTA, UTA, IMG, and TGC (“WTA, et al.”) pay  
22 an initial fee ranging from \$6,995 to \$7,950 to become affiliates in WTA, et al.’s  
23 network of surplus brokers. Defendants represent that these affiliates, or brokers, will  
24 have access to “exclusive” listings of overstocked merchandise for sale. Affiliates  
25 market the surplus goods by telephone and facsimile and receive a commission on  
26 any sales they make. WTA, et al. promise expert training, pre-qualified accounts, and  
27 everything an affiliate needs to operate a successful surplus brokerage business.

1           23.     Since at least June 2003 and continuing to the present, MP has marketed  
2 and sold a business opportunity that, like the one offered by WTA, et al., involves the  
3 brokerage of surplus merchandise. MP's business venture differs from that offered  
4 by WTA, et al. in that MP's venture involves the brokerage of surplus merchandise  
5 over the Internet.

6           24.     MP promises to create and maintain for each affiliate an individualized  
7 surplus goods website modeled after a website MP created called "Blowout  
8 Bargains." MP represents that it will provide affiliates with hundreds of name-brand,  
9 low-priced, overstocked goods to advertise on their Blowout Bargains websites.  
10 According to MP's sales pitch, each affiliate receives a commission for every  
11 purchase made on his or her Blowout Bargains website. The MP business venture  
12 also provides for the creation of a personalized "Megamall" website that links  
13 prospective buyers to the websites of more than two hundred businesses, including  
14 well-known companies such as Office Depot, Target, and LL Bean. MP promises  
15 affiliates a commission for every purchase made by customers who link to a website  
16 advertised on the affiliate's Megamall website. The initial fee for the MP venture  
17 ranges from \$3,995 to \$5,995.

18           25.     Consumers of defendants' business opportunities are required to pay  
19 monthly fees for the ongoing services promised by defendants, including training,  
20 access to defendants' updated listings of overstocked merchandise, and shipment of  
21 merchandise to surplus purchasers.

22           26.     Defendants market their business venture through advertisements in  
23 online and print publications that target small business owners. Defendants attract  
24 potential customers by describing the business opportunity as "the perfect home-  
25 based business." IMG describes itself as "a leader" in the import/export industry.  
26 MP represents that it is "the leading developer and most trusted provider of  
27 comprehensive internet business opportunities." Defendants claim that the surplus  
28



1 industry is a profitable industry free of ups and downs and one in which the  
2 “opportunities are limitless.” Defendants’ advertisements also portray the venture as  
3 a foolproof, turnkey business: “Men and women of all ages, working part-time or full  
4 time can be earning fees almost immediately.”

5 27. Defendants also promote their business opportunity on their company  
6 websites, which claim that defendants’ venture features “the best and most unique  
7 training and support program in the world.” The websites portray the surplus  
8 industry as “[r]ecession-[p]roof” and “constantly expanding.” Defendants also  
9 represent on their websites that eighty percent of the surplus merchandise offered  
10 through the venture is “name brand, first quality” merchandise with all of the  
11 manufacturers’ original warranties and guarantees. The websites promise the  
12 mentoring of a trainer who earns “six figures” and who will “help you set-up every  
13 aspect of your new home-based business.” Defendants assert that “[i]f the training is  
14 followed, virtually anyone can succeed in this exciting business.”

15 28. Defendants’ websites and advertisements direct potential purchasers to  
16 request additional information about the business venture online or to call the  
17 advertised toll-free telephone number. In response to an inquiry from a prospective  
18 purchaser, defendants send either an email or hard copy materials containing, among  
19 other things, a company brochure, press releases about the business opportunity, and  
20 a personal questionnaire for the prospect to complete. These materials also generally  
21 include a certificate of membership or good standing for the defendants from an  
22 organization that purportedly certifies small businesses or franchises, such as the  
23 National Business Opportunity Bureau or the International Small Business Bureau.

24 29. Defendants’ promotional materials make express earnings claims  
25 through sales projections. For example, defendants suggest on a projected earnings  
26 chart that twenty surplus orders per day would result in an annual income of  
27 \$153,300.

1           30.    The promotional materials also often include a reference to *Entrepreneur*  
2 *Magazine* that consumers who purchase the opportunity will earn \$103,000 annually.  
3 Defendants’ brochures lure prospective purchasers with the promise that “there are no  
4 limitations to your earnings” from the business opportunity.

5           31.    Within a week of sending the promotional package, a sales  
6 representative calls or emails the prospect to schedule an appointment for a detailed  
7 presentation of the business opportunity. During this presentation, the sales  
8 representative explains the basics of the surplus industry and highlights the purported  
9 advantages of becoming an affiliate in the company’s network of surplus brokers.

10          32.    Defendants’ sales representatives frequently make express earnings  
11 claims during their sales presentations. Defendants tell potential consumers that they  
12 can expect to recoup their investment in two to four months. Defendants represent  
13 that there are current affiliates working part-time who earn between \$35,000 to  
14 \$40,000 and full-time affiliates who earn six-figure incomes.

15          33.    Defendants do not provide any support for their earnings claims made in  
16 their websites, promotional materials, advertisements, or made by sales  
17 representatives to potential consumers on the telephone.

18          34.    Consumers who purchase defendants’ business opportunity do not earn  
19 six-figure incomes per year. In fact, consumers typically lose money on their  
20 investment, regardless of whether they work full-time or part-time.

21          35.    Defendants WTA, et al. and their representatives promise to provide  
22 affiliates with pre-qualified accounts, businesses that are interested in purchasing  
23 surplus merchandise from defendants’ network. Defendants WTA, et al. also promise  
24 that affiliates will not be required to do any selling or cold calling.

25          36.    In numerous instances, consumers have found that the majority of pre-  
26 qualified accounts provided by defendants are in fact companies that are no longer in  
27 business, not in the business industry listed by defendants, or not interested in

1 purchasing surplus merchandise. In the majority of other instances, consumers have  
2 found that the pre-qualified businesses either had never heard of the defendants or  
3 had requested that defendants' brokers refrain from contacting them in the future.

4 37. Defendant MP and its representatives promise, through written and oral  
5 statements to prospective purchasers, that brokers will obtain two hundred customers  
6 on their Blowout Bargains website.

7 38. In numerous instances, MP brokers failed to obtain the promised two  
8 hundred customers on their Blowout Bargains website.

9 39. Defendants and their representatives represent to prospective purchasers  
10 that defendants will provide all goods and services necessary for affiliates to operate  
11 their surplus business venture. The promised goods include, but are not limited to,  
12 hundreds of overstocked, name-brand goods that defendants store in their warehouses  
13 and ship directly to surplus purchasers. The promised services include, but are not  
14 limited to, training, support, and delivery of goods to surplus purchasers.

15 40. In numerous instances, defendants failed to provide the goods and  
16 services promised to potential purchasers.

17 41. If, after hearing the sales representative's detailed presentations, the  
18 prospect appears interested in pursuing the opportunity, the sales representative  
19 provides him or her with a list of references to contact. Defendants and their  
20 representatives represent to prospective purchasers that company-selected references  
21 are satisfied purchasers of one of the business ventures offered by defendants. These  
22 company-selected references typically tell consumers that they have purchased one of  
23 the defendants' business opportunities, and are making the amount of money that  
24 defendants represented they would make.

25 42. In numerous instances, the references either have not purchased the  
26 specified business opportunity from defendants or have not had the type of success  
27 they describe to prospective purchasers.

1           43.    Once the prospect has had a chance to contact these company-selected  
2 references, the sales representative follows up again with a phone call. If the prospect  
3 expresses interest in purchasing the opportunity, the sales representative sends him or  
4 her a contract for review and signature.

5           44.    Defendants have failed to provide prospective business opportunity  
6 purchasers with a basic disclosure document, as required by the Franchise Rule.

7           45.    Neither defendants nor their representatives have a reasonable basis for  
8 the earnings claims they make.

9           46.    Defendants and their representatives fail to disclose, in immediate  
10 conjunction with each earnings claim, and in a clear and conspicuous manner, that  
11 material which constitutes a reasonable basis for the claim is available to prospective  
12 franchisees.

13          47.    Defendants and their representatives fail to provide prospective  
14 franchisees with earnings claim documents as prescribed by the Franchise Rule.

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

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

18   **COUNT I**

19   **Misrepresentations Regarding Income**

20          49.    In numerous instances in the course of offering for sale and selling their  
21 surplus distribution business ventures, defendants represent, directly or indirectly,  
22 expressly or by implication, that consumers who purchase the defendants’ business  
23 ventures are likely to earn substantial income.

24          50.    In truth and in fact, consumers who purchase the defendants’ business  
25 ventures are not likely to earn substantial income.

26          51.    Therefore, defendants’ representations as set forth in Paragraph 49 are  
27 false and misleading and constitute deceptive acts or practices in violation of Section  
28

1 5(a) of the FTC Act, 15 U.S.C. § 45(a).

2 **COUNT II**

3 **Misrepresentations Regarding Customer Accounts**

4 52. In numerous instances in the course of offering for sale and selling their  
5 surplus distribution business ventures, the defendants represent that purchasers of the  
6 business opportunity will acquire two hundred accounts or receive lists of pre-  
7 qualified businesses that are interested in purchasing surplus merchandise from  
8 defendants' network of brokers.

9 53. In truth and in fact, in numerous instances, purchasers of the business  
10 opportunity do not acquire two hundred accounts or do not receive lists of pre-  
11 qualified business that are interested in purchasing surplus merchandise from  
12 defendants' network of brokers.

13 54. Therefore, the defendants' representations as set forth in Paragraph 52  
14 are false and misleading and constitute deceptive acts or practices in violation of  
15 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

16 **COUNT III**

17 **Misrepresentations Regarding References**

18 55. In numerous instances in the course of offering for sale and selling their  
19 surplus distribution business ventures, the defendants represent, directly or indirectly,  
20 expressly or by implication, that certain company-selected references have purchased  
21 one of the defendants' business ventures or will provide reliable descriptions of their  
22 experiences with one of the defendants' business ventures.

23 56. In truth and in fact, in numerous instances, the defendants' references  
24 have not purchased one of the defendants' business ventures or do not provide  
25 reliable descriptions of their experiences with one of the defendants' business  
26 ventures.

27 57. Therefore, the defendants' representations as set forth in Paragraph 55

1 are false and misleading and constitute deceptive acts or practices in violation of  
2 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

3 **COUNT IV**

4 **Misrepresentations Regarding Goods and Services Provided to Business Purchasers**

5 58. In numerous instances in the course of offering for sale and selling their  
6 surplus distribution business ventures, the defendants represent, directly or indirectly,  
7 expressly or by implication, that defendants provide purchasers with goods and  
8 services for the operation of their businesses. The promised goods include, but are  
9 not limited to, hundreds of overstocked, name-brand goods stored in defendants'  
10 warehouses. The promised services include, but are not limited to, training, support,  
11 and delivery of merchandise to surplus purchasers.

12 59. In truth and in fact, in numerous instances, defendants do not provide  
13 purchasers with the promised goods and services for the operation of their businesses.

14 60. Therefore, the defendants' representations as set forth in Paragraph 58  
15 are false and misleading and constitute deceptive acts or practices in violation of  
16 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

17 **THE FRANCHISE RULE**

18 61. The business ventures sold by the defendants are franchises, as  
19 "franchise" is defined in Sections 436.2(a)(1)(ii), (a)(2), and (a)(5) of the Franchise  
20 Rule, 16 C.F.R. §§ 436.2(a)(1)(ii), (a)(2), and (a)(5).

21 62. The Franchise Rule requires a franchisor to provide prospective  
22 franchisees with a complete and accurate basic disclosure document containing  
23 twenty categories of information, including information about the owners and officers  
24 of the franchisor, information about the terms and conditions under which the  
25 franchise operates, the litigation history of the franchisor and its principals, and  
26 information identifying existing franchisees. 16 C.F.R. § 436.1(a)(1) - (a)(20). The  
27 pre-sale disclosure of this information required by the Rule enables a prospective  
28

1 franchisee to contact prior purchasers and take other steps to assess the potential risks  
2 involved in the purchase of the franchise.

3 63. The Franchise Rule specifically prohibits franchisors from making any  
4 claim or representation that contradicts information required to be disclosed pursuant  
5 to Section 436.1 of the Rule. 16 C.F.R. § 436.1(f).

6 64. The Franchise Rule additionally requires that a franchisor:

- 7 (a) have a reasonable basis for any oral, written, or visual  
8 earnings claim it makes, 16 C.F.R. § 436.1(b)(2), (c)(2) and  
9 (e)(1);
- 10 (b) disclose, in immediate conjunction with any earnings claim  
11 it makes, and in a clear and conspicuous manner, that  
12 material which constitutes a reasonable basis for the  
13 earnings claim is available to prospective franchisees, 16  
14 C.F.R. § 436.1(b)(2) and (c)(2);
- 15 (c) provide, as prescribed by the Rule, an earnings claim  
16 document containing information that constitutes a  
17 reasonable basis for any earnings claim it makes, 16 C.F.R.  
18 § 436.1(b) and (c); and
- 19 (d) clearly and conspicuously disclose, in immediate  
20 conjunction with any generally disseminated earnings claim,  
21 additional information including the number and percentage  
22 of prior purchasers known by the franchisor to have  
23 achieved the same or better results, 16 C.F.R. §  
24 436.1(e)(3)-(4).

25 65. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), and 16  
26 C.F.R. § 436.1, violations of the Franchise Rule constitute unfair or deceptive acts or  
27 practices in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15

1 U.S.C. § 45(a).

2 **VIOLATIONS OF THE FRANCHISE RULE**

3 **COUNT V**

4 **Basic Disclosure Violations**

5 66. In connection with the offering of franchises, as “franchise” is defined in  
6 Section 436.2(a) of the Rule, the defendants violate Section 436.1(a) of the Rule and  
7 Section 5(a) of the FTC Act by failing to provide prospective franchisees with  
8 accurate and complete disclosure documents within the time period prescribed by the  
9 Rule.

10 **COUNT VI**

11 **Earnings Disclosure Violations**

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

21 **CONSUMER INJURY**

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

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

27 69. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to



1 grant injunctive and other ancillary relief, including consumer redress, disgorgement  
2 and restitution, to prevent and remedy any violations of any provision of law enforced  
3 by the Federal Trade Commission.

4 70. Section 19 of the FTC Act, 15 U.S.C. § 57b, authorizes this Court to  
5 grant such relief as the Court finds necessary to redress injury to consumers or other  
6 persons resulting from the defendants' violations of the Franchise Rule, including the  
7 rescission and reformation of contracts, and the refund of money.

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

10 **PRAYER FOR RELIEF**

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

14 1. Award plaintiff such preliminary injunctive and ancillary relief,  
15 including a temporary restraining order and preliminary injunction which, among  
16 other things, freezes defendants' assets and appoints a receiver, as may be necessary  
17 to avert the likelihood of consumer injury during the pendency of this action and to  
18 preserve the possibility of effective final relief;

19 2. Permanently enjoin the defendants from violating the FTC Act and  
20 the Franchise Rule, as alleged herein;

21 3. Award such relief as the Court finds necessary to redress injury to  
22 consumers resulting from the defendants' violations of the FTC Act and the Franchise  
23 Rule, including but not limited to, rescission of contracts, the refund of monies paid,  
24 and the disgorgement of ill-gotten gains by the defendants; and

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

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Dated: April 5, 2005

Respectfully submitted,  
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