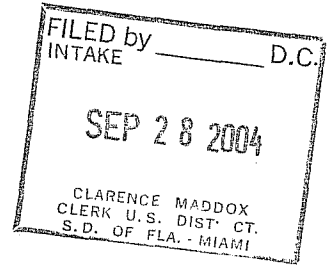


UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No. _____ -CIV



FEDERAL TRADE COMMISSION,

Plaintiff,

v.

AMERICAN ENTERTAINMENT
DISTRIBUTORS, INC.;

AUTOMATED ENTERTAINMENT
DISPENSERS, INC.;

AUTOMATED ENTERTAINMENT
MACHINES, INC.;

UNIVERSAL TECHNICAL SUPPORT,
INC.;

UNIVERSAL CYBERCOM
CORPORATION;

RUSSELL G. MACARTHUR, JR.;

ANTHONY ROCCO ANDREONI;

JAMES R. MACARTHUR;

MAURICIO A. PAZ;

and

MIRIAM SMOLYANSKY, aka
MASHA TANGO,

Defendants.

04-22431

MAGISTRATE JUDGE
TURNOFF

CIV - HUCK

COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF

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

1. The FTC brings this action under Sections 5(a), 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a), 53(b) and 57b, to obtain temporary, preliminary, and permanent injunctive relief, rescission of contracts, restitution, disgorgement, appointment of a receiver, and other equitable relief for 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. § 436, in connection with the marketing and sale of business ventures involving the ownership and operation of automated DVD and VHS movie rental machines.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over the FTC’s claims in this action pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 53(b) and 57b. This action arises under 15 U.S.C. § 45(a)(1).

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

THE PARTIES

4. Plaintiff Federal Trade Commission is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41 *et seq.* The Commission is charged with, *inter alia*, enforcing 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, and the Franchise Rule, 16 C.F.R. § 436,

which imposes full and accurate disclosure requirements on brokers and sellers of franchises and business opportunities. The Commission is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and the Franchise Rule in order to secure such equitable relief as may be appropriate in each case, and to obtain consumer redress. 15 U.S.C. §§ 53(b), 57b.

5. Defendant American Entertainment Distributors, Inc. (“AED”) is a Florida corporation with its principal place of business at 2514 Hollywood Boulevard, Suite 200, Hollywood, Florida. AED markets and sells to the public business ventures involving the ownership and operation of automated DVD and VHS movie rental machines marketed under the trade name “Box Office Express.” AED transacts or has transacted business in the Southern District of Florida.

6. Defendant Automated Entertainment Dispensers, Inc. (“AED II”) is a Florida corporation with its principal place of business at 17450 Biscayne Boulevard, North Miami Beach, Florida. AED II purports to purchase automated DVD and VHS movie rental machines wholesale from manufacturers and supply the machines to AED. AED II maintains a bank account to which AED transfers and has transferred substantial proceeds from its sale of business ventures. AED II transacts or has transacted business in the Southern District of Florida.

7. Defendant Automated Entertainment Machines, Inc. (“AEM”) is a Florida corporation with its principal place of business at 17100 North Bay Road, Suite 1107, Sunny Isles Beach, Florida. Like AED II, AEM purports to purchase automated DVD and VHS movie rental machines wholesale from manufacturers and supply the machines to AED. AEM transacts or has transacted business in the Southern District of Florida.

8. Defendant Universal Technical Support, Inc. (“UTS”) is a Florida corporation with its principal place of business at 2016 N.E. 155th Street, North Miami Beach, Florida. UTS purports to provide machine installation services and other technical support services to AED’s customers. UTS maintains a bank account to which AED transfers and has transferred substantial proceeds from its sale of business ventures. UTS transacts or has transacted business in the Southern District of Florida.

9. Defendant Universal Cybercom Corporation, (“UCC”) is a Florida corporation with its principal place of business at 18151 N.E. 31st Court, # 206, Aventura, Florida. UCC purports to be the employer of defendant Mauricio A. Paz, the sales manager for AED. UCC maintains a bank account to which AED transfers and has transferred substantial proceeds from its sale of business ventures. UCC transacts or has transacted business in the Southern District of Florida.

10. Defendant Russell G. MacArthur, Jr. (“R. MacArthur”) is the founder and a direct or beneficial co-owner of defendant AED. R. MacArthur is the president, secretary, treasurer and a director of defendant AEM. R. MacArthur also has held himself out as an owner and officer of defendant AED II.

11. In June 2002, the FTC filed an action against R. MacArthur in this District Court for operating a deceptive business opportunity venture scheme. *FTC v. Associated Record Distributors*, No. 02-21754-CV-MARTINEZ/DUBÉ. In May 2003, the Court entered a final order in that action permanently enjoining R. MacArthur from marketing or selling any business venture, or receiving any remuneration whatsoever or having any other involvement with the sale of any business venture.

12. At all times material to this Complaint, acting alone or in concert with others, R. MacArthur has formulated, directed, controlled or participated in the acts and practices of defendants AED, AED II, AEM, and UTS, including the acts and practices set forth in this Complaint. R. MacArthur resides or has transacted business in the Southern District of Florida.

13. Defendant Anthony Rocco Andreoni is a direct or beneficial co-owner of defendant AED with R. MacArthur, and the president, secretary, treasurer, and director of defendants AED II and UTS. At all times material to this Complaint, acting alone or in concert with others, Andreoni has formulated, directed, controlled or participated in the acts and practices of defendants AED, AED II, AEM, and UTS, including the acts and practices set forth in this Complaint. Andreoni resides or has transacted business in the Southern District of Florida.

14. Defendant James R. MacArthur ("J. MacArthur") is the president, secretary, treasurer and a director of defendant AED. At all times material to this Complaint, acting alone or in concert with others, J. MacArthur has formulated, directed, controlled or participated in the acts and practices of defendants AED, AED II, AEM, and UTS, including the acts and practices set forth in this Complaint. J. MacArthur resides or has transacted business in the Southern District of Florida.

15. Defendant Mauricio A. Paz is the president of UCC, and the sales manager of AED. At all times material to this Complaint, acting alone or in concert with others, Paz has formulated, directed, controlled or participated in the acts and practices of AED, AED II, AEM, UTS, and UCC, including the acts and practices set forth in this Complaint. Paz resides or has transacted business in the Southern District of Florida.

16. Defendant Miriam Smolyansky, also known as “Masha Tango,” is a manager of AED, and the spouse of defendant Andreoni. At all times material to this Complaint, acting alone or in concert with others, Smolyansky has formulated, directed, controlled or participated in the acts and practices of AED, AED II, UTS, and UCC, including the acts and practices set forth in this Complaint. Smolyansky resides or has transacted business in the Southern District of Florida.

COMMON ENTERPRISE

17. Corporate defendants AED, AED II, AEM, UTS, and UCC have operated as a common enterprise while engaging in the deceptive acts and practices and other violations of law alleged below. Individual defendants R. MacArthur, Andreoni, J. MacArthur, Paz, and Smolyansky have formulated, directed, controlled or had authority to control, or participated in the acts and practices of the corporate defendants that comprise the common enterprise.

COMMERCE

18. At all times relevant to this Complaint, defendants have maintained a substantial course of trade in the offering for sale and sale of automated DVD and VHS movie rental machine business ventures, in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS’ BUSINESS PRACTICES

19. Since September 2003, defendants have marketed and sold to the public a business opportunity venture involving the ownership and operation of automated DVD and VHS movie rental machines marketed under the trade name “Box Office Express.” Defendants charge or have charged consumers \$28,000 to \$37,500 for one machine, and proportionately

more for additional machines. Defendants promote their business opportunity through internet web sites and television commercials aired throughout the United States. Defendants have also promoted their business opportunity through unsolicited faxes.

20. Defendants' telephone sales representatives respond to calls from potential investors by making a high-pressure sales pitch promoting the Box Office Express business opportunity. The sales representatives who make the initial pitch are known as "fronters." If a consumer expresses further interest after hearing the fronter's sales pitch, defendants send the consumer a solicitation package by overnight mail delivery. The package consists of written marketing materials and a basic franchise disclosure document. During the first call, another salesperson, one of defendants' "closers," makes an appointment to call the consumer within a day or two after the consumer receives the solicitation package, to make another high-pressure sales pitch and close the sale.

21. In their television commercials, defendants lure consumers to call defendants' toll-free phone number with promises of an "exciting new business" called the Box Office Express, "a mini-video store without employees or overhead." Defendants claim that the machines have "over 600 movies and games, the same releases as a chain video store but at a lower price and a more convenient location." Representing that "the movie rental business generated \$8 billion last year in the U.S. alone," defendants urge consumers: "Imagine watching your bank account grow daily, as rental income is deposited electronically for the rest of your life. We secure your locations for you. Call now, because the best ones are filling quickly."

22. In their web sites at www.aedl.com and www.aed1.us promoting the Box Office Express business opportunity, defendants state: "The in-house Location Division will provide

you with quality high-traffic sites. Customer Service professionals will provide high-tech support, installation assistance, training, and answer any questions you may have.”

23. Defendants make express earnings claims in their web sites. Defendants present detailed projections purportedly based on “actual rental statistics throughout Europe,” suggesting that potential investors can earn between \$39,000 and \$78,000 per year in gross rental income, per machine. Defendants further state in their web site: “Remember, these are our cautious figures. We anticipate rental figures in the U.S. market to quickly surpass those from Europe and Israel, due to economic factors and the fact that Americans LOVE movies!”

24. Defendants’ telephone sales representatives also typically make express earnings claims and promises of location assistance to potential investors. Defendants tell potential investors that they can expect to earn \$60,000 to \$80,000 in net profits per year per machine, or that they can expect an average volume of sales resulting in a similar or higher range of annual earnings. Further, defendants tell potential investors that they will recover their initial investment in 6 to 14 months.

25. Defendants do not provide any support for their earnings claims made in their web site, in other marketing or disclosure materials, or made by sales representatives to consumers on the telephone.

26. Defendants’ earnings claims are false and misleading.

27. Defendants have no reasonable basis for their earnings representations and have failed to disclose additional information including the number and percentage of prior purchasers known by defendants to have achieved the same or better results.

28. Consumers who invest in defendants' business opportunity typically do not earn income at the rate of \$60,000 to \$80,000 a year; rather, they typically lose money on their investment.

29. In numerous instances, the machines that defendants deliver to consumers are not the machines appearing in their promotional materials and promised to the consumers, but rather different machines made by a different manufacturer that are not comparable to the promised machines.

30. In their promotional materials, defendants represent: "You will also be provided with a complete operators manual that will comprehensively describe all aspects of your system for referral purposes." In fact, the movie rental machines that defendants provide consumers do not come with an operating manual explaining how to install, operate or maintain the machines.

31. In numerous instances, the movie rental machines that defendants provide to consumers repeatedly malfunction or break down soon after they are installed at a location, causing the machine to be out of order for prolonged periods of time. Thus, consumers typically spend many hours communicating with defendants' technical support representatives in attempts to fix such problems.

32. Defendants' telephone sales representatives and promotional materials also promise that defendants' "Locator Division" will research a potential investor's local geographic market, secure locations with the demographics and high traffic flow to generate a high volume of rentals and sales, and negotiate a location agreement with the location owners. Defendants promise consumers that if a particular location does not work out, defendants will find another location and relocate the machine free of charge.

33. Defendants' representations of location assistance are also false and misleading.

34. In numerous instances, defendants do not provide consumers with high-traffic locations in the consumers' local geographic area, and defendants do not relocate machines for consumers free of charge.

35. Defendants or their employees or agents tell prospective business venture purchasers to call several references. Defendants represent that these references are currently operating automated DVD and VHS movie rental machines purchased from defendants, and that these references can give a reliable description of their experiences with defendants.

36. These references, however, are defendants' paid representatives and falsely represent to consumers that they are earning large sums of income from defendants' DVD and VHS movie rental machines, and misrepresent the reliability of the machines.

37. Finally, the basic franchise disclosure document that defendants provide to consumers is incomplete or inaccurate because, among other things: it fails to disclose information concerning other business venture purchasers; it fails to disclose that the true beneficial owners of AED are defendants R. MacArthur and Andreoni, and that R. MacArthur has been permanently banned from having any involvement whatsoever with the sale of business opportunity ventures; it fails to disclose the fact that AED's president, J. MacArthur, previously filed for bankruptcy; and it contains disclosures stating that defendants do not make earnings representations or offer or provide location assistance, which contradict statements made by defendants' marketing materials and their telephone sales representatives.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

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

COUNT I

Misrepresentations Regarding Income

39. In numerous instances, in the course of offering for sale and selling business ventures, defendants, directly or indirectly, represent, expressly or by implication, that consumers who purchase defendants’ business ventures are likely to earn substantial income.

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

41. Therefore, defendants’ representations as set forth in Paragraph 39 are false and misleading and constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II

Misrepresentations Regarding Company-Selected References

42. In numerous instances, in the course of offering for sale and selling business ventures, defendants, directly or indirectly, represent, expressly or by implication, that certain company-selected references have purchased defendants’ business ventures or will provide reliable descriptions of experiences with defendants’ business ventures.

43. In truth and in fact, in numerous instances, defendants’ references have not purchased defendants’ business ventures or do not provide reliable descriptions of the references’ experiences with defendants’ business ventures.

44. Therefore, defendants' representations as set forth in Paragraph 42 are false and misleading and constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT III

Misrepresentations Regarding Placement of Vending Machines

45. In numerous instances, in the course of offering for sale and selling automated DVD and VHS movie rental machine business ventures, defendants, directly or indirectly, represent, expressly or by implication, that defendants will secure locations for purchasers of their business ventures in the purchasers' local geographic market with the demographics and high traffic flow to generate a high volume of rentals and sales and will negotiate a location agreement with the location owners.

46. In truth and in fact, in numerous instances, defendants do not secure locations for purchasers of their business venture in the purchasers' local geographic market with the demographics and high traffic flow to generate a high volume of rentals and sales, and do not negotiate a location agreement with the location owners.

47. Therefore, defendants' representations as set forth in Paragraph 45 are false and misleading and constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

THE FRANCHISE RULE

48. The business ventures sold by 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).

49. 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 owners and officers of the franchisor, 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.

50. 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 (c);
- (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); and

- (e) refrain from making any claim or representation which is contradictory to the information required to be disclosed by the Franchise Rule, 16 C.F.R. § 436.1(f).

51. 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 IV

Basic Disclosure Violations

52. In connection with the offering of franchises, as “franchise” is defined in Section 436.2(a) of the Franchise Rule, defendants violate 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 V

Earnings Disclosure Violations

53. In connection with the offering of franchises, as “franchise” is defined in Section 436.2(a) of the Franchise Rule, defendants violate Sections 436.1(b)-(c) 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 times 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 VI

Advertising Disclosure Violations

54. In connection with the offering of franchises, as “franchise” is defined in Section 436.2(a) of the Franchise Rule, 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 defendants to have achieved the same or better results.

COUNT VII

Contradictory Claims or Representations

55. In connection with the offering of franchises, as “franchise” is defined in Section 436.2(a) of the Franchise Rule, defendants violate Section 436.1(f) of the Rule and Section 5(a) of the FTC Act by making earnings representations and offering to provide location assistance, which contradicts defendants’ statements in their disclosure document that they do not make earnings representations or provide location assistance.

CONSUMER INJURY

56. Consumers nationwide have suffered or will suffer substantial monetary loss as a result of defendants' violations of Section 5(a) of the FTC Act and the Franchise Rule. Absent

injunctive relief by this Court, defendants are likely to continue to injure consumers and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

57. 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.

58. 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 defendants' violations of the Franchise Rule, including the rescission and reformation of contracts, and the refund of money.

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

PRAYER FOR RELIEF

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

1. Award plaintiff such preliminary injunctive and ancillary relief, including a temporary restraining order and appointment of a receiver, as 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 and the Franchise Rule, as alleged herein;

3. Award such relief as the Court finds necessary to redress injury to consumers resulting from 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 defendants.

4. 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.

Respectfully submitted,

William E. Kovacic
General Counsel

Dated: Sept. 28, 2004



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