

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

)	
)	
FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	Civil Action No
)	
)	
v.)	
)	
GEORGIA INTERNATIONAL EXPORT)	COMPLAINT FOR
COMPANY, INC.,)	PERMANENT
<i>(a Georgia corporation)</i>)	INJUNCTION
)	AND OTHER
and)	EQUITABLE RELIEF
)	
GEORGIA INTERNATIONAL EXPORT)	
TECHNOLOGIES INTERNATIONAL)	COMPAN'
)	
and)	
)	
L & S MANUFACTURING, INC.)	
<i>(a Georgia corporation)</i>)	
)	
and)	
)	
ANDREW GILMORE)	
<i>(individually and as an officer of</i>)	
<i>one or more of the corporate defendants)</i>)	
)	
and)	
)	
STEVEN AXELROD)	
<i>(individually)</i>)	
)	
and)	
)	

ARNOLD FILNER)
<i>(individually),</i>)
)
and)
)
WAYNE GREGORY)
<i>(individually),</i>)
)
Defendants.)
_____)

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

1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, to secure a permanent injunction, preliminary injunctive relief, rescission of contracts, restitution, disgorgement, appointment of a receiver, and other equitable relief for defendants' unfair or deceptive acts or practices in violation 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" (the "Franchise Rule" or "the Rule"), 16 C.F.R. Part 436.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1337(a) and 1345, and 15 U.S.C. §§ 53(b) and 57b.

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

PLAINTIFF

4. Plaintiff, the FTC, is an independent agency of the United States Government created by statute, 15 U.S.C. §§ 41 et seq. The Commission is charged inter alia with enforcement of 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 is also charged with enforcing the Commission's Trade Regulation Rules. The Commission is authorized to initiate federal district court proceedings to enjoin violations of the FTC Act and the Commission's Rules in order to secure such equitable relief as may be appropriate in each case, 15 U.S.C. §§ 53(b) and 57b.

DEFENDANTS

5. Georgia International Export Company, Inc. ("Export") is a Georgia corporation with its principal place of business at 1925 Century Blvd., Suite 4, Atlanta, GA. Export also does business under the name Creative Technologies International ("Creative"). Creative is sometimes represented to be a division of Export. Export, doing business as Creative, promotes and sells vending machine-related business opportunities. Until approximately August, 1996, the principal place of business for Export, doing business as Creative, was 4426 Hugh Howell Road, #B110, Tucker, GA. On information and belief, Export also variously has identified its principal place of business as being at 2081 Kilman Drive, Tucker, Georgia and 1925 Century Blvd., Suite 4, Atlanta, GA. Export and Creative have transacted business in the Northern District of Georgia.

6. Defendant L & S Manufacturing, Inc. ("L&S"), is a Georgia corporation, with its principal place of business at 2081 Kilman Drive, Tucker, Georgia, which is also one of Export's locations.

L&S manufactures and supplies vending machines to, and is an affiliate of, Export, doing business as Creative. L&S has transacted business in the Northern District of Georgia.

7. Defendant Andrew Gilmore holds himself out as the president of Creative. Gilmore also is the president, director, sole shareholder and registered agent of Export. 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 defendants, including the acts and practices set forth in this complaint. He has transacted business in the Northern District of Georgia.

8. Defendant Steven Axelrod is a sales representative for Creative. At all times material to this complaint, acting alone or in concert with others, he has participated in the acts and practices of the corporate defendants, including the acts and practices set forth in this complaint. He has transacted business in the Northern District of Georgia.

9. Defendant Arnold Filner is a sales representative for Creative. At all times material to this complaint, acting alone or in concert with others, he has participated in the acts and practices of the corporate defendants, including the acts and practices set forth in this complaint. He has transacted business in the Northern District of Georgia.

10. Defendant Wayne Gregory is a sales representative for Creative. At all times material to this complaint, acting alone or in concert with others, he has participated in the acts and practices of the corporate defendants, including the acts and practices set forth in this complaint. He has transacted business in the Northern District of Georgia.

COMMERCE

11. At all times relevant to this complaint, the defendants have maintained a substantial course of trade in the promotion, offering for sale, and sale of vending machine-related business opportunities, in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' BUSINESS ACTIVITIES

12. Since at least early 1996, the defendants have been engaged in a common scheme to promote, offer to sell and sell nationwide to consumers a business opportunity involving vending machines which distribute disposable cameras and other film products.

13. Defendants advertise their camera vending machine venture through newspaper advertisements. Typical advertisements include, but are not limited to, the following representations: "KODAK PRODUCTS, 45K P/T - 150K F/T, NO SELLING REQUIRED, Own and operate KODAK product PROFIT CENTERS, Minimum investment \$14,500, 1-800-520-0651."

14. If a consumer responds to the advertisement, his name and telephone number generally are taken by an operator, and the call is returned by a sales representative for the corporate defendants. These sales representatives include defendants Steven Axelrod, Arnold Filner, and Wayne Gregory.

15. In the return call, the sales representatives explain that the business opportunity being sold is vending machines that distribute disposable cameras and other film products. They state that the

initial minimum investment is \$14,500 for which the consumer receives three camera vending machines and the assistance of a professional location service. The investment price does not include the cost of any inventory. The consumer is told that the camera machines return "a very high profit," and that an investor can make \$5 to \$8 per item sold, with \$6 being the average profit per item sold. The sales pitch then indicates that while some of defendants' camera machines in the market are selling 15 to 20 items per day, that the consumer should "think [that] big" and that the lowest known average sales level for the camera machines is 5 to 7 items per day. The sales representatives then tell the consumer that an average of 4 or 5 sales per day will generate a net profit of \$8,000 to \$10,000 per year per machine, and that to achieve such a level of sales, consumers need not work full time. The sales representatives stress the importance of Creative's use of Kodak products to ensure the success of the business opportunity. The sales representative further states: that the camera vending machine idea is the result of "partnership" between Kodak and Creative; that Kodak itself has purchased 50 of the machines; and that the sales figures Creative represents as typical were verified by a Summer, 1996 survey of camera vending machines conducted by Kodak.

16. The sales representatives also state that while Creative only has been in existence for approximately one year, it is part of Export, which has been in business for four years.

17. The sales representatives also tell consumers that defendants' vending machines are easy to place, and that there are many good locations for them, such as hotels, hospital maternity wards, college dorms, and amusement parks. Creative's sales representatives further state Creative will arrange for the camera vending machines to be placed by a professional locator; that

the locator will place the camera vending machines at locations subject to the camera machine owner's approval; and that successful placement will ensure that the investment will be successful.

18. If the consumer remains interested after speaking with Creative's sales representative in the return call, then Creative sends the consumer a brochure, generally by United Parcel Service overnight delivery.

19. Defendants send consumers brochures that contain profit analysis projections, suggestions of the many types of profitable locations for their camera vending machines, and materials depicting the success rate of vending machines. The profit analysis projections show that three camera sales per vending machine per day will return an annual "profit" of \$21,130.20, and that four camera sales will return a profit of \$28,173.60. The profit analysis projections show that three film sales per day will return an annual profit of \$11,457. The camera vending machines do not provide the revenue or profit levels promised by Creative and its representatives.

20. In such return calls from Creative, defendants provide consumers with the names and telephone numbers of "references" who purportedly have purchased camera vending machines from Creative and are familiar with the business. These references include Ed Rubin and Brenda Grafton. When contacted by consumers, both Mr. Rubin and Ms. Grafton indicate that they own Creative camera vending machines and that their camera vending machines have been profitable or provide a good financial return.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

21. 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 ONE

22. Paragraphs 1 through 21 are incorporated herein by reference.

23. In the course of offering for sale and selling vending machine-related business opportunities, defendants have represented, directly or by implication, that purchasers may reasonably expect to achieve a specific level of annual earnings, such as income between \$8,000 and \$10,000 per camera vending machine. In order to support this representation, defendants cite a sales survey concerning the profitability of vending machines of one-time-use cameras purportedly conducted by the Eastman Kodak Company.

24. In truth and in fact, Eastman Kodak conducted no such survey, and consumers are unlikely to achieve the specific level of earnings represented by the defendants. Few if any customers have achieved revenues at the rate forecast by defendants.

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

COUNT TWO

26. Paragraphs 1 through 25 are incorporated herein by reference.

27. In the course of offering for sale and selling vending machine-related business opportunities, defendants have represented, directly or by implication, that certain company-selected references have purchased one or more of the defendants' vending machine-related business opportunities, and will provide reliable descriptions of the references' experiences with defendants' vending machine-related business opportunity.

28. In truth and in fact, in numerous instances, the defendants' references have not purchased one of the defendants' vending machine-related business opportunities, or will not provide reliable descriptions of the references' experiences with defendants' vending machine-related business opportunity.

29. Therefore, defendants' representations as set forth above in Paragraph 27 are false and misleading, and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT THREE

30. Paragraphs 1 through 29 are incorporated herein by reference.

31. In the course of offering for sale and selling vending machine-related business opportunities, defendants, directly or by implication, in numerous instances, have made misrepresentations of material facts, including, but not limited to:

A. That it is easy to find good locations for their business opportunity purchasers vending machines; and

B. That defendants are in a partnership or are affiliated with the Eastman Kodak Company.

32. In truth and in fact:

A. In numerous instances, it is difficult to find good locations for defendants' business opportunity purchasers' vending machines; and

B. Defendants are neither in a partnership nor are they affiliated with the Eastman Kodak Company, other than as purchasers of Eastman Kodak products.

33. Therefore, defendants' representations as set forth above in Paragraph 31 are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

THE FRANCHISE RULE

34. The business opportunities sold by the defendants are franchises, as "franchise" is defined in Section 436.2(a) of the Franchise Rule, 16 C.F.R. § 436.2(a).

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

Disclosure of this information enables a prospective franchisee to assess potential risks involved in the purchase of the franchise.

36. The Franchise Rule additionally requires that: (1) the franchisor provide prospective franchisees a document containing information substantiating the earnings claim, 16 C.F.R. § 436.1(b)-(e); and (2) the franchisor, in immediate conjunction with any generally disseminated

earnings claim, disclose the material basis (or the lack of such basis) for the earnings claim and include a warning that the earnings claim is only an estimate, 16 C.F.R. § 436.1(e)(3)-(4).

37. 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 FOUR

38. Paragraphs 1 through 37 are incorporated herein by reference.

39. In numerous instances in connection with the offering of franchises, as "franchise" is defined in the Rule, 16 C.F.R. § 436.2(a), defendants have failed to provide prospective franchisees with accurate and complete disclosure documents within the time period required by the Franchise Rule, thereby violating Section 436.1(a) of the Rule, 16 C.F.R. § 436.1(a), and Section 5 of the FTC Act, 15 U.S.C. § 45.

COUNT FIVE

40. Paragraphs 1 through 39 are incorporated herein by reference.

41. In numerous instances in connection with the offering of franchises, as "franchise" is defined in the Rule, 16 C.F.R. § 436.2(a), defendants have made earnings claims within the meaning of the Rule, 16 C.F.R. § 436.1(b)-(e), but have failed to provide prospective franchisees the earnings claim document required by the Rule, or have failed to disclose the information

required by the Rule in immediate conjunction with such claims, thereby violating Sections 436.1(b)-(e) of the Rule, 16 C.F.R. § 436.1(b)-(e), and Section 5 of the FTC Act, 15 U.S.C. § 45.

CONSUMER INJURY

42. Consumers across the United States have suffered or will suffer substantial monetary loss as a result of defendants' unlawful acts or practices. 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

43. 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.

44. 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.

45. This Court, in the exercise of its equitable jurisdiction, may award other ancillary relief to remedy injury caused by the 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 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, including the appointment of a receiver;
2. Permanently enjoin the defendants from violating the Franchise Rule and the FTC Act, as alleged herein, in connection with the offering and promotion of business opportunities, distributorships, and franchises;
3. Award such relief as the Court finds necessary to redress injury to consumers resulting from the defendants' violations of the Franchise Rule and the FTC Act, including but not limited to, rescission of contracts, the refund of monies paid, and the disgorgement of ill-gotten monies; and
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.

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