UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FEDERAL TRADE COMMISSION,	)	
Plaintiff,	)	Civ. No. ____________________
v.	)	
P.M.C.S., Inc., 122 Cuttermill Road Great Neck, NY 11021 *(a Delaware corporation doing business in New York)*,	)	COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF
Dennis Harmon, 18 Broadway Greenlawn, NY 11740 *(individually and as an officer of P.M.C.S., Inc.)*,	)	
- and -	)	
Philip T. Bukowski 8137 260th Street Floral Park, NY 11004 *(individually and as an officer of P.M.C.S., Inc.)*,	)	
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. § 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 Eastern 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 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. The Commission is authorized to initiate federal district court proceedings to enjoin violations of the FTC Act in order to secure such equitable relief as may be appropriate in each case. 15 U.S.C. §§ 53(b) and 57b.

DEFENDANTS

5. Defendant P.M.C.S., Inc. ("PMCS"), a Delaware corporation with its principal place of business at 122 Cuttermill Road, Great Neck, NY 10021, promotes and sells computerized medical billing business ventures. PMCS has transacted business in the Eastern District of New York.

6. Defendant Dennis Harmon is an officer and the sole shareholder of PMCS. 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 defendant, including the acts and practices set forth in this complaint. He has transacted business in the Eastern District of New York.

7. Defendant Philip T. Bukowski is an officer of PMCS. 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 defendant, including the acts and practices set forth in this complaint. He has transacted business in the Eastern District of New York.

COMMERCE

8. At all times relevant to this complaint, the defendants have maintained a substantial course of trade in the offering for sale and sale of computerized medical billing 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

9. Since at least 1994, the defendants have been engaged in a common scheme to promote, offer to sell and sell nationwide medical billing software business ventures.

10. The defendants have induced individuals to purchase their business venture by making numerous misrepresentations concerning the earnings potential of their business ventures, and the level of assistance the defendants will provide to purchasers.

11. The defendants offer to sell and sell a business opportunity consisting of processing medical claims and submitting these claims on behalf of doctors and dentists to insurance companies for payment. The consumer or prospective purchaser is required to spend between $5,995 and $7,495 for the PMCS package. That package principally includes medical billing computer software which can be purchased at a retail cost of approximately $69. The package also includes a two-day training session on how to use the software, marketing tips, a "lead" list of doctors and/or dentists in the consumer's area to whom the consumer should attempt to market his or her billing services, and follow-up support from PMCS regarding marketing, sales tips, software-related questions, and business development.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

12. 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

13. Paragraphs 1 through 14 are incorporated herein by reference.

14. In the course of offering for sale and selling computerized medical billing business opportunities, defendants have represented, directly or by implication, that purchasers can reasonably expect to achieve a specific level of earnings, such as income between $18,000 and $23,000 and more per year by working just 28 minutes per day at home. In print advertisements and oral statements, defendants also represent that purchasers of the business opportunity can earn in excess of $50,000 using the computer billing package during the course of a year and that such figures are average estimates of the sales or earnings purchasers can reasonably expect.

15. In truth and in fact, few if any purchasers attain the specific level of earnings represented by the defendants. Nor are such figures average estimates of the sales or earnings purchasers can reasonably expect.

16. Therefore, defendants' representations as set forth in Paragraph 15 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

17. Paragraphs 1 through 16 are incorporated herein by reference.

18. In the course of offering for sale and selling computerized medical billing business opportunities, defendants have represented, directly or by implication, that the physicians and dentists that defendants provide or recommend are ready and willing to purchase the consumer's medical billing services.

19. In truth and in fact, in numerous instances, the physicians and dentists that defendants provide or recommend are not ready and willing to purchase the consumer's medical billing services.

20. Therefore, defendants' representations as set forth in Paragraph 19 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

21. Paragraph 1 through 20 are incorporated herein by reference.

22. In the course of offering for sale and selling computerized medical billing business opportunities, defendants have represented, directly or by implication, that the defendants provide

purchasers with significant and valuable assistance in the operation of their businesses, including but not limited to, claims that the defendants provide (1) extensive training devoted to use of the software and to the marketing of the medical billing services to the doctors and/or dentists; (2) updated manuals; (3) training and promotional cassette tapes; and (4) comprehensive follow-up support and technical assistance.

23. In truth and in fact, in numerous instances, defendants do not provide purchasers with significant and valuable assistance in the operation of their businesses, including but not limited to, (1) extensive training devoted to use of the software and to the marketing of the medical billing services to the doctors and/or dentists; (2) updated manuals; (3) training and promotional cassette tapes; and (4) comprehensive follow-up support and technical assistance.

24. Therefore, defendants' representations as set forth 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).

THE FRANCHISE RULE

25. The business ventures 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).

26. 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.

27. The Franchise Rule additionally requires: (1) that the franchisor provide to prospective franchisees a document containing information substantiating the earnings claim, 16 C.F.R. § 436.1(b)-(e); and (2) that 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).

28. 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

29. Paragraphs 1 through 28 are incorporated herein by reference.

30. 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 in the manner and within the time frame required by the 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

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

32. 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 documents required by the Rule and have failed to disclose the information required by the Rule in the manner and within the time frame required by the Rule, 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

33. Consumers in many areas of the United States have suffered 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

34. 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.

35. 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.

36. 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;

2. Permanently enjoin the defendants from violating the FTC Act and the Franchise Rule, as alleged herein, in connection with the offering and promotion of business ventures, distributorships, business opportunities 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.

Respectfully submitted,

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