

- C. "[A]ccording to a recent Gallup Poll, 94% of franchise owners are successful, averaging \$124,290 in pre-tax profits . . . !" (Exhibit A, ad #2)
- D. "According to a recent Gallup Poll, 94% of franchise owners are successful, averaging \$124,290 in pre-tax income . . . !" (Exhibit A, ad #3)
- E. "A recent Gallup Poll revealed that 94% of franchise owners are successful, that average pre-tax income is \$124,290 . . . !" (Exhibit A, ad #4)
- F. "If You Go Into Business For Yourself, Your Chances of Success are 94% or 35%! WHICH WILL YOU CHOOSE? If you buy a Franchise Business, your chances of success are 94%! THAT'S A FACT, according to a recent Gallup poll. Conversely, it's estimated that only 35% of independent business start-ups survive 5 years." (Exhibit A, ad #5)
- G. "The 1991 Gallup Poll revealed an average pre-tax income among Franchises of \$124,290" (Exhibit A, ad #5)
- H. "A recent Gallup Poll showed that 94 percent of franchise owners are successful, with an average pre-tax profit of \$124,290!" (Exhibit A, ad #6)
- I. "A recent independent survey showed that franchise owners enjoy an incredible 94 percent success rate and an average income of more than 124 thousand dollars." (Exhibit B; television advertisement)
- J. "A recent poll of 994 franchise owners showed a 94% success rate and an average pre-tax income of over a hundred and twenty four thousand dollars." (Exhibit C; radio advertisement)

A copy of the Gallup poll referred to above is attached hereto and incorporated herein as Exhibit D.

PARAGRAPH FIVE: Through the use of the statements contained in the advertisements for franchise shows referred to in PARAGRAPH FOUR, including but not necessarily limited to the advertisements attached as Exhibits A, B and C, respondent has represented, directly or by implication, that:

- A. franchise owners earn an average income and/or average pre-tax income of more than \$124,000;

B. franchise owners earn an average pre-tax income and/or average pre-tax profit of \$124,290;

C. a prospective franchise owner's chances of success are 94%;

D. franchise owners enjoy a 94% success rate;

E. representations A through D were proved by a Gallup poll of franchise owners conducted in 1991.

PARAGRAPH SIX: Through the use of the statements contained in the advertisements referred to in PARAGRAPH FOUR, including but not necessarily limited to the advertisements attached as Exhibits A-C, respondent has represented, directly or by implication, that at the time it made representations A through D in PARAGRAPH FIVE, respondent possessed and relied upon a reasonable basis that substantiated such representations.

PARAGRAPH SEVEN: In truth and in fact, at the time it made representations A through D in PARAGRAPH FIVE, respondent did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in PARAGRAPH SIX was, and is, false and misleading.

PARAGRAPH EIGHT: In truth and in fact, the Gallup poll of franchise owners conducted in 1991 does not prove representations A through D in PARAGRAPH FIVE, for reasons including but not limited to the following:

A. The poll participants were asked to report their annual gross income before taxes, and were not asked to deduct business expenses;

B. The poll participants were drawn exclusively from a list of current franchise owners, and no former franchise owners were polled; and

C. The poll included a disproportionate number of owners of multiple franchise locations.

Therefore, representation E in PARAGRAPH FIVE was, and is, false and misleading.

PARAGRAPH NINE: The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a).

