

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

FILED
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AUG 16 1996

PER 
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FEDERAL TRADE COMMISSION,

Plaintiff,

v.

TOWER CLEANING SYSTEMS, INC.,
a corporation, and

DAVID A. GANSKY, individually and as an
officer and director of the corporation,

Defendants.

Civil Action No.

X960122

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CV-96-1521

**COMPLAINT FOR PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF**

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

1. Plaintiff 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 and to obtain consumer redress, rescission or reformation of contracts, disgorgement, and other

equitable relief for defendants' unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, and the Commission's Trade Regulation Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" ("the Franchise 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. This action arises under 15 U.S.C. § 45(a)(1).

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

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 Tower Cleaning Systems, Inc. ("Tower") is a Pennsylvania corporation with its office and principal place of business located within the Middle District of Pennsylvania

at Bay Colony Executive Park, 565 East Swedesford Road, Suite 103, Wayne, Pennsylvania 19087.

6. Defendant David A. Gansky is an officer and director of defendant Tower. His principal place of business is within the Middle District of Pennsylvania at Bay Colony Executive Park, 565 East Swedesford Road, Suite 103, Wayne, Pennsylvania 19087. 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.

7. Each of the defendants resides and/or transacts business in this District.

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 commercial cleaning franchises 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 January 1990, the defendants have promoted, offered to sell and sold commercial cleaning franchises in the United States. In promoting and marketing the franchises, defendants typically place advertisements in general circulation newspapers, or distribute promotional material at franchise and business opportunity trade shows. The defendants charge consumers between \$4,000 and \$33,600 for the purchase of one of their franchises, and promise purchasers significant assistance in operating the franchise, including, but not limited to, providing franchisees with cleaning contracts having a specified level of gross monthly billings.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

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

11. Misrepresentations of material fact constitute unfair or deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

COUNT ONE

12. Paragraphs 1 through 11 are incorporated herein by reference.

13. In numerous instances, in connection with promoting, offering for sale and selling commercial cleaning franchises, defendants have represented, directly or by implication, that purchasers can reasonably expect to achieve a specific level of earnings, ranging from monthly revenues of \$500 to \$10,000, or a specific hourly income, such as \$15 per hour.

14. In truth and in fact, in numerous instances purchasers have not achieved the specific level of earnings or specific hourly income represented by defendants.

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

THE FRANCHISE RULE

16. 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).

17. The Franchise Rule requires a franchisor, within a specified time frame, 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, as well as specific information about other franchisees, including information about franchisee terminations, reacquisitions and cancellations. 16 C.F.R. § 436.1(a)(1) - (20).

18. The Franchise Rule also requires that the franchisor have a reasonable basis for any oral, written, or visual earnings or profit representations made by a franchisor to a prospective franchisee, 16 C.F.R. §§ 436.1(b)(2), (c)(2) and (e)(1), and that, if a franchisor makes such a representation, an earnings claim document containing certain substantiating information be provided to the prospective franchisee. 16 C.F.R. § 436.1(b)-(e).

19. The FTC permits franchisors to comply with the Franchise Rule by fully and completely complying with the disclosure requirements set forth in the Uniform Franchise Offering Circular ("UFOC") format, adopted by the Midwest Securities Commissioners' Association on September 2, 1975, and approved by the FTC on December 21, 1978 (43 Fed. Reg. 59722), as revised by the North American Securities Administrators Association ("NASAA") and approved by the Commission on June 15, 1987 (52 Fed. Reg. 22686), and as further revised by NASAA on April 25, 1993, and approved by the Commission on December 30, 1993 (58 Fed. Reg. 69224).

20. 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 II

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

22. In numerous instances, in connection with promoting, offering for sale and selling franchises, as "franchise" is defined in the Franchise Rule, 16 C.F.R. § 436.2(a), the defendants have failed to provide prospective franchisees with a basic disclosure document in the manner and within the times required by the Franchise Rule, thereby violating Section 436.1(a) of the Rule, 16 C.F.R. § 436.1(a), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT III

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

24. In numerous instances, in connection with promoting, offering for sale and selling franchises, as "franchise" is defined in the Franchise Rule, 16 C.F.R. § 436.2(a), the defendants have failed to provide prospective franchisees with specific items of information required by the Franchise Rule, including, but not limited to, a complete and accurate disclosure of all franchise terminations, reacquisitions, non-renewals and cancellations for the previous fiscal year (or the alternative requirements of Item XX of the UFOC), thereby violating Section 436.1(a)(16) of the Franchise Rule, 16 C.F.R. § 436.1(a)(16), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT IV

25. Paragraphs 1 through 24 are incorporated herein by reference.

26. In numerous instances, in connection with promoting, offering for sale and selling franchises, as "franchise" is defined in the Franchise Rule, 16 C.F.R. § 436.2(a), the defendants have made earnings claims, within the meaning of Sections 436.1(b)-(e) of the Franchise Rule, 16 C.F.R. §§ 436.1(b)-(e), but have failed to provide prospective franchisees the earnings claims document or other disclosures required by the Franchise Rule (or the alternative requirements of Item XIX of the UFOC), or have failed to have a reasonable basis for such claims at the time

they were made, thereby violating Sections 436.1(b)-(e) of the Franchise Rule, 16 C.F.R. § 436.1(b)-(e), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT V

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

28. In numerous instances, in connection with promoting, offering for sale and selling franchises, as "franchise" is defined in the Franchise Rule, 16 C.F.R. § 436.2(a), the defendants have failed to return funds or deposits in accordance with contract provisions disclosed in the basic disclosure document, thereby violating Section 436.1(h) of the Franchise Rule, 16 C.F.R. § 436.1(h), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

29. Consumers throughout 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

30. 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 FTC.

31. 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 others resulting from defendants' violations of the Franchise Rule, including the rescission and reformation of contracts, and the refund of money.

32. 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

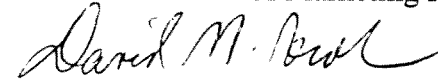
WHEREFORE, plaintiff requests this Court, as authorized by Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and pursuant to the Court's own equitable powers, to:

1. Enter judgment against the defendants and in favor of the plaintiff for each and every violation alleged in this complaint;
2. Award plaintiff such relief as the Court finds necessary to redress injury to consumers or others resulting from defendants' violations of the Franchise Rule and Section 5 of the FTC Act, including but not limited to, the rescission of contracts, the refund of monies paid, and the disgorgement of ill-gotten gains;
3. Permanently enjoin the defendants from violating the Franchise Rule and the FTC Act, as alleged herein, in connection with the offering and promotion of franchises; and
4. Award plaintiff such additional relief as the Court may deem just and proper.

Respectfully submitted,

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