

FILED  
U.S. DISTRICT COURT  
DISTRICT OF COLORADO

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

'98 AUG 24 P12:01

Civil Action No.

98-N-1832

WES R. MANSPEAKER CLERK

FEDERAL TRADE COMMISSION,	)
	)
Plaintiff,	)
	)
v.	)
	)
VENDORS FINANCIAL SERVICES, INC.,	)
also dba T & H MANAGEMENT, INC.,	)
SAMUEL JOHN LEVINE, JAY SAMUEL	)
LEVINE, and TOM DAVIS a/k/a	)
RICHARD MCLAUGHLIN	)
	)
Defendants.	)

**COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF**

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

**JURISDICTION AND VENUE**

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, 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.

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 District of Colorado is proper under 28 U.S.C. § 1391(b) and (c), and 15 U.S.C. § 53(b).

#### THE PARTIES

4. Plaintiff, the 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, *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.

5. Defendant Vendors Financial Services, Inc., also d/b/a T & H Management, Inc. ("Vendors Financial Services"), a Colorado corporation with its principal place of business at 3501 S. Corona St. #1, Englewood, Colorado 80110, has promoted or sold vending machine business ventures. Vendors Financial Services has transacted business in the District of Colorado.

6. Defendant Samuel John Levine ("Sam Levine") is an officer, director, or principal owner of defendant Vendors Financial Services. 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 defendant Vendors Financial Services, including the acts and practices set forth in this complaint. He lives and has transacted business in the District of Colorado.

7. Defendant Jay Samuel Levine ("Jay Levine") is an officer, director, or principal owner of defendant Vendors Financial Services. 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 defendant Vendors Financial Services, including the acts and practices set forth in this complaint. He lives and has transacted business in the District of Colorado.

8. Defendant Tom Davis a/k/a Richard McLaughlin ("Tom Davis") is a salesman for Vendors Financial Services. Defendant Tom Davis is also a "singer," i.e., a bogus reference, engaged in the deceptive conduct described below. As a singer, using the name Richard McLaughlin, he represents to have purchased a business venture sold by Vendors Financial Services and misrepresents to potential victims the profits he has made operating one of Vendors Financial Services' business ventures. At all times material to this complaint, acting alone or in concert with others, he has participated in the deceptive acts and practices set forth in this complaint. He resides and transacts business in the District of Colorado

### **COMMERCE**

9. At all times relevant to this complaint, the defendants have maintained a substantial course of trade in the offering for sale and sale of vending 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 ACTIVITIES**

10. Since at least May 1994, defendants have been engaged in a common scheme to promote, offer to sell and sell combination snack and soda vending machine business ventures to

consumers at prices ranging from \$2,840 for one vending machine and one professionally acquired location, to \$42,800 for twenty vending machines and twenty professionally acquired locations. The defendants claim they will provide the vending machines to consumers and recommend a locating company to acquire the locations in which consumers are to place their vending machines. Defendants pay for the services of the locating company by subtracting the locating fees from the prices of defendants' business ventures. The defendants induce consumers to purchase their business ventures by misrepresenting the earnings potential of the business ventures, the exclusivity of the territories in which purchasers' vending machines will be placed, the authenticity of the references whose names and telephone numbers defendants provide to potential purchasers, and the success of locating companies recommended by defendants in finding profitable locations.

#### **VIOLATIONS OF SECTION 5 OF THE FTC ACT**

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

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

#### **COUNT ONE**

13. In the course of offering for sale and selling vending machine business ventures, defendants have represented, expressly or by implication, that purchasers can reasonably expect to achieve a specific level of earnings, such as sales of 100 snacks per week and 150 sodas per week, gross profit of \$73.00 per week per machine, or gross profit of \$18,980.00 per year for five

machines, or that such figures are average estimates of the sales or earnings purchasers can reasonably expect.

14. 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.

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).

### **COUNT TWO**

16. In the course of offering for sale and selling vending machine business ventures, defendants have represented, expressly or by implication, that defendants provide purchasers with an exclusive territory in which no other business venture purchaser is permitted to place defendants' vending machines.

17. In truth and in fact, in numerous instances, defendants have not provided business venture purchasers with such exclusive territories.

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

### **COUNT THREE**

19. In the course of offering for sale and selling vending machine business ventures, defendants have represented, expressly or by implication, that they will provide references who

will give reliable and accurate descriptions of the references' experiences with defendants' business ventures.

20. In truth and in fact, in numerous instances, the defendants' references are shills or singers who have substantial ties to the defendants or have been compensated by the defendants to act as references and do not give reliable descriptions of the references' experiences with defendants' business ventures.

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

#### COUNT FOUR

22. In the course of offering for sale and selling vending machine business ventures, to induce consumers to purchase those business ventures, defendant Tom Davis has represented, expressly or by implication, that his name was Richard McLaughlin, and that as a reference for Vendors Financial Services, he provides consumers with reliable and accurate descriptions of his experience with defendants' business venture.

23. In truth and in fact, defendant Tom Davis is a shill or singer who has substantial ties to the other defendants or has been compensated by the other defendants to act as a reference and he does not provide reliable and accurate descriptions of his experience with defendants' business venture.

24. Therefore defendant Tom Davis' representations as set forth in Paragraph 22 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).

## COUNT FIVE

25. In the course of offering for sale and selling vending machine business ventures, defendants have represented, directly or by implication, that the locating company they provide or recommend is typically successful in placing business venture purchasers' vending machines in profitable locations.

26. In truth and in fact, in numerous instances, the locating company that the defendants provide or recommend is not typically successful in placing business venture purchasers' vending machines in profitable locations.

27. Therefore, defendants' representations as set forth in Paragraph 25 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

28. 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).

29. 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.

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

31. 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 SIX

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 Vendors Financial Services, Sam Levine and Jay Levine 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 SEVEN

33. 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 Vendors Financial Services, Sam Levine and Jay Levine have made earnings claims within the meaning of the Rule, 16 C.F.R. § 436.1(b)-(d), but have failed to provide prospective franchisees the earnings claim document required by

the Rule, and have failed to have a reasonable basis for such claims at the times they were made, thereby violating Sections 436.1(b)-(d) of the Rule, 16 C.F.R. § 436.1(b)-(d), and Section 5 of the FTC Act, 15 U.S.C. § 45.

### **CONSUMER INJURY**

34. 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**

35. 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.

36. 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.

37. 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 respectfully 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 defendants from violating the Franchise Rule and the FTC Act 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 gains; and

- (4) Award the Commission the costs of bringing this action, as well as such other and additional equitable relief as the Court may determine to be just and proper.

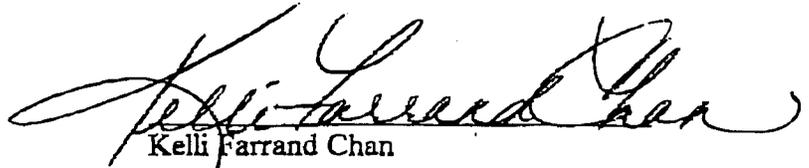
Respectfully submitted,

DEBRA A. VALENTINE  
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