

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
DIVISION

Case No. \_\_\_\_\_ Civ. **00-00515**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

ADVANCED PUBLIC COMMUNICATIONS  
CORPORATION, a Florida corporation;  
MICHAEL PORTMAN, individually and  
as an officer of the Corporation;  
and  
MICHAEL DAVIS, individually,  
Defendants.

**CIV - UNGARO - BENAGES**

**MAGISTRATE JUDGE  
BROWN**

CLARENCE HADDOX  
CLERK U.S. DIST. CT.  
S.D. OF FLA. - MIA

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D.C.

**COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF**

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

1. The FTC brings this action under Sections 5(a), 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b) and 57b, to obtain temporary, preliminary, and permanent injunctive relief, rescission of contracts, restitution, disgorgement, and other equitable relief for defendants' violations 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 subject matter jurisdiction over this action 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 Southern District of Florida 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, as well as enforcement of the Franchise Rule, 16 C.F.R. § 436. The Commission is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act in order to secure such equitable relief as may be appropriate in each case, and to obtain consumer redress. 15 U.S.C. §§ 53(b) and 57b.~~

~~5. Defendant Advanced Public Communications Corp. ("Advanced Public"), a Florida corporation with its principal place of business at 19501 N.E. Tenth Avenue, Suite 300, North Miami, Florida, 33179, promotes and sells payphone business ventures. Advanced Public transacts or has transacted business in the Southern District of Florida.~~

6. Defendant Michael Portman is the President and sole shareholder of Advanced Public. 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 resides and transacts or has transacted business in the Southern District of Florida.

7. Defendant Michael Davis holds himself out to consumers as the Operations Director and/or as the Supervising Route Coordinator of Advanced Public. 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 resides and transacts or has transacted business in the Southern District of Florida.

### 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 payphone 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

9. Since at least May 1999, and continuing through mid-December 1999, defendants offered and sold payphone business ventures to consumers. The defendants promoted their business ventures to prospective purchasers in classified advertisements in newspapers.

10. In their classified newspaper advertisements, defendants made representations about the earnings potential of their business venture, and urged consumers to call defendants' toll-free telephone number to learn more about the opportunity. For example, defendants'

advertisements typically stated:

"OWN PAYPHONES  
\$10K plus monthly potential.  
Call A.P.C. at 1-800-656-9565"

OR

"PAYPHONES 160K/yr.  
Local Sites Available Now!  
Call A.P.C. 800-656-9565"

11. Consumers who called the defendants' toll-free telephone number were ultimately ~~connected to defendants, or their employees or agents, who represented to consumers that in~~ exchange for a payment, often in excess of \$5,000.00, consumers would receive what they needed to get started in the business venture, including: (1) payphones and related equipment; (2) highly profitable locations; and (3) complete start-up assistance, including support establishing the payphone route.

12. The defendants or their employees or agents also made representations about the earnings potential of the business venture, and the actual earnings of prior purchasers, without giving consumers access to the information they need to evaluate the claims. For example, the ~~defendants or their employees or agents typically represented that their pre-selected payphone~~ locations generated at least \$300 per month per payphone, with an average profit of \$400 to \$600 per month per payphone.

13. The defendants or their employees or agents additionally represented that profitable payphone locations had been pre-selected and were available in the consumer's local area, and that these locations would be provided for the purchasers' payphones.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

14. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), provides that "unfair or deceptive acts or practices in or affecting commerce are hereby declared unlawful."

COUNT I

15. In numerous instances in the course of offering for sale and selling their payphone business ventures, defendants or their employees or agents represented, expressly or by implication, that consumers who purchase the business venture would earn in excess of \$300.00 per payphone per month.

16. In truth and in fact, few, if any, consumers who purchase the defendants' business ventures earn, or will earn, at least \$300.00 per payphone per month.

17. 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 II

18. In numerous instances in the course of offering for sale and selling their business ventures, defendants or their employees or agents represented, expressly or by implication, that consumers would be provided with pre-selected, highly profitable locations for their payphones.

19. In truth and in fact, few, if any, consumers who purchase the defendants' business venture are provided with profitable locations.

20. Therefore, defendants' representations as set forth in Paragraph 18 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 III

21. In numerous instances in the course of offering for sale and sale of payphone business ventures, defendants or their employees or agents represented, expressly or by implication, that purchasers would receive the payphone equipment the purchasers have ordered and paid for within 45 days of purchase.

22. In truth and in fact, numerous purchasers have never received the equipment they ordered and paid for.

~~23. Therefore, defendants' representations as set forth in Paragraph 21 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

24. The business ventures sold by the defendants were franchises, as "franchise" is defined in Sections 436.2(a)(1)(ii), (a)(2), and (a)(5) of the Franchise Rule, 16 C.F.R. §§ 436.2(a)(1)(ii), (a)(2), and (a)(5).

25. The Franchise Rule requires a franchisor to provide prospective franchisees with a ~~complete and accurate basic disclosure document containing twenty categories of information,~~ including information about the litigation and bankruptcy history of the franchisor and its principals, the terms and conditions under which the franchise operates, and information identifying existing franchisees. 16 C.F.R. § 436.1(a)(1) - (a)(20). The pre-sale disclosure of this information required by the Rule enables a prospective franchisee to contact prior purchasers and take other steps to assess the potential risks involved in the purchase of the franchise.

26. The Franchise Rule additionally requires: (1) that the franchisor have a reasonable basis for any oral, written, or visual earnings or profit representations ("earnings claims") it makes to a prospective franchisee, 16 C.F.R. § 436.1(b)(2), (c)(2) and (e)(1); (2) that the franchisor provide to prospective franchisees an earnings claim document containing information substantiating any earnings claims it makes, 16 C.F.R. § 436.1(b)-(e); and (3) that the franchisor, in immediate conjunction with any generally disseminated earnings claim, disclose additional information including the number and percentage of prior purchasers known by the franchisor to have achieved the same or better results. 16 C.F.R. § 436.1(e)(3)-(4).

27. 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 IV

28. In connection with the offering of franchises, as "franchise" is defined in the Rule, 16 C.F.R. § 436.2(a), defendants failed to provide prospective franchisees with accurate and complete basic 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 V

29. In connection with the offering of franchises, as "franchise" is defined in the Rule, 16 C.F.R. § 436.2(a), defendants or their employees or agents made earnings claims within the meaning of the Rule, 16 C.F.R. § 436.1(b)-(c), but failed to provide prospective franchisees with earnings claim documents within the time period required by the Franchise Rule, failed to have a reasonable basis for such claims at the times they were made, or failed to disclose the information required by the Rule in immediate conjunction with such claims, 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.~~

### COUNT VI

30. In connection with the offering of franchises, as "franchise" is defined in the Rule, 16 C.F.R. § 436.2(a), defendants made generally disseminated earnings claims within the meaning of the Rule, 16 C.F.R. § 436.1(e), but failed to disclose information required by the Franchise Rule in immediate conjunction with such claims, including the number and percentage of prior purchasers known by the defendants to have achieved the same or better results, failed to have a reasonable basis for such claims at the times they were made, or failed to provide prospective ~~franchisees with earnings claim disclosures at the times required by the Rule whenever such~~ claims are made, thereby violating Section 436.1(e) of the Rule, 16 C.F.R. § 436.1(e), and Section 5 of the FTC Act, 15 U.S.C. § 45.

## CONSUMER INJURY

31. Consumers nationwide have suffered or will suffer substantial monetary loss as a result of defendants' violations of Section 5(a) of the FTC Act and the Franchise Rule. 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

32. 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.

33. 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.

34. This Court, in the exercise of its equitable jurisdiction, may award 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, including a temporary restraining order, 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;

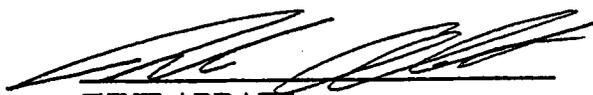
3. Award such relief as the Court finds necessary to redress injury to consumers resulting from the defendants' violations of the FTC Act and the Franchise Rule, including but not limited to, rescission of contracts, the refund of monies paid, and the disgorgement of ill-gotten gains; and

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.~~

Dated: February 7, 2000

Respectfully submitted,

DEBRA A. VALENTINE  
General Counsel



JULIE ABBATE  
KAREN LEONARD  
PETER LAMBERTON

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Attorneys for Plaintiff  
Federal Trade Commission  
600 Pennsylvania Avenue N.W.  
Washington, DC 20589  
Telephone: (202) 326-3639; 3597; 3274  
Facsimile: (202) 326-3395  
E-Mail: jabbate@ftc.gov; kleonard@ftc.gov;  
plamberton@ftc.gov