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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

TARGET VENDING SYSTEMS, L.L.C.,
a Delaware limited liability corporation;

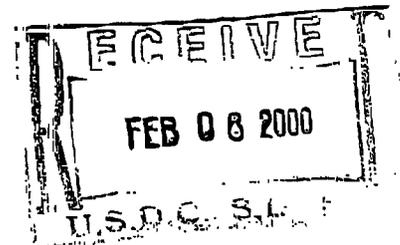
EAST WEST VENDING SYSTEMS, INC.,
d/b/a East/West Systems, a New York corporation;

BARRY RICHMAN, individually and as an
officer of the corporation; and

MARTHA GILLEN, individually and as an
officer of the corporation,

Defendants.

CIVIL ACTION NO.



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, appointment of a receiver, 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 New York 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 Target Vending Systems, L.L.C. ("Target Vending"), a Delaware limited liability corporation with its principal place of business at 350 Fifth Avenue, Suite 828, New York, New York 10118, promotes and sells vending machine business ventures. Target Vending transacts or has transacted business in the Southern District of New York.

6. Defendant East West Vending Systems, Inc., also doing business as East/West Systems, Inc. ("East West Vending"), a New York corporation with its principal place of business at 350 Fifth Avenue, Suite 828, New York, New York 10118, promotes and sells vending machine business ventures. East West Vending transacts or has transacted business in the Southern District of New York.

7. Defendants Target Vending and East West Vending are affiliated companies controlled in whole or in part by individual defendants Richman and Gillen. They share office space and employees and cooperate and act in concert to carry out the defendants' business practices as alleged herein. They constitute a common enterprise for purposes of this proceeding.

8. Defendant Barry Richman is an owner and an officer of both Target Vending and East West Vending. 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 defendants, including the acts and practices set forth in this complaint. He transacts or has transacted business in the Southern District of New York.

9. Defendant Martha Gillen is an owner and an officer of both Target Vending and East West Vending. At all times material to this complaint, acting alone or in concert with others, she has formulated, directed, controlled or participated in the acts and practices of the corporate defendants, including the acts and practices set forth in this complaint. She transacts or has transacted business in the Southern District of New York.

COMMERCE

10. 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

11. Since at least April 1996, and continuing thereafter, defendants have offered and sold vending machine business ventures to consumers. The defendants have promoted their business ventures to prospective purchasers by placing classified advertisements in newspapers.

12. In their advertisements, defendants make representations about the earnings potential of their business venture, and urge consumers to call defendants' toll-free telephone

number to learn more about the opportunity. For example, defendant East West Vending's classified newspaper advertisements typically state:

Established vending route. Must sell by 1/31.
20 locations. \$7K. \$2300+/mo. 100% finance
with good credit. 800-866-5979 ext. 4000.

Similarly, defendant Target Vending's advertisements typically state:

Avail. VENDING Route.
10-20 Locations. \$4K-10K. \$4,000+/Mo. Income
- ALL CASH! 100% Fin. avail. 1-888-538-9508, 24 hrs.

13. Consumers who call the defendants' toll-free telephone number are ultimately connected to defendants, or their employees or agents, who represent to consumers that, in exchange for a payment, often in excess of \$7,000, consumers will receive what they need to get started in the vending machine business venture, including quality vending machines, referral to a professional locator service, and continuing assistance in operating the venture.

14. In their sales presentation, the defendants or their employees or agents make representations about the earnings potential of the business venture without giving consumers access to the information they need to evaluate the claims. For example, the defendants or their employees or agents typically represent that their vending machines average ten (10) sales a day, and generate an average profit of \$7.80 per day, \$46.80 per six-day week, and \$2,433.60 per machine per year. These oral representations about the earnings potential of the business venture are reiterated in literature the defendants or their employees or agents provide to interested consumers.

15. Defendants or their employees or agents additionally represent that they will connect the consumer with a professional locator who will place the machines in profitable locations that are already secured or will be secured for the consumer.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

16. 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

17. In numerous instances in the course of offering for sale and selling their business ventures, defendants or their employees or agents have represented, expressly or by implication, that consumers who purchase the business venture can reasonably expect to earn a specified level of sales or income, such as \$2,433.60 per vending machine per year.

18. In truth and in fact, few, if any, consumers who purchase the defendants' business ventures earn, or will earn, the specified level of sales or income, such as \$2,433.60 per vending machine per year.

19. Therefore, defendants' representation as set forth in Paragraph 17 is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II

20. In numerous instances in the course of offering for sale and selling their business ventures, defendants or their employees or agents have represented, expressly or by implication, that consumers will be provided with profitable locations for their vending machines.

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

22. Therefore, defendants' representation as set forth in Paragraph 20 is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

THE FRANCHISE RULE

23. The business ventures sold by the defendants are 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).

24. 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.

25. 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).

26. 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 III

27. 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 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 IV

28. 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 have made earnings claims within the meaning of the Rule, 16 C.F.R. § 436.1(b)-(c), but have failed to provide prospective franchisees with earnings claim documents within the time period required by the Franchise Rule, have failed to have a reasonable basis for such claims at the times they were made, or have 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 V

29. In connection with the offering of franchises, as "franchise" is defined in the Rule, 16 C.F.R. § 436.2(a), defendants have made generally disseminated earnings claims within the meaning of the Rule, 16 C.F.R. § 436.1(e), but have 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, have failed to have a reasonable basis for such claims at the times they were made, or have 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

30. 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

31. 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.

32. 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.

33. 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 and appointment of a receiver, 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.

Respectfully submitted,

DEBRA A. VALENTINE
General Counsel

Date: Feb. 8, 2000

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