

COMMERCE

6. At all times relevant to this complaint, the defendants have maintained a substantial course of trade in the offering for sale and sale of mini automatic teller 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

7. The defendants offer and sell mini automatic teller machine business ventures to prospective purchasers. The defendants promote their business ventures through their Internet website www.mini-atm.com. On their website, 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.

8. Defendants have no reasonable basis for these earnings representations and have failed to disclose additional information including the number and percentage of prior purchasers known by the defendants to have achieved the same or better results.

9. Consumers who call the defendants’ toll-free telephone number are ultimately connected to defendants, or their employees or agents, who make representations about the earnings potential of the business venture and the actual earnings of prior purchasers. For example, the defendants or their employees or agents have represented that a mini automatic teller machine placed in a location visited by 500 persons per day will generate approximately \$450 in profits per month.

10. Defendants failed to provide prospective business venture purchasers with an earnings claim document containing information substantiating their earnings claims, failed to have a reasonable basis for the earnings claims at the time that they were made, and/or failed to disclose that materials,

which constitute a reasonable basis for the claims, are available.

11. Defendants do not provide potential purchasers with a basic disclosure document.

THE FRANCHISE RULE

12. 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).

13. 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.

14. The Franchise Rule additionally requires that a franchisor:

- (a) have a reasonable basis for any oral, written, or visual earnings claim it makes, 16 C.F.R. § 436.1(b)(2), (c)(2) and (e)(1);
- (b) disclose, in immediate conjunction with any earnings claim it makes, and in a clear and conspicuous manner, that material which constitutes a reasonable basis for the earnings claim is available to prospective franchisees, 16 C.F.R. § 436.1(b)(2) and (c)(2);
- (c) provide, as prescribed by the Rule, an earnings claim document containing

information that constitutes a reasonable basis for any earnings claim it makes, 16 C.F.R. § 436.1(b) and (c); and

- (d) clearly and conspicuously disclose, in immediate conjunction with any generally disseminated earnings claim, 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).

15. 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 I

Basic Disclosure Violations

- 16. Paragraphs 1 through 15 are incorporated herein by reference.
- 17. In connection with the offering of franchises, as “franchise” is defined in Section 436.2(a) of the Franchise Rule, the defendants have violated Section 436.1(a) of the Rule and Section 5(a) of the FTC Act by failing to provide prospective franchisees with accurate and complete basic disclosure documents as prescribed by the Rule.

COUNT II

Earnings Disclosure Violations

- 18. Paragraphs 1 through 15 are incorporated herein by reference.
- 19. In connection with the offering of franchises, as “franchise” is defined in Section 436.2(a)

of the Franchise Rule, the defendants have violated Sections 436.1(b)-(c) of the Rule and Section 5(a) of the FTC Act by making earnings claims to prospective franchisees while, *inter alia*, (1) lacking a

the FCOUNT III-376.E.5 71.2 5230 58 TD .D 0rnch B.5 (b 4980 0 02 Tf -0.457 T99 0.457 T99 0.4e FAdvertiso T)

alleged in this complaint;

2. Permanently enjoin the defendants from violating the Franchise Rule and the FTC Act;

3. Award plaintiff monetary civil penalties from each defendant for every violation of the Franchise Rule;

4. 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

5. 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.

FRANK MAXWELL WOOD
United States Attorney
Middle District of Georgia

Brendan Flanagan
Assistant United States Attorney
Middle District of Georgia
1246 First Avenue, 3rd Floor
Columbus, Georgia 31902
PHONE: 706-649-7700
FAX: 706-649-7667