

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
Northern Division**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

**MAJORS MEDICAL SUPPLY, INC.,
a Florida Corporation,**

**STUART PHILLIPS,
individually and as an officer and
principal of Majors Medical Supply,
Inc.**

and

**JOANNE PHILLIPS,
individually and as an officer and
principal of Majors Medical Supply,
Inc.,**

Defendants.

Civ.

Case No.

Magistrate

**COMPLAINT FOR
PERMANENT INJUNCTION,
CONSUMER REDRESS,
RESCISSION OF
CONTRACTS, AND OTHER
EQUITABLE RELIEF.**

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

1. The Commission 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 or reformation of contracts, disgorgement, appointment of a receiver, and other equitable relief for defendants' 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.

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.

3. Venue in the Southern District of Florida is proper under 28 U.S.C. §§ 1391(b) and (c), and 15 U.S.C. § 53(b).

PLAINTIFF

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. Part 436. The Commission is authorized to initiate federal district court proceedings to enjoin violations of the FTC Act, 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.

DEFENDANTS

5. Defendant Stuart Phillips is a founder of defendant Majors Medical Supply, Inc. ("MMS").

He is currently the vice-president and has been a principal of the company since its inception. He resides at 5757 NW 40th Way, Boca Raton, Florida, and his principal place of business is at 2600 N. Military Trail, Suite 390, Boca Raton, Florida 33431. 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.

6. Defendant Joanne Phillips, who is married to Stuart Phillips, is the co-founder of MMS. She owns MMS and is its president. She has been a principal in the company since its inception. She resides at 5757 NW 40th Way, Boca Raton, Florida, and her principal place of business is at 2600 N. Military Trail, Suite 390, Boca Raton, Florida 33431. 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 defendant, including the acts and practices set forth in this complaint.

7. Defendant Majors Medical Supply, Inc., a Florida corporation with its principal place of business at 2600 N. Military Trail, Suite 390, Boca Raton, Florida 33431, promotes, offers to sell, and sells home medical equipment franchises. At all times material to this complaint, MMS 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 or business in the offering for sale and sale of home medical equipment franchises, in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' COURSE OF BUSINESS

9. Since at least 1995, the defendants have promoted, offered for sale, and sold home medical equipment franchises nationwide. MMS franchisees sell or rent medical equipment to consumers and are reimbursed by Medicare, Medicaid, or other insurance carriers. The defendants sell exclusive territories for between \$25,000 and \$35,000. MMS promises to provide substantial assistance to its franchisees including: training the franchisees in how to sell home medical equipment; incorporating the franchisees' companies; placing the franchisees' orders for medical equipment with vendors; billing the insurance carriers on behalf of the franchisees; obtaining Medicare Supplier Numbers for its franchisees; developing advertising and advertising strategies for the franchisees; updating its franchisees on changes in Medicare and Medicaid requirements; and providing a staff to assist franchisees in any questions they have once they have started their business. The defendants induce individuals to purchase their franchises through representations about the cost of opening a franchise and the earnings potential of its franchises.

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."

COUNT I

11. Paragraphs 1 through 10 are incorporated herein by reference.

12. In numerous instances, in the course of promoting, offering for sale and selling home medical equipment franchises, defendants have represented, directly or by implication, that an initial investment of \$39,110 was sufficient to join MMS and open and operate an office for three months. Later, defendants represented that franchisees would need \$47,225 to open and operate

an MMS office for three months.

13. In truth and fact, in numerous instances, the amounts stated by defendants have not been sufficient to join MMS and open and operate an office for three months. Many franchisees have had to spend thousands of dollars over and above the figures represented by the defendants.

14. Therefore, the defendants' representations regarding the initial investment required to join MMS and open an office and operate for three months, as set forth in Paragraph 12, were and 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

15. Paragraphs 1 through 14 are incorporated herein by reference.

16. In numerous instances, in the course of promoting, offering for sale, and selling home medical equipment franchises, defendants have represented, directly or by implication, that purchasers would achieve profits of at least \$10,466 or \$13,295 after three months of operation.

17. In truth and fact, in numerous instances purchasers have not achieved the profits claimed by the defendants after three months of operation.

18. Therefore, the defendants' representations regarding profit levels, as set forth in Paragraph 16, were and 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).

THE FRANCHISE RULE

19. The home medical equipment businesses 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).

20. 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 ("disclosure document"). 16 C.F.R. §§ 436.1(a)(1)-(20). Disclosure of this information enables a prospective franchisee to assess the potential risks involved in the franchise.

21. The Franchise Rule also requires that the franchisor provide prospective franchisees with a document containing information substantiating any oral, written, or visual earnings or profit representations that the franchisor makes to prospective franchisees, 16 C.F.R. § 436.1(b)-(e).

22. The Franchise Rule also requires franchisors to provide purchasers with the disclosure document and the earnings document at the earlier of either the first face-to-face meeting or ten business days prior to the execution by the franchisee of a franchise agreement or the payment by the prospective franchisee of any consideration in connection with the sale or proposed sale of a franchise. 16 C.F.R. § 436.1(a).

23. 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

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

25. In numerous instances in connection with promoting, offering for sale and selling

franchises, as "franchise" is defined in the Rule, 16 C.F.R. § 436.2(a), the defendants have failed to provide prospective franchisees with a disclosure document in the manner and within the time frame required by the Franchise Rule, thereby violating Section 436.1(a) of the Rule, 16 C.F.R. 436.1(a)(1)-(20), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT IV

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

27. In numerous instances in connection with promoting, offering for sale and selling franchises, as "franchise" is defined in the Rule, 16 C.F.R. § 436.2(a), the defendants have made earnings claims, within the meaning of Section 436.1(b)-(d) of the Franchise Rule, 16 C.F.R. 436.1(b)-(d), but have failed to provide prospective franchisees the earnings claims document required by the Franchise Rule in the manner and within the time frame required by the Rule, thereby violating Section 436.1(b)-(d) of the Franchise Rule, 16 C.F.R. § 436.1(b)-(d), and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

28. Consumers in many areas of the United States have suffered and continue to suffer substantial monetary loss as a result of defendants' unlawful acts or practices in their ongoing sales of franchises. Absent injunctive relief by this Court, defendants are likely to continue to injure consumers.

THIS COURT'S POWER TO GRANT RELIEF

29. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes this Court to grant injunctive and other equitable relief, including the rescission of contracts, restitution, and disgorgement to

prevent and remedy any violations of any provision of law enforced by the Federal Trade Commission.

30. 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 rescission of contracts, restitution, and disgorgement.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff, the Federal Trade Commission, 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, including but not limited to, temporary and preliminary injunctions, appointment of a receiver, and an order freezing each defendants' assets;
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 monies; and
4. Award plaintiff the costs of bringing this ~~action~~ ^{suit}, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully Submitted,

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Dated: