

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
\_\_\_\_\_ - CIV - \_\_\_\_\_

---

UNITED STATES OF AMERICA,	)
	)
PLAINTIFF,	)
	)
v.	)
	)
ESPRESSO ITALIA MARKETING, INC., a Florida	)
corporation,	)
	)
SHADD VICKORY, individually and as an officer of the	)
corporation, and	)
	)
PATRICK ALBRIGHT, individually and as an officer )	)
of the corporation,	)
	)
DEFENDANTS.	)

---

**COMPLAINT FOR CIVIL PENALTIES, CONSUMER REDRESS,  
PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF**

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission (“FTC” or “the Commission”), pursuant to Section 16(a)(1) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 56(a)(1), for its complaint alleges:

1. Plaintiff brings this action under Sections 5(a), 5(m)(1)(A), 13(b), 16(a) and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), 56(a) and 57b, to secure civil penalties, consumer redress, a permanent injunction and other equitable relief for defendants’ violations of 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, and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

### **JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(m)(1)(A), 53(b), 56(a) and 57b. This action arises under 15 U.S.C. § 45(a).

3. Venue in the United States District Court for the Southern District of Florida is proper under 28 U.S.C. §§ 1391(b)-(c) and 1395(a), and 15 U.S.C. § 53(b).

### **DEFENDANTS**

4. Defendant Espresso Italia Marketing, Inc. ("Espresso"), a Florida corporation with its principal place of business at 1301 N. Congress Avenue, Suite 410, Boynton Beach, FL 33426, promotes espresso-cappuccino vending machine business ventures. Espresso transacts or has transacted business in the Southern District of Florida.

5. Defendant Shadd Vickory is Espresso's president, director and treasurer. In connection with the matters alleged herein, he resides or has transacted business in the Southern District of Florida. 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 Patrick Albright is Espresso's vice president and secretary. In connection with the matters alleged herein, he resides or has transacted business in the Southern District of Florida. 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.

### **COMMERCE**

7. At all times relevant to this complaint, the defendants have maintained a substantial course of trade in the offering for sale and sale of espresso/cappuccino 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**

8. The defendants offer and sell espresso/cappuccino vending machine business ventures to prospective purchasers. The defendants promote their business ventures through classified ads in newspapers.

9. In their advertisements, defendants urge consumers to call defendants’ toll-free telephone number to learn more about the opportunity. For example, defendants’ classified newspaper advertisements have stated:

Business Opportunity - Coffee Distributor  
High Profit Potential  
Short Hours, Low Overhead. Company Training.  
Pre-set accounts. 800-899-4503

10. 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 forty of their espresso/cappuccino vending machines typically

generate a profit of \$100,000 per year.

11. 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.

12. The written material also includes a basic franchise disclosure document.

13. However, this basic franchise disclosure document is incomplete or inaccurate because it fails to disclose information concerning other business venture purchasers.

### **THE FRANCHISE RULE**

14. 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).

15. 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.

16. 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); and
- (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).

17. 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**

18. Paragraphs 1 through 17 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 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**

20. Paragraphs 1 through 17 are incorporated herein by reference.

21. 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 reasonable basis for each claim at the times it is made; (2) failing to disclose, in immediate conjunction with each earnings claim, and in a clear and conspicuous manner, that material which constitutes a reasonable basis for the claim is available to prospective franchisees; and/or (3) failing to provide prospective franchisees with an earnings claim document, as prescribed by the Rule.

### **CONSUMER INJURY**

22. Consumers in the United States have suffered and will suffer substantial monetary loss as a result of defendants’ violations of the Franchise Rule and the FTC Act. 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**

23. 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.

24. Section 5(m)(1)(A) of the FTC Act, § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, and as implemented by 16 C.F.R. § 1.98(d) (1997), authorizes this Court to award civil penalties of not more than \$11,000 for each violation of the Franchise Rule occurring after November 20, 1996. The defendants’ violations of the Rule were committed after that date and with the knowledge required by

Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

25. 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.

26. This Court, in the exercise of its equitable jurisdiction, may award ancillary relief to remedy injury caused by the defendants' violations of the Franchise Rule and the FTC Act.

### **PRAYER FOR RELIEF**

WHEREFORE, plaintiff requests that this Court, as authorized by Sections 5(a), 5(m)(1)(A), 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b) and 57b, and pursuant to its own equitable powers:

1. Enter judgment against the defendants and in favor of the plaintiff for each violation 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.

DATED: \_\_\_\_\_

OF COUNSEL:

EILEEN HARRINGTON  
Associate Director for  
Marketing Practices  
Federal Trade Commission  
Washington, D.C. 20580

COLLEEN ROBBINS  
Attorney  
Federal Trade Commission  
Washington, D.C. 20580  
Tel: (202) 326-2548  
Fax: (202) 326-3395

FOR THE UNITED STATES OF AMERICA:

ROBERT D. McCALLUM, JR.  
Assistant Attorney General  
Civil Division  
United States Department of Justice  
Washington, D.C. 20044

EUGENE M. THIROLF  
Director  
Office of Consumer Litigation

---

SONDRA L. MILLS  
Trial Attorney, Office of Consumer Litigation  
United States Department of Justice  
P.O. Box 386  
Washington, D.C. 20044  
Tel: (202) 616-2375  
Fax: (202) 514-8742  
sondra.mills@usdoj.gov

GUY A. LEWIS  
United States Attorney for the  
Southern District of Florida

---

Assistant United States Attorney  
Florida Bar # \_\_\_\_\_  
99 N.E. 4th Street  
Miami, FL 33132  
Tel: (305)

Fax: (305)  
\_\_\_\_\_@usdoj.gov