IN THE UNITED STATED DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Window World of Chicagoland, LLC and David L. Hampton,	)	
	)	Case No. 12-CV-579
Plaintiffs,	)	
v.	)	
Window World, Inc., Tammy Whitworth and Dana Deem,	)	
Defendants.	)	JURY TRIAL DEMANDED

AMENDED COMPLAINT

Plaintiffs Window World of Chicagoland, LLC ("WWC") and David L. Hampton (collectively "Plaintiffs"), by and through their attorneys, as and for their Amended Complaint against Defendants, Window World, Inc. ("Window World"), Tammy Whitworth and Dana Deem, state as follows:

NATURE OF THE ACTION

1. This is an action for rescission and damages based on Defendants' violations of the Illinois Franchise Disclosure Act, 805 ILCS 705/1 *et seq.* by, among other things, failing to register as a franchise under the Illinois Franchise Disclosure Act ("IFDA") and making fraudulent representations and omissions in connection with the sale of an unregistered franchise. Plaintiffs also seek damages for Defendants' breach of contract arising out of Defendants' denial of Plaintiffs' right of first refusal by establishing a new territory adjacent to Plaintiffs' territory. As a result of Defendants' wrongful conduct, Plaintiffs' customer base has dwindled and the once thriving business has over night been devalued causing Defendants substantial monetary damages entitling them to recover damages and/or rescission under Illinois law.

PARTIES

2. Plaintiff WWC is an Illinois limited liability company organized under the laws of the State of Illinois with its principal place of business in Naperville, Illinois. David L. Hampton is the sole member of WWC and is a citizen and resident of Illinois.

3. Plaintiff Hampton is a citizen and resident of the State of Illinois.

4. Defendant Window World is a North Carolina corporation organized under the laws of the State of North Carolina with its principal place of business located at 118 Shaver Street, North Wilkesboro, North Carolina.

5. Defendant Tammy Whitworth is the Chief Executive Officer of Window World and is a citizen and resident of the State of North Carolina.

6. Defendant Dana Deem is the President of Window World and a citizen and resident of the State of North Carolina.

JURISDICTION AND VENUE

7. This Court has jurisdiction over the parties and subject matter in this civil action pursuant to 28 U.S.C. § 1332(a) in that the parties are citizens of different states and that the matter in controversy exceeds the sum of $75,000, exclusive of interests and costs.

8. Because Hampton is a resident of Illinois and an Illinois franchisee under the Illinois Franchise Disclosure Act of 1987 (“IFDA”), venue is proper in this district pursuant to Section 4 of the IFDA (815 ILCS 705/4).

9. Venue is proper in this division because Hampton resides in DuPage County, Illinois.

FACTUAL BACKGROUND

10. Defendant Window World is in the business of selling and licensing others to sell vinyl replacement windows, doors, siding and related products. Leon Whitworth is the founder

and former Chief Executive Officer of Window World. In 2006, he sold the company to his son and daughter-in-law, Todd and Tammy Whitworth. Todd Whitworth has since passed away and Tammy Whitworth is now Chief Executive Officer. Dana Deem has been with Window World since at least 2004 and is now the company's president.

11. Plaintiff Hampton has been in the vinyl replacement business since 1987. In 2005, he approached Window World to inquire about becoming a Window World dealer in the Chicagoland area. The company told him that Michael Bendfeldt had the rights to develop the Chicagoland market. Dana Deem worked with Bendfeldt and Hampton to create WWC to develop the area. David Hampton would be the operating partner and Bendfeldt the majority owner.

12. Initially, the partners wanted all of Cook, Lake, Kane, Will, McHenry and DuPage Counties. Deem told them that wasn't possible as the company kept surrounding counties as "buffers" or "grey" areas between territories to prevent overlap and encroachment between licensees. They agreed to take North Cook County, South Cook County and DuPage County with the opportunity to purchase immediately adjacent counties in the future.

13. On or about August 29, 2005, Hampton and his then partners entered into three separate "License Agreements" with Window World granting them the right to sell windows and related products under the Window World name in three designated trade areas--North Cook County, South Cook County and DuPage County. A true and correct copy of the License Agreements are attached hereto as Exhibit A.

14. In addition to the oral representations made to Plaintiffs that they could purchase the territory for adjacent counties, the License Agreements also provide Plaintiffs with the opportunity. *See* Ex. A, ¶9.

15. Prior to executing the License Agreement on August 29, 2005, neither Hampton nor his then partners were provided with any form of Franchise Disclosure Document ("FDD") by Window World. This is because Window World was not registered to sell franchises with the FTC or the State of Illinois.

16. Prior to signing the License Agreements, Window World made numerous material representations that were false that Plaintiffs relied upon in deciding to sign the Agreements, including:

• Window World had the rights to use the "Window World" trademarks and would take any steps necessary to ensure the efficacy of the brand;

•Window World would always keep a buffer between different trade areas so as to prevent overlap and encroachment between different licensees. These buffer areas are defined by county and were commonly referred to as "buffer counties" or "grey area."; and,

•Plaintiffs would have a right to purchase the territory of any counties adjacent to their licensed trade area.

17. Prior to signing the License Agreement, Window World also failed to disclose numerous material facts to Plaintiffs, including:

• the existence of at least two unrelated companies making unauthorized use of the "Window World" tradename in Plaintiffs' territories;

•Window World received undisclosed fees from suppliers, vendors and manufacturers that Plaintiffs would be forced to use;

•Window World's mandatory suppliers, vendors and manufacturers rates were not competitive and quite often debilitating to Plaintiffs' ability to turn a profit; and,

•Some of Window World's mandatory suppliers, vendors and manufacturers were owned by family members of the Whitworths.

18. Shortly after signing the License Agreements, Plaintiffs started receiving complaints for products they had not sold. Upon investigation, Plaintiffs learned there was an individual named David Diamond located at 700 W. 35th Street in Chicago, Illinois selling replacement vinyl windows and doors under the name "Window World, Inc." Mr. Diamond was

not incorporated and simply used the name. His presence caused and continues to cause confusion in the marketplace. Plaintiffs brought this to the immediate attention of Window World. Plaintiffs have continuously asked Window World to stop Mr. Diamond's infringement but they have done nothing. Mr. Diamond's unfair competition continues unabated to this day.

19. Sometime in 2007, the Better Business Bureau (the "BBB") of North Carolina accused Window World of false and misleading advertising. In response, Dana Deem wrote to all licensees instructing them to resign from the BBB. Plaintiffs did as instructed resulting in the Chicagoland BBB immediately lowering Plaintiffs' rating from an *A+* to an *F*. Window World refused to get involved to help Plaintiffs resolve the issue while Window World was fighting with the BBB in North Carolina. Plaintiffs' competitors used this information against them causing Plaintiffs' a dramatic loss in sales.

20. Plaintiffs were permitted to rejoin the Chicagoland BBB once Window World prevailed in a lawsuit against the BBB in North Carolina in August 2009. Plaintiffs new rating was only a *B-* until they proved themselves over the first year. The rating was eventually upgraded in 2010 to *A+* but the damage had been done.

21. Around this time, Defendant Hampton bought the interests of his partners in WWC. He signed a promissory note on behalf of the company to effect the sale. Window World approved the transfer and the promissory note. Over $200,000 remains outstanding on that note.

22. Pursuant to the buyout of Plaintiffs' partners, the License Agreements were assigned in full to Plaintiffs. Window World, however, requested that Plaintiffs enter into new license agreements for the same territories even though the initial term of the original license agreement was still in effect. A true and correct copy of these License Agreements are attached

as Exhibit B. The new License Agreements again provided Plaintiffs with the opportunity to purchase the territory for any adjacent counties.

23. Throughout this time, Plaintiffs made repeated requests to Window World to purchase the adjacent counties. Will County was key though as Plaintiffs offices are in Naperville, Illinois which straddles Will and DuPage counties and their advertising is targeted in those areas.

24. In February of 2010, Plaintiffs attended a regional meeting for Window World only to be introduced to the owner of a new territory, Window World Joliet, which included Will County. At no time were Plaintiffs ever offered the opportunity to buy the Will County territory.

25. On or about October 28, 2011, Window World wrote to Plaintiffs indicating that the License Agreement relationship was in fact a franchise. In that letter, Window World went on to say that the License Agreement violated franchise registration and disclosure laws and as a result, Window World would need to change to a franchise system. In that letter, Window World demanded that Plaintiffs agree within 35 days to become a franchisee or else the License Agreements would be rescinded and they would no longer be allowed to operate under the Window World name. If Plaintiffs chose to rescind, they would be refunded the license fee less the profits Plaintiffs earned during the term of the License Agreement. A true and correct copy of the letter is attached hereto as Exhibit C.

26. Included with the October 28, 2011 letter was a document purporting to be a Franchise Disclosure Document for Plaintiffs review in deciding whether to become a franchise. At the time the letter was sent, Window World was not registered to sell franchises in Illinois and did not have any approved form of FDD registered in Illinois. Yet, Window World is again offering a franchise to Plaintiffs without providing an FDD registered in Illinois in violation of the IFDA, 815 ILCS 705/1 *et seq.*

27. Faced with a total loss of their business if they don't blindly agree to become franchisees, Plaintiffs indicated they would enter into a franchise agreement. To date, no form of approved FDD has been presented to Plaintiffs.

28. In the October 28, 2011 letter, Window World purports to offer rescission. Defendants do not, however, comply with the IFDA's requirements for offering to rescind an illegally sold franchise. *See* 815 ILCS 705/1 *et seq.*

29. Upon information and belief, Window World is under investigation by numerous state governments for failing to follow a proper rescission process.

30. A few weeks later, the Attorney General of the State of Illinois filed a Complaint in the Court for the Seventh Judicial Circuit, Sangamon County, State of Illinois against Window World, Inc. captioned *People of the State of Illinois v. Window World, Inc.*, 2011 CH 1524 (the "AG Action").

31. In the AG Action, Window World entered into a Final Judgment and Consent Decree ("FJCD") with the Attorney General on November 29, 2011. A true and correct copy of the FJCD is attached hereto as Exhibit D.

32. In the FJDC, Window World admits it sold illegal franchises in the State of Illinois to at least fourteen "licensees" between 2003 and 2011. *See* Ex. D, ¶¶6-8. In the FJDC, Window World is enjoined from selling any franchises in the State of Illinois until such time as it is registered to do so and is enjoined from failing to provide prospective franchisees with an FDD that meets the requirements of the IFDA. *Id.* at ¶A.

33. The FJDC also imposes fines on Window World and require Window World to make an offer of rescission that meets the requirements of the IFDA 815 ILCS 705/26. *Id.* at ¶¶B & C.

34. Plaintiffs business has been devalued as a result. Plaintiffs have been unable to pay the over-priced Window World manufacturer for past orders and as such cannot receive shipments for new orders.

35. Window World still has not provided any form of FDD properly registered in Illinois. Window World still has not sent Plaintiffs an offer of rescission that complies with 815 ILCS 705/26.

36. Upon information and belief, Window World continues to offer illegal licenses through its website www.windowworld.com.

COUNT I
VIOLATION OF ILLINOIS FRANCHISE DISCLOSURE ACT - 815 ILCS 705/5

37. Plaintiffs repeat and reallege paragraphs 1 through 36 above as if fully set forth herein.

38. The IFDA, 815 ILCS 705/1, et. seq., governs the sale of franchise businesses in the State of Illinois.

39. Pursuant to the terms of the IFDA, a "Franchise" is defined as:

> [a] contract or agreement, either express or implied, whether oral or written, between two or more persons by which:
>
> (a) a franchisee is granted the right to engage in the business of offering, selling, or distributing goods or services, under a marketing plan or system prescribed or suggested in substantial part by the franchisor; and
> (b) the operation of the franchisee's business pursuant to such a plan is substantially associated with the franchisor's trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchisor or its affiliate; and
> (c) the person granted the right to engage in such a business is required to pay directly or indirectly a franchisee fee of $500 or more. 815 ILCS 705/3(1).

40. The IFDA defines a "franchisee" as "a person to whom a franchise is granted." 815 ILCS 705/3(2). Plaintiffs are each a "franchisee" as defined by the IFDA.

41. The IFDA defines a "franchisor" as "a person who grants a franchise." 815 ILCS 705/3(3). Defendant Window World is a "franchisor" as defined by the IFDA.

42. The License Agreements and relationship between Plaintiffs and Window World satisfy all of the elements of the franchise definition under the IFDA.

43. As such, Window World is required to comply with the IFDA when offering to sell or selling a franchise to a prospective franchisee.

44. Section 705/5 of the IFDA prohibits a franchisor from offering to sell or selling a franchise without first providing the prospective franchisee with a copy of the disclosure statement required by Section 705/16 of the IFDA at least fourteen (14) days prior to the execution of any binding agreement.

45. Specifically, Section 5 of the IFDA expressly provides:

> It is unlawful for any person to offer or sell any franchise which is required to be registered under this Act without first providing to the prospective franchisee at least 14 days prior to the execution by the prospective franchisee of any binding franchise or other agreement, or at least 14 days prior to the receipt by such person of any consideration, whichever occurs first, a copy of a disclosure statement meeting the requirements of this Act and registered by the Administrator, together with a copy of all proposed agreements relating to the sale of the franchise. For the purposes of this Act, delivery of a disclosure statement to a general partner of a partnership shall constitute delivery to the partnership and its partners and delivery of a disclosure statement to a principal officer of a corporation shall constitute delivery to the corporation and its shareholders.

46. Window World admittedly violated Section 705/5 of the IFDA by offering to sell and selling a franchise to Plaintiffs without first providing a copy of an FDD required by Section 705/16 of the IFDA at least fourteen (14) days prior to the execution of the License Agreements.

47. Pursuant to Section 705/26, a franchisee may sue for rescission and damages (including its costs and reasonable attorneys' fees) "in the case of a violation of Section 5, 6, 10, 11 or 15" of the IFDA.

48. The individual Defendants are liable pursuant to Section 705/26 of the IFDA which imposes liability on officers, directors, owners or employees of a Franchisor which violates the statute.

49. As a direct and proximate result of Defendants' statutory violations, Plaintiffs are entitled to rescission and/or an award of damages, including their reasonable attorneys' fees and court costs, in an amount in excess of $75,000.

COUNT II
VIOLATION OF ILLINOIS FRANCHISE DISCLOSURE ACT - 815 ILCS 705/6

50. Plaintiffs repeat and reallege paragraphs 1 through 49 above as if fully set forth herein.

51. Section 705/6 of the IFDA prohibits a franchisor from engaging in fraudulent practices when offering to sell or selling a franchise in Illinois.

52. Specifically, Section 6 of the IFDA expressly provides:

> In connection with the offer or sale of any franchise made in this State, it is unlawful for any person, directly or indirectly, to:
> (a) employ any device, scheme, or artifice to defraud;
> (b) make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
> (c) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person...

53. Window World admittedly violated Section 705/6 of the IFDA by offering to sell and selling franchises as licenses in Illinois. Window World violated Section 705/6 of the IFDA by, among other things, representing or omitting that:

- Window World had the rights to use the "Window World" trademarks and would take any steps necessary to ensure the efficacy of the brand;

- Window World would always keep a buffer between different trade areas so as to prevent overlap and encroachment between different licensees. These buffer areas are defined by county and were commonly referred to as "buffer counties" or "grey area.";

- Plaintiffs would have a right to purchase the territory of any counties adjacent to their licensed trade area.

- the existence of at least two unrelated companies making unauthorized use of the "Window World" tradename in Plaintiffs' territories;

•Window World received undisclosed fees from suppliers, vendors and manufacturers that Plaintiffs would be forced to use;

•Window World's mandatory suppliers, vendors and manufacturers rates were not competitive and quite often debilitating to Plaintiffs' ability to turn a profit; and,

•Some of Window World's mandatory suppliers, vendors and manufacturers were owned by family members of the Whitworths.

54. The individual Defendants are liable pursuant to Section 705/26 of the IFDA which imposes liability on officers, directors, owners or employees of a Franchisor which violates the statute.

55. As a direct and proximate result of Defendants' statutory violations, Plaintiffs are entitled to rescission and/or an award of damages, including their reasonable attorneys' fees and court costs, in an amount in excess of $75,000.

COUNT III
VIOLATION OF ILLINOIS FRANCHISE DISCLOSURE ACT - 815 ILCS 705/10

56. Plaintiffs repeat and reallege paragraphs 1 through 55 above as if fully set forth herein.

57. Section 705/10 of the IFDA prohibits a franchisor from offering to sell or selling a franchise in Illinois without being registered as required by Section 705/10.

58. Specifically, Section 10 of the IFDA expressly provides:

> No franchisor may sell or offer to sell a franchise in this State if (1) the franchisee is domiciled in this State or (2) the offer of the franchise is made or accepted in this State and the franchise business is or will be located in this State, unless the franchisor has registered the franchise with the Administrator by filing such form of notification and disclosure statement as required under Section 16.

59. Window World admittedly violated Section 705/10 of the IFDA by offering to sell and selling franchises in Illinois without being registered.

60. Pursuant to Section 705/26, a franchisee may sue for rescission and damages (including its costs and reasonable attorneys' fees) "in the case of a violation of Section 5, 6, 10, 11 or 15" of the IFDA.

61. The individual Defendants are liable pursuant to Section 705/26 of the IFDA which imposes liability on officers, directors, owners or employees of a Franchisor which violates the statute.

62. As a direct and proximate result of Defendants' statutory violations, Plaintiffs are entitled to rescission and/or an award of damages, including their reasonable attorneys' fees and court costs, in an amount in excess of $75,000.

COUNT IV
BREACH OF CONTRACT

63. Plaintiffs repeat and reallege paragraphs 1 through 62 above as if fully set forth herein.

64. Under the License Agreements, Defendants agreed, among other things, to offer to Plaintiffs any adjacent territories to their trade area.

65. Defendants materially breached the License Agreements by, among other things, selling the Will County territory to a third party.

66. As a direct and proximate result of Defendants' breach, Plaintiffs have been damaged in an amount equal to the lost profits it should have received and/or would have earned but for Defendants' breaches plus costs, including attorneys' fees and interest.

67. Plaintiffs at all times fully performed all of its obligations under the License Agreements.

COUNT IV
FRAUD

68. Plaintiffs repeat and reallege paragraphs 1 through 67 above as if fully set forth herein.

69. Defendants intentionally, knowingly and willfully made multiple false and misleading omissions and statements of material fact to Plaintiffs, including but not limited to:

- Window World had the rights to use the "Window World" trademarks and would take any steps necessary to ensure the efficacy of the brand;
- Window World would always keep a buffer between different trade areas so as to prevent overlap and encroachment between different licensees. These buffer areas are defined by county and were commonly referred to as "buffer counties" or "grey area.";
- Plaintiffs would have a right to purchase the territory of any counties adjacent to their licensed trade area.
- the existence of at least two unrelated companies making unauthorized use of the "Window World" tradename in Plaintiffs' territories;
- Window World received undisclosed fees from suppliers, vendors and manufacturers that Plaintiffs would be forced to use;
- Window World's mandatory suppliers, vendors and manufacturers rates were not competitive and quite often debilitating to Plaintiffs' ability to turn a profit; and,
- Some of Window World's mandatory suppliers, vendors and manufacturers were owned by family members of the Whitworths.

70. Defendants knew their material omissions and statements were false and misleading when made.

71. Defendants made the false and misleading omissions and statements with the intent to induce Plaintiffs to enter into the License Agreements. Plaintiffs relied on Defendants' false and misleading omissions and statements by signing the License Agreements.

72. As a direct and proximate result of Defendants' fraudulent representations and omissions, Plaintiffs have suffered and are entitled to damages in an amount to be determined at the trial, but in no event less than $75,000.

WHEREFORE, Plaintiffs, respectfully pray for a trial by jury, judgment in their favor and against Defendants, and for rescission of the License Agreements and/or an award of damages, including their reasonable attorneys' fees and court costs, in an amount in excess of $75,000, and for an award of punitive damages against the Defendant and in favor of Plaintiffs.

Dated: January 26, 2012

Respectfully submitted,

WINDOW WORLD OF CHICAGOLAND, LLC AND DAVID L. HAMPTON

_/s/ Alice A. Kelly___________________________

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