

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FILED IN CLERK'S OFFICE
U.S.D.C. Atlanta

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LUTHER D. THOMAS, Clerk
By: *ALH* Deputy Clerk

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

CLUB ATLANTA TRAVEL, INC.,
DAVID L. STRAUB, FRANK GARNER, and
FRED GARNER

Defendants.

CIVIL ACTION FILE NO.

1 97-CV 2774

COMPLAINT

The plaintiff, Securities and Exchange Commission ("Commission"), files this complaint and alleges the following:

OVERVIEW

1. This matter involves the sale of unregistered, non-exempt securities to investors throughout the United States by defendants Club Atlanta Travel, Inc. ("CAT"), David L. Straub ("Straub"), CAT's founder, president, chief executive officer, and chairman, Frank Garner, CAT's vice president and director, and Fred Garner, CAT's secretary and director, through false and misleading representations and omissions of material facts, concerning, among other things, (a) the expected return on investment, (b) the financial stability and wherewithal of CAT, (c) the escrowing of investors' funds, (d) challenges to CAT by various states' Attorney General offices, and (e) Straub's background.

2. From November 1995, the defendants have raised over \$32,000,000 from approximately 24,000 investors nationwide and Canada by selling unregistered securities in the form of investment contracts involving an instrument called a "CAT Pass." CAT has paid out as commissions approximately \$28,000,000, including those commissions paid to the defendants.

3. The defendants, directly and indirectly, have engaged, are engaged and are about to engage in transactions, acts, practices and courses of business which constitute violations of Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77e(a) and 77e(c)], Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

4. Defendants' violations described herein involved fraud, deceit and deliberate or reckless disregard of regulatory requirements, and such violations directly and indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.

5. There is a reasonable likelihood that the defendants, unless restrained and enjoined, will continue to engage in the acts, transactions, practices and courses of business alleged in this Complaint, or in acts, transactions, practices and courses of business of similar purpose and object.

6. The Commission brings this action pursuant to authority conferred upon it by Sections 20(b), 20(c) and 20(d) of the Securities Act [15 U.S.C. §§ 77t(b)-(d)] and Section 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d)-(e)].

7. Pursuant to the authority granted by Sections 10(b) and 23(a) of the Exchange Act [15 U.S.C. §§78j(b) and 78w(a)], the Commission has promulgated Rule 10b-5 [17 C.F.R. § 240.10b-5], which rule was and continues to be in effect at all times mentioned herein.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(c), 20(d), and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77t(c), 77t(d) and 77v(a)] and Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e) and 78aa].

9. Venue lies in this Court pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa] because conduct from which this action arose occurred in this district and because the defendants reside within or have their principal place of business in this district.

10. Each of the defendants, directly and indirectly, singly and in concert, has made use of the means and instrumentalities of interstate commerce and of the mails in connection with the acts, practices, transactions and courses of business described in this Complaint.

THE DEFENDANTS

11. Club Atlanta Travel, Inc. ("CAT") was incorporated in Georgia in September 1995. CAT is headquartered in Marietta, Georgia and began selling CAT Passes to the public in November 1995. CAT represents that it has foreign offices in Toronto, Canada and Sao Paulo, Brazil. CAT is owned by Straub, his wife, Frank Garner, and Fred Garner.

12. David L. Straub ("Straub"), the founder and current president, chief executive officer, and chairman of CAT, is 49 years old and is a resident of Roswell, Georgia. Straub together with his wife owns 50% of CAT, whose shares are held in the name of a trust. Straub is responsible for organizing national and regional membership meetings and producing written promotional sales materials and audio- and video- taped promotional messages for CAT. He has written the script for radio advertisements and has prepared several and reviewed most, if not all, written sales materials. Straub also has recorded a promotional solicitation for the CAT Pass which is played when persons call CAT's "1-800 Presentation Line." Since at least December 1995, Straub has regularly participated in national conference telephone calls promoting CAT every Thursday night. Straub has spoken at meetings soliciting the purchase of CAT Passes, at which existing investors can bring new prospects, in Anchorage, Atlanta, Birmingham, Boston, Charlotte, Charleston, Chattanooga, Columbia, Dallas, Denver, Detroit, Greensboro, Las Vegas, Louisville, Miami, Nashville, New York, Oklahoma City, Palm Springs, Phoenix, San Diego, San Francisco, Savannah, Washington, D.C., and Toronto. Straub designed the CAT Pass concept, participated in CAT strategy meetings and board meetings and approved all decisions which materially effected the structure of the CAT Pass and CAT Canada programs or the sale of CAT Passes to investors.

13. Prior to founding CAT, Straub was the chief executive officer, and together with his wife were the two principals, of Trademasters, Inc., a barter/exchange company which filed for bankruptcy in March 1993. The Chapter 11 bankruptcy trustee assigned to the matter

concluded that Trademasters suffered from gross mismanagement by its principals, that monies disappeared from the company and remained unaccounted for, that the principals took actions which resulted in depriving Trademasters' members out of the benefits for which they had joined, and that the principals, just prior to the filing of Trademasters' bankruptcy petition, fraudulently conveyed the majority of Trademasters' assets to another entity. The trustee recommended that Straub be immediately removed from his position. On or about December 15, 1994, Straub and his wife filed for Chapter 7 bankruptcy, listing total assets of \$198,536 and total liabilities of \$663,706.

14. Frank Garner is vice president and director of CAT, is 59 years old and is a resident of Marietta, Georgia. Frank Garner, together with his brother Fred Garner, gave approximately \$14,000 to Straub as start-up capital for CAT. Frank Garner owns 25% of CAT. Frank Garner was active in CAT's operations. He processed incoming applications and checks to CAT from investors. He executed contracts on behalf of CAT. He opened various CAT bank accounts (including traveling to Costa Rica for that purpose), monitored the accounts, and transferred monies from one account to another. He is on the signature cards for several CAT bank accounts. He reviewed computer reports to monitor the monies which CAT was receiving, the monies it was paying out, and the number of CAT Passes that had been "activated." He spoke with investors who called CAT's customer service number, gave sales presentations to investors at CAT headquarters, and attended other sales presentations at other locations. He participated in CAT strategy meetings and board meetings and approved of most, if not all,

decisions which materially effected the structure of the CAT Pass and CAT Canada programs or the sale of CAT Passes to investors.

15. Fred Garner is a director, secretary and treasurer of CAT, is 58 years old, and is a resident of Kennesaw, Georgia. Fred Garner, together with his brother Frank Garner, gave approximately \$14,000 to Straub as start-up capital for CAT. Fred Garner owns 25% of CAT. Fred Garner was active in CAT's operations. He processed incoming applications and checks to CAT from investors. He executed contracts on behalf of CAT. He opened various CAT bank accounts (including traveling to Costa Rica for that purpose), monitored the accounts, and transferred monies from one account to another. He is on the signature cards for several CAT bank accounts. He reviewed reports to monitor the monies which CAT was receiving, the monies it was paying out, and the number of CAT Passes that had been "activated." He spoke with investors who called CAT's customer service number and attended other sales presentations at other locations. He participated in CAT strategy meetings and board meetings and approved of most, if not all, decisions which materially effected the structure of the CAT Pass and CAT Canada programs or the sale of CAT Passes to investors.

THE CAT PASS PROGRAM

16. From at least November 1995, the defendants have solicited investors throughout the United States to invest in the CAT Pass Program through written promotional sales materials, radio, television and print advertisements, public meetings, national conference calls, highway billboards, and "1-800" presentation hot-line numbers.

17. In order to enter the CAT Pass Program, an investor was required to make a \$500 downpayment towards the purchase of a CAT Pass, to which CAT assigned a value of \$1,000, together with a \$99 payment to cover the cost of application/computer processing fees, a newsletter and a kit of promotional sales materials to be used in recruiting new investors. With this \$599 payment, the investor was assigned a Travel Business Center ("TBC"), and thus a position in the CAT binary matrix. CAT called these investors CAT "independent representatives." The \$500 balance for the CAT Pass was due in 6 months.

18. The emphasis in the CAT Pass program was for those investors who had made their \$500 downpayments to recruit two other persons into the program. For example, December 1995 and March 1996 CAT promotional sales materials represented that an investor could "activate" his TBC by "selling" two additional CAT Passes, i.e., getting two other persons to each make \$500 downpayments (one of these persons would fill the investor's "downline left leg" and the other would fill the investor's "downline right leg" in CAT's binary matrix). Other CAT marketing materials emphasized that CAT representatives earn commissions and CAT Passes by referring new members; still other materials and advertisements spoke of the need to sponsor new members.

19. CAT sales materials stressed that an investor need do nothing more once he had brought two additional persons into the CAT Pass program. For example:

a. in an audio cassette tape which was given to investors, Straub states:

Three centers [TBCs] can earn you \$12,000 a week forever, and seven centers can earn you \$28,000 a week, all you have to do is refer two people period. You

never ever have to personally sponsor another single CAT representative on that center ever. (Emphasis added.)

b. CAT promotional sales and training packages distributed in or about March 1996 represented that a person was “only obligated to make 2 retail CAT Pass sales per Travel Business Center (TBC).”

c. In promotional sales and training packages distributed in or about June 1996, CAT similarly represented that “you are only obligated to create \$500 in sales volume in each marketing group (MG #1 and MG #2).”

20. Investors in the CAT Pass program as structured would be earning money based on the efforts of other individuals, persons who they would not even know. This was repeated in CAT promotional sales materials. For example:

a. The December 5, 1995 CAT newsletter, The Latest Scoop, and the Winter 1996 CAT newsletter, The Scoop, distributed in or about January 1996, described the CAT Pass program as a binary multilevel marketing system which provided unlimited depth and unlimited downline which “means that new business a thousand levels below you will be just as important as the first people you sponsor.”

b. In an audio tape given to new investors, Straub described the CAT Pass program as follows:

Binary has no depth, no cutoff point, no end forever. That means that as you build your downline sales organizations it could grow to include thousands of distributors that you do not know, that live in other states, maybe even in other countries, but who make you money each time they sign up a new CAT representative, and that process goes on to infinity. (Emphasis added.)

c. The Winter 1996 edition of The Scoop and CAT advertisements which appeared in various magazines, including the March 1996 issue of Money Makers Monthly, stated that "You only need to sponsor 2 persons to qualify for unlimited depth."

21. CAT promotional sales materials distributed beginning in December 1995 through at least July 1996 represented to investors that "Your success is our success."

22. CAT promotional sales materials distributed beginning sometime before March 1996 through at least June 28, 1996 made clear that an individual could participate in the CAT program without the purchase of any of products.

23. In Volume 1 Issue 2 of CAT Tracks, a newsletter sent to CAT representatives in or about July 1996, Straub described as "exciting" a hypothetical investment opportunity in which a person would go \$1,000 out-of-pocket and with a little work could potentially earn a \$5,000 return in less than a year. Although he professed that CAT was not an investment, Straub then immediately proceeded to describe the CAT program as one in which a person would go out-of-pocket \$500 for the purchase of a CAT Pass and could earn 5 times that amount not in a year, but every single week.

24. Under the CAT Pass program, an investor would begin to receive a return on his \$500 investment as soon as each of the two persons who he had brought into the program in turn brought in two more persons (ie., each "sold" two additional CAT Passes), which would make

for a total of 3 “downline left leg” sales and 3 “downline right leg” sales. With this, the investor would have completed what CAT designated as “Level 1” and would receive a check from CAT for \$500; in addition, CAT would “apply” an additional \$500 to pay off the balance on the investor’s CAT Pass and send a CAT Pass to the investor.

25. CAT promotional sales materials represented that an investor would continue to receive additional returns on his initial \$500 investment as persons “downline” from him continued to bring new persons into the CAT Pass program. For example, when an additional 8 more CAT Passes were “sold” by persons “downline” from the investor (4 sales anywhere and by anyone on the “left leg” and 4 sales anywhere and by anyone on the “right leg”), the investor would complete “Level 2” and would receive a \$1,000 check from CAT. The investor would reach “Level 3” when persons “downline” from him “sold” another 6 more CAT Passes (3 sales anywhere on the “left leg” and 3 anywhere on the “right leg”). Completing “Level 3” would earn the investor another \$500 check; CAT would also “apply” an additional \$500 as a downpayment for a another CAT Pass (which CAT called the “Auto CAT Pass”) for the investor and assign him another TBC, which would enable the investor to earn Level 1, 2, and 3 payments again. An investor would reach “Level 4” and receive a \$1,000 check if he and someone on his “downline left leg” and someone on his “downline right leg” each reached Level 3 in the same pay cycle (which runs from Thursday to Thursday).

26. Each of the defendants have positions at the top of the CAT Pass matrix.

27. At various times, CAT represented that investors could redeem their CAT Passes to pay for vacation trips, automobiles, boats, motor homes, vacation homes, and college tuition, housing and related expenses. In April 1996, at least 7 cars, 1 van, 1 boat, and a motorized parasail were purchased with redeemed CAT Passes. For certain persons, including Straub, CAT redeemed CAT Passes for outright cash. CAT Passes were transferable and could be sold. CAT and Straub described the CAT Pass as a bearer certificate and stated that it "should be regarded the same as cash!" CAT redeemed a CAT Pass for \$750.

28. On or about June 28, 1996, CAT distributed new promotional sales materials which described an additional option by which a person could participate in the CAT Pass program. Under the new option, a person would still need to pay \$99 in start up costs, as described in paragraph 17 above, when submitting his application. However, in lieu of making a \$500 downpayment to CAT, as most investors continued to do, a person could instead achieve \$1,500 in sales volume on "sales" of CAT Passes; these "sales" must be made within 30 days from the date of person's application. Upon doing so, the person was given a Travel Marketing Center (which CAT had previously referred to as a TBC) and assigned a position in the CAT binary matrix. The only effort then required of the person in order to become eligible for "downline" commissions was the same as before--bring two new persons into the CAT Pass program, as described in paragraph 24 above.

29. On or about November 18, 1996, the defendants, after the Commission's staff had requested that CAT produce documents and had requested that certain individual defendants

testify in the Commission's investigation, announced in materials mailed to representatives changes to the CAT Pass (and CAT Canada) program concerning (a) the number of persons that an investor was required to bring into the CAT Pass program; (b) the amount of downline volume of CAT Pass "sales" that a representative could "carry over" to the next pay cycle; (c) CAT Pass redemption limitations; and (d) CAT Holidays, Inc.

a. CAT marginally increased the number of persons that an investor must bring into the CAT Pass program in order to remain eligible to receive downline commissions. In addition to the two persons which an investor must bring into the program in order to have his TBC activated, CAT now required that in subsequent years, an investor bring two additional persons into the program on an annual basis.

b. CAT modified its retention policy. Previously, an investor was allowed to retain or "carry over" up to 20 CAT Pass "sales" in his "left downline leg" and in his "right downline leg" (ie., \$10,000 sales volume in each leg) beyond those "sales" necessary to qualify for a "Level 3" payout. This retention would automatically qualify an investor to receive additional payouts in subsequent weeks. Under the new policy, an investor could retain up to \$5,000 sales volume per leg, which still automatically qualified an investor to receive additional payouts in subsequent weeks.

c. CAT announced that it was temporarily limiting the redemption of CAT Passes to travel and college tuition only. CAT represented that "[t]his change is derived

from all states misunderstanding the value of the CAT pass and how we determined it's [sic] use of \$1,000 or \$750."

d. In an effort to deal with the criticism "that a new representative is not actually receiving any product for his/her downpayment [of \$500]," CAT stated that it was adding a new travel division, CAT Holidays, Inc. CAT represented that CAT Holidays would offer to CAT representatives discount travel packages which prices would be set at one or more CAT Passes.

THE CAT CANADA PROGRAM

30. In a letter dated April 23, 1996 from Straub to CAT "representatives," Straub offered them the opportunity to purchase 7 CAT Passes for \$3,599 in the CAT Canada, Ltd. ("CAT Canada") program. Straub described the program as follows:

The unique structure in which we have designed the Canadian CAT program is such that the Canadian positions in the program are at the top of the matrix. Our agreement with Mr. Bock [president of CAT Canada, Ltd.] is that the U.S. independent CAT representatives will have a limited opportunity to purchase seven CAT passes in the Canadian program, and be placed directly under the Canadian positions. This means that Canada cannot begin signing up representatives and selling CAT passes until such time as this limited offer has been completed by the U.S. independent representatives. Once the matrix is built for Canada, with U.S. representatives, then and only then, may Mr. Bock begin building the Canadian CAT program beneath the U.S. representatives. . . . This limited opportunity then means that you will have a position at the very top of the matrix of an entire country prior to that country building its total sales force in the CAT program. (Emphasis added.)

While there is no guarantee that your positions will be paid out immediately, it stands to reason that when the Canadian CAT program begins to build, all new Canadian positions must be placed under yours in order for that business volume to reach the Canadian positions on top of the matrix.

Straub further stated in the letter that positions in the CAT Canada matrix would be determined by the order in which applications were received at CAT's Marietta headquarters.

31. The CAT Canada program was to run as the CAT Pass program did in the United States, as set forth above in paragraphs 17 through 29.

32. In correspondence mailed sometime prior to mid-June 1996, Straub told U.S. investors who had purchased the requisite 7 CAT Passes to obtain a position in the CAT Canada matrix that Tim Bock, the president of CAT Canada, was now in the process of building the Canadian CAT program and that Canadians who purchased CAT Passes would be placed under the U.S. investors in the CAT Canada matrix.

33. Tim Bock, in separate correspondence sent to U.S. investors in or about May or early June 1996, made similar assurances that Canadians purchasing CAT Passes would be placed beneath the U.S. investors' existing positions in the CAT Canada matrix. Bock further noted that those who have the "distinct advantage" of entering the matrix at its genesis "enjoy the tremendous financial benefit that flows up to them as their downline organization ever deepens."

34. Each of the defendants have positions at the top of the CAT Canada matrix.

35. CAT Canada is incorporated in Canada and has the same shareholders as does CAT, ie., Straub, his wife, Frank Garner and Fred Garner.

THE CLASSY CAT COLLECTION DISTRIBUTOR PROGRAM

36. Promotional sales materials distributed on or about June 28, 1996, also described the Classy Cat Collection Distributor Program. A person could become a Classy Cat distributor by paying \$99 in processing fees. Becoming a Classy Cat distributor entitled a person to sell various products out of the Classy Cat Collection Catalog. A distributor would receive a 10% commission on all products which he sold out of the catalog. If the distributor could convince another person to become a distributor, he would receive a 10% override on sales made by that second person.

37. The Classy Cat Collection Distributor Program was independent from the CAT Pass Program; in the June 28th promotional sales materials, Straub stated that it had "absolutely no connection by matrix, downline association, or genealogy to the CAT Pass program in which you have been participating." The only link was that a Classy Cat distributor could enter the CAT Pass program by selling 3 CAT Passes at "full" retail price (\$1,000 each); at such time, CAT would then assign a Travel Marketing Center to the distributor. In order to receive "downline" commissions, the only effort required of the distributor was the same as that required of anyone in the CAT Pass program—bring two persons into the program, as described in paragraph 24 above.

38. No one has entered the CAT Pass program by selling 3 CAT Passes at "full" retail price. In fact, no CAT Passes have been sold through the Classy Cat Collection catalog.

39. As of on or around November 20, 1996, only 70 persons had signed up to be Classy Cat Collection distributors.

40. The prices on merchandise in the Classy Cat Collection catalog were considerably marked up. The company which provided the merchandise to CAT charged CAT its cost in obtaining the merchandise plus 23%. CAT then added an additional 30% to that price to reach the price quoted in the catalog. Several representatives called CAT complaining that the catalog prices for much of the merchandise were higher than those charged by retailers.

41. CAT Passes could be redeemed to purchase merchandise from the Classy Cat Collection Catalog for a redemption value of \$750 per CAT Pass. From the inception of the Classy Cat Collection Distributor Program through November 5, 1996, only 54 CAT Passes had been redeemed by 24 persons for merchandise in the Classy Cat Collection Catalog.

MISREPRESENTATIONS AND OMISSIONS

42. The defendants made numerous representations concerning the large amounts of money a person could expect to earn through the CAT Pass and CAT Canada programs. For example:

a. The December 12, 1995 issue of The Latest Scoop stated that :

We're creating millionaires . . . and want you to be one of them. There is no reason you cannot be with the CAT program. Not one reason, not one excuse . . . NONE. (Emphasis in original)

b. Various CAT marketing materials, including the Winter 1996 edition of the The Scoop, and advertisements, including that which appeared in the Saturday

Evening Post, represented that an investor could earn \$4,000 per week, every week, per TBC (ie., per \$500 investment) and that an investor could own up to 7 TBCs. Other CAT promotional materials represented that with 7 TBCs, a person could earn \$28,000 a week.

c. After the "Level 4" payout was reduced by \$1,000, CAT promotional sales and training materials distributed in or about March 1996 represented that a member could earn up to \$3,000 per week, every week on each TBC that was opened and that a member could own up to 7 TBCs.

d. After the "Level 1" payout was reduced by \$500, the June 28th promotional sales materials represented that a member could earn \$2,500 per week per Travel Marketing Center (which CAT had earlier called a Travel Business Center) and that a member could own up to 7 Travel Marketing Centers.

43. The representations set forth in paragraph 42 above were false and misleading in that:

a. No one had made \$1 million through the CAT Pass program at the time the December 12, 1995 issue of The Latest Scoop was given to investors nor did CAT have a reasonable basis to expect that an investor could make \$1 million through the CAT Pass program. In fact, no one has earned \$1 million through the CAT Pass program.

b. CAT had no reasonable basis to believe that a person could earn \$4,000 or \$3,000 or even \$2,500 per week, every week for each TBC that the person owned. CAT

failed to disclose that the average weekly commission payment for those CAT representatives who actually earned commissions was approximately \$221. In fact, over two thirds of all persons who have entered the CAT Pass program have never earned any commissions at all.

44. CAT's June 28th promotional sales materials stated, in response to the question "How can I be sure of the financial stability of CAT?," that CAT separately contracted with the University of South Carolina, Georgia State University and the Harvard Business School to analyze and produce studies of the CAT Pass Program ("the University Studies"). The materials then represented that:

Three Ph.D's conducted these studies independently and without knowledge of the same studies being conducted by the other schools. The results of those studies conclusively proved that the Club Atlanta Travel CAT PASS marketing plan would never collapse due to instability, numbers of participants or sales volume. In other words, to infinity and to numbers beyond the populations of the planet, these studies concluded that our program is stable.

45. The representations made concerning the University Studies were false and misleading in that:

a. At the time that the June 28th materials were sent to investors, the defendants believed that the study performed at Georgia State University was erroneous.

b. At the time that the June 28th materials were sent to investors, the author of the study performed at the Harvard Business School had already written to Straub stating that if each entrant did not recruit two new entrants, CAT's cumulative cash flow

may well turn negative and increasingly so with time. Furthermore, he expressed concern that the most recent entrants would be unable to recruit new entrants and would not receive any commissions.

c. Far from conducting their analyses without knowledge of the other studies, the professors at the University of South Carolina and the Harvard Business School were aware of each other's study and each wrote to CAT's attorney in April 1996 questioning the accuracy of the other's analysis.

46. Both promotional materials titled "CAT'S Partners In Success" and a letter from Straub sent to investors stated that the Georgia State University study "proved" that CAT:

would pay out to its Independent Representatives 82.5% of all revenues received forever. In other words, to infinity, Club Atlanta Travel would enjoy a healthy profit margin regardless of the number of representatives or the life of the company.

47. The representations set forth in paragraph 46 above were false and misleading in that the defendants did not disclose that the author of the Georgia State University study had written to CAT's attorney on or about January 18, 1996 and stated that he was troubled by the representation:

that CAT will pay out 82.5% of proceeds into perpetuity, regardless of how long the company is in business and how many reps they have. In fact, my study suggests that they would pay out 82.5% of proceeds only if one TBC maxed out under the primary assumptions of 1) balanced downlines, and 2) no breakage. Since, in my opinion, these are very unrealistic assumptions, the 82.5 percent payout is probably overstated and misleading. (Emphasis added.)

48. The defendants have failed to disclose that CAT does not have sufficient cash to cover redemptions of all outstanding CAT Passes. As of August 31, 1996, CAT had a CAT Pass redemption liability of approximately \$5.4 million and only had between \$3.5 to \$4 million in cash reserves.

49. Both promotional materials titled "CAT'S Partners In Success" and a letter from Straub sent to investors represented that were a person to redeem his CAT Pass for travel, the monies which would be used to pay for such travel:

will have already been escrowed in a special bank account and strictly monitored by both CAT and World Tours attorneys. When a CAT PASS is activated and issued to you, the money to cover travel when you choose to redeem it has been strictly dedicated to the escrow account." (Emphasis added.)

50. The representations set forth in paragraph 49 above were false and misleading in that CAT never opened an escrow account. Moreover, World Tours attorneys never monitored any bank account which CAT opened.

51. On August 16, 1996, CAT entered into a Consent Order with the State of North Carolina to resolve an action in which the Attorney General for North Carolina alleged that CAT and Straub violated the North Carolina Pyramid Schemes Act, the North Carolina Unfair and Deceptive Trade Practices Act, and the North Carolina Referral Sales Act. CAT and Straub were ordered to cease and desist from operating, promoting, advertising and soliciting for CAT within North Carolina and were enjoined from accepting applications or remuneration from persons residing in North Carolina. CAT sent a copy of the Consent Order only to its North

Carolina investors. CAT omitted to disclose the existence of the Consent Order or the fact that it was prohibited from doing business in North Carolina to prospective investors and members residing in other states.

52. In Volume 1 Issue 3 of CAT Tracks, a newsletter sent to CAT representatives in or about August 1996, Straub stated "Club Atlanta Travel, as you know, has only received one serious challenge, from the state of North Carolina."

53. The representation set forth in paragraph 52 above was false and misleading in that CAT's operations had also been challenged by the states of Ohio and Michigan.

a. Ohio's Attorney General issued an Order To Cease And Desist against CAT on June 11, 1996, which ordered CAT to cease and desist from violating the Ohio Consumer Sales Practices Act. The Attorney General stated that CAT, through the CAT Pass program, was operating a pyramid sales plan or program in violation of Ohio law.

b. On March 21, 1996, Michigan's Department of Attorney General issued a Notice Of Intended Action And Opportunity To Cease And Desist ("Notice") against CAT and Straub. The Notice stated that the respondents' acts violated, among other statutes, the Michigan Franchise Investment Law which prohibited the sale of any form of participation in a pyramid or chain promotion. The Notice was pending at the time Volume 1 Issue 3 of CAT Tracks was mailed to representatives.

54. In a letter dated November 18, 1996 which was sent to CAT representatives on or about that date, Straub stated "that there is . . . no fraud [in my background] . . . Additionally, I

was involved in a non-MLM company which filed for Chapter 11 bankruptcy protection in 1993.”

55. The representations set forth in paragraph 54 above were false and misleading in that Straub did not disclose the Trademasters’ bankruptcy trustee’s findings, as more fully described in paragraph 13 above.

56. Straub has not disclosed to all investors the fact that he filed for Chapter 7 bankruptcy, as more fully described in paragraph 13 above.

UNREGISTERED SECURITIES

57. The CAT Pass and CAT Canada programs entailed the sales of investment contracts whereby persons invested money in a common enterprise and were led to expect that profits would come predominately from the efforts of others, as set forth above at paragraphs 16 through 35. The investment contracts are securities, as that term is defined in Section 2(1) of the Securities Act [15 U.S.C. § 77b(1)] and Section 3(a)(10) of the Exchange Act [15 U.S.C. § 78c(a)(10)].

58. No registration statement is in effect, nor has a registration statement ever been filed with the Commission, with respect to the securities sold by the defendants.

GAINS RECEIVED BY THE DEFENDANTS

59. From November 1995, CAT has raised over \$32,000,000 from investors through the sale of unregistered securities, as more fully described above at paragraphs 16 through 56,

and has materially profited from the sale of these securities. CAT has paid out as commissions approximately \$28,000,000, including those commissions paid to the defendants.

60. From November 1995 to the present, Straub has received a material amount of money from CAT in the form of commissions from sales "downline" from Straub's positions in the CAT Pass and CAT Canada matrices, salary, director's fees, and loans. In addition, Straub has redeemed CAT Passes which he has received for a new car.

61. From November 1995 to the present, Frank Garner has received a material amount of money from CAT in the form of commissions from sales "downline" from Frank Garner's positions in the CAT Pass and CAT Canada matrices, salary, and loans. In addition, Frank Garner has redeemed CAT Passes for a new car.

62. From November 1995 to the present, Fred Garner has received a material amount of money from CAT in the form of commissions from sales "downline" from Fred Garner's positions in the CAT Pass and CAT Canada matrices, salary, and loans. In addition, Fred Garner has redeemed CAT Passes for a new car.

FIRST CLAIM FOR RELIEF

Violations of Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)]

63. Paragraphs 1 through 62 are hereby realleged and are incorporated herein by reference.

64. From at least in or about November 1995, defendants CAT, Straub, Frank Garner and Fred Garner, singly and in concert, in the offer and sale of the securities described herein,

by use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly, employed devices, schemes and artifices to defraud, all as more particularly described in paragraphs 11 through 62 above.

65. The defendants knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud. In engaging in such conduct, the defendants acted with scienter, that is with an intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

66. By reason of the foregoing, defendants CAT, Straub, Frank Garner and Fred Garner, directly and indirectly, have violated, are violating, and, unless restrained and enjoined, will continue to violate Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

SECOND CLAIM FOR RELIEF

Violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)]

67. Paragraphs 1 through 62 are hereby realleged and are incorporated herein by reference.

68. From at least in or about November 1995, defendants CAT, Straub, Frank Garner and Fred Garner, singly and in concert, in the offer and sale of the securities described herein, by use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly:

a. obtained money and property by means of untrue statements of material fact and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and

b. engaged in transactions, practices and a course of business which would and did operate as a fraud and deceit upon the purchasers of such securities,

all as more particularly described in paragraphs 11 through 62 above.

69. By reason of the foregoing, defendants CAT, Straub, Frank Garner and Fred Garner, directly and indirectly, have violated, are violating, and, unless restrained and enjoined, will continue to violate Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)].

THIRD CLAIM FOR RELIEF

**Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)]
and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]**

70. Paragraphs 1 through 62 are hereby realleged and are incorporated herein by reference.

71. From at least in or about November 1995, defendants CAT, Straub, Frank Garner and Fred Garner, singly and in concert, in connection with the purchase and sale of securities described herein, by the use of the means and instrumentalities of interstate commerce and by use of the mails, directly and indirectly:

a. employed devices, schemes, and artifices to defraud;

b. made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and

c. engaged in acts, practices, and a course of business which would and did operate as a fraud and deceit,

all as more particularly described in paragraphs 11 through 62 above.

72. The defendants knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud, made untrue statements of material facts and omitted to state material facts, and engaged in fraudulent acts, practices and a course of business. In engaging in such conduct, the defendants acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

73. By reason of the foregoing, defendants CAT, Straub, Frank Garner and Fred Garner, directly and indirectly, have violated, are violating, and, unless restrained and enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

FOURTH CLAIM FOR RELIEF

Violations of Sections 5(a) and 5(c) of the Securities Act
[15 U.S.C. §§ 77e(a) and 77e(c)]

74. Paragraphs 1 through 62 are hereby realleged and are incorporated herein by reference.

75. From in or about November 1995, defendants CAT, Straub, Frank Garner and Fred Garner, directly or indirectly, singly and in concert, have:

(a) made use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell the securities described herein, through the use or medium of any prospectus or otherwise, when a registration statement was not in effect as to such securities;

(b) carried securities or caused such securities, as described herein, to be carried through the mails or in interstate commerce, by means or instruments of transportation, for this purpose of sale or for delivery after sale, when a registration statement was not in effect as to such securities; and

(c) made use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell through the use or medium of any prospectus or otherwise the securities described herein, without a registration statement having been filed as to such securities.

76. By reason of the foregoing, defendants CAT, Straub, Frank Garner and Fred Garner, directly and indirectly, have violated, are violating, and, unless restrained and enjoined, will continue to violate Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Securities and Exchange Commission respectfully prays that the Court:

I.

Declare, determine and find that each of the defendants named herein committed the violations alleged herein.

II.

Issue permanent injunctions enjoining defendants CAT, Straub, Frank Garner, and Fred Garner, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the order of injunction, by personal service or otherwise, and each of them, from violating, directly or indirectly, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, by:

- a. employing any device, scheme or artifice to defraud;
- b. obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- c. engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser,

in the offer or sale of any security.

III.

Issue permanent injunctions enjoining defendants CAT, Straub, Frank Garner, and Fred Garner, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the order of injunction, by personal service or otherwise, and each of them, from violating, directly or indirectly, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, by:

- a. employing any device, scheme, or artifice to defraud;
- b. making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- c. engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person,

in connection with the purchase or sale of any security.

IV.

Issue permanent injunctions enjoining defendants CAT, Straub, Frank Garner, and Fred Garner, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the order of injunction, by

personal service or otherwise, and each of them, from violating, directly or indirectly, Sections 5(a) and (c) of the Securities Act [15 U.S.C. §§ 77e(a) and (c)] by:

- a. making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell any security, through the use or medium of any prospectus or otherwise, unless a registration statement is in effect with the Commission as to such security;
- b. carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any security for the purpose of sale or for delivery after sale, unless a registration statement is in effect with the Commission as to such security; or
- c. making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise, any security, unless a registration statement has been filed with the Commission as to such security, or while a registration statement as to such security is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding of examination under Section 8 of the Securities Act [15 U.S.C. § 77h];

provided, however, that nothing in the foregoing portion of the requested injunction shall apply to any security or transaction which is exempt from the provisions of Section 5 of the Securities Act [15 U.S.C. § 77e].

V.

Issue an order requiring an accounting by defendants CAT, Straub, Frank Garner, and Fred Garner of the receipt, disposition and use of funds received directly or indirectly from the sales of securities described herein.

VI.

Issue an order requiring defendants CAT, Straub, Frank Garner, and Fred Garner be jointly and severally liable for disgorgement of all ill-gotten gains and unjust enrichment with prejudgment interest, to effect the remedial purposes of the federal securities laws.

VII.

Issue an order against defendants Straub, Frank Garner, and Fred Garner imposing civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

VIII.

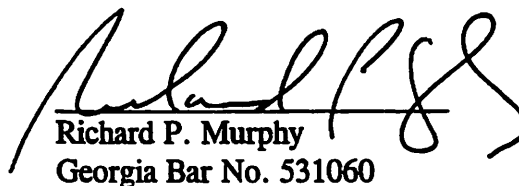
Retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that may have been entered or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

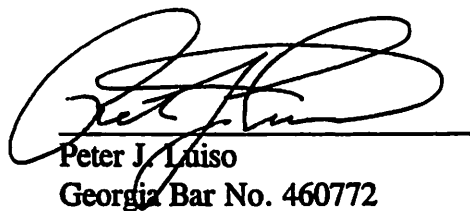
IX.

Grant such other and further relief as may be necessary and appropriate.

Respectfully submitted,

Dated: September 18, 1997
Atlanta, Georgia


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