

1 BRIAN M. BOYNTON  
2 Acting Assistant Attorney General  
3 Civil Division  
4 ARUN G. RAO  
5 Deputy Assistant Attorney General  
6 GUSTAV W. EYLER  
7 Director  
8 Consumer Protection Branch  
9 LISA K. HSIAO  
10 Assistant Director  
11 MARCUS P. SMITH  
12 Trial Attorney  
13 Consumer Protection Branch  
14 U.S. Department of Justice  
15 P.O. Box 386  
16 Washington, DC 20044  
17 (202) 353-9712  
18 marcus.p.smith@usdoj.gov

19 Attorneys for Plaintiff United States of America

20 **UNITED STATES DISTRICT COURT**  
21 **CENTRAL DISTRICT OF CALIFORNIA**

22 **UNITED STATES OF AMERICA,**

23 Plaintiff,

24 v.

25 **BURGERIM GROUP USA, INC.,**

26 **BURGERIM GROUP, INC.,**

27 and

28 **OREN LONI**, individually and as an  
officer of Burgerim Group USA, Inc.  
and Burgerim Group, Inc.,

Defendants.

No. 2:22-CV-825

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

**DEMAND FOR JURY TRIAL**

1 Plaintiff, the United States of America, acting upon notification and  
2 authorization to the Attorney General by the Federal Trade Commission (“FTC”),  
3 pursuant to Section 16(a)(1) of the Federal Trade Commission Act (“FTC Act”),  
4 15 U.S.C. § 56(a)(1), for its Complaint alleges:

5 1. Plaintiff brings this action under Sections 5(a), 5(m)(1)(A), 13(b) and  
6 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a),  
7 45(m)(1)(A), 53(b), 56(a), 57b, and the FTC’s Trade Regulation Rule entitled  
8 “Disclosure Requirements and Prohibitions Concerning Franchising,” as amended  
9 (the “Franchise Rule” or “the Rule”), 16 C.F.R. Part 436, for permanent injunctive  
10 relief, monetary relief, civil penalties, and other relief for Defendants’ acts or prac-  
11 tices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Fran-  
12 chise Rule, 16 C.F.R. Part 436.

13 **SUMMARY**

14 2. Defendants lure would-be entrepreneurs into paying tens of thousands  
15 of dollars to open a burger franchise under the trade name “Burgerim.” These fran-  
16 chises require a large upfront investment. Purchasers included veterans and people  
17 with different backgrounds and business experiences. Many purchasers relied on  
18 obtaining loans for tens of thousands of dollars to fund their franchise. Defendants,  
19 however, glossed over the risks of these hefty investments, touting the franchise as  
20 a “business in a box,” and purporting to offer refunds in the event franchisees  
21 could not open the restaurant.

22 3. The Franchise Rule was designed to help prospective entrepreneurs  
23 evaluate the risks and benefits of a franchise opportunity with a disclosure docu-  
24 ment. In marketing and selling Burgerim franchises, Defendants fell woefully short  
25 of complying with the Rule. Left out of Defendants’ disclosure document was the  
26 information necessary to enable prospective franchisees to analyze earning repre-  
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1 presentations or to get unvarnished experiences from prior purchasers. Worse, De-  
2 fendants muddied the waters by making representations in their disclosure docu-  
3 ment that contradicted other statements they made to the prospective franchisees.

4 4. Defendants sold more than 1,500 Burgerim franchises, but the over-  
5 whelming majority of Burgerim franchisees never got their businesses off the  
6 ground. Hundreds sought to cancel their franchise agreements. In many cases, De-  
7 fendants did not honor their promises to provide refunds, and in this scheme, have  
8 bilked aspiring business owners out of millions of dollars.

9 **JURISDICTION AND VENUE**

10 5. This Court has subject matter jurisdiction over this action pursuant to  
11 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C. § 53(b). This action  
12 arises under 15 U.S.C. § 45(a).

13 6. Venue is proper in this District under 28 U.S.C. §§ 1391(b)-(d) and  
14 1395(a), and 15 U.S.C. § 53(b).

15 **SECTION 5 OF THE FTC ACT**

16 7. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or  
17 deceptive acts or practices in or affecting commerce.”

18 8. Misrepresentations of material facts constitute deceptive acts or prac-  
19 tices prohibited by Section 5(a) of the FTC Act.

20 **THE FRANCHISE RULE**

21 9. The Franchise Rule defines a “franchise” as any continuing commer-  
22 cial relationship or arrangement, whatever it may be called, in which the terms of  
23 the offer or contract specify, or the franchise seller promises or represents, orally or  
24 in writing, that:

- 25 a) The franchisee will obtain the right to operate a business that is identified or  
26 associated with the franchisor’s trademark, or to offer, sell, or distribute  
27 goods, services, or commodities that are identified or associated with  
28 the franchisor’s trademark;

1 b) The franchisor will exert or has authority to exert a significant degree of  
2 control over the franchisee’s method of operation, or to provide significant  
3 assistance in the franchisee’s method of operation; and

4 c) As a condition of obtaining or commencing operation of the franchise,  
5 the franchisee makes a required payment or commits to make a required  
6 payment to the franchisor or its affiliate. 16 C.F.R. § 436.1(h).

7 10. Under the Franchise Rule, a “franchise seller” is a person that offers  
8 for sale, sells, or arranges for the sale of a franchise. The term encompasses the  
9 franchisor and the franchisor’s employees, representatives, agents, subfranchisors,  
10 and third-party brokers who are involved in franchise sales activities. It does not  
11 include existing franchisees who sell only their own outlet and who are otherwise  
12 not engaged in franchise sales on behalf of the franchisor. 16 C.F.R. § 436.1(j).

13 11. A “franchisor” means any person who grants a franchise and partici-  
14 pates in the franchise relationship. Unless otherwise stated, it includes sub franchi-  
15 sors. For purposes of this definition, a “subfranchisor” means a person who func-  
16 tions as a franchisor by engaging in both pre-sale activities and post-sale perfor-  
17 mance. 16 C.F.R. § 436.1(k).

18 12. The Franchise Rule requires a franchisor to provide prospective fran-  
19 chisees with a basic Franchise Disclosure Document (“FDD”) containing twenty-  
20 three categories (or “Items”) of information, including information about: the fran-  
21 chisor and its affiliates (Item 1); prior or pending litigation (Item 3); the initial fee  
22 paid by franchisees, including conditions under which the fee is refundable (Item  
23 5); franchisee obligations to purchase or lease goods and services from designated  
24 suppliers and payments to the franchisor from such suppliers based on those pur-  
25 chases (Item 8); franchise endorsement by public figures (Item 18); the assistance  
26 provided by the franchisor (Item 11); and statistical information on the number of  
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1 company-owned and franchisee-owned outlets in the franchisor’s system, includ-  
2 ing the names, addresses, and telephone numbers of existing franchisees (Item 20).  
3 16 C.F.R. § 436.5(a)-(w).

4 13. The FDD must be current (16 C.F.R. § 436.2(a)) and marked with an  
5 issuance date (16 C.F.R. § 436.3(e)(6)). Additional disclosures are required if the  
6 franchisor elects to make any financial performance representations, such as in-  
7 cluding those financial performance representations in Item 19 of the franchisor’s  
8 FDD, among other things. 16 C.F.R. § 436.9(c). Franchise sellers are prohibited  
9 from making any representations that contradict the information required to be dis-  
10 closed in the FDD. 16 C.F.R. § 436.9(a).

11 14. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. 57a(d)(3), and  
12 subparts B, D, and F, 16 C.F.R. § 436.2, § 436.6(a), and § 436.9, violations of the  
13 Franchise Rule constitute unfair or deceptive acts or practices in or affecting com-  
14 merce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

15 15. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as mod-  
16 ified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990,  
17 28 U.S.C. § 2461, the Federal Civil Penalties Inflation Adjustment Act of 2015,  
18 Public Law 114-74, sec. 701, 129 Stat. 599 (2015), and Section 1.98(d) of the  
19 FTC’s Rule of Practice, 16 C.F.R. § 1.98(d), authorizes this Court to award mone-  
20 tary civil penalties of not more than \$46,517 for each violation of the Franchise  
21 Rule assessed after January 10, 2022, including penalties whose associated viola-  
22 tion predated January 10, 2022, that is made with actual knowledge or knowledge  
23 fairly implied on the basis of objective circumstances that such act is unfair or de-  
24 ceptive and is prohibited by such rule.

25 **DEFENDANTS**

26 16. Defendant Burgerim Group USA, Inc. (“BIMGUSA”) is a California  
27 corporation with its principal place of business at 23945 Calabasas Road, Cala-  
28 basas, California 91302. BIMGUSA sells burger restaurant franchises under the

1 trade name “Burgerim.” BIMGUSA transacts or has transacted business in this  
2 District and throughout the United States. At all times relevant to this Complaint,  
3 acting alone or in concert with others, BIMGUSA has advertised, marketed, dis-  
4 tributed or sold Burgerim franchises to consumers throughout the United States.

5 17. Defendant Burgerim Group, Inc. (“BIMG”) is a Delaware corporation  
6 with its principal place of business at 23945 Calabasas Road, Calabasas, California  
7 91302. BIMG transacts or has transacted business in this District and throughout  
8 the United States. Since 2019, BIMG, acting alone or in concert with others, has  
9 advertised, marketed, distributed or sold Burgerim franchises to consumers  
10 throughout the United States.

11 18. Defendant Oren Loni (“Loni”) was at all relevant times the chief ex-  
12 ecutive officer of BIMGUSA and BIMG (collectively, “Corporate Defendants”).  
13 Acting alone or in concert with others, he has formulated, directed, controlled, had  
14 the authority to control, or participated in the acts and practices of Corporate De-  
15 fendants, including the acts and practices set forth in this Complaint. Loni has ad-  
16 vertised, marketed, distributed or sold Burgerim franchises to consumers through-  
17 out the United States. At all times material to this Complaint, Loni formulated, di-  
18 rected, controlled, had the authority to control, or participated in the acts and prac-  
19 tices of Corporate Defendants. Loni has been a signatory on BIMGUSA and BIMG  
20 bank accounts, communicated with prospective and existing franchisees about the  
21 Burgerim franchise opportunity, entered into agreements, and negotiated contracts  
22 with franchisees. In connection with the matters alleged herein, Loni transacts or  
23 has transacted business in this District and throughout the United States.

24 **COMMON ENTERPRISE**

25 19. Defendants BIMGUSA and BIMG have operated as a common enter-  
26 prise while engaging in the deceptive and unlawful acts and other violations of law  
27 alleged below. BIMGUSA was incorporated in California in October 2014 with its  
28 initial principal place of business at 16861 Ventura Boulevard, Suite 303, Encino,

1 California 91436. BIMG was incorporated in Delaware in June 2019 with its prin-  
2 cipal place of business at the same address. On September 4, 2019, pursuant to  
3 California Corporations Code sections 201(b) and 2106(b), and California Code of  
4 Regulations sections 21003-21004, Oren Loni, as CEO of BIMGUSA, granted per-  
5 mission to BIMG to do business in California under that name. Since at least Au-  
6 gust 2019, BIMG has participated in the operation of the Burgerim franchise busi-  
7 ness, including, but not limited to, communicating with and managing the business  
8 relationships with BIMGUSA franchisees, enforcing agreements entered into by  
9 BIMGUSA and its franchisees; receiving rebate payments sent to BIMGUSA un-  
10 der agreements with product and service suppliers; and making payments to em-  
11 ployees or former employees of BIMGUSA.

12 20. Corporate Defendants have conducted the business practices de-  
13 scribed below through interrelated companies that have common management; co-  
14 ordinated business functions; shared office space, employees and resources; shared  
15 revenues, and comingled funds. Because these Corporate Defendants have oper-  
16 ated as a common enterprise, each of them is liable for the acts and practices as al-  
17 leged below.

### 18 COMMERCE

19 21. At all times relevant to this Complaint, Defendants have maintained a  
20 substantial course of trade in or affecting commerce, as “commerce” is defined in  
21 Section 4 of the FTC Act, 15 U.S.C. § 44.

### 22 DEFENDANTS’ BUSINESS ACTIVITIES

23 22. Since at least 2016, Defendants BIMGUSA and Oren Loni, and since  
24 2019, Defendant BIMG, have offered and sold franchises of Burgerim, a fast-cas-  
25 ual restaurant specializing in multiple types of hamburgers.

26 23. For those interested in opening a Burgerim franchise, the investment  
27 of time and money is quite substantial. In many instances, franchisees paid De-  
28

1 defendants a franchise fee between \$50,000 and \$70,000 for a single franchise loca-  
2 tion. In many instances, Defendants offered incentives to purchase more than one  
3 Burgerim franchise, such as a discounted franchise fee of \$40,000 per franchise.  
4 To secure the money to pay the franchise fees, many prospective franchisees have  
5 sought and taken out loans backed by the Small Business Administration or a com-  
6 mercial bank lender.

7 24. Defendants have targeted military veterans, recruiting them to the  
8 franchise by offering them, in many instances, a \$10,000 to \$15,000 discount off  
9 the franchise fee for a single Burgerim franchise. In many instances, Defendants  
10 have incentivized veterans to purchase more than one location by offering a dis-  
11 count to veterans who purchased multiple locations.

12 25. In exchange for the franchise fee, Defendants provided franchisees the  
13 right to establish and operate a Burgerim restaurant. The fee does not include other  
14 costs of opening or operating the franchise, such as securing a location, building  
15 out the restaurant, outfitting it with necessary equipment, and obtaining products  
16 and supplies. Defendants have estimated that it may cost franchisees more than  
17 \$600,000 to begin operation of a Burgerim franchise.

18 26. Defendants control the franchise operations by, among other things,  
19 approving sites for Burgerim restaurant locations, imposing building design speci-  
20 fications, and requiring franchisees to sell specific items, use certain equipment,  
21 and purchase only approved products and supplies.

22 27. Franchisees who paid Defendants the franchise fee come from differ-  
23 ent backgrounds and business experiences. In many instances, Burgerim fran-  
24 chisees had no prior experience running a restaurant before signing up to be a  
25 Burgerim franchisee.

26 28. Defendants make it a point to undersell the risks and difficulties of  
27 opening a franchise. In their online and in-person marketing, Defendants represent  
28



1 that their franchise is a “business in a box,” which prospective franchisees do not  
2 need any prior business experience to operate.

3 29. Anticipating that inexperienced franchisees may be intimidated by the  
4 process, Defendants represent they will assist franchisees every step of the way.  
5 For example, Defendants represent in the Burgerim “Brand Book,” which they pro-  
6 vide to prospective franchisees, that “[o]ur Burgerim Team walks you through  
7 the entire process of becoming a restaurateur [sic].” The Brand Book also states,  
8 among other things, that Defendants will assist franchisees with “locking in a  
9 prime location” for their restaurant, obtaining financing, and “acquiring the archi-  
10 tect and contractors, as well as the different licenses needed to open the restau-  
11 rant.” Defendants also promise to provide ongoing support to franchisees.

12 30. Defendants also make the following representations on their website,  
13 [www.burgerim.com](http://www.burgerim.com):

- 14 • “All you need is the will to succeed. Our international fast food franchising  
15 team paves the way for you to become a thriving business owner. We’ll help  
16 you customize your location, hire a small team, and generate wealth.”
- 17 • “Burgerim’s experienced global team has conducted extensive research into  
18 the US fast casual dining market and has developed training, branding and  
19 operations protocols designed to empower franchise owners and support  
20 them in operating successful and profitable Burgerim stores in their commu-  
21 nities.”

22 31. In many instances, throughout the sales process, Defendants have  
23 pitched prospective franchisees on the financial performance of their franchise op-  
24 portunity. Defendants have made verbal representations about the financial perfor-  
25 mance of existing locations and prospective franchisees’ likely performance, such  
26 as estimates for weekly or monthly sales figures and break-even points. For exam-  
27 ple, a Burgerim representative told one franchisee that the break-even point for  
28

1 open Burgerim stores was \$50,000 per month and that they were all hitting that  
2 number in two weeks or sooner.

3 32. Further downplaying the financial risk of paying the franchise fees, in  
4 many instances, Defendants, verbally or in writing, have represented to prospective  
5 and existing franchisees that if they were unable to obtain financing or secure a  
6 restaurant location, Defendants would refund the prospective franchisees their  
7 franchise fees. In some instances, Defendants entered into written refund and can-  
8 cellation agreements with existing franchisees whereby Defendants agreed to pro-  
9 vide a refund of the franchise fees. In exchange, the franchisees agreed, among  
10 other things, not to disparage Defendants.

11 33. For many franchisees who paid franchise fees to Burgerim, Defend-  
12 ants' promises were illusory. In numerous instances, franchisees could not secure  
13 the financing necessary to pay necessary costs, such as conducting the build out of  
14 the restaurant to the specifications demanded by Defendants. Other franchisees  
15 could not secure a restaurant location.

16 34. In many cases, Defendants did not provide the promised refunds to  
17 franchisees who requested one. Even franchisees who persisted with repeated re-  
18 quests spanning several months often were unable to obtain a refund. For example,  
19 some franchisees who were unable to secure financing, and had a signed letter  
20 from Oren Loni promising that Burgerim would refund their franchise fee under  
21 such circumstances, spent more than a year trying to get their money back to no  
22 avail. Ultimately, a Burgerim representative told them that in order to get their  
23 money back, they would have to sign a new document, which included a non-dis-  
24 paragement clause and other obligations.

25 35. Since 2017 Burgerim has sold more than 1,500 franchises across the  
26 United States, for which Defendants received tens of millions of dollars. Despite  
27 Defendants receiving franchise fee payments from prospective franchisees for the  
28 right to open a Burgerim franchise, the majority of those franchises never opened.

1           36. In addition to their misrepresentations and broken promises, Defend-  
2 ants withheld material information required by the Franchise Rule. The Franchise  
3 Rule requires franchisors to provide aspiring entrepreneurs with a FDD containing  
4 certain mandatory disclosures, a key purpose of which is to enable prospective  
5 franchisees to assess the risks of the paying the franchise fee and entering into a  
6 franchise agreement.

7           37. For example, in numerous instances, Defendants' FDDs did not in-  
8 clude in Item 2 the name and position of the franchisor's principals or any other in-  
9 dividuals who would have management responsibility relating to the sale or opera-  
10 tion of the franchises, impeding prospective franchisees from conducting appropri-  
11 ate due diligence.

12           38. Defendants' FDDs, in numerous instances, did not provide contact in-  
13 formation for prior purchasers as required in Item 20, impeding prospective fran-  
14 chisees from contacting other franchisees and learning about their experiences with  
15 Defendants.

16           39. Defendants failed to include in Item 19 of the FDDs, the verbal finan-  
17 cial performance representations they provided to prospective franchisees. In fact,  
18 Defendants not only failed to include this required information, they contradicted  
19 their verbal representations by stating in the FDDs that no such representations had  
20 been made.

21           40. Despite Defendants' representations that under certain conditions they  
22 would refund the franchisees' franchise fees, in numerous instances, Item 5 of De-  
23 fendants' FDDs did not identify all such conditions. In fact, not only did Defend-  
24 ants fail to include all such conditions, but in certain instances, the FDDs contra-  
25 dicted Defendants' own representations by stating the franchise fee was non-re-  
26 fundable.

27           41. Defendants' unlawful activities have harmed people across the coun-  
28 try. Many franchisees find themselves crushed by substantial debt or ruined credit,

1 in addition to the time and effort they exerted to make their entrepreneurial aspira-  
2 tions a reality.

3 42. In early 2020, the Maryland Attorney General's office, the Washing-  
4 ton Department of Financial Institutions, and Indiana's Secretary of State each is-  
5 sued orders against BIMGUSA that prohibit it from selling franchises in their re-  
6 spective states based upon various violations of their respective state franchise  
7 laws. In addition, in February 2021, the Commissioner of Financial Protection and  
8 Innovation for the State of California issued a citation and cease and desist order  
9 against Defendants for injunctive and monetary relief for violations of California  
10 law.

11 43. Defendants continue to advertise the Burgerim franchise opportunity  
12 on their website, burgerim.com.

13 44. Based on the facts and violations of law alleged in this Complaint, the  
14 FTC has reason to believe that Defendants continue to violate or are about to vio-  
15 late laws enforced by the Commission.

16 **VIOLATIONS OF SECTION 5 OF FTC ACT**

17 **COUNT I**

18 45. Paragraphs 1-44 are incorporated as if set forth herein.

19 46. In numerous instances in connection with the advertising, marketing,  
20 promotion, offering for sale, or sale of Burgerim franchises, Defendants have made  
21 false or misleading representations of material facts to franchisees.

22 47. For example, Burgerim represented directly, or indirectly, expressly  
23 or by implication, that it will provide a refund of the franchise fee to franchisees  
24 who are unable to secure financing or a restaurant location. In fact, in numerous in-  
25 stances where Defendants represented that Burgerim would provide a refund of the  
26 franchise fee to franchisees who were unable to secure financing or a restaurant lo-  
27 cation, Defendants did not refund the franchise fee.

28

1           48. Therefore, Defendants have made false or misleading representations  
2 of material facts that constitute deceptive acts or practices in violation of Section  
3 5(a) of the FTC Act.

4                           **VIOLATIONS OF THE FRANCHISE RULE**

5   **COUNT II**

6   Disclosure Violations

7           49. Paragraphs 1-48 are incorporated as if set forth herein.

8           50. The Burgerim opportunity sold by Defendants is a “franchise” pursu-  
9 ant to the Franchise Rule.  
10

11           51. Defendants are “franchise sellers” pursuant to the Franchise Rule.

12           52. Defendants are “franchisors” pursuant to the Franchise Rule.

13           53. In many instances, Defendants furnish prospective franchisees with  
14 disclosures that fail to comply with the FTC’s Franchise Rule’s disclosure require-  
15 ments.

16           54. Defendants had knowledge of the requirements of the Franchise Rule  
17 as evidenced by the fact that they provided an FDD to prospective franchisees.

18           55. In connection with the offering for sale and sale of franchises, as  
19 “franchise” is defined in 16 C.F.R. § 436.1(h), in many instances, Defendants fur-  
20 nish prospective franchisees with FDDs that fail to: (1) include all of the infor-  
21 mation required by the Franchise Rule, 16 C.F.R. § 436.5 and (2) follow the in-  
22 structions for preparing disclosure documents set forth in 16 C.F.R. §§ 436.3 and  
23 436.6 of the Franchise Rule. For example, in certain instances Defendants failed to  
24 disclose the following:

25                   a) the issuance date of each FDD (16 C.F.R. § 436.3(e)(6));

26                   b) the name and principal business address of any affiliates that offer fran-  
27 chises in any line of business (Item 1) (16 C.F.R. § 436.5(a)(1));  
28

- 1 c) the prior business experience of any affiliates that offer any franchises in  
2 any line of business (Item 1) (16 C.F.R. § 436.5(a)(7));
- 3 d) the name and position of the franchisor’s directors, trustees, general part-  
4 ners, principal officers, and any other individuals who will have manage-  
5 ment responsibility relating to the sale or operation of the franchises  
6 (Item 2) (16 C.F.R. § 436.5(b));
- 7 e) any conditions under which the initial fees are refundable (Item 5)  
8 (16 C.F.R. § 436.5(e));
- 9 f) information regarding the revenue the franchisor received from required  
10 purchases or leases by franchisees (Item 8) (16 C.F.R. § 436.5(h)(6)); and
- 11 g) the telephone numbers of each current franchisee’s outlets, and the name,  
12 city and state, and current business telephone number or, if unknown, the  
13 last known home telephone number of every franchisee who voluntarily  
14 or involuntarily ceased to do business under the franchise agreement dur-  
15 ing the most recently completed fiscal year or who has not communicated  
16 with the franchisor within 10 weeks of the disclosure document issuance  
17 date (Item 20) (16 C.F.R. § 436.5(t)(4)-(5)).

18 56. Therefore, Defendants have violated subpart C, 16 C.F.R. §§ 436.3,  
19 436.5, and subpart D, 16 C.F.R. § 436.6, of the Franchise Rule with the knowledge  
20 required by Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

21 **COUNT III**

22 Dissemination of Financial Performance Representations Not Included in FDD

23 57. Paragraphs 1-56 are incorporated as if set forth herein.

24 58. Section 436.9(c) of the Franchise Rule, 16 C.F.R. § 436.9(c), requires  
25 a franchisor to include any and all financial performance representations in Item 19  
26 of the franchisor’s FDD.

1 59. In connection with the offering for sale and sale of franchises, as  
2 “franchise” is defined in section 436.1(h) of the Franchise Rule, Defendants dis-  
3 seminated financial performance representations to prospective franchisees while  
4 failing to include those representations in Item 19 of Defendant BIMGUSA’s FDD  
5 and failing to provide the other information and statements as required by Section  
6 436.9(c) of the Franchise Rule.

7 60. Therefore, Defendants have violated section 436.9(c) of the Franchise  
8 Rule, 16 C.F.R. § 436.9(c) and Section 5(a) of the FTC Act with the knowledge re-  
9 quired by Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

#### 10 **COUNT IV**

##### 11 Claims or Representations that Contradict a Required Disclosure

12 61. Paragraphs 1-60 are incorporated as if set forth herein.

13 62. Section 436.9(a) of the Franchise Rule, 16 C.F.R. § 436.9(a), prohibits  
14 a franchisor from making any claim or representation orally, visually, or in writing  
15 that contradicts the information required to be disclosed by the Franchise Rule.

16 63. In connection with the offering for sale and sale of franchises, as  
17 “franchise” is defined in Section 436.1(h) of the Franchise Rule, Defendants made  
18 numerous representations contradicting disclosures made in their FDD, including  
19 but not limited to making representations to prospective or existing franchisees:

- 20 a) that they could obtain refunds, in certain circumstances, of their fran-  
21 chise fees;
  - 22 b) regarding the financial performance of already-open franchise locations  
23 and the income (gross and net) that prospective franchisees could expect  
24 to make; and
  - 25 c) regarding Defendants’ obligations to provide assistance in identifying a  
26 location, obtaining financing, constructing, and remodeling the franchise  
27 premises.
- 28

1           64. Therefore, Defendants have violated Section 436.9(a) of the Franchise  
2 Rule, 16 C.F.R. § 436.9(a), and Section 5(a) of the FTC Act with the knowledge  
3 required by Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

4                                   **CONSUMER INJURY**

5           65. Consumers have suffered or will suffer substantial monetary loss as a  
6 result of Defendants' violation of the Franchise Rule and the FTC Act. Absent in-  
7 junctive relief by the Court, Defendants are likely to continue to injure consumers  
8 and harm the public interest in the offer and sale of franchises.

9                                   **PRAYER FOR RELIEF**

10           WHEREFORE, Plaintiff requests that the Court:

11           A. Enter a permanent injunction to prevent future violations of the FTC  
12 Act and Franchise Rule by Defendants;

13           B. Award monetary and other equitable relief within the Court's power to  
14 grant;

15           C. Award Plaintiff monetary civil penalties from each Defendant for  
16 every violation of the Franchise Rule; and

17           D. Award any additional relief as the Court determines to be just and  
18 proper.

19                                   **DEMAND FOR JURY TRIAL**

20           Plaintiff hereby demands a trial by jury of all issues so triable pursuant to  
21 Rule 38 of the Federal Rules of Civil Procedure.

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Dated: February 7, 2022

**FOR FEDERAL TRADE  
COMMISSION:**

Christine M. Todaro  
Christopher E. Brown  
Attorneys  
Federal Trade Commission  
Washington, DC 20580  
202-326-3711 (Todaro)  
202-326-2825 (Brown)  
202-326- 3395 (fax)  
ctodaro@ftc.gov  
cbrown3@ftc.gov

Respectfully submitted,

**FOR PLAINTIFF  
THE UNITED STATES OF AMERICA:**

BRIAN M. BOYNTON  
Acting Assistant Attorney General  
Civil Division

ARUN G. RAO  
Deputy Assistant Attorney General

GUSTAV W. EYLER  
Director  
Consumer Protection Branch

LISA K. HSIAO  
Assistant Director

By: /s/ Marcus P. Smith  
Marcus P. Smith  
Trial Attorney  
Consumer Protection Branch  
U.S. Department of Justice  
P.O. Box 386  
Washington, DC 20044  
(202) 353-9712  
marcus.p.smith@usdoj.gov