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By Chuck Howitt, Record staff | Sat Jul 16 2011 |  1 Recommend

Peanut vending venture sparks class action suit

KITCHENER — The letter promised earnings of \$300 to \$2,400 per week with no set hours and no direct selling.

Planters Canada was looking to place new peanut-vending machines in the area and needed distributors to own and operate them.

Jennifer and David Zwaniga Jr. were intrigued. The Kitchener couple was interested in starting their own business.

On March 1, 2010, they attended a presentation in Kitchener where they heard they could earn up to \$63,000 per year. All they had to do was spend six to 10 hours a week keeping 36 machines stocked with peanuts.

Professional locators would help place the machines in ideal locations and the number of vendors in each area would be kept to a minimum.

The sponsors of the program emphasized the advantages of being associated with the Planters name. It was an iconic brand in the peanut world symbolized by its mascot, Mr. Peanut, dressed in top hat, monocle and brandishing a walking cane.

Three days later, on March 4, 2010, the Zwanigas plunked down a non-refundable deposit of \$15,000 on 51 peanut vending machines.

Just over a week later, the Kitchener couple paid the balance of \$41,232 on the machines. When additional costs were thrown in, including peanuts, stands and promotional materials, their startup investment came to a total of \$65,488.

According to the promotional materials, by making just four sales a day, they could expect to earn up to \$89,000 a year.

Eight months later, after tabulating revenues from those 51 machines, their total came to just \$2,100.

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The Zwanigas are now the lead plaintiffs in a class-action lawsuit seeking damages of up to \$20 million against Revolution Food Technologies, an Orillia-based manufacturer of the vending machines, and Johnvince Foods Distribution, a Toronto-based bulk food supplier and exclusive distributor of Planters peanuts in Canada.

The statement of claim, filed in the Ontario Superior Court of Justice in Toronto, accuses the defendants of "fraudulent" or "negligent" misrepresentation of the benefits of the peanut-selling program and says they acted with "arrogance, high-handedness and callous disregard" for the rights of participants in the operation.

None of the allegations in the statement of claim have been proved in court.

According to the lawsuit, Revolution and Johnvince entered into a partnership in September 2009 to launch the venture, called the Revolution 650/Planters Program.

It was marketed as an opportunity for people to operate their own "automatic merchandizing" business.

Participants were encouraged to purchase up to 72 wall-mounted vending machines at a total cost of \$64,440. By making only four sales a day at \$2 each, they could earn as much as \$126,000 a year, the sponsors said.

According to a news release from Revolution, more than 150 entrepreneurs had signed up with the program as of April 2010. The company planned a series of seminars across Canada over the rest of the year with a goal of hiring 350 distributors and allocating 10,000 machines by the end of 2010.

But according to the statement of claim, the business plan was designed "to improperly obtain money" from the distributors rather than sell peanuts.

Not only did revenue fall short of projections, the defendants engaged in high-pressure sales tactics to sign up distributors, the claim alleges.

The vending machines were supposed to dispense four-ounce servings of peanuts, but could only provide three-ounce portions, and distributors were encouraged to buy far more peanuts than they could sell, resulting in the need to discard large quantities, the statement says.

Moreover, servicing of the vending machines took longer than promised and there was no control over where they could be located, resulting in "oversaturation" of the market, the statement says.

When contacted about the lawsuit, the Zwanigas said they would have no additional comments apart from what is in the statement of claim.

Alan Farrar, a lawyer with the Toronto firm of Thomson, Rogers, which is representing the plaintiffs, said the defendants have until Nov. 30 to file a statement of defence.

The firm has been contacted by about 90 different distributors in the Revolution 650 program who raised the same complaints described in the statement of claim, he said.

The lawsuit has yet to be certified as a class action, he said.

Jill Knudsen, a lawyer for the Toronto firm of Macdonald Sager Manis, which is representing Johnvince Foods, said the firm has not filed a statement of defence yet as the case is in the "very, very early stages."

She had no further comment, adding "it is better not to litigate things in the press."

Rod Knight, president of Revolution Food Technologies, did not respond to a phone message requesting comment.

But Chris Chapman, a Barrie-based distributor with the Revolution 650 program, called to say he is happy with how it is running.

In the spring of 2010, he purchased about 30 vending machines and placed them in racetracks, legion halls and other locations in the Barrie, Milton and Hamilton areas, he said.

"It's not a get-rich-quick scheme. You have to go out and pound the pavement," Chapman said.

He estimated he has invested about \$21,000 in the program, but would not say how much he has earned. He put a lot of thought and research into choosing his locations and has heard no complaints that portions are too small, he said.

As for leftover product, Chapman said he and his wife had no previous experience in the vending business and weren't sure how much to order, but Revolution took back some of the peanuts he did not

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need.





"I know a lot of people who are successful doing this business. They work hard at it," he said.

"It's no different than buying a Tim Hortons store. There is no guarantee you are going to be successful," Chapman said. "If you follow what they tell you and work hard at it, vending is a viable business."

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