REGINA VS. LUCAS ET AL
SUNWAY DISTRIBUTING LTD.

SYNOPSIS

Sunway Distributing Ltd. was incorporated on March 23, 1970, under a federal charter to sell vending machines that dispensed cookies. Shortly after its incorporation, Michael Lucas became the president; Richard Cross was named vice president and Andrew Kendall the secretary treasurer. Melvyn Lipson was employed as general office manager.

Sunway headquarters were located in an office of the Skyline Hotel in Ottawa and this is where all the general business was conducted. The office staff generally consisted of Michael Lucas, Melvyn Lipson, Mrs. Marie Boyer, bookkeeper, and two or more secretary-typists.

After this company was incorporated in March 1970, it inserted a series of advertisements in newspapers circulating across Canada. These advertisements offered a fairly substantial guaranteed income which could be earned for an investment of $1,000.00 to $3,000.00. Although the advertisements differed somewhat in the various papers, they all offered a spare-time income that could net the right person an income of $800.00 per month or more.

In addition to the office staff, Sunway Distributing Ltd. employed a sales staff of approximately 10 men to interview those people who responded to the advertisements. Locaters were also hired to place the vending machines sold to the distributors in good locations. The company selected these men after personal interviews at the Sutton Hotel, Toronto, in mid-March 1970. Salesmen traveled independently of each other and were provided with material in the form of a brochure from the company instructing them on what to promise the new distributors.

Some 180 people across Canada purchased these distributorships. The prices on the agreement varied between $249.50 and $499.50 depending on the number of vending machines. Supplies of cookies and insurance were also included in the distributor's Purchase Agreement.

An accounting was completed of Sunway Distributing Ltd. which disclosed corporate sales from April 1970 to December 1970 of approximately $400,000.00.

A large number of distributors were interviewed. In addition, a letter in the form of a questionnaire was sent to all other distributors across Canada. Not one person was successful in his business. The complaints in general were as follows:

1. The quality of the vending machine was very poor.
2. Locators never located machines as promised by the company.
3. Many location slips were forged by the locator and the company did not locate the machine as promised.
4. Three distributors never received their vending machines (23 machines in all).
5. Salesmen promised exclusive areas for distributors which the company did not grant.
6. Cookies were stale when received by the distributor.
7. The price of cookies increased from $.04.5 cents to $.06.5 each soon after distributors purchased the machines.
8. Supplies of cookies came late and in some instances Sunway Distributors cashed the distributor's cheque for orders and did not ship the cookies.
9. The company did not honour claims of damage to machines in accordance with the protective policy on the agreement.
10. The company did not honour its 3-year guarantee for defective workmanship on vending machines.
11. Compounding these complaints, the company did not attempt to rectify any reasonable complaint although many promises were made that a company representative would call on the distributor.

ACCOUNTING EVIDENCE

An overall statement of revenue and expense was prepared so that the primary sources of income and the primary types of disbursements could be shown. The level of profitability in this company was shown to be directly attributable to the sale of machines. They were generally priced at between $250.00 and $300.00 per machine while the cost to Sunway of each machine was $59.00. It was also noted that the sale of cookies resulted in an operating loss, thus the company had a motive to sell machines rather than cookies.

The primary disbursements showed large expenditures for commissions, advertising, travel and business promotions. These expenditures occurred during a period when Lucas knew that the distributors were complaining about product quality and nothing was being done to deal with the problem. Likewise, there was no evidence of an insurance policy, although one was represented as a protective policy to the distributors in their purchase agreement.

The company's profitability was important; of equal importance was the profit/loss experience of the distributors. The accounting evidence from distributors was reviewed in order to compare it with the representations set out in the various newspaper advertisements. In the case of Jacqueline Sherrington, for example, her gross profit assuming all cookies were sold totaled $125.00, for an investment of $1,647.00 over a period of 18 months.

Finally the distributor agreement itself set out under the terms and conditions a non-rescission clause specifically stating, “The distributor is not relying on any oral or written expressions, promises or warranties made by anyone to consummate this transaction”. In spite of the statement on the distributor purchase agreement, the accused were found guilt of fraud.