

Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b). At the same time the Commission sought, and on November 30, 2006, this Court granted *ex parte*, with modifications, the Commission's motion for a temporary restraining order and for an order to show cause why a preliminary injunction should not be granted pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 65. (Doc. 70).

On December 27, 2006, the Federal Trade Commission and Defendant Harvey Frank Milner and Relief Defendant Janice Wood-Milner stipulated to entry of a Preliminary Injunction Order. On December 28, 2006, this Court entered the Stipulated Preliminary Injunction Order against Defendant Harvey Frank Milner and Relief Defendant Janice Wood-Milner. (Doc. 106).

Having considered the Complaint, memorandum of law and exhibits filed by the Commission, and with the consent of Defendant Harvey Frank Milner and Relief Defendant Janice Wood-Milner, it is hereby **ORDERED, ADJUDGED** and **DECREED**:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and the parties hereto.
2. Venue is proper as to Defendant Harvey Frank Milner and Relief Defendant Janice Wood-Milner in the Southern District of Alabama under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b).
3. The activities of Defendant Harvey Frank Milner and Relief Defendant Janice Wood-Milner are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. The Complaint alleges claims upon which relief may be granted against Defendant Harvey Frank Milner and Relief Defendant Janice Wood-Milner under Sections 5(a)(1),

13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a)(1), 53(b), and 57b, and under the Franchise Rule.

5. The Federal Trade Commission and Defendant Harvey Frank Milner and Relief Defendant Janice Wood-Milner stipulate and agree to this Final Order to settle and resolve all matters in dispute between them arising from the Complaint to the date of entry of this Final Order.
6. Defendant Harvey Frank Milner and Relief Defendant Janice Wood-Milner have waived all rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, *amended by* Pub. L. 104-121, 110 Stat. 847, 863-64 (1996).
7. Defendant Harvey Frank Milner and Relief Defendant Janice Wood-Milner acknowledge that they have read the provisions of this Final Order and have agreed to abide by them.
8. Defendant Harvey Frank Milner and Relief Defendant Janice Wood-Milner waive all rights to seek appellate review or otherwise challenge or contest the validity of this Final Order.
9. Defendant Harvey Frank Milner and Relief Defendant Janice Wood-Milner waive and release any claim they may have against the FTC and its employees, representatives or agents.
10. Entry of this Final Order is in the public interest.

DEFINITIONS

1. "Assets" means any legal or equitable interest in, right to, or claim to, any real and personal property, including, but not limited to, chattel, goods, instruments, equipment, fixtures, general intangibles, inventory, checks, notes, leaseholds, effects, contracts, mail

or other deliveries, shares of stock, interest in mutual funds, lists of consumer names, accounts, credits, premises, receivables, funds, and cash, wherever located, whether in the United States or abroad;

2. "Business venture" means any written or oral business arrangement, however denominated, regardless of whether covered by the Franchise Rule or Business Opportunity Rule, which consists of the payment of any consideration for:
 - a. the right or means to offer, sell, or distribute goods or services (regardless of whether identified by a trademark, service mark, trade name, advertising, or other commercial symbol); and
 - b. more than nominal assistance to any person or entity in connection with or incident to the establishment, maintenance, or operation of a new business or the entry by an existing business into a new line or type of business;
3. "Document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or nonidentical copy is a separate document within the meaning of the term;
4. "Franchise Rule or Business Opportunity Rule" means:
 - A. The FTC Trade Regulation Rule codified at 16 C.F.R. Part 436, until the effective date of the amendments to the FTC Trade Regulation Rule titled "Disclosure

Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures,” approved by the Commission on January 22, 2007;

B. After the effective date of the amendments to the FTC Trade Regulation Rule titled “Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures,” approved by the Commission on January 22, 2007:

1. The FTC Trade Regulation Rule titled “Disclosure Requirements Concerning Franchising,” to be codified at 16 C.F.R. Part 436, or as it may be amended; and
2. The FTC Trade Regulation Rule titled “Disclosure Requirements concerning Business Opportunities,” to be codified at 16 C.F.R. Part 437, or as it may be amended.

ORDER

I. PROHIBITION AGAINST VIOLATION OF SECTION 5

IT IS THEREFORE ORDERED that, in connection with the offering for sale or selling of any business venture, Defendant Harvey Frank Milner and their agents, employees, officers, corporations, successors, assigns, and those persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other entity, are hereby restrained and enjoined from making any material misrepresentation or assisting others in making any material misrepresentation, either expressly or by implication, to any prospective purchaser of a business venture, including, but not limited to, misrepresentations that:

A. Consumers who purchase a business venture are likely to earn substantial income;

B. Locations have been secured or will be secured in prospective purchasers'

geographic areas for the placement of vending machines associated with any business venture;

and

C. References have purchased a business venture or will provide reliable descriptions of experiences with the business venture.

**II. PROHIBITION AGAINST VIOLATION OF THE FRANCHISE RULE
OR BUSINESS OPPORTUNITY RULE**

IT IS FURTHER ORDERED that Defendant Harvey Frank Milner and his agents, employees, officers, corporations, successors, assigns, and those persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other entity, are hereby restrained and enjoined from violating or assisting others to violate any provisions of the Franchise Rule or Business Opportunity Rule by, including, but not limited to:

A. Failing to provide each prospective purchaser with a complete and accurate disclosure document as prescribed by the Franchise Rule or Business Opportunity Rule;

B. Failing to have a reasonable basis for any earnings claim or financial performance representation at the time such claim or representation is made, as required by the Franchise Rule or Business Opportunity Rule;

C. Failing to provide prospective purchasers with required disclosures for any earnings claim or financial performance representations, as required by the Franchise Rule or Business Opportunity Rule;

D. Failing to disclose, in immediate conjunction with any earnings claim or financial performance representation, and in a clear and conspicuous manner, that material which constitutes a reasonable basis for the earnings claim or financial performance representation is available to prospective franchisees, as required by the Franchise Rule or Business Opportunity Rule;

E. Failing to provide material which constitutes a reasonable basis for any earnings claim or financial performance representation to prospective purchasers, the Commission, or its staff upon reasonable demand, as required by the Franchise Rule or Business Opportunity Rule; and

F. Failing to disclose, in immediate conjunction with any generally disseminated ("advertised") earnings claim or financial performance representation, information required by the Franchise Rule or Business Opportunity Rule, including the number and percentage of prior purchasers known by the franchisor or business opportunity seller to have achieved the same or better results, as required by the Franchise Rule or Business Opportunity Rule.

III. MONETARY JUDGMENT

IT IS FURTHER ORDERED that, judgment is entered, jointly and severally, against Defendant Harvey Frank Milner and Relief Defendant Janice Wood-Milner in the amount of \$42,000.

IV. PAYMENT OF JUDGMENT

IT IS FURTHER ORDERED that:

A. Within five (5) days of entry of this judgment, Defendant Harvey Frank Milner and Relief Defendant Janice Wood-Milner shall pay the judgment by wire transfer or certified or

cashier's check made payable to the Treasurer of the United States. The check or written confirmation of the wire transfer shall be delivered to: Associate Director, Division of Marketing Practices, 600 Pennsylvania Avenue, N.W., Room 286, Washington, D.C. 20580. Time is of the essence for payment; and

B. In accordance with 31 U.S.C. § 7701, Defendant Harvey Frank Milner and Relief Defendant Janice Wood-Milner are hereby required, unless they have done so already, to furnish to the Commission their respective taxpayer identifying numbers (social security numbers and employer identification numbers) which shall be used for purposes of collecting and reporting on any delinquent amount arising out of Defendant Harvey Frank Milner's and Relief Defendant Janice Wood-Milner's relationship with the government.

V. FUNDS PAID PURSUANT TO THE MONETARY JUDGMENT

IT IS FURTHER ORDERED that all funds paid pursuant to this Final Order shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including, but not limited to, consumer redress and any attendant expenses for the administration of any redress fund. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited into the United States Treasury as disgorgement. Defendant Harvey Frank Milner and Relief Defendant Janice Wood-Milner shall have no right to challenge the Commission's choice of remedies under this Paragraph.

VI. COOPERATION AGREEMENT

IT IS FURTHER ORDERED that Defendant Harvey Frank Milner and Relief Defendant Janice Wood-Milner shall, in connection with this action or any subsequent investigations related to or associated with the transactions or the occurrences that are the subject of the FTC's Complaint, cooperate in good faith with the FTC and appear at such places and times as the FTC shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by the FTC. If requested in writing by the FTC, Defendant Harvey Frank Milner and Relief Defendant Janice Wood-Milner shall appear and provide truthful testimony in any trial, deposition, or other proceeding related to or associated with the transactions or the occurrences that are the subject of the Complaint, without the service of a subpoena.

VII. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order:

A. Within ten (10) days of receipt of written notice from a representative of the Commission, Defendant Harvey Frank Milner shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in Defendant Harvey Frank Milner's possession or direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to monitor compliance with this Order by all other lawful means, including but not limited to the following:

1. obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45; and

2. posing as consumers and suppliers to Defendant Harvey Frank Milner's employees, or any entity managed or controlled in whole or in part by Defendant Harvey Frank Milner, without the necessity of identification or prior notice; and

C. Defendant Harvey Frank Milner shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order.

The person interviewed may have counsel present.

Provided, however, that nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce within the meaning of 15 U.S.C.

§ 45(a)(1).

VIII. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

A. For a period of five (5) years from the date of entry of this final Order,

1. Defendant Harvey Frank Milner shall notify the Commission of the

following:

(a) Any changes in residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;

- (b) Any changes in employment status (including self-employment), and any change in his ownership of any business entity, within ten (10) days of the date of such change. Such notice shall include the name and address of each business that he is affiliated with, employed by, creates or forms, or performs services for; a statement of the nature of the business; and a statement of his duties and responsibilities in connection with the business or employment; and
- (c) Any changes in Defendant Harvey Frank Milner's name or use of any aliases or fictitious names; and

2. Defendant Harvey Frank Milner shall notify the Commission of any changes in corporate structure of any business entity that he directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order, including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which Defendant Harvey Frank Milner learns less than thirty (30) days prior to the date such action is to take place, he shall notify the Commission as soon as is practicable after obtaining such knowledge;

