

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

ROUTE WIZARD, Inc., et. al.,

Defendants.

Civil Action No.: 06-0815-KD-B

**PROPOSED STIPULATED FINAL JUDGMENT AND ORDER
FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF
AS TO DEFENDANT RICHARD M. NORCROSS AND RELIEF DEFENDANT
SUMMER L. NORCROSS**

This matter comes before this Court on the stipulation of Plaintiff Federal Trade Commission ("FTC" or "Commission") and Defendant Richard M. Norcross and Relief Defendant Summer L. Norcross. On November 28, 2006, the Federal Trade Commission ("FTC" or "Commission") filed a Complaint against Defendants Route Wizard, Inc., Liberty Routes, Inc., Ready Routes, Inc., RouteCrafters, Inc., Ca\$h Route\$, Inc., NovaStar Vending, Inc., Alliance Locating Co., Inc., Harvey Frank Milner, Richard M. Norcross, and Richard D. Norcross and Relief Defendants Sasikant L. Norcross, Summer L. Norcross, and Janice Wood-Milner, alleging violations of Section 5 of the FTC Act and the FTC's Trade Regulation Rule titled, "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" (the "Franchise Rule"), 16 C.F.R. Part 436, in connection with the marketing of candy vending machine business ventures. The Commission's Complaint seeks a permanent injunction and other equitable relief in this matter, pursuant to section 13(b) of the

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 19, 2006, counsel for Defendant Richard M. Norcross and Relief Defendant Summer L. Norcross advised this Court that his clients did not oppose the entry of a Preliminary Injunction Order against them. On December 28, 2006, this Court entered the Preliminary Injunction Order against Defendant Richard M. Norcross and Relief Defendant Summer L. Norcross in the form of the Proposed Amended Preliminary Injunction Order With Asset Freeze and Other Equitable Relief submitted by the FTC. (Doc. 92).

Having considered the Complaint, memorandum of law and exhibits filed by the Commission, and with the consent of Defendant Richard M. Norcross and Relief Defendant Summer L. Norcross, 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 Richard M. Norcross and Relief Defendant Summer L. Norcross 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 Richard M. Norcross and Relief Defendant Summer L. Norcross 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 Richard M. Norcross and Relief Defendant Summer L. Norcross 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 Richard M. Norcross and Relief Defendant Summer L. Norcross 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 Richard M. Norcross and Relief Defendant Summer L. Norcross 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 Richard M. Norcross and Relief Defendant Summer L. Norcross acknowledge that they have read the provisions of this Final Order and have agreed to abide by them.
8. Defendant Richard M. Norcross and Relief Defendant Summer L. Norcross waive all rights to seek appellate review or otherwise challenge or contest the validity of this Final Order.
9. Defendant Richard M. Norcross and Relief Defendant Summer L. Norcross 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; and

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 Richard M. Norcross 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 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 Richard M. Norcross 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:

A. Judgment is hereby entered against Defendant Richard M. Norcross individually in the amount of \$3,382,070.61;

B. Judgment is further entered against Defendant Richard M. Norcross and Relief Defendant Summer L. Norcross, jointly and severally, in the amount of \$22,687; and

C. Upon the payment of \$30,000 to the Commission by Defendant Richard M. Norcross and/or Relief Defendant Summer L. Norcross, pursuant to Paragraph IV of this Order, the judgment against Relief Defendant Summer L. Norcross shall be fully satisfied, and the remainder of the judgment against Defendant Richard M. Norcross shall be suspended, subject to the conditions set forth in Paragraph V of this Order.

IV. PAYMENT OF JUDGMENT

IT IS FURTHER ORDERED that:

A. Within five (5) days of entry of this judgment, Defendant Richard M. Norcross and/or Relief Defendant Summer L. Norcross shall pay \$30,000 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 Richard M. Norcross and Relief Defendant Summer L. Norcross 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 Richard M. Norcross' and Relief Defendant Summer L. Norcross' relationship with the government.

V. TERMINATION OF SUSPENSION OF JUDGMENT

IT IS FURTHER ORDERED that:

A. The Commission's agreement to, and the Court's approval of, this Final Order is expressly premised upon the truthfulness, accuracy, and completeness of Defendant Richard M. Norcross' and Relief Defendant Summer L. Norcross' financial condition, as represented in their sworn financial statements dated December 11, 2006, and provided to the Commission, which include material information upon which the Commission relied in negotiating and consenting to this Final Order. By agreeing to this Final Order, Defendant Richard M. Norcross and Relief Defendant Summer L. Norcross reaffirm and attest to the truthfulness, accuracy, and completeness of their sworn financial statements dated December 11, 2006;

B. If, upon motion by the Commission, this Court should find that Defendant Richard M. Norcross failed to disclose any material asset, or materially misrepresented the value of any asset, or made any other material misrepresentation or omission concerning his financial condition on his sworn financial statement, then the suspension of the monetary judgment shall be terminated and this Court shall enter a modified judgment holding Defendant Richard M. Norcross liable to the Commission in the amount of \$3,382,070.61 (less any amounts paid by other Defendants in this matter), which Defendant Richard M. Norcross and the Commission stipulate is the amount of money received by Defendants that was unlawfully derived from consumers as a consequence of the deceptive acts and practices of Defendants. The modified judgment shall become immediately due and payable by Defendant Richard M. Norcross, and interest computed at the rate prescribed under 28 U.S.C. § 1961, as amended, shall immediately begin to accrue on the unpaid balance;

C. Defendant Richard M. Norcross agrees that the facts as alleged in the Complaint filed in this action shall be taken as true in any subsequent litigation filed by the Commission to enforce its rights pursuant to this Order, including, but not limited to, a nondischargeability complaint filed in any bankruptcy proceeding; and

D. Any proceedings instituted under this Section are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings that the FTC may initiate to enforce this Order.

VI. 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 practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited into the United States Treasury as disgorgement.

Defendant Richard M. Norcross and Relief Defendant Summer L. Norcross shall have no right to challenge the Commission's choice of remedies under this Paragraph.

VII. LIFTING OF THE ASSET FREEZE

IT IS FURTHER ORDERED that, the asset freeze against Defendant Richard M. Norcross and Relief Defendant Summer L. Norcross shall be lifted upon entry of this Stipulated Final Judgment and payment of \$30,000 to the Commission.

VIII. COOPERATION AGREEMENT

IT IS FURTHER ORDERED that Defendant Richard M. Norcross and Relief Defendant Summer L. Norcross 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 Richard M. Norcross and Relief Defendant Summer L. Norcross 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.

IX. 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 Richard M. Norcross 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 Richard M. Norcross' 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:

