

FILED

NOV 28 2006

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHWESTERN DIVISION

FEDERAL TRADE COMMISSION,)
)
 Plaintiff,)
)
 vs.)
)
 THOMAS E. RICHARDSON, d/b/a)
 MID-SOUTH DISTRIBUTORS,)
)
 Defendant.)
)

Civil Action No. CV-06-S-4754-NW

PRELIMINARY INJUNCTION AND ASSET FREEZE

Plaintiff, the Federal Trade Commission ("FTC"), having filed its complaint for a permanent injunction and other equitable relief in this matter pursuant to Sections 5(a), 13(b), and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a), 53(b), and 57b, respectively; the FTC's Trade Regulation Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" ("Franchise Rule" or "Rule"), 16 C.F.R. § 436; and having moved for a Temporary Restraining Order and/or Preliminary Injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 65; and the court having considered the complaint, declarations, exhibits and memorandum of law filed in support thereof, and now being advised in the premises, finds that:

1. This court has jurisdiction over the subject matter of this case, and there is good cause to believe it will have jurisdiction over all the parties hereto. *See* 28 U.S.C. § 1331.
2. The complaint states a claim upon which relief may be granted under Sections 5 and 13(b) of the FTC Act, 15 U.S.C. §§ 45 & 53(b).
3. Venue properly lies with this court. *See* 28 U.S.C. § 1391.
4. There is good cause to believe that defendant Thomas E. Richardson has engaged and is likely to engage in acts and practices that violate Sections 5(a) of the FTC Act, as amended, 15 U.S.C. §§ 45(a), and the Franchise Rule, 16 C.F.R. § 436, and that the FTC is therefore likely to prevail on the merits of this action.
5. There is good cause to believe that immediate and irreparable harm will result from defendant's ongoing violations of Section 5(a) of the FTC Act and the FTC's Franchise Rule unless defendant is restrained and enjoined by order of this court. The evidence set forth in the FTC's Motion for Temporary Restraining Order and Other Equitable Relief, and in the accompanying declarations and exhibits, shows that the FTC is likely to prove that defendant has engaged in a concerted course of illegal activity in connection with the sale of greeting card business

ventures in several states, in violation of the FTC Act. Thus, there is good cause to believe that defendant will attempt to conceal the scope of his illegal actions to avoid returning his ill-gotten gains to consumers injured by his unlawful practices if not restrained from doing so by this court.

6. There is good cause to order an asset freeze of defendant's assets. The FTC has made a *prima facie* showing that defendant has made misrepresentations to those consumers for whom he is supposed to be providing goods or services, that defendant has engaged in a widespread effort to take money from these consumers based on false and deceptive acts and practices, and that defendant has retained ill-gotten gains from these and other practices. Accordingly, an asset freeze is reasonably necessary in order to preserve the possibility of meaningful relief at the conclusion of this litigation.
6. Weighing the equities and considering the FTC's likelihood of ultimate success, a this order is in the public interest.
7. No security is required of any agency of the United States for issuance of a temporary restraining order or preliminary injunction. *See* Fed. R. Civ. P. 65(c).

8. Good cause exists for ordering defendant to provide an accounting of his business as set forth herein.
9. Finally, as defendant has been provided with notice and was present at the hearing and consented, this order will be in the nature of a Preliminary Injunction rather than a Temporary Restraining Order.

I. DEFINITIONS

1. **“Defendant”** means Thomas E. Richardson, and whatever other names he might be known as, including, but not limited to, Mid-South Distributors.
2. **“Document”** is synonymous in meaning, and equal in scope, to the term, as defined in Fed. R. Civ. P. 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 non-identical copy is a separate document within the meaning of this term.
3. **“Asset”** or **“Assets”** means all real or personal property of defendant, or held for the benefit of defendant, including, but not limited to, “goods,” “instruments,” “equipment,” “fixtures,” “general intangibles,” “inventory,” “checks,” or “notes” (as these terms are defined in the Uniform Commercial Code), and all chattel, leaseholds, contracts, mail or other deliveries, lists of consumer names, shares

of stock, accounts, credits, receivables, and cash, wherever located.

4. **“Material”** means likely to affect a person’s choice of, or conduct regarding, goods or services.

5. **“Person”** means a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.

6. **“Plaintiff”** means the Federal Trade Commission (“FTC”).

7. **“Business Venture”** means any written or oral arrangement, however denominated, whether or not covered by the Franchise Rule, which consists of the payment of any consideration for:

a. the right or means to offer, sell, or distribute goods or services (whether or not 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.

8. **“Financial Institution”** means any bank, savings and loan institution, credit union, or any financial depository of any kind including, but not limited to any

brokerage house, trustee, broker-dealer, escrow agent, title company, commodity trading company, or precious metal dealer.

II. ORDER

A. Prohibited Business Activities

1. Violations of Section 5 of the FTC Act

It is ORDERED that, in connection with the advertising, promotion, offering for sale, sale or provision of any goods or services, including but not limited to offers for sale of any business venture, defendant is hereby enjoined from making or assisting in the making of, expressly or by implication, orally or in writing, any false or misleading statement or representation of material fact, including but not limited to that consumers who purchase a business venture are likely to earn substantial income.

B. Violations of the Franchise Rule

It is further ORDERED that defendant is hereby enjoined from violating any provisions of the Franchise Rule, 16 C.F.R. § 436, including, but not limited to:

- A. failing to provide prospective franchisees with accurate and complete disclosure documents within the time period prescribed by the Franchise Rule;
- B. making earnings claims to prospective franchisees while, *inter alia*: (1)

- lacking a reasonable basis for each claim at the time it is made; (2) failing to disclose, in immediate conjunction with each earnings claim, and in a clear and conspicuous manner, that material which constitutes a reasonable basis for the claim is available to prospective franchisees; and/or (3) failing to provide prospective franchisees with an earnings claim document, as prescribed by the Franchise Rule; and
- C. making generally disseminated earnings claims, including, but not limited to, claims in general newspaper advertisements and claims on any internet Web site, without, *inter alia*, disclosing, in immediate conjunction with the claims, information required by the Franchise Rule including the number and percentage of prior purchasers known by defendant to have achieved the same or better results.

III. ASSET FREEZE

It is further ORDERED that defendant, and his officers, agents, servants, employees, and attorneys, and all other persons or entities in active concert or participation with him who receive actual notice of this order by personal service or otherwise, are hereby enjoined from:

- A. Transferring, liquidating, converting, encumbering, pledging, loaning, selling, concealing, dissipating, disbursing, assigning, spending,

withdrawing, granting a lien or security interest or other interest in, or otherwise disposing of any funds, real or personal property, automobiles, accounts, contracts, consumer lists, coins, precious metals, artwork, shares of stock, uncashed checks, or other assets, wherever located, that are: (1) owned or controlled by defendant, in whole or in part; (2) in the actual or constructive possession of defendant; (3) held by an agent of defendant as a retainer for the agent's provision of services to defendant; or (4) owned, controlled by, or in the actual or constructive possession of, or otherwise held for the benefit of, any corporation, partnership or other entity directly or indirectly owned, managed, or controlled by defendant including, but not limited to any assets held by or for any defendant in any account at any bank or savings and loan institution, credit card processing agent or with any broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, merchant account processor, or other financial institution or organization of any kind;

- B. Opening or causing to be opened any safe deposit boxes or commercial mail boxes titled in the name of defendant, or subject to access by defendant.

- C. Incurring charges or cash advances on any credit or debit card issued in the name of defendant;
- D. Obtaining a personal or secured loan; and
- E. Incurring liens or other encumbrances on real property, personal property, or other asset held in the name, individually or jointly, of defendant.

It is further ORDERED that the assets affected by this section shall include both existing assets and assets acquired after the effective date of this order, including, without limitation, those acquired by loan or gift, and assets in the form of retainers paid to defendant's agents as compensation for the provision of services to defendant. Defendant, or any third party holding assets for the benefit of defendant, shall hold all assets, including without limitation, payments, loans, and gifts, received after service of this order.

It is further ORDERED that, notwithstanding the asset freeze provisions of Section III above, defendant may pay reasonable, usual, ordinary, and necessary living expenses, and reasonable attorney's and accountant's fees after obtaining prior written approval by the FTC or by the court. Specifically, it is ORDERED that defendant have \$50 per day of his own assets in order to pay ordinary living expenses, to purchase food, and to otherwise provide for himself and his wife.

Additionally, it is ORDERED that defendant be permitted to obtain unsecured loans from friends and family for the purpose of paying rent and other necessary monthly expenses, including payment of attorney fees and accountant's fees incurred as a result of this proceeding, *provided* that: any such loans be received without encumbering any existing assets; defendant provide copies of all loan documents to the FTC, disclosing the identity of the lender, the amount of the loan, and the form of the payment received; and, that no such loans be repaid until the conclusion of this proceeding, or one year, whichever shall first occur.

IV. DUTIES OF ASSET HOLDERS

It is further ORDERED that, effective immediately upon notification of this order, any financial or brokerage institution, escrow agent, money market or mutual fund, title company, commodity trading company, common carrier, storage company, trustee, commercial mail receiving agency, merchant account processor, mail holding or forwarding company, creditor or credit card issuer, or any other person or entity having possession, custody or control of any assets or records of defendant, or of any account, safe deposit box, or other asset of defendant, or held on behalf of or for the benefit of defendant, at any time since **June 1, 2004**, shall:

- A. Hold and retain within its control and prohibit the transfer, encumbrance, pledge, assignment, removal, withdrawal, dissipation, sale or other

disposal of any such account or other asset, except for transfers or withdrawals directed by further order of this court;

- B. Deny any person or entity access to any safe deposit box titled in the name of defendant or otherwise held for the benefit of or subject to access by defendant;
- C. Provide to counsel for the FTC, within five business days of notice of this order, a sworn statement setting forth:
 - 1. The identification number of each account or asset titled in the name of defendant, or held on behalf of, or for the benefit of defendant;
 - 2. The balance of each account or a description of the nature and value of each asset as of the close of business on the day this order is served, and, if the account or asset has been closed or moved, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and
 - 3. The identification of any safe deposit box or storage facility that is either titled in the name of or subject to

access by the defendant.

- D. Upon the request by the FTC, promptly provide the FTC with copies of all records or other documentation pertaining to each such account or asset, including but not limited to originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs. For the purposes of this section, the FTC may properly serve this order on any financial or brokerage institution, business entity or person that holds, controls or maintains custody of any account or asset of defendant or has held, controlled or maintained custody of any account or asset of any defendant at any time since **April 1, 2001**, by facsimile transmission, hand delivery or overnight carrier.

V. RECORD KEEPING / MAINTAINING BUSINESS RECORDS

It is further ORDERED that defendant is hereby enjoined from:

- A. Failing to create and maintain books, records, accounts, bank statements, current accountants' reports, general ledgers, general journals, cash receipts ledgers, cash disbursements ledgers and source documents, documents indicating title to real or personal property, and any other

data which, in reasonable detail, accurately, fairly and completely reflect their incomes, disbursements, transactions, and dispositions of the assets of the defendant; and/or

- B. Destroying, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, any books, records, tapes, discs, accounting data, checks (fronts and backs), correspondence, forms, advertisements, brochures, manuals, electronically stored data, banking records, customer lists, customer files, invoices, telephone records, ledgers, payroll records, or other documents of any kind, including information stored in computer-maintained form, in their possession, custody, or control that relate to the business practices or business or personal finances of defendant from **June 2004**, to the present.

VI. DISTRIBUTION OF ORDER BY DEFENDANT

It is further ORDERED that defendant shall immediately provide a copy of this order to each: purchaser of a business venture sold by defendant, whether directly by defendant or by a third party, since **January 2002**; affiliate, partner, division, sales entity, successor, assignee, officer, director, employee, independent contractor, spouse, internet web host or master, agent, attorney, and/or representative of defendant. Defendant also shall, within ten days from the date of entry of this order,

serve upon counsel for the FTC a sworn statement that defendant has complied with this provision of this order, which statement shall include the names and addresses of each such person or entity who has received a copy of the order.

VII. SERVICE OF ORDER

It is further ORDERED that copies of this order may be served by any means, including facsimile transmission, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of defendant, or that may otherwise be subject to any provision of this order. Service upon any branch or office of any financial institution or entity shall effect service upon the entire financial institution or entity.

Plaintiff's agents or employees may serve this order upon any other person that may be subject to any provision of this order by serving a copy personally or by first class mail, overnight delivery, facsimile or electronic mail.

VIII. CREDIT REPORTS

It is further ORDERED that the FTC may obtain credit reports concerning defendant pursuant to Section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1), and that upon written request, any credit reporting agency from which such report is requested shall provide it to the FTC.

IX. CUSTOMER SALES INFORMATION

It is further ORDERED that within 48 hours of service of this order, defendant and any other person or entity served with a copy of this order, shall provide to the FTC a complete and accurate statement providing the names, addresses and telephone numbers of each purchaser of a business venture sold by defendant, whether directly by defendant or by a third party, since **January 2002**; and, by December 4, 2006, defendant shall provide to the FTC the total dollar amount of money received from each customer.

X. ACCOUNTING PROVISIONS

It is further ORDERED that defendant shall, within 48 hours of service of this order, prepare and provide to counsel for the FTC:

- A. A completed financial statement accurate as of the date of service of this order upon defendant which shall include all financial information as requested by the Financial Statement of Individual Defendant, appended as **Attachment A**, for himself and for each business entity under which he conducts business, regardless of the form of business organization, or of which he is an officer or member, and for each trust of which they are a trustee. The financial statements shall be accurate as of the date of entry of this order and shall be verified under oath;
- B. A full accounting of all assets and documents that are located inside or

outside of the territory of the United States of America and are held by or for defendant or are under his direct or indirect control, jointly, severally, or individually; and

- C. The name, address and telephone number of each accountant, financial planner, investment advisor, stock broker or other individual, corporation or partnership whom defendant hired for financial, business or tax advice or services, since **January 1, 2002**.

XI. REPATRIATION OF FOREIGN ASSETS AND DOCUMENTS

It is further ORDERED that, within five business days following service of this order, defendant shall:

- A. Repatriate to the United States all funds, documents or assets in foreign countries held either: (1) by defendant; (2) for the benefit of defendant; or (3) under the direct or indirect control, jointly or individually, of defendant;
- B. The same business day as any repatriation, (1) notify counsel for the FTC of the name and location of the financial institution or other entity that is the recipient of such funds, documents or assets; and (2) serve this order on any such financial institution or other entity;
- C. Provide the FTC with a full accounting of all funds, documents, and

assets outside of the territory of the United States held either: (1) by defendant; (2) for defendant's benefit; or (3) under defendant's direct or indirect control, jointly or singly; and

- D. Provide the FTC with access to all records of accounts or assets of defendants held by financial institutions whether located outside the territorial United States, or otherwise, by signing the Consent to Release of Financial Records that will be provided to defendant within a reasonable time. However, if the Consent to Release of Financial Records is, in defendant's judgment, not acceptable, defendant shall file a motion with this court for relief from or modification of this obligation, which the court will consider in due course.

XII. INTERFERENCE WITH REPATRIATION

It is further ORDERED that defendant is hereby enjoined from taking any action, directly or indirectly, which may result in the encumbrance or dissipation of foreign assets, or in the hindrance of the repatriation required by the preceding section of this order, including but not limited to:

- A. Sending any statement, letter, fax, e-mail or wire transmission, or telephoning or engaging in any other act, directly or indirectly, that results in a determination by a foreign trustee or other entity that a

“duress” event has occurred under the terms of a foreign trust agreement, until such time as all assets have been fully repatriated pursuant to the preceding section of this order; and

- B. Notifying any trustee, protector or other agent of any foreign trust or other related entities of either the existence of this order, or of the fact that repatriation is required pursuant to a court order, until such time as all assets have been fully repatriated pursuant to the preceding section of this order.

XIII. CORRESPONDENCE WITH AND NOTICE TO PLAINTIFF

It is further ORDERED that, for purposes of this order, all correspondence and pleadings to the FTC shall be addressed to:

Paul K. Davis, Esq.
Valerie M. Verduce, Esq.
Federal Trade Commission
225 Peachtree Street, Suite 1500
Atlanta, Georgia 30303
(404) 656-1354 (telephone)
(404) 656-1379 (facsimile)

Notice may be provided by email to pdavis@ftc.gov or vverduce@ftc.gov.

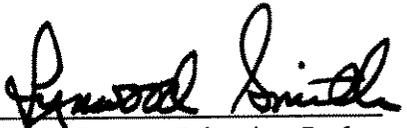
XIV. DURATION OF PRELIMINARY INJUNCTION

It is further ORDERED that the Preliminary Injunction granted herein shall remain in effect until further order of this court.

XV. RETENTION OF JURISDICTION

It is further ORDERED that this court shall retain jurisdiction over this matter for all purposes.

DONE this 28th day of November, 2006, at 6:42 p.m.


United States District Judge