

1 UNITED STATES DISTRICT COURT FOR THE
2 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

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CENTRAL DISTRICT OF CALIFC
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4 FEDERAL TRADE COMMISSION,

5 Plaintiff,

6 v.

7 WORLD TRADERS ASSOCIATION,
8 INC., et al.,

9 Defendants.

CASE NO. CV 05-591 AHM (CTx)
Hon. A. Howard Matz

10 STIPULATED JUDGMENT
11 AND ORDER FOR PERMANENT
12 INJUNCTION AS TO
13 DEFENDANT SHANNON
14 HOLDEN

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This matter comes before the Court on a stipulation of Plaintiff Federal Trade Commission ("Commission" or "FTC") and Defendant Shannon Holden ("Holden").

On January 25, 2005, the FTC filed a Complaint for a Permanent Injunction and Other Relief, including redress to consumers, pursuant to Sections 13(b) and 19(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b(a), and applied *ex parte* for a Temporary Restraining Order pursuant to Rule 65 of the Federal Rules of Civil Procedure. The Commission charged that Defendant Shannon Holden engaged with other named defendants in deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a), and the Commission's Rule entitled Disclosure Requirements and Prohibitions Concerning Franchise and Business Opportunity Ventures (the "Franchise Rule"), 16 C.F.R. Part 436, in the marketing and sale of an alleged business opportunity to become an affiliate in a network of brokers selling surplus goods. On January 25, 2005 - the same day the Complaint was filed - the Court issued a Temporary Restraining Order with an asset freeze, appointment of a Receiver, and other ancillary equitable relief ("TRO"). On February 22, 2005, upon stipulation of the parties, the Court entered a preliminary injunction. In addition to continuing the

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1 relief in the TRO, the preliminary injunction contained a ban against Defendant's
2 involvement with business ventures involving the sale or purchase of discounted
3 or surplus goods. On April 6, 2005, the FTC filed an Amended Complaint adding
4 additional defendants.

5 The Commission and Defendant Shannon Holden hereby stipulate to the
6 entry of, and request the Court to enter, this Stipulated Judgment and Order for
7 Permanent Injunction ("Final Order") to resolve all matters of dispute between
8 them in this action.

9 **IT IS THEREFORE STIPULATED, AGREED, AND ORDERED** as
10 follows:

11 1. This Court has jurisdiction of the subject matter of this case and
12 jurisdiction over the Defendant.

13 2. Venue in this District is proper under 15 U.S.C. § 53(b) and 28
14 U.S.C. §§ 1391(b) and (c).

15 3. The activities of Defendant are in or affecting commerce, as defined
16 in Section 4 of the FTC Act, 15 U.S.C. § 44.

17 4. The Amended Complaint states a claim upon which relief may be
18 granted against Defendant under Sections 5(a), 13(b), and 19 of the FTC Act, 15
19 U.S.C. §§ 45(a), 53(b), and 57b, and the Franchise Rule, 16 C.F.R. Part 436.

20 5. Defendant has entered into this Final Order freely and without
21 coercion. Defendant further acknowledges that she has read the provisions of this
22 Final Order and is prepared to abide by them.

23 6. The Plaintiff and Defendant have agreed that the entry of this Final
24 Order resolves all matters of dispute between them arising from the Amended
25 Complaint in this action, up to the date of entry of this Final Order.

26 7. Defendant waives all rights to seek appellate review or otherwise
27 challenge or contest the validity of this Final Order. Defendant further waives and
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1 releases any claim she may have against the Commission, its employees,
2 representatives, or agents.

3 8. Defendant agrees that this Final Order does not entitle Defendant to
4 seek or to obtain attorneys' fees as a prevailing party under the Equal Access to
5 Justice Act, 28 U.S.C. § 2412, as amended by Pub. L. 104-121, 110 Stat. 847, 863-
6 864 (1996), and Defendant further waives any rights to attorneys' fees that may
7 arise under said provision of law.

8 9. This Final Order is in addition to, and not in lieu of, any other civil or
9 criminal remedies that may be provided by law.

10 10. Entry of this Final Order is in the public interest.

11 11. This Final Order is for settlement purposes only, and does not
12 constitute an admission by Defendant that the law has been violated as alleged in
13 the Amended Complaint, or that the facts as alleged in the Amended Complaint,
14 other than jurisdictional facts, are true. However, for the purposes of bankruptcy
15 proceedings, this Final Order is governed by Paragraph III.G.

16 **DEFINITIONS**

17 1. "Assets" means any legal or equitable interest in, right to, or claim to,
18 any real and personal property, including, but not limited to, chattel, goods,
19 instruments, equipment, fixtures, general intangibles, inventory, checks, notes,
20 leaseholds, effects, contracts, mail or other deliveries, shares of stock, lists of
21 consumer names, accounts, credits, premises, receivables, funds, and cash,
22 wherever located, whether in the United States or abroad;

23 2. "Business venture" means any written or oral business arrangement,
24 however denominated, regardless of whether covered by the Franchise Rule,
25 which consists of the payment of any consideration for:

26 a. the right or means to offer, sell, or distribute goods or services
27 (regardless of whether identified by a trademark, service mark, trade name,
28 advertising, or other commercial symbol); and

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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. "Franchise Rule" means the FTC Trade Regulation Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures," 16 C.F.R. Part 436, as promulgated or as the Rule may hereinafter be amended or superseded by any future trade regulation rule or rules, in whole or in part;

4. "Defendant" means Shannon Kirk Holden, whether acting directly or indirectly through any heir, successor, assign, agent, employee, entity, corporation, limited liability company, subsidiary, division or other device; and

5. "Document" is synonymous in meaning and equal in scope to the usage of the term 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 the term.

6. "Receiver" shall mean Robb Evans and Associates, the Receiver appointed by the Court in this matter over Receivership Defendants.

ORDER

I. PROHIBITION AGAINST VIOLATION OF SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

IT IS THEREFORE ORDERED that, in connection with the offering for sale or sale of any business venture, good, or service, Defendant, and those persons in active concert or participation with Defendant who receive actual notice of this permanent injunction by personal service or otherwise, are hereby permanently restrained and enjoined from misrepresenting, directly or by

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1 implication, either orally or in writing, to any potential purchaser, any material
2 fact, or providing substantial assistance to others to make such a
3 misrepresentation, including, but not limited to, the following:

4 A. That consumers who purchase Defendant's business ventures, goods,
5 or services are likely to earn substantial income;

6 B. That consumers who purchase Defendant's business ventures, goods,
7 or services will be provided with names or contact information of buyers who have
8 been previously contacted by Defendant or are interested in purchasing
9 Defendant's goods or services;

10 C. That consumers who purchase Defendant's business ventures, goods,
11 or services will acquire accounts of buyers who are interested in purchasing
12 Defendant's goods or services;

13 D. That references provided by Defendant have purchased the
14 Defendant's business ventures, goods, or services, or will provide reliable
15 descriptions of experiences with the business ventures, goods, or services; or

16 E. That Defendant will provide consumers who purchase her business
17 ventures, goods, or services with training or support for the operation of the
18 consumers' businesses.

19 **II. PROHIBITION AGAINST VIOLATION OF THE FRANCHISE RULE**

20 **IT IS FURTHER ORDERED** that Defendant, and those persons in active
21 concert or participation with Defendant who receive actual notice of this
22 permanent injunction by personal service or otherwise, are hereby permanently
23 restrained and enjoined from violating, or assisting others to violate, any provision
24 of the Franchise Rule, 16 C.F.R. Part 436, including but not limited to:

25 A. Failing to provide a prospective purchaser with a complete and
26 accurate disclosure document as required by the Franchise Rule, 16 C.F.R.
27 § 436.1(a);
28

1 B. Failing to provide a prospective purchaser with an earnings claim
2 document as required by the Franchise Rule, 16 C.F.R. § 436.1(b)-(e);

3 C. Failing to have a reasonable basis for any earnings claim at the time
4 such claim is made, as required by the Franchise Rule, 16 C.F.R. § 436.1(b)-(e);

5 D. Failing to disclose, in immediate conjunction with any earnings claim,
6 and in a clear and conspicuous manner, that material which constitutes a
7 reasonable basis for the earnings claim is available to the prospective purchasers;
8 and

9 E. Failing to provide materials which constitute a reasonable basis for an
10 earnings claim to prospective purchasers, the Commission, or its staff upon
11 reasonable demand.

12 III. MONETARY JUDGMENT

13 IT IS FURTHER ORDERED that:

14 A. Defendant is liable to the Commission for Four Hundred Ninety One
15 Thousand Four Hundred Eighteen Dollars (\$491,418), which Defendant agrees is
16 the amount of injury suffered by consumers, and the FTC is awarded a monetary
17 judgment in this amount; *provided, however*, that payment of this judgment shall
18 be suspended; *provided, further*, that the freeze of Defendant's assets shall be
19 lifted permanently upon the entry of this Final Order; and *provided, further*, that if
20 judgment is entered against any of the other defendants, the liability created by
21 this judgment shall be joint and several with the liability of the other defendants.

22 B. Any and all funds paid pursuant to Paragraph IV shall be deposited
23 into a fund administered by the Commission or its agent to be used for equitable
24 relief, including, but not limited to, consumer redress and any attendant expenses
25 for the administration of any redress fund. In the event that redress to purchasers
26 is wholly or partially impracticable, or any funds remain after redress is
27 completed, the Commission may apply any remaining funds to such other
28 equitable relief (including consumer information remedies) as it determines to be

1 reasonably related to the Defendant's practices alleged in the Amended Complaint.
2 Any funds not used for such equitable relief shall be deposited in the United States
3 Treasury as disgorgement. Defendant shall have no right to contest the manner of
4 distribution chosen by the Commission. The Commission in its sole discretion
5 may use a designated agent to administer consumer redress.

6 C. In accordance with 31 U.S.C. § 7701, Defendant is hereby required,
7 unless she has done so already, to furnish to the Commission her taxpayer
8 identification numbers (social security numbers and employer identification
9 numbers) which shall be used for purposes of collecting and reporting on any
10 delinquent amount arising out of Defendant's relationship with the government.

11 D. Defendant is further required, unless she has done so already, to
12 provide the Commission with clear, legible and full-size photocopies of all valid
13 driver's licenses she possesses, which will be used for reporting and compliance
14 purposes.

15 E. Defendant agrees that the facts as alleged in the Amended Complaint
16 filed in this action shall be taken as true in any subsequent civil litigation pursued
17 by the Commission to enforce its rights pursuant to this Final Order, including, but
18 not limited to, a nondischargeability complaint in any bankruptcy proceeding.

19 IV. RIGHT TO REOPEN

20 A. The Commission's agreement to this Final Order is expressly
21 premised upon the financial condition of Defendant as represented in the sworn
22 financial statement and supporting documents she provided to the Commission
23 dated January 28, 2005, and June 13, 2005, all of which include material
24 information upon which the Commission relied in negotiating and consenting to
25 this Final Order.

26 B. If, upon motion by the Commission, this Court finds that Defendant
27 made a material misrepresentation or omitted material information concerning her
28 financial condition, then the Court shall lift any suspension of the judgment and

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1 direct the Clerk to enter judgment against Defendant and in favor of the
 2 Commission for the full amount of Four Hundred Ninety One Thousand Four
 3 Hundred Eighteen Dollars (\$491,418). This amount shall be immediately due and
 4 payable, together with interest computed at the rate prescribed under 28 U.S.C.
 5 § 1961, as amended.

6 C. Any proceedings instituted under this Paragraph IV are in addition to,
 7 and not in lieu of, any other civil or criminal remedies as may be provided by law,
 8 including any other proceedings that the FTC may initiate to enforce this Final
 9 Order.

10 **V. ACKNOWLEDGMENT OF RECEIPT OF ORDER**

11 **IT IS FURTHER ORDERED** that, within five (5) business days of receipt
 12 of this Final Order as entered by the Court, Defendant must submit to the
 13 Commission a truthful sworn statement acknowledging receipt of this Final Order.

14 **VI. DISTRIBUTION OF ORDER BY DEFENDANT**

15 **IT IS FURTHER ORDERED** that, for a period of three (3) years from the
 16 date of entry of this Final Order, Defendant shall deliver copies of this Final Order
 17 as directed below:

18 A. **Defendant as Control Person:** For any business that Defendant
 19 controls, directly or indirectly, or in which she has a majority ownership interest,
 20 Defendant must deliver a copy of this Final Order to all principals, officers,
 21 directors, and managers of that business. Defendant must also deliver copies of
 22 this Final Order to all employees, agents, and representatives of the business who
 23 engage in the offer or sale of opportunities, goods, or services for investment or
 24 income-production. For current personnel, delivery shall be within five (5) days
 25 of service of this Final Order upon Defendant. For new personnel, delivery shall
 26 occur prior to their assumption of their responsibilities;

27 B. **Defendant as Employee or Non-Control Person:** For any business
 28 where Defendant is not a controlling person of the business, but for which she

1 otherwise engages in the offer or sale of opportunities, goods, or services for
2 investment or income-production, Defendant must deliver a copy of this Final
3 Order to all principals and managers of such business before engaging in such
4 conduct; and

5 C. Defendant must secure a signed and dated statement acknowledging
6 receipt of the Final Order within thirty (30) days of delivery, from all persons
7 receiving a copy of the Final Order pursuant to this Paragraph VI.

8 **VII. COMPLIANCE REPORTING BY DEFENDANT**

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

11 A. For a period of three (3) years from the date of entry of this Final
12 Order, Defendant shall notify the Commission in writing of the following:

13 1. Any changes in Defendant's residence, mailing addresses, and
14 telephone numbers, within ten (10) days of the date of such change;

15 2. Any changes in Defendant's employment status (including self-
16 employment), within ten (10) days of such change. Such notice shall include the
17 name and address of each business that Defendant is affiliated with, employed by,
18 or performs services for; a statement of the nature of the business; and a statement
19 of Defendant's duties and responsibilities in connection with the business;

20 3. Any changes in Defendant's name, and any aliases or fictitious
21 names adopted or used by Defendant; and

22 4. Any changes in the corporate structure of any business entity
23 that Defendant directly or indirectly controls, or has a majority ownership interest
24 in, that may affect compliance obligations arising under this Final Order,
25 including, but not limited to, a dissolution, assignment, sale, merger, or other
26 action that would result in the emergence of a successor corporation; the creation
27 or dissolution of a subsidiary, parent, or affiliate that engages in any acts or
28 practices subject to this Final Order; the filing of a bankruptcy petition; or a

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1 change in the corporate name or address, at least thirty (30) days prior to such
2 change, *provided, however*, that with respect to any proposed change in such a
3 business entity about which Defendant learns less than thirty (30) days prior to the
4 date such action is to take place, Defendant shall notify the Commission as soon as
5 is practicable after obtaining such knowledge.

6 B. One hundred eighty (180) days after the date of entry of this Final
7 Order, and each year thereafter on the same date, through and including calendar
8 year 2008, Defendant shall provide a written report to the FTC, sworn to under
9 penalty of perjury, setting forth in detail the manner and form in which she has
10 complied and is complying with this Final Order. This report shall include, but
11 not be limited to:

12 1. The then-current residence address, mailing addresses, and
13 telephone numbers of Defendant;

14 2. The then-current employment and business addresses and
15 telephone numbers of Defendant, a description of the business activities of each
16 such employer or business, and the title and responsibilities of Defendant for each
17 such employer or business;

18 3. Any other changes required to be reported under Paragraph
19 VII.A of this Final Order; and

20 4. A copy of each acknowledgment of receipt of this Final Order
21 obtained by Defendant pursuant to Paragraph VI of this Final Order.

22 C. For the purposes of this Final Order, Defendant shall, unless
23 otherwise directed by the Commission's authorized representatives, mail all
24 written notifications to the FTC to:

25 Associate Director
26 Division of Marketing Practices
27 Federal Trade Commission
28 600 Pennsylvania Ave., NW, Rm. 238

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Washington, DC 20580
Re: FTC v. World Traders Association, et al.
Case No. CV 05-0591.

D. For the purposes of this Paragraph VII, "employment" includes the performance of services as an employee, consultant, or independent contractor; and "employers" include any individual or entity for whom Defendant performs services as an employee, consultant, or independent contractor.

E. For purposes of the compliance reporting required by this Paragraph VII, the Commission is authorized to communicate directly with Defendant.

VIII. RECORD-KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of six (6) years from the date of entry of this Final Order, in connection with any business that Defendant directly or indirectly manages, controls, or has a majority ownership interest in, Defendant is hereby permanently restrained and enjoined from failing to create and retain the following records:

A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;

B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;

C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;

D. Complaints and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests;

1 E. Copies of all sales scripts, training materials, advertisements, or other
2 marketing materials disseminated by Defendant to any person, including e-mail
3 and Internet web sites or web pages, relating to any good, service, company or
4 web site of the Defendant; and .

5 F. All records and documents necessary to demonstrate fully
6 Defendant's compliance with each provision of this Final Order.

7 IX. COMPLIANCE MONITORING

8 **IT IS FURTHER ORDERED** that, for the purpose of monitoring and
9 investigating compliance with any provision of this Final Order,

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

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

19 1. Obtaining discovery from any person, without further leave of
20 court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and
21 45; and

22 2. Posing as consumers or suppliers to: Defendant, her
23 employees, or any entity managed or controlled in whole or in part by Defendant,
24 without the necessity of identification or prior notice.

25 C. Defendant shall permit representatives of the Commission to
26 interview any employer, consultant, independent contractor, representative, agent,
27 or employee who has agreed to such an interview, relating in any way to any
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1 conduct subject to this Final Order. The person interviewed may have counsel
2 present.

3 *Provided, however,* that nothing in this Final Order shall limit the
4 Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of
5 the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible
6 things, testimony, or information relevant to unfair or deceptive acts or practices in
7 or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

8 **X. PROHIBITIONS INVOLVING CONSUMER LISTS**

9 **IT IS FURTHER ORDERED** that Defendant, and those persons in active
10 concert or participation with Defendant who receive actual notice of this
11 permanent injunction by personal service or otherwise, are hereby permanently
12 restrained and enjoined from selling, renting, leasing, transferring, or otherwise
13 disclosing the name, address, telephone number, credit card number, bank account
14 number, e-mail address, or other identifying information of any person who paid
15 any money to Defendant, at any time prior to entry of this Final Order, in
16 connection with the advertising, promotion, marketing, offering for sale, or sale of
17 any good or service; *provided, however,* that Defendant may disclose such
18 identifying information to a law enforcement agency, or as required by any law,
19 regulation or court order.

20 **XI. COOPERATION WITH RECEIVER**

21 **IT IS FURTHER ORDERED** that, so long as the Receivership remains in
22 effect, Defendant shall cooperate fully with the Receiver in: (a) pursuing any and
23 all claims by the Receivership against third parties; (b) assisting the Receiver in
24 defending any and all actions or claims brought against the Receivership by third
25 parties; and (c) executing any documents necessary to transfer assets or ownership
26 interests to the Receiver pursuant to the terms of this Final Order.

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XII. FEES AND COSTS

IT IS FURTHER ORDERED that each party to this Final Order hereby agrees to bear its own costs and attorneys' fees incurred in connection with this action.

XIII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Final Order.

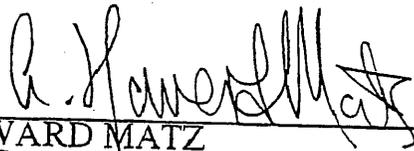
XIV. ENTRY OF ORDER

IT IS FURTHER ORDERED that there is no just reason for delay, and the Clerk of Court is hereby directed to enter this Order immediately.

XV. COMPLETE SETTLEMENT

The parties hereby consent to entry of this Final Order, which shall constitute a final judgment and order in this matter. The parties further stipulate and agree that the entry of this Final Order shall constitute a full, complete, and final settlement of this action.

SO ORDERED, this 10th day of March, 2006.


A. HOWARD MATZ
United States District Judge

SCANNED

1 **STIPULATED BY:**

2 **FOR THE PLAINTIFF:**

FOR THE DEFENDANT:

3 William Blumenthal
4 General Counsel

5 David R. Spiegel Date: 3/8/06
6 David R. Spiegel (N.Y. Bar #1592724)
7 Craig Tregillus (D.C. Bar #174607)
8 *Attorneys for Plaintiff*

9 Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
Telephone (202) 326-3281, 2970
Facsimile (202) 326-3395

Shannon Kirk Holden Date: 8/24/05
Shannon Kirk Holden, *pro se*

10 Kenneth Abbe (CA Bar #172416)
11 Federal Trade Commission
12 Western Region
13 10877 Wilshire Blvd., Ste. 700
14 Los Angeles, CA 90024
15 Telephone (310) 824-4318
16 Facsimile (310) 824-4380

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