

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

_____)
 FEDERAL TRADE COMMISSION,)
)
 Plaintiff,)
)
 v.)
)
 ESSEX MARKETING GROUP, INC.,)
 a New York corporation;)
)
 WESTBROOK MARKETING GROUP, INC.,)
 a New York corporation;)
)
 WESTBROOK MARKETING ASSOCIATES, LLC,)
 a Delaware limited liability company;)
)
 MANHATTAN VENDING, LLC,)
 a New York limited liability company;)
)
 RICHARD J. GUADAGNO, a/k/a Rich Dano,)
 Rich Guadano and Richard Guadago,)
 individually and as an officer or director)
 of one or more of the above corporations)
 and/or as a member of one or more of the)
)
 JACK G. SCHWARTZ, individually and)
 as an officer or director of one or more or)
 the above corporations and/or as a member)
 of one or more of the above the limited)
 liability companies; and)
)
 HENRY SANCHEZ, individually and)
 as an officer or director of one)
 or more of the above corporations)
 and/or as a member of one or more of the)
 above limited liability companies;)
)
 Defendants.)
 _____)

CIV. NO. 023415 (TCP)

STIPULATED TEMPORARY
RESTRAINING ORDER FOR
DEFENDANT
JACK G. SCHWARTZ

THIS ORDER IS TO BE MAILED BY MOVANT
TO ALL COUNSEL IMMEDIATELY UPON RECEIPT. *Esq*

Mrs. Weintraub,

Where as Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), having filed its complaint for a permanent injunction and other relief in this matter, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b; and having moved *ex parte* for a Temporary Restraining Order pursuant to Rule 65 of the Federal Rules of Civil Procedure on June 12, 2002, and this Court ordering Plaintiff to notify Defendants of the pending action, and after oral argument on this motion on June 13, 2002, the parties hereby stipulate and agree:

1. Plaintiff asserts that there is good cause to believe that Defendants Essex Marketing Group, Inc., Westbrook Marketing Group, Inc., Westbrook Marketing Associates, LLC, Manhattan Vending, LLC (hereafter collectively “Westbrook”), Richard J. Guadagno, a/k/a Rich Dano, Rich Guadano and Richard Guadago, (“Guadagno”), Jack G. Schwartz (“Schwartz”) and Henry Sanchez (“Sanchez”) have engaged and are likely to engage in acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Federal Trade Commission Trade Regulation Rule entitled “Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures” (the “Franchise Rule”), 16 C.F.R. Part 436, and that the Commission is therefore likely to prevail on the merits of this action. Defendant denies these assertions.

2. Plaintiff asserts that there is good cause to believe that the evidence set forth in support of Plaintiff’s Motion for a Temporary Restraining Order, Preliminary Injunction, and Other Equitable Relief, and in the accompanying declarations and exhibits, shows that the Defendants have engaged in a concerted course of illegal activity in their dealings with consumers nationwide in connection with the advertising, promotion, offering, sale or servicing of vending machine

business opportunities to consumers nationwide, in violation of Section 5 of the FTC Act, 15 U.S.C. § 45 and the Franchise Rule, 16 C.F.R. Part 436. Defendant denies these assertions.

3. Plaintiff asserts that no security is required of any agency of the United States for issuance of a restraining order. Fed. R. Civ. P. 65(c).

ORDER

Definitions

For purposes of this temporary restraining order, the following definitions shall apply:

1. “Franchise” and “Franchisee” are defined in Section 436.2(a) of the Federal Trade Commission Trade Regulation Rule entitled “Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures” (the “Franchise Rule”), 16 C.F.R. § 436.2(a), a copy of which is attached to this Order as Attachment A.

2. “Business venture” means any written or oral business 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.

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

4. "Defendant" means Defendant Jack G. Schwartz, any officer, director, employee, or agent, and his successors, assigns, officers, agents, servants, employees, attorneys, and all persons or entities directly or indirectly under their control or under common control with them, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device;

5. "Plaintiff" means the Federal Trade Commission;

6. "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, lists of consumer names, accounts, credits, premises, receivables, funds, and cash, wherever located, whether in the United States or abroad;

7. "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 the 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; and

8. "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.

I. PROHIBITED BUSINESS ACTIVITIES

IT IS THEREFORE ORDERED that, in connection with the advertising, promoting, offering for sale, or sale of any business venture, subject to this Courts' Order sealing these proceedings, Defendant is hereby temporarily restrained and enjoined from:

A. Falsely representing, expressly or by implication, either orally or in writing, any material fact, including but not limited to the following:

1. the income, profits, or sales volume likely to be achieved; and
2. that he will deliver the vending machines within the agreed upon time or allow purchasers to cancel their contracts; and

B. Violating or assisting others to violate any provision of the Franchise Rule, 16 C.F.R. Part 436, including but not limited to:

1. failing to provide any potential franchisee with a complete and accurate disclosure document within the times stated in the Franchise Rule, 16 C.F.R. § 436.1(a);
2. failing to provide any potential franchisee with an earnings claim document when any earnings claim is made, as required by the Franchise Rule, 16 C.F.R. § 436.1(b)-(e); and
3. failing to disclose, in immediate conjunction with any earnings claim, the material basis for the claim (or the lack of such basis) and a warning that the earnings claim is only an estimate, as required by the Franchise Rule, 16 C.F.R. § 436.1(e)(3)-(4).

II. ASSET FREEZE

IT IS FURTHER ORDERED, except as otherwise provided in Subparagraph F, that Defendant is hereby temporarily restrained and enjoined from:

- A. Transferring, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, or otherwise disposing of any personal assets that are: (1) owned or controlled, directly or indirectly, by Defendant, in whole or in part; (2) titled or held in the name, singly or jointly, of Defendant; or (3) in the actual or constructive possession of the Defendant; or (4) owned, controlled by, or in the actual or constructive possession of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by, or under common control with, any Defendant, including but not limited to, any assets held by, for, or under the name of the Defendant at any bank or savings and loan institution, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, or other financial institution or depository of any kind;
- B. Opening or causing to be opened any safe deposit boxes titled in Defendant's name, or subject to access by Defendant;
- C. Incurring charges or cash advances on any credit card issued in the name, singly or jointly, of Defendant;
- D. Obtaining a personal or secured loan;
- E. Incurring liens or other encumbrances on real property, personal property or other assets in the name, singly or jointly, of the Defendant; and

F. Assets affected by this Section shall be limited to all of the assets of the Defendant existing as of 4 p.m., June 13, 2002, including assets that are derived from or traceable to assets existing as of 4 p.m., June 13, 2002.

The Defendant may each pay customary and ordinary living expenses not to exceed \$1,000, with the exception of rent, mortgage, or condominium or cooperative maintenance fees which may exceed such amount. Any payment, expense, transfer, or disbursement exceeding \$1,000 other than rent, mortgage, or condominium or cooperative maintenance fees may not be paid without prior written approval of the FTC or further order of this Court. Total payments exclusive of rent, mortgage, or condominium or cooperative maintenance fees may not exceed \$8,000 without prior written approval of the FTC or further order of this Court.

Provided however, Plaintiff agrees not to serve this Order on any bank or financial institution. Plaintiff's agreement is based upon the accuracy and truthfulness the financial statement provided to the FTC on June 19, 2002 pursuant to Paragraph VII herein, and Defendant's willingness to provide copies of bank and financial records; should Defendant fail to comply with the provisions set forth in this Order or the financial statement provided to the FTC on June 19, 2002 contained any material omission, Plaintiff reserves the right to serve any bank and financial institution with copies of this Order.

III. RETENTION OF ASSETS AND RECORDS HELD BY THIRD PARTIES

IT IS FURTHER ORDERED that, pending determination of the Commission's request for a Preliminary Injunction, any financial or brokerage institution, business entity, or person served with a copy of this Order, that holds, controls or maintains custody of any asset of the

Defendant, or has held, controlled or maintained custody of any such asset of Defendant, which is the subject of this Order, at any time since January 1, 2000 shall:

A. Prohibit Defendant from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling, or otherwise disposing of any such assets, which are the subject of this Order, except as directed by further order of the Court;

B. Deny the Defendant access to any safe deposit box that is:

1. Titled in the name of the Defendant, either individually or jointly; or
2. Otherwise subject to access by the Defendant, either individually or jointly;

C. Provide counsel for the Commission, within five (5) business days of receiving a copy of this Order, a sworn statement setting forth:

1. The identification number and description of each such account or asset titled in the name, individually or jointly, of the Defendant, or held on behalf of, or for the benefit of Defendant;
2. The balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, 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 that is either titled in the name, individually or jointly, of the Defendant, or otherwise subject to access by Defendant; and

D. Upon the request of the Commission, promptly provide the Commission with copies of all records or other documentation pertaining to 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. Any such financial institution, account custodian, or other aforementioned entity shall arrange for Plaintiff to obtain copies of any such records which Plaintiff seeks, *provided* that such institution or custodian may charge a reasonable fee not to exceed ten cents (10¢) per page copied; and

IV. REPATRIATION OF ASSETS AND DOCUMENTS LOCATED IN FOREIGN COUNTRIES

IT IS FURTHER ORDERED that the Defendant shall:

A. Within forty-eight (48) hours following the date of this Order, take such steps as are necessary to transfer to the territory of the United States of America all documents and assets that are located outside of such territory and are held by or for the Defendant or are under his direct or indirect control, jointly, severally, or individually;

B. Within forty-eight (48) hours following the service of this Order, provide counsel for the Commission with a full accounting of all documents and assets that are located outside of such territory and are held by or for the benefit of Defendant or are under his direct or indirect control, whether jointly, severally, or individually;

C. Hold and retain all transferred documents and assets and prevent any transfer, disposition, or dissipation whatsoever of any such assets or funds; and

D. Provide counsel for the Commission with access to records and documents of the Defendant held by financial institutions outside the territorial United States of America, by signing and delivering to Plaintiff Commission the Consent of Release of Financial Records attached hereto as Attachment C within forty-eight (48) hours of service of this Order.

V. INTERFERENCE WITH REPATRIATION

IT IS FURTHER ORDERED that the Defendant is hereby temporarily restrained and 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 this Order, including but not limited to:

A. Sending any statement, letter, fax, e-mail or wire transmission, 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 that all assets have been fully repatriated pursuant to the preceding Section of this Order;

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 that all assets have been fully repatriated pursuant to the preceding Section of this Order.

VI. EXPEDITED DISCOVERY

IT IS FURTHER ORDERED that the Commission are granted leave to conduct certain expedited discovery, and that, commencing with the time and date of this Order, in lieu of the time periods, notice provisions, and other requirements of Rules 26, 30, 34, and 45 of the Federal Rules of Civil Procedure, expedited discovery shall proceed as follows:

A. Pursuant to Fed. R. Civ. P. 30, the Commission may take depositions upon oral examination concerning the nature, location, status, and extent of Defendant's assets; the status and location of documents reflecting Defendant's business transactions; and compliance with this Order, on two (2) days notice of any such deposition. Deposition transcripts that have not been signed by the witness may be used for purposes of the hearing on the Order to Show Cause Why a Preliminary Injunction Should Not Issue.

Provided, that this Subparagraph permitting expedited deposition discovery concerning the nature, location, status, and extent of Defendant's assets, the status and location of documents reflecting Defendant's business transactions, and compliance with this Order, shall not be construed in any manner to preclude Plaintiff's right to take subsequent depositions of the same witnesses on the merits of this action.

Provided, further, that any deposition taken pursuant to this Subparagraph is in addition to, and not subject to, the presumptive limits on depositions set forth in Fed. R. Civ. P. 30(a)(2)(A).

B. Pursuant to Fed. R. Civ. P. 34(b), Defendant shall produce all documents requested by the Commission within two (2) days of service of such request, with production of

documents made to the name and address listed in Paragraph XIII, or to such other person or place as counsel for the Commission may direct in writing.

Provided, that, in the event any of Defendant's documents have been removed from Defendant's premises by, and are in the possession of another law enforcement or investigative agency, the Commission may have immediate access to such documents for purposes of inspection, indexing, and copying, subject to the agency consenting to access by the Commission.

Provided, further, that this Sub-Paragraph shall extend to parties and non-parties.

VII. FINANCIAL REPORTS

IT IS FURTHER ORDERED that the Defendant, by June 21, 2002, shall prepare and deliver to this Court, and to counsel for the Commission:

A. Completed financial statements on the forms attached to this Order as Attachments D and E, for himself individually and for each business entity (whether or not incorporated) under which he conducts business, or of which he is an officer, and for each trust of which he is a trustee. The financial statements shall be accurate as of the date of entry of this Order; and

B. Upon request by Plaintiff, all current accountants' reports; all federal tax returns filed since January 1, 1999; documents indicating title to real or personal property; other indicia of ownership that are now in the Defendant's actual or constructive possession; and other of Defendant's financial and bank records requested by Plaintiff.

VIII. IDENTIFYING INFORMATION RELATING TO ACCOUNTANTS, FINANCIAL PLANNERS, INVESTMENT ADVISORS, STOCK BROKERS AND OTHERS

IT IS FURTHER ORDERED that the Defendant, within forty-eight (48) hours after the date of this Order, shall provide counsel for the Commission: (1) the name, address and telephone number for each accountant, financial planner, investment advisor, stock broker or other individual, corporation or partnership whom they hire for personal advice or services, including but not limited to preparation of tax returns and investment advice, since January 1, 2000, and (2) the name, address and telephone number for each accountant, financial planner, investment advisor, stockbroker or other individual, corporation or partnership who was hired on behalf of Defendant since January 1, 2000.

IX. RECORD KEEPING/BUSINESS OPERATIONS

IT IS FURTHER ORDERED that the Defendant is hereby temporarily restrained and enjoined from:

- A. Failing to document and maintain documents that, in reasonable detail, accurately, fairly, and completely reflect their incomes, disbursements, transactions, and use of money;
- B. Destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any contracts, accounting data, correspondence, advertisements, computer tapes, discs, or other computerized records, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, copies of federal, state or local business or personal income or property tax

returns, and other documents or records of any kind that relate to the business practices or business or personal finances of the Defendant; and

C. Creating, operating, or exercising any control over any business entity, including any partnership, limited partnership, joint venture, sole proprietorship or corporation, without first providing counsel for the Commission with a written statement disclosing: (1) the name of the business entity; (2) the address and telephone number of the business entity; (3) the names of the business entity's officers, directors, principals, managers and employees; and (4) a detailed description of the business entity's intended activities.

X. DISTRIBUTION OF ORDER BY DEFENDANT

IT IS FURTHER ORDERED that Defendant shall immediately provide a copy of this Order to each affiliate, subsidiary, division, sales entity, successor, assign, officer, director, agent, sales manager, attorney, and representative of the Defendant, and shall, within ten (10) days from the date of entry of this Order, provide counsel for the Commission with a sworn statement that Defendant has complied with this provision of the Order, which statement shall include the names and addresses of each such person or entity who received a copy of the Order. For any employee or independent contractor who solicits business opportunity sales or speaks to prospective business opportunity purchasers, Defendant shall give a statement in the form attached hereto as Attachment F.

XI. BANKRUPTCY PETITIONS

IT IS FURTHER ORDERED that Defendant is hereby prohibited from filing, or causing to be filed, a petition for relief under the United States Bankruptcy Code, 11 U.S.C. § 101 et seq., without five (5) days prior written notice to the Commission.

XII. CONSUMER CREDIT REPORTS

IT IS FURTHER ORDERED that the Commission may obtain and keep confidential credit reports concerning Defendant pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(1), and that upon written request, any credit reporting agency from which such reports are requested shall provide them to the Commission.

XIII. SERVICE OF PLEADINGS

IT IS FURTHER ORDERED that:

er
A. Defendant shall file with the Court and serve counsel for the Commission their response to the Order to Show Cause Why a Preliminary Injunction Should Not Issue, including all declarations, exhibits, memoranda, and other evidence, ~~not less than~~ seventy-two (72) hours prior to the hearing on such application. Defendant shall serve copies of all such materials on the Commission, by hand, by facsimile transmission, or by overnight delivery service to the attention of counsel for the Commission Ann F. Weintraub at Federal Trade Commission, Northeast Regional Office, 1 Bowling Green, Suite 318, New York, NY 10004 (facsimile transmission to (212) 607-2822). *Provided*, however, that if the Defendant choose to serve the Commission via overnight delivery, the documents shall be delivered so that they shall be received by the Commission at least seventy-two (72) hours prior to the hearing.

B. The Commission shall file with the Court and serve on Defendant any supplemental memoranda, declarations, materials, or other evidence ~~not less than twenty-four~~ ^{seventy-two} hours prior to the hearing on the Order to Show Cause Why a Preliminary Injunction Should Not Issue. The Commission shall serve copies of all such materials on counsel for Defendant by hand, by facsimile transmission, or by overnight delivery service. *Provided*, however, that if the

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~~(24)~~ ⁷²

Commission chooses to serve Defendant via overnight delivery, the documents shall be delivered so that they shall be received by Defendant at least twenty-four (24) hours prior to the hearing. Consumer declarations previously filed as exhibits in support of this Order comply with the disclosure requirements of this Paragraph.

C. Pursuant to Federal Rule of Civil Procedure 4(c)(2), the copies of this Order and the initial pleadings and papers filed in this matter, including the Complaint and summonses, may be served by employees and agents of the Commission, by employees of any state or other federal law enforcement agency, including but not limited to the United States Marshal's Office and the Federal Bureau of Investigation, and by agents of any process servers retained by the Commission, upon any office of the Defendant, the Defendant, any financial or brokerage institution, or any person or entity that may be in possession of any assets, property, or property rights of Defendant.

D. The issuance of a preliminary injunction shall be determined on the pleadings, declarations, memoranda, and other exhibits filed by the parties and on oral argument, without live testimony. Any party who desires to present live testimony at the hearing shall file a motion requesting leave to present live testimony, and serve such motion on all opposing parties, not less than seventy-two (72) hours prior to the hearing on the Order to Show Cause Why a Preliminary Injunction Should Not Issue. The request shall set forth in detail the reasons why an evidentiary hearing is desired and how such hearing would be helpful to the Court. In addition, the request shall set forth a witness list that shall include the name, address, and telephone number of any such witness, and either a summary of the witness' expected testimony, or the witness' declaration revealing the substance of such witness' expected testimony. *Provided*, that if

service is via overnight delivery, the documents shall be delivered so that they shall be received by all parties at least seventy-two (72) hours prior to the hearing.

Any party opposing a request to present live testimony shall file its written opposition, and serve such motion on all parties, not less than twenty-four (24) hours prior to the hearing on the Order to Show Cause Why a Preliminary Injunction Should Not Issue. Any party opposing a request to present live testimony also shall file its witness list, and serve such witness list on all parties, not less than twenty-four (24) hours prior to the hearing on the Order to Show Cause Why a Preliminary Injunction Should Not Issue. For purposes of this Subparagraph, service shall be by hand, by facsimile transmission, or by overnight delivery service. *Provided*, that if service is via overnight delivery, the documents shall be delivered so that they shall be received by all parties at least twenty-four (24) hours prior to the hearing.

XIV. DURATION OF TEMPORARY RESTRAINING ORDER

IT IS FURTHER ORDERED that the Temporary Restraining Order granted herein shall remain in effect until this Courts' decision and order on Plaintiff's motion for a Preliminary Injunction.

XV. ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION

IT IS FURTHER ORDERED, pursuant to Federal Rule of Civil Procedure 65(b), that Plaintiff's motion for a Preliminary Injunction is denied, without prejudice to renew and returnable on August 1, 2002. Defendant's answering papers for opposition shall be served

~~before July, 22, 2002. Plaintiff's reply papers shall be served by July 30, 2002. All Papers shall~~
T of personally served and
be filed on July 30, 2002.

XXVII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

STIPULATED AND AGREED TO BY:

PLAINTIFF:

WILLIAM E. KOVACIC
GENERAL COUNSEL

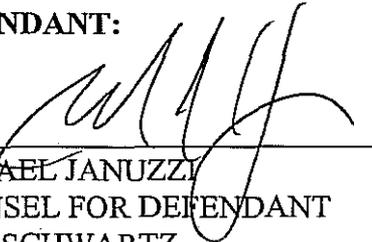
BARBARA ANTHONY
REGIONAL DIRECTOR
NORTHEAST REGION
FEDERAL TRADE COMMISSION:



ANN F. WEINTRAUB (AW 3080)
RONALD L. WALDMAN (RW 2003)

DATED: 7-15-02

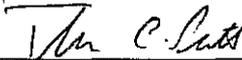
DEFENDANT:



MICHAEL JANUZZI
COUNSEL FOR DEFENDANT
JACK SCHWARTZ

DATED: 7/16/02

SO ORDERED, this 17th day of July, 2002, at 1:55 P.m.



UNITED STATES DISTRICT COURT JUDGE

Ms. Weintraub, Esq
THIS ORDER IS TO BE MAILED BY ~~MAIL~~
TO ALL COUNSEL IMMEDIATELY UPON RECEIPT.

As required by a Federal District Court Order in the matter of Federal Trade Commission v. Manhattan Vending, LLC *et al.* (Civil Action # 023415), any Manhattan Vending employee or independent contractor who solicits business opportunity sales or speaks to prospective business opportunity purchasers is hereby advised of the following:

The Federal District Court has issued an Order in the above matter that prohibits Jack G. Schwartz and his employees and independent contractors, in connection with the advertising, promoting, offering for sale, or sale of any business venture from:

A. Falsely representing, expressly or by implication, either orally or in writing, any material fact, including but not limited to the following:

1. the income, profits, or sales volume likely to be achieved; and
2. that he will deliver the vending machines within the agreed upon time or allow purchasers to cancel their contracts; and

B. Violating or assisting others to violate any provision of the Franchise Rule, 16 C.F.R. Part 436, including but not limited to:

1. failing to provide any potential franchisee with a complete and accurate disclosure document within the times stated in the Franchise Rule, 16 C.F.R. § 436.1(a);

2. failing to provide any potential franchisee with an earnings claim document when any earnings claim is made, as required by the Franchise Rule, 16 C.F.R. § 436.1(b)-(e); and
3. failing to disclose, in immediate conjunction with any earnings claim, the material basis for the claim (or the lack of such basis) and a warning that the earnings claim is only an estimate, as required by the Franchise Rule, 16 C.F.R. § 436.1(e)(3)-(4).