

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

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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  
above limited liability companies;

JACK G. SCHWARTZ, 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 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

*Judge Platt*

STIPULATED PRELIMINARY  
INJUNCTION ORDER FOR  
DEFENDANTS HENRY  
SANCHEZ AND MANHATTAN  
VENDING, LLC

*44*

Whereas 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, and this Court entering a Stipulated Temporary Restraining Order on June 27, 2002.

Therefore, having considered the pleadings, declarations, exhibits, and memoranda filed in support of and in opposition to the Commission's application for Preliminary Injunction, and the parties below having stipulated to the following Order, it hereby **ORDERED ADJUDGED AND DECREED** as follows:

#### FINDINGS OF FACT

1. This Court has jurisdiction of the subject matter of this case, and there is good cause to believe it will have jurisdiction over all parties.
2. Plaintiff alleges 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. Defendants deny these assertions.

3. Plaintiff alleges 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. Defendants deny these assertions.

4. The Defendants, Henry Sanchez and Manhattan Vending LLC, while denying all allegations of wrongdoing set forth in the Complaint, have stipulated and agreed to entry of this Order without any admission by Defendant of any wrongdoing or violation of law, and without a finding by the Court of any fact or law than as stated above.

5. The entry of this Order, as set forth below, is in the public interest.

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

7. By this stipulation, Defendants Henry Sanchez and Manhattan Vending, LLC waive their right to a Preliminary Injunction hearing before this Court.

**ORDER**

**Definitions**

For purposes of this preliminary injunction 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. "Defendants" mean Defendants Henry Sanchez and Manhattan Vending, LLC, 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 Court's Order sealing these proceedings, Defendants are hereby preliminarily 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 they 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. CUSTOMER LISTS**

**IT IS FURTHER ORDERED** that Defendants are hereby preliminarily restrained and enjoined from selling, renting, leasing, or transferring the name, address, telephone number, credit card number, debit card number, bank account number, e-mail address, or other identifying information of any person who paid any money to any Defendant, at any time prior to entry of this

Order, in connection with the sale or offering for sale of vending machine business opportunities. Notwithstanding the forgoing, that Defendants may disclose such identifying information to a law enforcement agency, as required by any law, regulation, or court order.

**III. ASSET FREEZE**

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

A. Transferring, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, or otherwise disposing of any assets that are: (1) owned or controlled, directly or indirectly, by any Defendant, in whole or in part; (2) titled or held in the name, singly or jointly, of any Defendant; or (3) in the actual or constructive possession of any 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 any 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 Manhattan Vending's name;~~

C. Incurring charges or cash advances on any credit card issued in the name of Manhattan Vending;

D. Obtaining a personal or secured loan in the name of Manhattan Vending;

E. Incurring liens or other encumbrances on real property, personal property or other assets in the name, singly or jointly, of any Defendant; and

F. Assets frozen by this Section shall be limited to any assets of Manhattan Vending and only the following assets of Henry Sanchez: (1) the house located at 49 Story Hollow Rd., Centerport, NY; (2) National Integrity Life annuity, account #1100033405, presently valued at \$226,086.50; and (3) 29,410 out of 34,410 stock options of the Tribune company. Defendant Sanchez must notify counsel for Plaintiff in writing sent via certified mail return receipt requested if: (1) the price for Tribune stock (symbol TRB) closes at or below \$31 a share on any trading day; or (2) the value of the annuity falls below \$204,000. Defendant Sanchez may within twelve months from the date of this order exercise/sell up to 5,000 stock options not frozen by this section and use the proceeds for customary and ordinary living expenses. Defendant shall inform Plaintiff in writing two business days prior to exercising any stock options under this section.

*Provided however*, the amount and scope of Defendant Henry Sanchez's asset freeze is predicated on the accuracy and truthfulness of sworn financial disclosures of Mr. Sanchez provided in June 2002 and thereafter, including the valuations given for the assets in paragraph F of this section and documents indicating that the amount of Manhattan Vending total sales were approximately \$850,000. If Mr. Sanchez's financial disclosures contained any material omission or Manhattan Vending's total sales were materially higher than \$850,000, Plaintiff may move this court to modify the scope of the asset freeze against Mr. Sanchez.

#### **IV. RETENTION OF ASSETS AND RECORDS HELD BY THIRD PARTIES**

**IT IS FURTHER ORDERED** that, pending determination of the Commission's request for a Permanent 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 which is the subject of this Order, or has held, controlled or maintained custody of any such asset of any Defendant, which is the subject of this Order, at any time since January 1, 2000 shall:

A. Prohibit Defendants 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 Defendants access to any safe deposit box that is:

1. Titled in the name of any Defendant, either individually or jointly; or
2. Otherwise subject to access by any 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 Defendants, or held on behalf of, or for the benefit of, any 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 any Defendant, or otherwise subject to access by any 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

**V. REPATRIATION OF ASSETS AND DOCUMENTS LOCATED IN FOREIGN COUNTRIES**

**IT IS FURTHER ORDERED** that unless Defendants have already done so pursuant to the TRO, the Defendants 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 Defendants or are under their 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 Defendants or are under their 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 a "Consent of Release of Financial Records" in a form to be provided by Plaintiff within forty-eight (48) hours of a request by Plaintiff.

## VI. INTERFERENCE WITH REPATRIATION

IT IS FURTHER ORDERED that the Defendant is hereby preliminarily 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.

## VII. DISCOVERY

**IT IS FURTHER ORDERED** that except as provided in section VII herein, the Commission and the Defendants shall conduct any further discovery in this action pursuant to the Federal Rules of Civil Procedure and this Court's Local Rules; provided, however, the requests for production of documents pursuant to the expedited discovery provision of the TRO shall not in any way waive Plaintiff's rights to seek the production of additional documents.

**VIII. FINANCIAL REPORTS**

**IT IS FURTHER ORDERED** that, unless the Defendants has already done so pursuant to the TRO, the Defendant, within forty-eight (48) hours of entry of this Order, shall prepare and deliver to counsel for the Commission:

- A. Completed financial statements on the forms attached the TRO. 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.

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

**IT IS FURTHER ORDERED** that, unless the Defendants have already done so pursuant to the TRO, the Defendants, 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 Defendants since January 1, 2000.

**X. RECORD KEEPING/BUSINESS OPERATIONS**

**IT IS FURTHER ORDERED** that the Defendants are hereby preliminarily 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 Defendants; 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.~~

**XI. DISTRIBUTION OF ORDER BY DEFENDANTS**

**IT IS FURTHER ORDERED** that Defendants 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 Defendants, 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, Defendants shall give a statement in the form attached hereto as Attachment B.

**XII. BANKRUPTCY PETITIONS**

**IT IS FURTHER ORDERED** that Defendants are 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 business (5) days prior written notice to the Commission.

**XIII. CONSUMER CREDIT REPORTS**

**IT IS FURTHER ORDERED** that the Commission may obtain, and must keep confidential, credit reports concerning any 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.

XXVII. RETENTION OF JURISDICTION

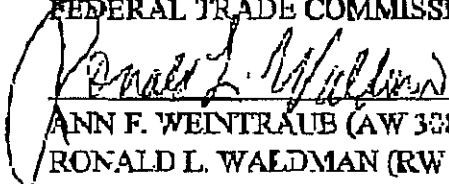
IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

STIPULATED AND AGREED TO BY:

PLAINTIFF:

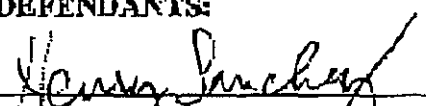
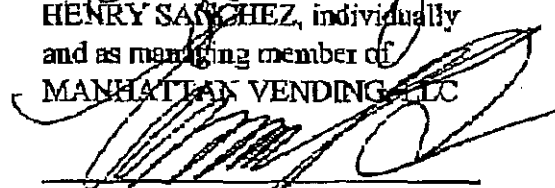
WILLIAM E. KOVACIC  
GENERAL COUNSEL

BARBARA ANTHONY  
REGIONAL DIRECTOR  
NORTHEAST REGION  
FEDERAL TRADE COMMISSION:

  
ANN F. WEINTRAUB (AW 3380)  
RONALD L. WALDMAN (RW 2003)

DATED: 2/18/03

DEFENDANTS:

  
HENRY SANCHEZ, individually  
and as managing member of  
MANHATTAN VENDING, LLC  
  
MALCOLM TABB  
ATTORNEY FOR DEFENDANTS  
HENRY SANCHEZ AND  
MANHATTAN VENDING, LLC

DATED: 2/21/03

DATED: 2/25/03

SO ORDERED, this 5<sup>th</sup> day of March, 2003, at 11 A.m.

  
THOMAS C. PLATT  
UNITED STATES DISTRICT COURT JUDGE