

Preliminary Injunction and Asset Freeze as to Thomas E. Richardson.

The Commission and defendant Thomas E. Richardson hereby stipulate to the entry of, and request the court to enter, this Stipulated Final Judgement and Order for Permanent Injunction and Other Equitable Relief Against Thomas E. Richardson (“final order” or “order”) to resolve all matters of dispute between them in this action.

It is therefore ORDERED, ADJUDGED, AND DECREED:

FINDINGS

1. This court has jurisdiction of the subject matter of this case and the parties hereto.
2. Venue in the United States District Court for the Northern District of Alabama is proper under 28 U.S.C. § 1391(b) and 15 U.S.C. § 53(b).
3. The activities of defendant Thomas E. Richardson are in or affecting commerce, as defined in the FTC Act, 15 U.S.C. §44.
4. The complaint states a claim upon which relief may be granted against defendant Thomas E. Richardson.
5. Defendant Thomas E. Richardson waives all rights to seek judicial review or otherwise challenge or contest the validity of this final order. Defendant further waives any claim under the Equal Access to Justice Act, 28 U.S.C. §2412, *amended by* Pub. L. 104-121, 110 Stat. 847, 863-64 (1996).
6. Defendant Thomas E. Richardson waives and releases any claim he may have against the Commission and its employees, representatives or agents.
7. Defendant Thomas E. Richardson enters into this final order freely and without coercion and acknowledges that he has read, understands, and is prepared to abide

by the provisions of this final order.

8. This final order is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.
9. This final order is for settlement purposes only and, except as provided in Paragraph IV.C., does not constitute and shall not be interpreted to constitute an admission by defendant that he engaged in violations of any law or regulation.
10. Entry of this Final order is in the public interest.

DEFINITIONS

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

2. “**Business Venture**” means any written or oral business arrangement, however denominated, regardless of whether covered by the Franchise Rule or Business Opportunity Rule, as defined, *infra*, which consists of the payment of any consideration for:

- a. the right or means to offer, sell, or distribute goods or services (regardless of whether identified by a trademark, service mark, trade name, advertising, or other commercial symbol); and
- b. more than nominal assistance to any person or entity in connection with or incident to the establishment, maintenance, or operation of a new business or the entry by an existing business into a new line or type of business.

3. **“Document”** is synonymous in meaning and equal in scope to the term, as defined in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of this term.

4. **“Franchise Rule or Business Opportunity Rule”** means:

a. The FTC Trade Regulation Rule codified at 16 C.F.R. Part 436, until the effective date of the amendments to the FTC Trade Regulation Rule titled “Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures,” approved by the Commission on January 22, 2007;

b. After the effective date of the amendments to the FTC Trade Regulation Rule titled “Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures,” approved by the Commission on January 22, 2007:

(1). The FTC Trade Regulation Rule titled “Disclosure Requirements Concerning Franchising,” to be codified at 16 C.F.R. Part 436, or as it may be amended; and

(2). The FTC Trade Regulation Rule titled “Disclosure Requirements concerning Business Opportunities,” to be codified at 16 C.F.R. Part 437, or as it may be amended.

5. **“Person”** means a natural person, organization or other legal entity, including a

corporation, partnership, proprietorship, limited liability company, association, cooperative, or any other group, or combination acting as an entity.

ORDER

I. PROHIBITION AGAINST VIOLATION OF SECTION 5 OF THE FTC ACT

It is therefore ORDERED that, in connection with the advertising, promotion, offering for sale, or sale of any business venture, defendant Thomas E. Richardson, and his agents, employees, officers, corporations, successors, assigns, and those persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other entity, are hereby restrained and enjoined from making or assisting others in making, expressly or by implication, any false or misleading statement or representation of material fact, including but not limited to, misrepresentations that:

- A. Consumers who purchase a business venture are likely to earn substantial income;
- B. Certain company selected references have purchased a business venture or will provide reliable descriptions of their experiences with the business venture; and
- C. Locations have been secured or will be secured in geographic areas that will produce a high volume of sales.

**II. PROHIBITION AGAINST VIOLATION OF THE FRANCHISE RULE OR
BUSINESS OPPORTUNITY RULE**

It is further ORDERED that defendant Thomas E. Richardson, and his agents, employees, officers, corporations, successors, assigns, and those persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other entity, are hereby restrained and enjoined from violating or assisting others to violate any provisions of the Franchise Rule or Business

Opportunity Rule by, including, but not limited to:

A. Failing to provide each prospective purchaser with a complete and accurate disclosure document as prescribed by the Franchise Rule or Business Opportunity Rule;

B. Failing to have a reasonable basis for any earnings claim or financial performance representation at the time such claim or representation is made, as required by the Franchise Rule or Business Opportunity Rule;

C. Failing to provide prospective purchasers with required disclosures for any earnings claim or financial performance representations, as required by the Franchise Rule or Business Opportunity Rule;

D. Failing to disclose, in immediate conjunction with any earnings claim or financial performance representation, and in a clear and conspicuous manner, that material which constitutes a reasonable basis for the earnings claim or financial performance representation is available to prospective franchisees, as required by the Franchise Rule or Business Opportunity Rule;

E. Failing to provide material which constitutes a reasonable basis for any earnings claim or financial performance representation to prospective purchasers, the Commission, or its staff upon reasonable demand, as required by the Franchise Rule or Business Opportunity Rule; and

F. Failing to disclose, in immediate conjunction with any generally disseminated (“advertised”) earnings claim or financial performance representation, information required by the Franchise Rule or Business Opportunity Rule, including the number and percentage of prior purchasers known by the franchisor or business opportunity seller to have achieved the same or better results, as required by the Franchise Rule or Business Opportunity Rule.

III. CONSUMER REDRESS AND OTHER EQUITABLE RELIEF

It is further ORDERED that judgement is hereby entered against defendant Thomas E. Richardson in the amount of \$901,402.89. *Provided, however*, that this judgement shall be suspended subject to the conditions set forth in Paragraph IV of this order.

IV. RIGHT TO REOPEN

It is further ORDERED that:

A. The Commission's agreement to, and the court's approval of, this order is expressly premised upon the truthfulness, accuracy, and completeness of the financial condition of defendant as represented in the sworn financial statement dated December 1, 2006 and supporting documents provided to the Commission in support thereof, as well as the truthfulness, accuracy, and completeness of defendant's sworn deposition testimony of February 6, 2006, all of which include material information upon which the Commission relied in negotiating and consenting to this final order.

B. If, upon motion by the Commission, this court finds that defendant failed to disclose any material asset, or made any other material misrepresentation or omitted material information in the above-referenced financial statement and information, the suspension of the monetary judgement will be terminated and the entire \$901,402.89 shall become immediately due and payable, together with interest computed at the rate prescribed under 28 U.S.C. §1961, as amended.

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

V. COMPLIANCE MONITORING

It is further ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this order,

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

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

1. obtaining discovery from any person, without further leave of the court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
 2. posing as consumers and suppliers to Thomas E. Richardson, and his employees, or any entity managed or controlled in whole or in part by Thomas E. Richardson, without the necessity of identification or prior notice;
- and

C. Thomas E. Richardson shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this order. The person interviewed may have counsel present.

Provided, however, that nothing in this order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain

any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

VI. COMPLIANCE REPORTING

It is further ORDERED that, in order that compliance with the provisions of this order may be monitored:

- A. For a period of five (5) years from the date of entry of this order,
 1. Thomas E. Richardson shall notify the Commission of the following:
 - a. Any changes in residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
 - b. Any changes in his employment status (including self-employment), and any change in the ownership of any business entity, within ten (10) days of the date of such change. Such notice shall include the name and address of each business that he is affiliated with, employed by, creates or forms, or performs services for; a statement of the nature of the business; and a statement of his duties and responsibilities in connection with the business or employment; and
 - c. Any changes in his name or use of any aliases or fictitious names; and
 2. Thomas E. Richardson shall notify the Commission of any changes in corporate structure of any business entity that he directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence

of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which Thomas E. Richardson learns less than thirty (30) days prior to the date such action is to take place, he shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this order, Thomas E. Richardson shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which he has complied and is complying with this order. This report shall include, but not be limited to:

1. Thomas E. Richardson's then-current residence address, mailing addresses, and telephone numbers;
2. Thomas E. Richardson's then-current employment and business addresses and telephone numbers, a description of the business activities of each such employer or business, and the title and responsibilities of the Thomas E. Richardson for each such employer or business; and
3. Any other changes required to be reported under subparagraph A of this Section.
4. A copy of each acknowledgment of receipt of this order, obtained pursuant to Paragraph VIII by Thomas E. Richardson.

C. For the purposes of this order, Thomas E. Richardson shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director for Enforcement
Federal Trade Commission
601 New Jersey Avenue
Washington, D.C. 20580
Re: **FTC v. Thomas E. Richardson**, Civil Action No. CV-06-S-4754-NW.

D. For purposes of the compliance reporting and monitoring required by this order, the Commission is authorized to communicate directly with Thomas E. Richardson. Mr. Richardson may have counsel present.

VII. RECORD KEEPING PROVISIONS

It is further ORDERED that, for a period of eight (8) years from the date of entry of this order, defendant Thomas E. Richardson, and his agents, employees, officers, corporations, successors, assigns, and those persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other entity, are hereby restrained and enjoined from failing to create and retain the following records in connection with the offering, sale or marketing of business ventures:

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;

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials; and

F. All records and documents necessary to demonstrate full compliance with each provision of this order, including but not limited to, copies of acknowledgments of receipt of this order, required by Paragraph VIII, and all reports submitted to the FTC pursuant to Paragraph VI of this order.

VIII. DISTRIBUTION OF ORDER

It is further ORDERED that, for a period of five (5) years from the date of entry of this order, Thomas E. Richardson shall deliver copies of the order as directed below:

A. For any business that Thomas E. Richardson controls, directly or indirectly, or in which Thomas E. Richardson has a majority ownership interest, Thomas E. Richardson must deliver a copy of this order to all principals, officers, directors, and managers of that business. Thomas E. Richardson must also deliver copies of this order to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the order. For current personnel, delivery shall be within (5) days of service of this order upon defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities.

B. For any business where Thomas E. Richardson is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this order, Thomas E. Richardson must deliver a copy of this order to all principals and managers of such business before engaging in such conduct.

C. Thomas E. Richardson must secure a signed and dated statement acknowledging receipt of the order, within thirty days of delivery, from all persons receiving a copy of the order pursuant to this Part.

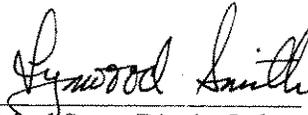
IX. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT

It is further ORDERED that Thomas E. Richardson, within five (5) business days of receipt of this order as entered by the court, must submit to the Commission a truthful sworn statement acknowledging receipt of this order.

X. 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 order.

DONE this 31st day of May, 2007, at 12:45 p.m.


United States District Judge

STIPULATED AND AGREED TO BY:

FOR THE PLAINTIFF



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Federal Trade Commission
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FOR THE DEFENDANT


Thomas E. Richardson, Defendant

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foregoing is true and correct. Executed on _____, at

_____.

Thomas E. Richardson

State of _____, City of _____

Subscribed and sworn to before me
this ____ day of _____, 2007.

Notary Public
My Commission Expires:

acknowledging receipt of this Order.