

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA

FEDERAL TRADE COMMISSION, and )  
STATE OF MARYLAND )  
 )  
 )  
 ) Plaintiffs, )  
 )  
 ) v. )  
 ) ACCENT MARKETING, INC. d/b/a )  
 ) ACCENT MARKETING OF )  
 ) ALABAMA, INC., )  
 ) an Alabama corporation; )  
 )  
 ) MONARCH VENDING, INC., )  
 ) an Alabama corporation; )  
 )  
 ) VEND 1 ONE, INC., )  
 ) an Alabama corporation; )  
 )  
 ) JOHN NOLAN WHITE a/k/a NOLAN )  
 ) WHITE, individually and as an )  
 ) officer or director of one or )  
 ) more of the above )  
 ) corporations; )  
 )  
 ) and )  
 )  
 ) JOHN BYRON WHITE a/k/a BYRON )  
 ) WHITE, individually and as an )  
 ) officer or director of one or )  
 ) more of the above corporations )  
 )  
 ) Defendants. )

FILED JUN 4 1968 PM 7 08 USDC S

Civil Action No.:

COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF

Plaintiffs, the Federal Trade Commission ("FTC" or  
"Commission") and the State of Maryland, for their Complaint  
allege:

1. The FTC brings this action under Sections 5(a), 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b) and 57b, to obtain temporary, preliminary, and permanent injunctive relief, rescission of contracts, restitution, disgorgement, appointment of a receiver, and other equitable relief for defendants' violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC's Trade Regulation Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" ("Franchise Rule" or "Rule"), 16 C.F.R. § 436.

2. The State of Maryland, through its Office of the Attorney General, Securities Commissioner, brings this action under § 14-110 of the Maryland Business Opportunity Sales Act, Md. Code Bus. Reg §§14-101 et seq. (1998 Repl. Vol.) (the "Maryland Business Opportunity Act") to obtain permanent injunctive relief, rescission of contracts, restitution, appointment of a receiver, and other equitable relief for defendants' violations of the registration, disclosure and antifraud provisions of the Maryland Business Opportunity Act.

#### JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over the FTC's claims in this action pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 53(b) and 57b. This action arises under 15 U.S.C. § 45(a)(1).

4. This Court has supplemental jurisdiction over plaintiff

State of Maryland's claims under 28 U.S.C. § 1367.

5. Venue in the United States District Court for the Southern District of Alabama is proper under 28 U.S.C. §§ 1391(b) and (c), and 15 U.S.C. § 53(b).

#### THE PARTIES

6. Plaintiff Federal Trade Commission is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41 *et seq.* The Commission is charged, *inter alia*, with enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce, as well as enforcement of the Franchise Rule, 16 C.F.R. § 436. The Commission is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act in order to secure such equitable relief as may be appropriate in each case, and to obtain consumer redress. 15 U.S.C. §§ 53(b) and 57b.

7. Plaintiff State of Maryland is one of the fifty sovereign states of the United States. The Maryland Securities Commissioner is the principal executive officer of the Maryland Securities Division, a division of the Office of the Attorney General of Maryland. The Maryland Securities Commissioner is authorized to bring an action under the Maryland Business Opportunity Act to enjoin violations of that law and to secure equitable relief. This Court has supplemental jurisdiction over

plaintiff State of Maryland's claims under 28 U.S.C. § 1367.

8. Defendant Accent Marketing, Inc. d/b/a Accent Marketing of Alabama, Inc. ("Accent"), is an Alabama corporation with its principal place of business at 29000 Highway 98, Building A, Suite 202, Daphne, Alabama 36526. Accent promotes and primarily sells vending machine business ventures. Accent has transacted business in the Southern District of Alabama.

9. Defendant Monarch Vending, Inc. ("Monarch"), an Alabama corporation, has its principal place of business at 6475 Van Buren Street, Daphne, Alabama 36520. Monarch's articles of incorporation state that the company is engaged in the business of marketing vending machine business ventures. Monarch serves as a locator company and it purports to find retail locations for vending machines purchased by Accent's customers. Monarch is listed on Accent's financial statements filed with the State of California as a related party. Monarch has transacted business in the Southern District of Alabama.

10. Defendant Vend 1 One, Inc. ("Vend 1"), an Alabama corporation with its principal place of business at 29000 Highway 98, Building A, Suite 202, Daphne, Alabama 36526, promotes and sells bulk candy vending machine business ventures. Vend 1 is listed on Accent's financial statements filed with the State of California as a related party. Vend 1 has transacted business in the Southern District of Alabama.

11. Defendant John Nolan White, a/k/a Nolan White, is the president, owner and sole shareholder of Accent, the sole director and incorporator of Monarch, and the incorporator of Vend 1. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled or participated in the acts and practices of the corporate defendants, including the acts and practices set forth in this Complaint. He resides or has transacted business in the Southern District of Alabama.

12. Defendant John Byron White, a/k/a Byron White, is Vice President of Accent. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled or participated in the acts and practices of Accent, including the acts and practices set forth in this Complaint. He resides or has transacted business in the Southern District of Alabama.

#### COMMERCE

13. At all times relevant to this Complaint, defendants have maintained a substantial course of trade in the offering for sale and sale of bulk candy machine business ventures, in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

#### DEFENDANTS' BUSINESS PRACTICES

14. Accent has been incorporated since 1993 and primarily

offers vending machine business ventures. Monarch and Vend 1 were both incorporated by John Nolan White in 1998 to offer candy vending machine business opportunities for sale. However, Monarch serves as a locator service recommended by Accent to prospective purchasers. The defendants promote their business opportunities to prospective purchasers in classified advertisements listed in newspapers and on the Internet.

15. In classified newspaper advertisements, the defendants make representations about the earnings potential of their business ventures, and urge prospective business venture purchasers to call Accent's toll-free telephone number to learn more about the opportunity. The defendants' advertisements typically state:

**M&M MARS/NESTLE**  
\$3200/mo. (realistic)  
25 vending sites, no  
competition; 8 hrs/mo.  
\$8,976 cash required.  
1-800-268-6601 (24 hrs)

and

**FUN-FILLED ROUTE**  
\$9,000-\$18,000/mo. (proven)  
no competition with new  
Brain Teaser game,  
25 Local vending sites.  
\$36,625 cash required.  
866-391-5976:

16. The defendants make representations in these advertisements appearing in newspapers throughout the United States that business venture purchasers can make anywhere from

\$3,200 per month to \$18,000 per month depending on the business venture. The defendants have no reasonable basis for these earnings representations and have failed to disclose additional information including the number and percentage of prior purchasers known by the defendants to have achieved the same or better results.

17. Prospective business venture purchasers who call the defendants' toll-free telephone number are ultimately connected to the defendants, or their employees or agents, who represent to consumers that in exchange for payment, typically in excess of \$8,000, prospective purchasers will receive what they need to get started in a vending machine business venture, including: (1) vending machines, and (2) a professional locator service recommended by Accent. The defendants offer several different kinds of business ventures, but these different vending routes all come with a set number of machines and they all cost thousands of dollars.

18. The defendants or their employees or agents also make representations about the earnings potential of the business venture. For example, the defendants or their employees or agents typically represent that the "Shootin' Hoops" business venture generates \$250 every two to three weeks per machine, with \$3,250 profit every two to three weeks on 13 machines.

19. All of the defendants' earnings representations are

false and misleading.

20. The defendants have no reasonable basis for their earnings representations, fail to disclose that materials, which constitute a reasonable basis for the claims, are available, or fail to provide the earnings claims document required by the Franchise Rule or, where applicable, the Maryland Business Opportunity Act.

21. The defendants or their employees or agents provide business venture purchasers with a package of written material after the first telephone call. This material typically includes, among other things, photographs of the type of machine offered, letters from references who have purportedly purchased a business venture from the defendants and bank wire information.

22. The written material also includes a basic franchise disclosure document.

23. However, this basic franchise disclosure document is incomplete or inaccurate because, among other things, it fails to disclose information concerning other business venture purchasers and Byron White's bankruptcy information.

24. The defendants or their employees or agents then tell the prospective business venture purchaser to call several references. The defendants represent that these references are currently operating a vending route purchased from Accent, and that these references can give a reliable description of their



experiences with Accent.

25. These references, however, are the defendants' paid representatives and falsely represent to consumers that they are operating vending routes and earning large sums of income from those routes.

26. The defendants or their employees or agents also recommend to prospective purchasers a locator service that works closely with Accent. Accent represents that this locator service will provide the prospective purchaser with profitable locations for the vending machines in their area. Accent recommends a number of different locator services to consumers, including Monarch.

27. In numerous instances, Monarch misrepresents to consumers that store owners consent to the placement of the vending machines.

28. With regard to its activities in Maryland, Accent offered and sold its vending machine venture in Maryland when it was not registered with the Maryland Securities Division to offer or sell business opportunities.

29. Accent did not provide Maryland buyers of its vending machine venture with a written disclosure document that was filed with the Maryland Securities Division as required under the Maryland Business Opportunity Act.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

(Brought by Plaintiff FTC)

30. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce."

COUNT I

Misrepresentations Regarding Income

31. Paragraphs 1 through 30 are incorporated herein by reference.

32. In numerous instances in the course of offering for sale and selling their business ventures, the defendants, directly or indirectly, represent, expressly or by implication, that consumers who purchase the defendants' business ventures are likely to earn substantial income.

33. In truth and in fact, consumers who purchase the defendants' business ventures are not likely to earn substantial income.

34. Therefore, the defendants' representations as set forth in Paragraph 32 are false and misleading and constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II

Misrepresentations Regarding Company-Selected References

35. Paragraphs 1 through 34 are incorporated herein by

reference.

36. In numerous instances in the course of offering for sale and selling their business ventures, the defendants, directly or indirectly, represent, expressly or by implication, that certain company-selected references have purchased the defendants' business ventures or will provide reliable descriptions of experiences with the defendants' business ventures.

37. In truth and in fact, in numerous instances, the defendants' references have not purchased the defendants' business ventures or do not provide reliable descriptions of the references' experiences with the defendants' business ventures.

38. Therefore, the defendants' representations as set forth in Paragraph 36 are false and misleading and constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

### COUNT III

#### Misrepresentations Regarding Placement of Vending Machines

39. Paragraphs 1 through 38 are incorporated herein by reference.

40. In numerous instances in the course of offering for sale and selling their business ventures, the defendants, directly or indirectly, represent, expressly or by implication, that the defendants or the locating companies that the defendants

provide or recommend have obtained the consent of store owners in the prospective purchaser's geographic area for the placement of vending machines.

41. In truth and in fact, in numerous instances, neither the defendants nor the locating companies that defendants provide or recommend have obtained the consent of store owners in the prospective purchaser's geographic area for the placement of vending machines.

42. Therefore, the defendants' representations as set forth in Paragraph 40 are false and misleading and constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

#### THE FRANCHISE RULE

(Brought by Plaintiff FTC)

43. The business ventures sold by the defendants are franchises, as "franchise" is defined in Sections 436.2(a)(1)(ii), (a)(2), and (a)(5) of the Franchise Rule, 16 C.F.R. §§ 436.2(a)(1)(ii), (a)(2), and (a)(5).

44. The Franchise Rule requires a franchisor to provide prospective franchisees with a complete and accurate basic disclosure document containing twenty categories of information, including information about the litigation and bankruptcy history of the franchisor and its principals, the terms and conditions under which the franchise operates, and information identifying

existing franchisees. 16 C.F.R. § 436.1(a)(1) - (a)(20). The pre-sale disclosure of this information required by the Rule enables a prospective franchisee to contact prior purchasers and take other steps to assess the potential risks involved in the purchase of the franchise.

45. The Franchise Rule additionally requires that a franchisor:

- (a) have a reasonable basis for any oral, written, or visual earnings claim it makes, 16 C.F.R. § 436.1(b)(2), (c)(2) and (e)(1);
- (b) disclose, in immediate conjunction with any earnings claim it makes, and in a clear and conspicuous manner, that material which constitutes a reasonable basis for the earnings claim is available to prospective franchisees, 16 C.F.R. § 436.1(b)(2) and (c)(2);
- (c) provide, as prescribed by the Rule, an earnings claim document containing information that constitutes a reasonable basis for any earnings claim it makes, 16 C.F.R. § 436.1(b) and (c); and
- (d) clearly and conspicuously disclose, in immediate conjunction with any generally disseminated earnings claim, additional information including the number and percentage of prior purchasers

known by the franchisor to have achieved the same or better results, 16 C.F.R. § 436.1(e)(3)-(4).

46. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. 57a(d)(3), and 16 C.F.R. § 436.1, violations of the Franchise Rule constitute unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

### VIOLATIONS OF THE FRANCHISE RULE

#### COUNT IV

##### Basic Disclosure Violations

47. Paragraphs 1 through 46 are incorporated herein by reference.

48. In connection with the offering of franchises, as "franchise" is defined in Section 436.2(a) of the Franchise Rule, the defendants violate Section 436.1(a) of the Rule and Section 5(a) of the FTC Act by failing to provide prospective franchisees with accurate and complete basic disclosure documents as prescribed by the Rule.

#### COUNT V

##### Earnings Disclosure Violations

49. Paragraphs 1 through 48 are incorporated herein by reference.

50. In connection with the offering of franchises, as "franchise" is defined in Section 436.2(a) of the Franchise Rule,

the defendants violate Sections 436.1(b)-(c) of the Rule and Section 5(a) of the FTC Act by making earnings claims to prospective franchisees while, *inter alia*,: (1) lacking a reasonable basis for each claim at the times it is made; (2) failing to disclose, in immediate conjunction with each earnings claim, and in a clear and conspicuous manner, that material which constitutes a reasonable basis for the claim is available to prospective franchisees; and/or (3) failing to provide prospective franchisees with an earnings claim document, as prescribed by the Rule.

COUNT VI

Advertising Disclosure Violations

51. Paragraphs 1 through 50 are incorporated herein by reference.

52. In connection with the offering of franchises, as "franchise" is defined in Section 436.2(a) of the Franchise Rule, the defendants violate Section 436.1(e) of the Rule and Section 5(a) of the FTC Act by making generally disseminated earnings claims without, *inter alia*, disclosing, in immediate conjunction with the claims, information required by the Franchise Rule including the number and percentage of prior purchasers known by the defendants to have achieved the same or better results.

VIOLATIONS OF MARYLAND LAW

(Brought by Plaintiff State of Maryland)

THE MARYLAND BUSINESS OPPORTUNITY ACT

53. The business ventures sold by the defendants are "business opportunities" as defined under §14-101 of the Maryland Business Opportunity Act. Defendants offered and sold business opportunities in Maryland to Maryland residents.

54. Section 14-120 of the Maryland Business Opportunity Act prohibits, in connection with the offer or sale of any business opportunity in Maryland, any person from making any untrue statements of material fact or omitting to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading.

55. Section 14-121 of the Maryland Business Opportunity Act prohibits, in connection with the offer or sale of any business opportunity in Maryland, any person from engaging in any act, practice, or course of business or employ any device, scheme, or artifice to defraud another person.

56. Section 14-114 of the Maryland Business Opportunity Act prohibits a person from offering or selling any business opportunity in Maryland unless a written disclosure statement, filed with the Maryland Securities Commissioner, is delivered to the buyer at least 10 full business days before the buyer signs a contract or pays any consideration in connection with the business



opportunity.

57. Section 14-122 of the Maryland Business Opportunity Act prohibits in connection with the offer or sale of any business opportunity in Maryland, a person from representing that the business opportunity provides income or earning potential of any kind unless the seller has documentation to substantiate the representation and the person discloses the documentation to the prospective buyer when the representation is made.

58. Section 14-113 of the Maryland Business Opportunity Act prohibits a person from offering or selling any business opportunity in Maryland unless the business opportunity is registered with the Maryland Securities Commissioner.

#### COUNT VII

(Misrepresentations About Substantial Income Potential)

59. Paragraphs 1 through 58 are incorporated herein by reference.

60. In connection with the offering of a business opportunity, as defined in the Maryland Business Opportunity Act, the defendants, directly and indirectly, represent, expressly or by implication, that buyers of the defendants' business venture are likely to earn substantial income.

61. In truth and in fact, buyers of the defendants' business venture are not likely to earn substantial income.

62. Information about the income potential of any business

venture is material.

63. Therefore, the defendants' misrepresentations about the substantial income potential of the defendants' business venture are untrue or misleading in violation of Section 14-120 of the Maryland Business Opportunity Act.

#### COUNT VIII

(Fraud Regarding Company-Selected References)

64. Paragraphs 1 through 63 are incorporated herein by reference.

65. In numerous instances in the course of offering for sale and selling the defendants' business ventures, the defendants, directly or indirectly, represent, or by implication, that certain company-selected references have purchased the defendants' business ventures or will provide reliable descriptions of experiences with the defendants' business ventures.

66. In truth and in fact, in numerous instances, the defendants' references have not purchased the defendants' business ventures or do not provide reliable descriptions of the references' experiences with the defendants' business ventures.

67. Therefore, the defendants' representations about references for the defendants' business ventures constitute an device, scheme, or artifice to defraud prospective buyers of the defendant's business opportunity in violation of Section 14-121 of the Maryland Business Opportunity Act.

COUNT IX

(Disclosure Violations)

68. Paragraphs 1 through 67 are incorporated herein by reference.

69. In connection with the offer and sale in Maryland of business opportunities, as defined in §14-101 of the Maryland Business Opportunity Act, the defendants failed to provide prospective buyers of defendants' business venture with a written disclosure statement, filed with the Maryland Securities Commissioner, at least 10 full business days before the buyer signs a contract or pays any consideration in connection with the business venture, thereby violating §14-114 of the Maryland Business Opportunity Act.

COUNT X

(Earnings Disclosure Violations)

70. Paragraphs 1 through 69 are incorporated herein by reference.

71. In connection with the offer and sale in Maryland of business opportunities, as defined in §14-101 of the Maryland Business Opportunity Act, the defendants represented that their business venture provides income or earning potential, but the defendants did not disclose to prospective buyers any substantiation of those representations when the representations were made, thereby violating § 14-122 of the Maryland Business

Opportunity Act.

COUNT XI

(Registration Violations)

72. Paragraphs 1 through 71 are incorporated herein by reference.

73. The defendants offered and sold in Maryland business opportunities, as defined in §14-101 of the Maryland Business Opportunity Act, without registering the business opportunity with the Maryland Securities Commission, thereby violating § 14-113 of the Maryland Business Opportunity Act.

CONSUMER INJURY

74. Consumers nationwide have suffered or will suffer substantial monetary loss as a result of defendants' violations of Section 5(a) of the FTC Act and the Franchise Rule. Absent injunctive relief by this Court, defendants are likely to continue to injure consumers and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

75. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief, including consumer redress, disgorgement and restitution, to prevent and remedy any violations of any provision of law enforced by the Federal Trade Commission.

76. Section 19 of the FTC Act, 15 U.S.C. § 57b, authorizes this Court to grant such relief as the Court finds necessary to

redress injury to consumers or other persons resulting from defendants' violations of the Franchise Rule, including the rescission and reformation of contracts, and the refund of money.

77. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction to allow plaintiff, the State of Maryland, to enforce its state law claims under the Maryland Business Opportunity Act against defendants in this Court.

78. This Court, in the exercise of its equitable jurisdiction, may award ancillary relief to remedy injury caused by defendants' law violations.

#### PRAYER FOR RELIEF

WHEREFORE, plaintiffs request that this Court, as authorized by Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Section 14-110 of the Maryland Business Opportunity Act, and pursuant to its own equitable powers:

1. Award plaintiffs such preliminary injunctive and ancillary relief, including a temporary restraining order and appointment of a receiver, as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief;

2. Permanently enjoin defendants from violating the FTC Act, the Franchise Rule, and the Maryland Business Opportunity Act, as alleged herein;

3. Award such relief as the Court finds necessary to

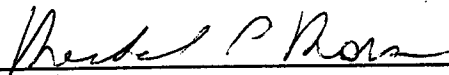
redress injury to consumers resulting from defendants' violations of the FTC Act, the Franchise Rule, and the Maryland Business Opportunity Act, including but not limited to, rescission of contracts, the refund of monies paid, and the disgorgement of ill-gotten gains by defendants.

4. Award plaintiffs the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,


William E. Kovacic,  
General Counsel

Dated: 5/31/02

  
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Dated: 5/31/02

  
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