

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No. 05-61682 CIV-LENARD/KLEIN

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

USA BEVERAGES, Inc.,
a Florida corporation
and New Mexico corporation;

DILRAJ MATHAUDA a/k/a Dan Reynolds,
individually and as a principal
of USA Beverages, Inc.;

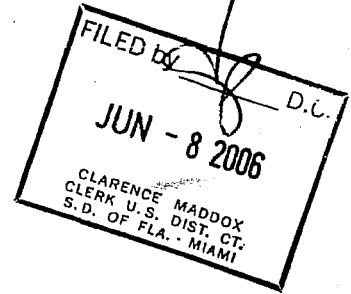
SIRTAJ MATHAUDA,
individually and as a principal
of USA Beverages, Inc.;

JEFF PEARSON a/k/a Paul Clayton,
individually and as a principal
of USA Beverages, Inc.;

DAVID MEAD, and
individually and as an officer of
USA Beverages, Inc.;

SILVIO CARRANO,
individually and as an officer of
USA Beverages, Inc.,

Defendants.



STIPULATED FINAL JUDGMENT AND ORDER FOR
PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF
AS TO DEFENDANT DAVID MEAD

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/A

This matter comes before the Court on the stipulation of Plaintiff Federal Trade Commission ("FTC" or "Commission") and Defendant David Mead. On October 19, 2005, the Federal Trade Commission ("FTC" or "Commission") filed a Complaint against USA Beverages, Inc., a Florida corporation and a New Mexico corporation ("USA Beverages"), Dilraj Mathauda, Sirtaj Mathauda, Jeff Pearson, David Mead and Silvio Carrano alleging violations of Section 5 of the FTC Act and the FTC's Trade Regulation Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" (the "Franchise Rule"), 16 C.F.R. Part 436, in connection with the marketing of coffee display rack business ventures. The Commission's Complaint seeks a permanent injunction and other equitable relief in this matter, pursuant to section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b). At the same time the Commission sought, and on November 4, 2005, this Court granted *ex parte* the Commission's motion for a temporary restraining order and for an order to show cause why a preliminary injunction should not be granted pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 65.

On November 17, 2005, the FTC submitted a stipulated preliminary injunction as to David Mead and USA Beverages, Inc. a New Mexico corporation, of which Mr. Mead is President. On November 18, 2005, this Court entered that stipulated preliminary injunction.

Having considered the Complaint, memorandum of law and exhibits filed by the Commission and with the consent of Defendant David Mead, it is hereby **ORDERED**, **ADJUDGED** and **DECREED**:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and the parties hereto.

2. Venue is proper as to David Mead in the Southern District of Florida under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b).
3. The activities of David Mead are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. The Complaint alleges claims upon which relief may be granted against David Mead under Sections 5(a)(1), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a)(1), 53(b), and 57b, and under the Franchise Rule.
5. The Federal Trade Commission and David Mead stipulate and agree to this Final Order to settle and resolve all matters in dispute between them arising from the Complaint to the date of entry of this Final Order.
6. David Mead has waived all rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, *amended by* Pub. L. 104-121, 110 Stat. 847, 863-64 (1996).
7. David Mead acknowledges that he has read the provisions of this Final Order and has agreed to abide by them.
8. David Mead waives all rights to seek appellate review or otherwise challenge or contest the validity of this Final Order.
9. David Mead waives and releases any claim he may have against the FTC and its employees, representatives or agents, and against the Receiver and his employees, representatives or agents.
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, interest 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, 16 C.F.R. Part 436, as promulgated or as it may hereinafter be amended, 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 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 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
4. "Receiver" shall mean David Chase, Esq., the permanent receiver previously appointed

in this matter, and any deputy receivers that may be named by the permanent receiver.

ORDER

I. PROHIBITION AGAINST VIOLATION OF SECTION 5

IT IS THEREFORE ORDERED that, in connection with the offering for sale or selling of any business venture, Defendant David Mead and his agents, servants, employees, entities or persons directly or indirectly under his control, and those persons or entities in active concert or participation with David Mead who receive actual notice of this Order, by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, are hereby restrained and enjoined from making any material misrepresentation or assisting others in making any material misrepresentation, either expressly or by implication, to any prospective purchaser of a business venture, including, but not limited to, misrepresentations that:

- A. Consumers who purchase a business venture are likely to earn substantial income;
- B. Locations have been secured or will be secured in prospective purchasers' geographic areas for the placement of display racks or other equipment associated with any business venture; and
- C. References have purchased a business venture or will provide reliable descriptions of experiences with the business venture.

II. PROHIBITION AGAINST VIOLATION OF THE FRANCHISE RULE

IT IS FURTHER ORDERED that Defendant David Mead and his agents, servants, employees, entities or persons directly or indirectly under his control, and those persons or entities in active concert or participation with David Mead who receive actual notice of this

Order, by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, are hereby restrained and enjoined from violating or assisting others in violating any provisions of the Franchise Rule, 16 C.F.R. Part 436, as promulgated or as it may hereinafter be amended, 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, 16 C.F.R. § 436.1(a);

B. Failing to disclose, in immediate conjunction with any generally disseminated (“advertised”) earnings claim, information required by the Franchise Rule, including the number and percentage of prior purchasers known by Defendant to have achieved the same or better results, as required by the Franchise Rule, 16 C.F.R. § 436.1(e);

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

D. Failing to disclose, in immediate conjunction with any earnings claim, and in a clear and conspicuous manner, that material which constitutes a reasonable basis for the earnings claim is available to prospective franchisees, as required by the Franchise Rule 16 C.F.R. 436.1(b)(2) and (c)(2); and

E. Failing to provide material which constitutes a reasonable basis for any earnings claim to prospective purchasers, the Commission, or its staff upon reasonable demand, as required by the Franchise Rule, 16 C.F.R. 436.1(b), (c) and (e).

III. REDRESS AND OTHER EQUITABLE RELIEF

IT IS FURTHER ORDERED that, judgment is entered against David Mead in the amount of \$189,862.50. *Provided, however,* that judgment shall be suspended against David

Mead subject to the terms of Paragraph IV of this Order. *Provided, further*, that if judgment is entered against any of the other Defendants, the liability created by this judgment shall be joint and several with the liability of the other Defendants.

IV. RIGHT TO REOPEN

IT IS FURTHER ORDERED that,

A. The Commission's agreement to this Final Order is expressly premised upon the financial condition of David Mead as represented in his sworn financial statement, dated November 12, 2005, and provided to the Commission, which includes material information upon which the Commission relied in negotiating and consenting to this Final Order. If, upon motion by the Commission, this Court should find that David Mead made a material misrepresentation or omitted material information concerning his financial condition from his sworn financial statement, then the Court shall enter a modified judgment holding David Mead liable to the Commission in the amount of \$189,862.50, which David Mead and the Commission stipulate is the amount of consumers' funds deposited into USA Beverages' accounts during May 2005 while David Mead was a signatory to the USA Beverages' bank accounts. This amount shall become immediately due and payable by David Mead and interest computed at the rate prescribed under 28 U.S.C. § 1961, as amended, shall immediately begin to accrue on the unpaid balance;

B. The Commission's agreement to this Final Order is also expressly premised upon David Mead's waiver and assignment to the Receiver of all interest in any assets held by or on behalf of USA Beverages;

C. Any funds paid pursuant to this Final Order shall be deposited into a fund

administered by the Commission or its agent to be used for equitable relief, including, but not limited to, consumer redress and any attendant expenses for the administration of any redress fund. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may pay any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the Defendants' practices as alleged in the complaint. Any funds not used for such equitable relief shall be deposited into the United States Treasury as disgorgement. David Mead shall have no right to challenge the Commission's choice of remedies under this Paragraph;

D. David Mead 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; and

E. Any proceedings instituted under this Section are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings that the FTC may initiate to enforce this Order.

V. COOPERATION AGREEMENT

IT IS FURTHER ORDERED that David Mead shall, in connection with this action or any subsequent investigations related to or associated with the transactions or the occurrences that are the subject of the FTC's Complaint, cooperate in good faith with the FTC and appear at such places and times as the FTC shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by the FTC. If requested in writing by the FTC, David Mead shall appear

and provide truthful testimony in any trial, deposition, or other proceeding related to or associated with the transactions or the occurrences that are the subject of the Complaint, without the service of a subpoena.

VI. 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, David Mead 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 David Mead's possession or direct or indirect control;

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 court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;

2. posing as consumers and suppliers to David Mead, and his employees, or any entity managed or controlled in whole or in part by David Mead, without the necessity of identification or prior notice; and

C. David Mead 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)).

VII. 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 final Order,
 1. David Mead shall notify the Commission of the following:
 - (a) Any changes in his 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 his 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. David Mead shall notify the Commission of any changes in corporate structure of any business entity that he directly or indirectly control(s), 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 David Mead 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, David Mead 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. David Mead's then-current residence address, mailing addresses, and telephone numbers;
2. David Mead'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 David Mead, 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 IX by David Mead;

C. For the purposes of this Order, David Mead 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. USA Beverages, Inc., Civil Action No. 05-61682; and

D. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with David Mead.

VIII. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that for the period of eight (8) years from the date of entry of this Order, David Mead and his agents, servants, employees, entities or persons directly or indirectly under his control, and those persons or entities in active concert or participation with David Mead who receive actual notice of this Order, 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 IX of this Order, and all reports submitted to the FTC pursuant to Paragraph VII of this Order.

IX. DISTRIBUTION OF ORDER

IT IS FURTHER ORDERED that for a period of five (5) years from the date of entry of this Order, David Mead shall deliver copies of the Order as directed below:

A. For any business that David Mead controls, directly or indirectly, or in which David Mead has a majority ownership interest, David Mead must deliver a copy of this Order to all principals, officers, directors, and managers of that business. David Mead 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 five (5) days of service of this Order upon Defendant David Mead. For new personnel, delivery shall occur prior to them assuming their responsibilities;

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

such conduct; and

C. David Mead 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.

X. ACKNOWLEDGMENT OF RECEIPT OF ORDER

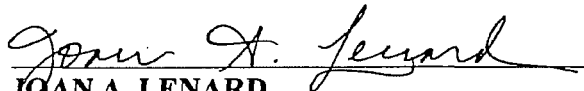
IT IS FURTHER ORDERED that, within five (5) business days of receipt of this Order as entered by the Court, David Mead must submit to the Commission a truthful sworn statement acknowledging receipt of the this Order.

XI. RETENTION OF JURISDICTION

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


DONE AND ORDERED, Miami, Florida, this 3 day of June

2006.



JOAN A. LENARD
UNITED STATES DISTRICT JUDGE

STIPULATED AND AGREED TO BY:

FOR THE PLAINTIFF:


Russell Deitch
Attorney Federal Trade Commission
600 Pennsylvania Ave, NW
Washington, D.C. 20580
202-326-2585 (phone)
202-326-3395 (fax)
rdeitch@ftc.gov

FOR DEFENDANT DAVID MEAD


David Mead
262 Palm Leaf Ct.
Coconut Creek, FL 33073