

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No: 03-23291-CIV-ALTONAGA/Bandstra

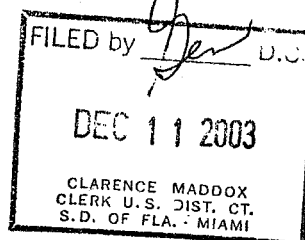
FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

VINYARD ENTERPRISES, INC.,
d/b/a COMFORT CASTLE ENTERPRISES,
a Florida corporation; SUNSHINE
ADVERTISING & MARKETING, INC., d/b/a
DYNAMIC DATE SERVICES, a Florida
corporation; RAY A. THOMPSON, an officer
of one or more of the above-named companies,
and an individual, d/b/a DYNAMIC DATA
SERVICES, DECTURA DIRECT SERVICE,
and D.D. SERVICE; JUDITH LIVINGSTON,
an individual, d/b/a DIRECT BUSINESS
SERVICES, and DYNAMIC DATA; and
JASON LUNAN, an individual, d/b/a DYNAMIC
DATA EXPRESS, and COMFORT CASTLE
ASSOCIATES,

Defendants.



**ORDER GRANTING EX PARTE TEMPORARY RESTRAINING ORDER WITH
ASSET FREEZE AND OTHER EQUITABLE RELIEF**

THIS CAUSE came before the Court upon Plaintiff, Federal Trade Commission's ("Commission" or "FTC") Emergency Motion for an Ex Parte Temporary Restraining Order With Asset Freeze and Other Equitable Relief, filed on December 10, 2003.

The Commission, pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), has filed a complaint for injunctive and other equitable relief, including consumer redress, and has applied *ex parte* for a temporary restraining order ("TRO") and other

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equitable relief, and for an order to show cause why a preliminary injunction should not be granted pursuant to Rule 65, Fed. R. Civ. P.

PRELIMINARY FINDINGS

The Court has considered the pleadings, declarations, exhibits, and memoranda filed in support of the Commission's application and finds as follows:

A. This Court has jurisdiction over the subject matter of this case, and there is good cause to believe it will have jurisdiction over all the parties.

B. There is good cause to believe that Defendants may have engaged in and may continue to engage in acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

C. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief in the form of monetary restitution will likely occur as a result of the sale, transfer, or other disposition or concealment by Defendants of their assets or business records, unless Defendants are immediately restrained and enjoined by Order of this Court. The evidence set forth in the Plaintiff's Emergency Motion for an *Ex Parte* Temporary Restraining Order With Asset Freeze and Other Equitable Relief, and in the accompanying declarations and exhibits, shows that Defendants may have engaged in a concerted course of illegal activity in connection with the advertising, promotion, offering or sale of Work-At-Home Opportunities offered through flyers mailed to consumers' residences, in violation of Section 5 of the FTC Act, 15 U.S.C. § 45. Defendants' marketing practices purportedly include operating under fictitious names, avoiding consumers through the use of post office boxes and commercial mailboxes, and making false assurances about their businesses. Thus, there is good cause to believe that the Defendants may

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attempt to conceal the scope of their deliberate illegal actions to avoid returning their ill-gotten gains to consumers injured by their unlawful practices if not restrained from doing so by Order of the Court.

D. The Commission has not provided notice to Defendants due to the likelihood that advanced notice of this action will lead to the very irreparable harm, including the possible dissipation of assets and destruction of evidence, that the Commission seeks to prevent through its application for an *ex parte* temporary restraining order. The Commission's request for this emergency *ex parte* relief is not the result of any lack of diligence on the part of the Commission, but is instead based on the showing made by Plaintiffs of the nature of the Defendants' unlawful conduct. There is, therefore, good cause for relieving the Commission of the duty to provide Defendants with prior notice of the Commission's application.

E. There is good cause for the Court to order an asset freeze against Defendants. There is evidence before the Court showing that Defendants may have retained ill-gotten gains derived from their deceptive practices, including: misrepresenting to consumers that they are likely to earn a substantial amount of money after purchasing Defendants' Work-At-Home Opportunities; falsely claiming that they will pay consumers for each item consumers mail; and providing consumers with the means and instrumentalities to commit deceptive acts and practices by furnishing them with false and misleading materials, including flyers soliciting other consumers to join Defendants' Work-At-Home Opportunities. An asset freeze is reasonably necessary in order to preserve the possibility of complete and meaningful relief at the conclusion of this litigation.

F. Weighing the equities and considering the Commission's likelihood of success, this Order

is in the public interest.

G. No security is required of any agency of the United States for issuance of a restraining order. Fed. R. Civ. P. 65(c).

ORDER

Accordingly, it is hereby **ORDERED AND ADJUDGED** that Plaintiff's Motion for an Ex Parte Temporary Restraining Order With Asset Freeze and Other Equitable Relief is **GRANTED** in part.

Definitions

A. "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, effects, leaseholds, premises, contracts, mail or other deliveries, shares of stock, lists of consumers' names, inventory, checks, notes, accounts, credits, receivables, funds, and all cash, wherever located.

B. "Corporate Defendants" means Vinyard Enterprises, Inc., d/b/a Comfort Castle Enterprises, and any other d/b/a of Vinyard Enterprises, Inc.; Sunshine Advertising & Marketing, Inc., d/b/a Dynamic Data Services, and any other d/b/a of Sunshine Advertising & marketing, Inc.; and their successors, assigns, affiliates or subsidiaries.

C. "Defendants" means, individually, collectively or in any combination: (1) each Corporate Defendant; (b) each Individual Defendant; (c) any person insofar as he or she is acting in the capacity of an officer, agent, servant, employee or attorney of either Corporate Defendant or any Individual Defendant; and (d) all persons or entities in active concert or participation with any of the foregoing

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who receive notice of this Order by personal service or otherwise. Fed. R. Civ. P. 65(d).

D. "Individual Defendants" means Ray A. Thompson, individually and through any d/b/a, including Dynamic Data Services, Dectura Direct Service, and D.D. Service; Judith Livingston, individually and through any d/b/a, including Direct Business Services and Dynamic Data; and Jason Lunan, individually and through any d/b/a, including Dynamic Data Express and Comfort Castle Associates.

E. "Document" is synonymous in meaning and equal in scope to the usage of the term in Rule 34(a), Fed. R. Civ. P., 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, into reasonably usable form through detection devices. A draft or non-identical copy is a separate document within the meaning of the term.

F. "Material" means likely to affect a person's choice of, or conduct regarding, goods and services.

G. "Plaintiff" means the Federal Trade Commission ("Commission" or "FTC").

H. "Relate to" means refer to, concern, regard, reflect, discuss, constitute, mention, pertain to, allude to or associate with. "Relating to" means referring to, concerning, regarding, reflecting, discussing, constituting, mentioning, pertaining to, alluding to or associated with.

I. "Work-At-Home Opportunity" means any program, plan, product or service that enables a participant or purchaser to earn money by working at home.

I. INJUNCTION AGAINST MISREPRESENTATIONS

For all the foregoing reasons, it is **ORDERED AND ADJUDGED** that in connection with

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the advertising, promotion, offering or sale of goods or services in or affecting commerce, Defendants are hereby temporarily restrained and enjoined from making, or assisting others in making, any express or implied representation or omission of material fact that is false or misleading, in any manner, directly or indirectly, to any consumer or entity, including but not limited to, the following:

- A. Representing that consumers are likely to earn a substantial amount of money from Defendants' Work-At-Home Opportunities;
- B. Representing that Defendants will pay consumers for each item consumers mail;
- C. Representing the nature of any Work-At-Home Opportunity offered or sold; and
- D. Representing any material term, condition, or limitation of the transaction or about the use of any offered good or service.

II. INJUNCTION AGAINST PROVIDING OTHERS WITH THE MEANS AND INSTRUMENTALITIES TO VIOLATE SECTION 5 OF THE FTC ACT

It is further **ORDERED AND ADJUDGED** that in connection with the offering for sale or sale of Work-At-Home opportunities, Defendants are temporarily restrained and enjoined from providing to others the means and instrumentalities with which to make, expressly or by implication, orally or in writing, any false or misleading statement or representation of material fact, including but limited to:

- A. Any fact material to a consumer's decision to purchase the Defendants' services or products;
- B. Any fact representing that consumers are likely to earn a substantial amount of money from Defendants' Work-At-Home Opportunities; and

C. Any fact representing that Defendants will pay consumers for each item consumers mail.

III. ASSET FREEZE

It is further **ORDERED AND ADJUDGED** that Defendants are temporarily restrained and enjoined from:

A. Transferring, liquidating, converting, encumbering, pledging, loaning, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, perfecting a security interest in, or otherwise disposing of any assets, wherever located, inside or outside the United States of America, that are: (1) held on behalf, for the benefit of, or owned or controlled, directly or indirectly, by any Corporate Defendants or any Individual Defendants in whole or in part, including but not limited to, property, bank accounts, or other assets where the title is taken in his or her name, as joint tenancy or common ownership with a non-party, co-owned with a spouse, or held in trust; (2) in the actual or constructive possession of any Corporate Defendant or any Individual Defendant; or (3) 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 of any Corporate Defendant or any Individual defendant, including but not limited to, any assets held for, by, or under the name of, any Corporate Defendant or any Individual Defendant or subject to access by any Corporate Defendant or any Individual 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 the name of any Corporate Defendant or any Individual Defendant, or subject to access by any Corporate Defendant

or any Individual Defendant;

C. Incurring charges or cash advances on any credit card, debit card or checking card issued in the name of any Corporate Defendant or any Individual Defendant, singly or jointly;

D. Obtaining a personal or secured loan in the name of any Corporate Defendant or any Individual Defendant, singly or jointly; and

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

Provided, however, that the assets affected by this Paragraph shall include: (1) all of the assets of any Corporate Defendant or any Individual Defendant existing as of the date this Order was entered; and (2) for assets obtained after the date this Order was entered, only those assets of any Corporate Defendant or Individual Defendant that are derived from or otherwise related to the sale of Work-At-Home Opportunities.

IV. RETENTION OF ASSETS AND RECORDS BY FINANCIAL INSTITUTIONS AND OTHER THIRD PARTIES

It is further **ORDERED AND ADJUDGED** that any financial or brokerage institution, escrow agent, title company, commodity trading company, business entity, or person served with a copy of this Order that holds, controls or maintains custody of any accounts or assets of any Corporate Defendant or any Individual Defendant, or has held, controlled or maintained any accounts or assets of any Corporate Defendant or any Individual Defendant at any time since August 1, 1997 shall:

A. Hold and retain within its control and prohibit any Defendant from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting,

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selling, or otherwise disposing of any account, funds, property, or other asset;

1. Maintained in the name of, or subject to withdrawal or access by, any Corporate Defendant or any Individual Defendant;

2. Held on behalf of or for the benefit of any Corporate Defendant or any Individual Defendant; or

3. Subject to access or use by any Corporate Defendant or any Individual Defendant.

Provided, however, that this Order shall not: (i) prohibit transfers as directed by further order of the Court; or (ii) prohibit transfers for specific transfers authorized in writing by counsel for the Commission.

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

1. Titled in the name of any Corporate Defendant or any Individual Defendant, either individually or jointly; or

2. Otherwise subject to access by any Corporate Defendant or any Individual Defendant, either individually or jointly.

C. Provide counsel for the Commission, within **seven (7) business days** of receiving a copy of this Order, a sworn statement setting forth:

1. The identification number of each such account or asset titled in the name, individually or jointly, of any Corporate Defendant or any Individual Defendant, or held on behalf of, or for the benefit of, any Corporate Defendant or any Individual Defendant;

2. The balance of each such account, or a description of the nature and appraisal of the value of such asset as of (a) the close of business on the day on which this Order is served, and

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(b) the close of business on the day prior to 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 Corporate Defendant or any Individual Defendant, or otherwise subject to access by any Corporate Defendant or any Individual Defendant.

The Commission is granted leave, pursuant to Rule 45, Fed. R. Civ. P., and notwithstanding Rule 26, Fed. R. Civ. P., to subpoena documents immediately from any such financial institution, account custodian, or other aforementioned entity concerning the nature, location, status, and extent of any Corporate Defendant's and any Individual Defendant's assets, and compliance with this Order. Subpoenas may be served by agents or attorneys of the Commission or by agents of any process server retained by the Commission.

V. FINANCIAL STATEMENTS

It is further **ORDERED AND ADJUDGED** that each Corporate Defendant and each Individual Defendant, not less than three (3) **business days** prior to the scheduled date and time for a hearing on a preliminary injunction in this matter, but in no event later than **ten (10) days** after entry of this Order, shall:

A. Prepare and deliver to counsel for Plaintiff, as provided in Paragraph XVI of this Order, completed financial statements, on the forms attached to this Order as Attachments A and B, for themselves individually, and for each business entity under which each Corporate Defendant and

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each Individual Defendant conducts business, or of which any Individual Defendant is an officer, and for each trust of which any Individual Defendant is a trustee. The financial statements shall be accurate as of the date of entry of this Order; and

B. Such financial statements shall include a full accounting of all assets and documents that are located inside or outside of the territory of the United States of America and are held by or for each Corporate Defendant and each Individual Defendant or are under such Defendants' direct or indirect control, jointly, severally, or individually.

VI. CONSUMER CREDIT REPORTS

It is further **ORDERED AND ADJUDGED** that, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681(b)(1), any consumer reporting agency may furnish a consumer report concerning any Corporate Defendant or any Individual Defendant to Plaintiff.

VII. PLAINTIFF'S ACCESS TO BUSINESS RECORDS

It is further **ORDERED AND ADJUDGED** that each Corporate Defendant and each Individual Defendant shall allow Plaintiff's representatives, agents, and assistants access to all of Defendants' business records to inspect and copy documents so that the Commission may prepare for the preliminary injunction hearing and identify and locate assets. Accordingly, each Corporate Defendant and each Individual Defendant shall, within **forty-eight (48) hours** of service of this Order:

A. Produce to Plaintiff for inspection, inventory and/or copying, at the FTC's Headquarters Building located at 600 Pennsylvania Avenue, NW, Room 238, Washington, D.C., 20580, or at another location designated by Plaintiff, all materials related or referring, directly or indirectly, to

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Defendants' offer, sale, or provision of their Work-At-Home Opportunities and/or any materials, information, products or data related thereto, including but not limited to, work-at-home solicitations, consumer identification or financial information obtained through or as a result of mail solicitations, computers, computerized files, storage media (including but not limited to, floppy disks, hard drives, cd-roms, zip disks, punch cards, magnetic tape, backup tapes and computer chips) on which information has been saved, any and all equipment needed to read any such material, contracts, accounting data, correspondence (including but not limited to, electronic correspondence), advertisements (including but not limited to, advertisements placed on the World Wide Web), USENET Newsgroup postings, World Wide Web pages, books, written or printed records, handwritten notes, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, copies of federal, state or local business or person income or property tax returns, 1099 forms, and other documents or records of any kind that relate to any Corporate Defendant's or any Individual Defendant's business practices.

The Commission shall return materials produced by each Corporate Defendant and each Individual Defendant pursuant to this Paragraph within five (5) business days of completing said inventory and copying.

VIII. PRESERVATION OF RECORDS

It is further **ORDERED AND ADJUDGED** that Defendants are temporarily restrained and enjoined from destroying, erasing, mutilating, concealing, altering, transferring or otherwise disposing of, in any manner, directly or indirectly, any documents that relate to the business practices or business or personal finances of any Corporate Defendant or any Individual Defendant, including

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but not limited to, work-at-home solicitations, consumer identification or financial information obtained through or as a result of mail solicitations, computers, computerized filings, storage media (including but not limited to, floppy disks, hard drives, cd-roms, zip disks, punch cards, magnetic tape, backup tapes and computer chips) on which information has been saved, any and all equipment needed to read any such material, contracts, accounting data, correspondence (including but not limited to, electronic correspondence), advertisements (including but not limited to, advertisements placed on the World Wide Web), USENET Newsgroup postings, World Wide Web pages, books, written or printed records, handwritten notes, 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, 1099 forms, and other documents or records of any kind that relate to any Corporate Defendant's or any Individual Defendant's business practices.

IX. NON-DISCLOSURE OF CONSUMER LISTS

It is further **ORDERED AND ADJUDGED** that Defendants are temporarily restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, date of birth, address, telephone number, credit card number, bank account number, e-mail address, or other identifying information of any person who submitted such information to any Corporate Defendant or any Individual Defendant at any time prior to entry of this Order, in connection with the advertising, promotion, telemarketing, offering for sale, or sale of any product or service in or affecting commerce, *provided, however*, that Defendants may disclose such identifying information to a law enforcement agency, or as required by any law, regulation or court order.

X. EXPEDITED DISCOVERY

It is further **ORDERED AND ADJUDGED** that, prior to the preliminary injunction hearing or the expiration of this Temporary Restraining Order, whichever occurs first, any party may depose or subpoena any third party, pursuant to Rules 30 and 45, Fed. R. Civ. P., upon **forty-eight (48) hours'** notice. Any deposition taken pursuant to this provision is in addition to, and not subject to, the presumptive limits on depositions set forth in Rules 30 and 31, Fed. R. Civ. P. Subpoenas may be served by agents or attorneys of the Commission and any agents of any process server retained by any of the parties. Nothing in this Paragraph shall affect the Court's ability to further modify the discovery rules as appropriate.

XI. DISTRIBUTION OF ORDER BY DEFENDANTS

It is further **ORDERED AND ADJUDGED** that each Corporate Defendant and each Individual Defendant shall immediately provide a copy of this Order to each affiliate, subsidiary, division, sales entity, successor, assign, officer, director, employee, independent contractor, agent, attorney, spouse and representative of each Corporate Defendant and each Individual Defendant, and shall, within **ten (10) days** from the date of this Order, provide the Commission with a sworn statement that each Corporate Defendant and each Individual Defendant has complied with this Paragraph of the Order, which statement shall include the names and addresses of each such person or entity who received a copy of the Order.

XII. SERVICE OF ORDER BY FAX

It is further **ORDERED AND ADJUDGED** that copies of this Order may be served by any means, including facsimile transmission, upon any financial institution or other entity or person that

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may have possession, custody, or control of any documents or assets of any Corporate Defendant or any Individual Defendant, or that may otherwise be subject to any Paragraph of this Order. Service upon any branch or office of any financial institution shall effect service upon the entire financial institution. Pursuant to Rule 4(c)(2), Fed. R. Civ. P., this Order and the initial papers filed in this matter may be served by agents or attorneys of the Commission and by agents of any process server retained by the Commission.

XIII. PAPERS ON MOTION FOR PRELIMINARY INJUNCTION

It is further **ORDERED AND ADJUDGED** that, pursuant to Rule 6(d), Fed. R. Civ. P., memoranda and affidavits, if any, supporting or opposing the motion for preliminary injunction shall be served not later than one day before the preliminary injunction hearing.

XIV. DURATION OF TEMPORARY RESTRAINING ORDER

It is further **ORDERED AND ADJUDGED** that the Temporary Restraining Order granted herein shall expire within **ten (10) days** of the date of this Order, unless, within such time, the Order, for good cause shown, is extended for an additional period not to exceed **ten (10) days**, or unless it is further extended pursuant to Rule 65, Fed. R. Civ. P.

XV. ORDER TO SHOW CAUSE REGARDING PRELIMINARY INJUNCTION

It is further **ORDERED AND ADJUDGED** that, pursuant to Rule 65(b), Fed. R. Civ. P., Defendants shall appear before this Court on **December 30, 2003, at 10:00 a.m.**, to show cause why this Court should not enter a preliminary injunction, pending final disposition on the Complaint against Defendants, enjoining them from further violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), continuing the freeze of their assets, and imposing such additional relief as may be

appropriate.

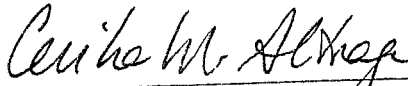
XVI. SERVICE UPON PLAINTIFF

It is further **ORDERED AND ADJUDGED** that, with regard to any correspondence or pleadings related to this Order, service on the Commission shall be performed by overnight delivery to the attention of Colleen Robbins, Division of Marketing Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Room H-238, Washington, D.C. 20580, (202) 326-2548, or by facsimile transmission to (202) 326-3395.

XVII. RETENTION OF JURISDICTION

It is further **ORDERED AND ADJUDGED** that this Court shall retain jurisdiction of this matter for all purposes.

DONE AND ORDERED in Chambers at Miami, Florida, this 11 day of December, 2003.



CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

Copies furnished to:

- (1) Magistrate Judge Ted E. Bandstra
- (2) Colleen B. Robbins, Esq. & Brian Huseman, Esq. (Counsel for Plaintiff)
- (3) Jason Lunan (Defendant)
15880 NE 16th Avenue
Miami, FL 33162
- (4) Judith Livingston (Defendant)
7817 Alhambra Blvd.
Miramar, FL 33023
- (5) Sunshine Advertising & Marketing, Inc. (Defendant)
19335 NW 2nd Avenue
Miami, FL 33169
- (6) Ray Thompson (Defendant)
7817 Alhambra Blvd.
Miramar, FL 33023
- (7) Vinyard Enterprises, Inc.

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7817 Alhambra Blvd.
Miramar, FL 33023