

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 03-23291-CV-(Altonaga/Bandstra)

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

VINYARD ENTERPRISES, INC., also d/b/a
COMFORT CASTLE ENTERPRISES, a
Florida corporation,

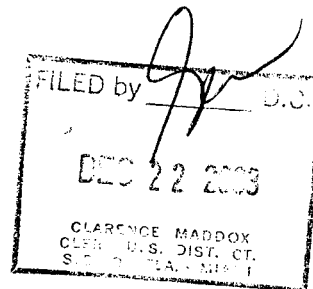
SUNSHINE ADVERTISING & MARKETING,
INC., also d/b/a DYNAMIC DATA
SERVICES, a Florida corporation,

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.



**STIPULATED PRELIMINARY INJUNCTION WITH ASSET FREEZE
AND OTHER EQUITABLE RELIEF AS TO DEFENDANTS VINYARD ENTERPRISES,
INC., SUNSHINE ADVERTISING & MARKETING, INC.,
RAY A. THOMPSON, JUDITH LIVINGSTON AND JASON LUNAN**

Plaintiff Federal Trade Commission ("Commission" or "FTC"), pursuant to Section 13(b)
of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), having filed its complaint

for injunctive and other equitable relief, including consumer redress, and the Court having issued an *ex parte* Temporary Restraining Order, considered the pleadings evidence, memoranda of law and argument of counsel of the parties, finds that:

1. This Court has jurisdiction over the subject matter of this case, and there is good cause to believe it will have jurisdiction over all parties hereto, pursuant to 15 U.S.C. §§ 45(a) and 53(b), and 28 U.S.C. §§ 1331, 1337(a) and 1345. The Complaint states a claim upon which relief may be granted under Sections 5 and 13(b) of the FTC Act, 15 U.S.C. §§ 45 and 53(b).
2. There is good cause to believe that Defendants have engaged in and are likely to engage in acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and that the Commission has therefore demonstrated a substantial likelihood of prevailing on the merits of this action.
3. Unless the Court continues the asset freeze, there is a substantial likelihood that Defendants will conceal, dissipate, or otherwise divert their assets, and defeat the Court's ability to grant effective final relief in the form of equitable monetary relief for consumers, if applicable. An asset freeze is reasonably necessary in order to preserve the possibility of complete and meaningful relief at the conclusion of this litigation.
4. Counsel for Defendants was retained in this matter on December 17, 2003. Counsel for Defendants, notwithstanding entry of this Order, believes that Sunshine Advertising & Marketing, Inc., also d/b/a Dynamic Data Services ("Sunshine") may be operating a legitimate business at this time. Counsel for the FTC agree to receive evidence pertaining to the possible legitimacy of Sunshine's current operations. Notwithstanding this agreement to entry of this Stipulated Preliminary Injunction, Counsel for Defendants retains the right to file a motion

seeking modification for Sunshine. In addition, nothing shall preclude the parties from stipulating to modify this order upon review of further evidence.

5. Weighing the equities and considering the Commission's likelihood of success, a Preliminary Injunction with an asset freeze and other equitable relief is in the public interest.

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

ORDER

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 consumer names, inventory, checks, notes, accounts, credits, receivables, funds, and all cash, wherever located.

B. "Corporate Defendants" means Vinyard Enterprises, Inc., also d/b/a Comfort Castle Enterprises, and any other d/b/a of Vinyard Enterprises, Inc.; Sunshine Advertising & Marketing, Inc., also 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: (a) 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 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 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, 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 or services.

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

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

IT IS THEREFORE ORDERED that in connection with the advertising, promotion, offering or sale of goods or services in or affecting commerce, Defendants are hereby preliminarily 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 that in connection with the offering for sale or sale of work-at-home opportunities, Defendants are hereby preliminarily 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 not 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 that Defendants are hereby preliminarily 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 Defendant or any Individual Defendant 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 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 continue to:

A. Hold and retain within its control and prohibit any Defendant from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, 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 thirty (30) 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 (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 Fed. R. Civ. P. 45, and notwithstanding Fed. R. Civ. P. 26, 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 Defendants' and any Individual Defendants' assets, and compliance with this Order. Subpoenas may be served by agents or attorneys of the Commission and by agents of any process server retained by the Commission.

V. FINANCIAL STATEMENTS

IT IS FURTHER ORDERED that each Corporate Defendant and each Individual Defendant

A. Shall, to the extent not already provided pursuant to the Temporary Restraining Order, within thirty (30) days of the signing of this Order, prepare and deliver to counsel for Plaintiff, as provided in Paragraph XI 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 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 the Temporary Restraining Order;

B. Shall have the continuing duty to immediately prepare and deliver to counsel for Plaintiff, as provided in Paragraph XI of this Order, updated versions of such financial statements reflecting any material change to any such financial statement.

C. Such financial statements and such updated versions of 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 that pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(1), any consumer reporting agency may furnish a consumer report concerning any Corporate Defendant or any Individual Defendant to Plaintiff.

VII. PRESERVATION OF RECORDS

IT IS FURTHER ORDERED that Defendants are hereby preliminarily 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, 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 personal income or property tax returns, 1099 forms, and other documents or records of any kind that relate to any Corporate Defendant or any Individual Defendant's business practices.

VIII. NON-DISCLOSURE OF CONSUMER LISTS

IT IS FURTHER ORDERED that Defendants are preliminarily 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, email 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.

IX. DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED 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 thirty (30) days from the date of entry 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.

X. SERVICE OF ORDER BY FAX

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission, upon any financial institution or other entity or person that 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 Fed. R. Civ. P. 4(c)(2), 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.

XI. SERVICE UPON PLAINTIFF

IT IS FURTHER ORDERED, 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, DC 20580, (202) 326-2548, or by facsimile transmission to (202) 326-3395.


XII. RETENTION OF JURISDICTION

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

SO ORDERED, this 22 day of December, 2003, at 3:15 p.m.

Catherine M. Althoff
United States District Judge


It is so stipulated:



Barry G. Roderman
Attorney for Defendants Vinyard
Enterprises, Inc., Sunshine Advertising &
Marketing, Inc., Ray A. Thompson, Judith
Livingston, and Jason Lunan
Barry G. Roderman & Associates, P.A.
888 East Las Olas Blvd., Suite 601
Ft. Lauderdale, Fl. 33301
(954) 761-8810

Dated: 12/18/03

It is so stipulated:



Colleen B. Robbins
Brian Huseman
Attorneys for Plaintiff
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580
(202) 326-2548

Dated: 19 Dec. 2003