

~~COPY FOR JUDGE~~

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

FEDERAL TRADE COMMISSION,  
  
Plaintiff,  
  
v.  
  
VINYARD ENTERPRISES, INC., *et al.*,  
  
Defendants.

FILED by *[Signature]* D.C.  
DEC 17 2004  
CLARENCE MADDOX  
CLERK U.S. DIST. CT.  
S.D. OF FLA. MIAMI

**STIPULATED PERMANENT INJUNCTION AND FINAL JUDGMENT ORDER**

Plaintiff, the Federal Trade Commission ("FTC"), filed a Complaint on December 10, 2003 for permanent injunction and other relief, including restitution to consumers, pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), charging Defendants Vinyard Enterprises, Inc. (also doing business as Comfort Castle Enterprises), Sunshine Advertising & Marketing, Inc. (also doing business as Dynamic Data Services), Ray A. Thompson (also doing business as Dynamic Data Services, Dectura Direct Service, and D.D. Service), Judith Livingston (also doing business as Direct Business Services and Dynamic Data), and Jason Lunan (also doing business as Dynamic Data Express and Comfort Castle Associates), with engaging in deceptive acts and practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45. On Plaintiff's motion, supported by a memorandum of law, declarations, and other exhibits, the Court issued an *ex parte* temporary restraining order including an asset freeze. The parties stipulated to the entry of a Preliminary Injunction Order ("Preliminary Injunction") which the Court entered on December 22, 2003. Plaintiff and Defendants have now agreed to entry of this Stipulated Final Order For Permanent Injunction, Restitution, and Other Equitable

54  
*[Signature]*

Relief to resolve all matters in dispute between them in this action.

The FTC and Defendants have consented to entry of this Order without trial or adjudication of any issue of law or fact herein. **NOW, THEREFORE**, Defendants and the FTC having requested the Court to enter this Order, it is hereby ordered, adjudged, and decreed:

**FINDINGS**

1. This Court has jurisdiction of the subject matter of this case and over all parties hereto.
2. The Complaint states a claim upon which relief may be granted against Defendants under Sections 5 and 13(b) of the FTC Act, 15 U.S.C. §§ 45 and 53(b).
3. Venue is proper as to all parties in the Southern District of Florida pursuant to 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b) and (c).
4. The activities of Defendants are in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
5. Entry of this Order is in the public interest.
6. This Order does not constitute and shall not be interpreted to constitute either an admission by Defendants or a finding by the Court that Defendants have engaged in any violations of law.
7. Defendants have waived all rights to seek judicial review or otherwise challenge or contest the validity of this Order, and further waive and release any claim Defendants may have against the FTC and its employees and agents, including any rights that may arise for attorney fees or other costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, *amended by* Pub. L. 104-121, 110 Stat. 847, 863-64 (1996).
8. The parties shall each bear their own costs and attorneys' fees incurred in this

action.

### DEFINITIONS

1. "Asset" or "Assets" means any legal or equitable interest in, right to, or claim to, any real and/or personal property, including without limitation, chattels, goods, instruments, equipment, fixtures, general intangibles, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, contracts, receivables, shares of stock, and all cash, wherever located.
2. "Assisting others" means: (1) performing customer service functions including, but not limited to, receiving or responding to consumer complaints, receiving identifying and financial information from consumers, and communicating with consumers; (2) developing, providing or arranging for the development or provision of sales scripts or any other marketing material; (3) providing names of, or arranging for the provision of names of, potential customers; or (4) performing marketing services of any kind.
3. "Consumer" means a purchaser or customer, or potential purchaser or customer.
4. "Business Venture" means any written or oral business arrangement, however denominated, whether or not covered by the Franchise Rule, which consists of the payment of any consideration for:
  - a. The right or means to offer, sell, or distribute goods or services (whether or not identified by a trademark, service mark, trade name, advertising, or other commercial symbol); and
  - b. The promise or provision of assistance to any person in connection with: (1) the establishment, maintenance, or operation of a new business; or (2) the entry by an existing business into a new line or type of business, including, but not limited to, referrals to one or more persons providing location services.

5. "Defendants" means, individually, collectively, or in any combination: (a) each Corporate Defendant; and (b) each Individual Defendant.

6. "Individual Defendant" or "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.

7. "Corporate Defendant" or "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.

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

9. "Financial Institution" means any bank, savings and loan institution, credit union, or any financial depository of any kind, including, but not limited to, any brokerage house, trustee, broker-dealer, escrow agent, title company, commodity trading company, or precious metal dealer.

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

11. "Person" means a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.

12. "Work at home opportunity" means any program, plan, product, or service that represents that it enables a participant or purchaser to earn money while working at home.

## **ORDER**

### **I. BAN ON SALE OF WORK AT HOME OPPORTUNITIES**

**IT IS THEREFORE ORDERED** that Defendants are permanently restrained and enjoined from engaging or participating in the marketing, advertising, promotion, offering for sale, or sale of work at home opportunities.

### **II. PROHIBITIONS AGAINST MISREPRESENTATIONS**

**IT IS FURTHER ORDERED** that Defendants, their agents, servants, and employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, in connection with the advertising, offering for sale, or sale of business ventures, are hereby permanently 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, to any consumer or entity, including, but not limited to:

- A. That consumers are likely to earn a substantial amount of money;
- B. The amount of earnings, income, sales volume, or profits that a consumer is likely to achieve;
- C. The amount of earnings, income, sales volume, or profits that consumers have

achieved in the past;

D. That Defendants will pay consumers for each item consumers mail;

E. The length of time that it may or will take to recoup the purchase price or investment;

F. The nature of any business venture offered or sold; and

G. Any material term, condition, or limitation of the transaction or about the use of any offered good or service.

### **III. PROHIBITION 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 any business venture, Defendants, their agents, servants, and employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, are hereby permanently 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 any false and misleading representations prohibited by Paragraph II above.

### **IV. MONETARY JUDGMENT**

**IT IS FURTHER ORDERED** that:

A. Judgment in the amount of \$4,120,504.00 is entered against Defendants.

B. Judgment shall be partially satisfied by the release of the payment previously provided by Defendants to the Commission of \$110,000.00, which release is effective

upon the Court's execution of this Order.

C. Upon payment provided in this Paragraph, the remainder of the judgment shall be suspended subject to the conditions set forth in Subparagraph D of this Paragraph.

D. The Commission's agreement to this Final Order is expressly premised upon the truthfulness, accuracy and completeness of Defendants' sworn financial statements and other supporting financial documents submitted to the Commission on January 19, 2004, March 18, 2004, and April 28, 2004, which include material information upon which the Commission relied in negotiating and agreeing to this Final Order. If, upon motion by the Commission, this Court finds that Defendants have failed to disclose any material asset or materially misstated the value of any asset in the financial statements and related documents described above, or have made any other material misstatements or omissions in the financial statements and related documents described above, then this Final Order shall be reopened and suspension of the judgment shall be lifted for the purpose of requiring payment of monetary relief in the amount of the judgment set forth in Subparagraph A of this Paragraph, less the sum of any amounts paid to the Commission pursuant to Subparagraph B of this Paragraph. *Provided, however,* that in all other respects this Final Order shall remain in full force and effect, unless otherwise ordered by the Court.

E. In accordance with 31 U.S.C. § 7701, Defendants are hereby required, unless they have done so already, to furnish to the Commission their respective taxpayer identifying numbers (social security number or employer identification number) which shall be used for purposes of collecting and reporting on any delinquent amount arising out of Defendants' relationship with the government.

F. Defendants are further required, unless they have done so already, to provide the Commission with clear, legible and full-size photocopies of all valid driver's licenses they

possess, which will be used for reporting and compliance purposes.

G. Defendants agree that the facts as alleged in the Complaint filed in this action shall be taken as true solely for the purpose of a nondischargeability complaint in any bankruptcy proceeding.

H. Proceedings instituted under this Paragraph are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this Final Order.

#### **V. COMMISSION'S USE OF MONETARY JUDGMENT**

**IT IS FURTHER ORDERED** that all funds paid pursuant to Paragraph IV of 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 apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Defendants shall have no right to challenge the Commission's choice of remedies under this Paragraph.

#### **VI. ASSET FREEZE**

**IT IS FURTHER ORDERED** that the freeze against the assets of Defendants pursuant to Paragraph IV of the Preliminary Injunction, shall be lifted as of the date that the Court signs this Order.



## **VII. PROHIBITION ON DISCLOSING CUSTOMER INFORMATION**

**IT IS FURTHER ORDERED** that Defendants, their agents, servants, and employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, are hereby permanently restrained and enjoined from:

A. Selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, social security number, or other identifying information of any person who purchased or paid to participate in a work at home opportunity at any time prior to the date this Order is entered; and

B. Benefitting from or using the name, address, telephone number, credit card number, bank account number, date of birth, email address, or other identifying or financial information of any person who submitted this information to Defendants as a result of, or otherwise related to, the activities alleged in the FTC's Complaint;

*Provided, however,* that Defendants may disclose identifying information to a law enforcement agency or as required by any law, regulation, or court order.

## **VIII. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS**

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

## **IX. RECORD KEEPING**

**IT IS FURTHER ORDERED** that, for a period of six (6) years from the date of entry of this Order, Corporate Defendants and Individual Defendants (for any business where an

Individual Defendant is the majority owner of the business or directly or indirectly manages or controls the business) and their agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from failing to create and retain the following records:

- 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, telephone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;
- D. Complaints and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests;
- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials; and
- F. All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, copies of acknowledgments of receipt of this Order, required by Paragraph VIII, and all reports submitted to the FTC pursuant to Paragraph X.

#### **X. COMPLIANCE REPORTING BY DEFENDANTS**

**IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this

Order may be monitored:

- A. For a period of three (3) years from the date of entry of this Order,
  1. Each Individual Defendant shall notify the FTC of the following:
    - a. Any changes in the Individual Defendant's residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
    - b. Any changes in employment status (including self-employment) of the Individual Defendant, and any change in the ownership of the Individual Defendant in 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 the Individual Defendant is affiliated with, employed by, creates or forms, or performs services for; a statement of the nature of the business; and a statement of the Individual Defendant's duties and responsibilities in connection with the business or employment; and
    - c. Any changes in the Individual Defendant's name or use of any aliases or fictitious names.
  2. Each Corporate Defendant shall notify the Commission of any change in corporate structure and each Individual Defendant shall notify the Commission regarding any change in a business entity that the Individual Defendant directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order, including, but not limited to, a dissolution, assignment, sale, merger, or other action

that would result in the emergence of a successor corporation; 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 any Defendant learns less than thirty (30) days prior to the date such action is to take place, Defendant 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, each Defendant shall provide a written report to the FTC, sworn to under penalty of perjury under the laws of the United States, setting forth in detail the manner and form in which they have complied and are complying with this Order. This report shall include, but not be limited to:

(1) For each Individual Defendant:

- a. The then-current residence address, mailing addresses, and telephone numbers of the Individual Defendant;
- b. The then-current employment and business addresses and telephone numbers of the Individual Defendant, a description of the business activities of each such employer or business, and the title and responsibilities of the Individual Defendant, for each such employer or business; and
- c. Any other changes required to be reported under subparagraph. A of this Paragraph.

(2) For all Defendants:

- a. A copy of each acknowledgment of receipt of this Order, obtained pursuant to Paragraph VIII;
- b. Any other changes required to be reported under subparagraph A of this Paragraph.

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

Associate Director for Marketing Practices  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. 238  
Washington, DC 20580

Re: FTC v. Vinyard Enterprises, Inc., et al., Civil Action No. 03-23291 SDFL.

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

#### **XI. 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, each Defendant shall submit additional written reports, sworn to or affirmed 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 such Defendant's possession or direct or indirect control to inspect the business operation.

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

- I. 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: Defendants, Defendants' employees, or any other entity managed or controlled in whole or in part by Defendants, without the necessity of identification or prior notice; and

C. Each Defendant shall permit representatives of the FTC 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 FTC'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)).

## **XII. DISTRIBUTION OF ORDER BY DEFENDANTS**

**IT IS FURTHER ORDERED** that, for a period of three (3) years from the date of entry of this Order, Defendants shall deliver copies of the Order as directed below:

- A. Corporate Defendants: Each Corporate Defendant must deliver a copy of this Order to all of its principals, officers, directors, and managers. Each Corporate Defendant also must deliver copies of this Order to all of its employees, agents, and representatives who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within (5) days of service of this Order upon the Corporate Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities.
- B. Individual Defendants as Control Persons: For any business that each Individual

Defendant controls, directly or indirectly, or in which the Individual Defendant has a majority ownership interest, the Individual Defendant must deliver a copy of this Order to all principals, officers, directors, and managers of that business.

Each Individual Defendant must also deliver copies of this Order to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within (5) days of service of this Order upon the Individual Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities.

- C. Individual Defendants as employees or non-control persons: For any business where each Individual Defendant is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, the Individual Defendant must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.
- D. Each Corporate Defendant and each Individual Defendant 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 Paragraph.

### **XIII. RETENTION OF JURISDICTION**

**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

### **XIV. ENTRY OF THIS JUDGMENT**

**IT IS FURTHER ORDERED** that, as there is no just reason for delay of entry of this judgment, pursuant to Fed. R. Civ. P. 54(b), the Clerk shall enter this Final Order immediately.

**XV. COMPLETE SETTLEMENT**

The parties hereby consent to entry of the foregoing Final Order which shall constitute a final judgment and order in this matter. The parties further stipulate and agree that the entry of the foregoing Final Order shall constitute a full, complete, and final settlement of this action.

SO ORDERED, this 14 day of December, 2004.

CECILIA ALTONAGA / TBO BANDSTRA  
U.S. DISTRICT JUDGE/U.S. MAGISTRATE J.

SO STIPULATED:

For Plaintiff:

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