

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
Case No. 1:06-CV-2939-CAP

FEDERAL TRADE COMMISSION,)
))
Plaintiff,)
))
v.)
))
HOLIDAY ENTERPRISES, INC.,)
a Delaware corporation,)
))
HOLIDAY INK, INC.,)
a Delaware corporation,)
))
HOLIDAY INK HALF PRICE, INC.,) PRELIMINARY
a Delaware corporation,) INJUNCTION
) WITH ASSET FREEZE
RICHARD J. MORRELL, a/k/a Nick Cascario,) AND OTHER INJUNCTIVE
R. J. Morrell, and Nick Morrell,) RELIEF
individually, and as owner,)
officer, director, or manager of)
one or more of the above-listed)
corporations, and)
))
RICHARD J. CASCARIO, a/k/a Rick)
Cascario and Richard J. Morrell,)
Jr., individually, and as owner,)
officer, director, or manager of)
one or more of the above listed)
corporations,)
))
Defendants,)
))
and)
))
N.M.C. PROPERTIES, INC.,)
a Delaware Corporation,)
))
Relief Defendant.)

Plaintiff Federal Trade Commission ("Commission") having filed its complaint for a permanent injunction and other relief, including consumer redress, in this matter pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57, and the trade regulation rule on Disclosure Requirements and Prohibitions Concerning Franchises and Business Opportunity Ventures, 16 C.F.R. Part 436 ("Franchise Rule"), and having moved for a Temporary Restraining Order ("TRO") pursuant to Rule 65 of the Federal Rules of Civil Procedure, and the Court having granted the Motion for Temporary Restraining Order and other relief and having entered an Order to Show Cause Why a Preliminary Injunction Should Not Issue, the Court now finds that:

1. This Court has jurisdiction over the subject matter of this case and all the parties hereto. Venue in the Northern District of Georgia is proper.

2. Good cause exists to believe that the Commission will ultimately succeed in establishing that the above-named Defendants have engaged in and are likely to engage in acts and practices that violate Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a), and the Franchise Rule, 16 C.F.R. Part 436, and that the Commission is likely to prevail on the merits.

3. Good cause exists to believe that immediate and irreparable damage will occur to this Court's ability to grant effective final relief for consumers in the form of monetary redress from the sale, destruction, transfer, concealment or other disposition of their assets or corporate records unless the Defendants are restrained and enjoined by order of this Court.

4. Weighing the equities and considering the Commission's likelihood of ultimate success, a preliminary injunction with asset freeze and other equitable relief is in the public interest.

5. No security is required of any agency of the United States for issuance of a preliminary injunction. Fed. R. Civ. P. 65(c).

6. On or about September 9, 2006 Defendant N.M.C. Properties, Inc. filed a voluntary petition for relief under the reorganization provisions of Chapter 11 of the Bankruptcy Code, Title 11 U.S.C. 101 et seq., in the United States Bankruptcy Court for the Northern District of Georgia, Case No. 06-70647. Pursuant to 11 U.S.C. §§ 1106 and 1107, defendant-debtor N.M.C. remains in possession of its business and property as debtors-in-possession.

7. The Commission's action against N.M.C. and all other defendants, including the enforcement of a judgment other than a

money judgment, is not stayed by 11 U.S.C. § 362(a)(1), (2), (3) or (6) because it is an exercise of the Commission's police or regulatory power as a governmental unit pursuant to 11 U.S.C. § 362(b)(4). Thus, the district court case falls within an exemption to the automatic stay.

Definitions

For the purpose of this Preliminary Injunction, the following definitions shall apply:

1. **"Asset"** or **"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, lists of consumer names, accounts, credits, premises, receivables, funds, and cash, wherever located, whether in the United States or abroad, and shall include both existing assets and assets acquired after the date of entry of this Order.

2. **"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. 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. **"Corporate Defendants"** means Holiday Enterprises, Inc., Holiday Ink, Inc., Holiday Ink Half Price, Inc., and their successors, assigns, affiliates or subsidiaries;

4. **"Defendants"** means (a) each Corporate Defendant; (b) each Individual Defendant by whatever names each may be known; (c) any person insofar as he or she is acting in the capacity of an officer, agent, servant, employee or attorney of any Corporate Defendant or any Individual Defendant; and (d) any person acting in active concert or participation with any of the foregoing who receives actual notice of this Order by personal service or otherwise. See Fed. R. Civ. P. 65(d).

5. **"Individual Defendants"** means Richard J. Morrell and Richard J. Cascario and by any other names each may be known.

6. **"Relief Defendant"** means N.M.C. Properties, Inc.

7. "**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 of a document is a separate document within the meaning of the term.

8. "**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, money market or mutual fund, telephone or common carrier, credit card company, storage company, trustee, broker-dealer, escrow agent, title company, commodity trading company, or precious metal dealer, or any other person, partnership, corporation, or other legal entity maintaining or having control of any records, accounts or other assets owned directly or indirectly, of record or beneficially, by any Defendant, including accounts or other assets that any Defendants may control by virtue of being a signatory on said accounts.

9. "**Person**" means a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, or

cooperative, or any other group or combination acting as an entity.

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

11. The terms "and" and "or" in this Order shall be construed conjunctively or disjunctively as necessary, to make the applicable sentence or phrase inclusive rather than exclusive.

ORDER

I. VIOLATIONS OF SECTION 5 OF THE FTC ACT PROHIBITED

IT IS THEREFORE ORDERED that, in connection with the advertising, promoting, offering for sale or selling of any business venture, including a franchise, or location services, Defendants are hereby preliminarily 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 such business venture or services, including, but not limited to, the following:

- A. that consumers who purchase Defendants' business ventures or location services are likely to earn substantial income, are likely to earn a specific amount or range of money, are likely to have a certain

number of purchases, or are likely to recoup or earn back their investment within a specified time period;

- B. that Defendants will provide purchasers with profitable, high-traffic, or other locations in which to place the purchasers' product, including but not limited to ink cartridges and display racks; and
- C. that certain company-selected references have purchased the Defendants' business opportunities or will provide reliable descriptions of experiences with these business opportunities.

II. VIOLATIONS OF THE FRANCHISE RULE PROHIBITED

IT IS FURTHER ORDERED that Defendants are hereby preliminarily restrained and enjoined from violating or assisting others to violate any provisions of the Franchise Rule, 16 C.F.R. Part 436, including, but not limited to, the following:

- A. failing to provide prospective purchasers with a complete and accurate disclosure document, as prescribed by the Franchise Rule, 16 C.F.R. § 436.1(a);
- B. failing to provide prospective purchasers with an earnings claim document, as prescribed by the Franchise Rule, 16 C.F.R. § 436.1(b), (c), and (e);
- C. 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 the Defendants to have achieved the same or better results, as required by the Franchise Rule, 16 C.F.R. § 436.1(e);

- D. 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),(c), and (e);
- E. 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 the prospective purchasers;
- F. failing to provide material which constitutes a reasonable basis for any earnings claim to prospective purchasers, the Commission, or its staff upon reasonable demand; and
- G. making claims or representations to prospective purchasers that are contradictory to the information required to be disclosed by Section 436.1 of the Rule.

III. PROHIBITION AGAINST PROVIDING OTHERS WITH THE MEANS AND INSTRUMENTALITIES TO VIOLATE THE FTC ACT OR THE FRANCHISE RULE

IT IS FURTHER ORDERED that Defendants, and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order, 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 the representations contained in Paragraphs I and II above, in connection with the marketing, advertising, promotion, offering for sale, sale or provision of any business venture or location services.

IV. ASSET FREEZE

IT IS FURTHER ORDERED that the Defendants are hereby preliminarily restrained and enjoined from:

- A. Transferring, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, or otherwise disposing of any assets, wherever located, that are (a) owned or controlled, in whole or in part, by any Defendant; (b) titled or held in the name, singly or jointly, of any Defendant; (c) in the actual or constructive possession

of any Defendant; or (d) 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 with, any Defendant including, but not limited to, any assets held by or for any Defendant at any bank or savings and loan institution, or with any financial institution, as defined above, or other depository of any kind;

- B. Opening or causing to be opened any safe deposit boxes or other storage facility or container titled in the name of or subject to access by any Defendant;
- C. Incurring charges or cash advances on any credit card, debit card, or checking card issued in the name, singly or jointly, of any Defendant; and
- D. Securing a loan with or incurring a lien on the real property, the personal property, or other asset in the name, singly or jointly, of any Defendant.

Provided, however, that the assets affected by this Section shall include: (1) all of the assets of the Defendants existing as of the date this Order is entered; and (2) all assets obtained after the date this Order is entered that in any way relate to advertising, marketing, promoting, offering to sell, or selling

business opportunities;

Provided, also, that Defendant Richard J. Cascario is permitted to withdraw from his Wachovia checking account that was active on December 7, 2006, a one time amount of \$1,500;

Provided, also, that all Defendants are further required to submit to the Commission within one week of receipt a copy of any and all paychecks and other evidences of payments received by any Defendant during the pendency of this Order;

Provided, also, that this Section shall not apply to the Relief Defendant so long as the Relief Defendant remains in bankruptcy; if the bankruptcy case is withdrawn, dismissed, or otherwise closed, this Section shall immediately apply to all Assets held by the Relief Defendant.

V. DUTIES OF THIRD-PARTY ASSET HOLDERS

IT IS FURTHER ORDERED that any financial institution, business entity, or person that holds, controls or maintains custody of any account or asset titled in the name of, held for the benefit of, or otherwise under the control of any Defendant, or has held, controlled or maintained custody of any such account or asset at any time since January 1, 2003, shall:

- A. Prohibit any person or entity from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting,

selling, or otherwise disposing of any such asset except as directed by further order of the Court; provided, however, if a purchase agreement is entered for the sale of any real property of any Defendant, the sale may proceed with the condition that any monetary proceeds due to any Defendant will be deposited by the closing attorney into a bank account designated by the FTC, which has been frozen by this Order.

- B. Deny any person or entity access to any safe deposit box or other storage facility that is:
 - 1. titled in the name of any Defendant, either individually or jointly; or
 - 2. otherwise held for the benefit of or subject to access by any Defendant.

- C. Provide counsel for the Commission, to the extent not previously provided, within five (5) 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, or held on behalf of, or for the benefit of, any Defendant;
 - 2. the balance of each such account, or a description

of the nature and value of such asset as of the time 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 or other storage facility or container that is either titled in the name, individually or jointly, of any Defendant or is otherwise subject to access by any Defendant;

- D. Upon the request by the Commission, promptly provide, within ten (10) business days of receipt of the request, the Commission with copies of all records or other documentation pertaining to such account or asset, including but not limited to originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs; and
- E. Cooperate with all reasonable requests of the

Commission relating to implementation of this Order, including the transferring of funds.

Provided, however, that this Section shall not apply to the Relief Defendant so long as the Relief Defendant remains in bankruptcy; if the bankruptcy case is withdrawn, dismissed, or otherwise closed, this Section shall immediately apply to the Relief Defendant.

VI. ACCOUNTING PROVISIONS

IT IS FURTHER ORDERED that, within three (3) calendar days after service of this Order, if not already provided, each Corporate, Individual, and Relief Defendant shall provide to counsel for the FTC:

A. A completed financial statement accurate as of the date of entry of this Order, in the form provided as Attachment A for individuals and Attachment B for businesses, as the case may be, signed under penalty of perjury; and

B. A complete and accurate list of all Corporate Defendants' customers that purchased a Holiday Enterprises, Holiday Ink, or Holiday Ink For Half Price business venture, or any other substantially similar products, including, if available, the customer's name, address, telephone number, electronic mail address, date of purchase, type of product purchased, and the amount paid for the purchase.

VII. FOREIGN ASSET REPATRIATION

IT IS FURTHER ORDERED that within three (3) business days following the service of this Order, each Defendant and Relief Defendant shall, if not already done so:

- A. Provide the Commission with a full accounting of all funds, documents, and assets located outside of the United States which are (1) titled in the name, individually or jointly, of any Defendant or Relief Defendant; or (2) held by any person or entity for the benefit of any Defendant or Relief Defendant; or (3) under the direct or indirect control, whether jointly or singly, of any Defendant or Relief Defendant;
- B. Transfer to the territory of the United States all funds, documents, and assets located outside of the United States which are (1) titled in the name individually or jointly of any Defendant; or (2) held by any person or entity for the benefit of any Defendant; or (3) under any Defendants' direct or indirect control, whether jointly or singly;
- C. Hold and retain all repatriated funds, documents, and assets, and prevent any transfer, disposition, or dissipation whatsoever of any funds or assets, except as required by this Order; or for any funds, documents,

- or assets held by or in the name of any Defendant; and
- D. Provide the Commission access to all records of funds, documents, or assets of any Defendant or Relief Defendant held by financial institutions or other entities or individuals located outside the United States by signing a Consent to Release of Financial Records, to be supplied by Plaintiff.

Provided, however, that Sub-sections B and C shall not apply to the Relief Defendant so long as the Relief Defendant remains in bankruptcy; if the bankruptcy case is withdrawn, dismissed, or otherwise closed, Sub-sections B and C shall immediately apply to the Relief Defendant.

VIII. INTERFERENCE WITH REPATRIATION

IT IS FURTHER ORDERED that the Defendants are hereby preliminarily restrained and enjoined from taking any action, directly or indirectly, which may result in the encumbrance or dissipation of funds, documents, or assets held outside of the United States, or in the hindrance of the repatriation required by the preceding Section of this Order, including but not limited to:

- A. Sending any statement, letter, fax, e-mail or wire transmission, telephoning or engaging in any other act, directly or indirectly, that results in a determination by a foreign

trustee or other entity that a "duress" event has occurred under the terms of a foreign trust agreement until such time that all assets have been fully repatriated pursuant to the preceding Section of this Order; and

B. Notifying any trustee, protector or other agent of any foreign trust or other related entities of either the existence of this Order, or of the fact that repatriation is required pursuant to a Court Order, until such time that all assets have been fully repatriated pursuant to the preceding Section of this Order.

Provided, however, that this Section shall not apply to the Relief Defendant so long as the Relief Defendant remains in bankruptcy; if the bankruptcy case is withdrawn, dismissed, or otherwise closed, this Section shall immediately apply to the Relief Defendant.

IX. MAINTENANCE OF RECORDS

IT IS FURTHER ORDERED that all Defendants and Relief Defendant, and their officers, agents, servants, employees, and attorneys, and those in active concert or participation with them who receive actual notice of this Order, are hereby preliminarily restrained and enjoined from directly or indirectly destroying, mutilating, erasing, altering, concealing or disposing of, in any manner, directly or indirectly, any documents that relate to the

business practices or business or personal finances of any Defendant or Relief Defendant.

X. CREATION OF OTHER BUSINESSES

IT IS FURTHER ORDERED that Defendants are hereby preliminarily restrained and enjoined from creating, operating, or controlling any business entity, whether newly-formed or previously inactive, including any partnership, limited partnership, joint venture, sole proprietorship, or corporation, without first providing the Commission with a written statement disclosing: (1) the name of the businesses entity; (2) the address and telephone number of the business entity; (3) the names of the business entity's officers, directors, principals, managers, and employees; and (4) a detailed description of the business entity's intended activities.

XI. BANKRUPTCY PETITIONS

IT IS FURTHER ORDERED that, in light of the preliminary injunction and asset freeze, the Corporate and Individual Defendants are hereby prohibited from filing a petition for relief under the United States Bankruptcy Code, 11 U.S.C. § 101 et seq., without prior permission from this Court.

XII. 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 Defendants or Relief Defendant, or that may be subject to any provision of this Order.

XIII. CONSUMER CREDIT REPORTS

IT IS FURTHER ORDERED that, pursuant to Section 604 of the Fair Credit Reporting Act, 15 U.S.C. §1681b, any consumer reporting agency may furnish the Commission with a consumer report concerning any Defendant.

XIV. SERVICE ON THE COMMISSION

IT IS FURTHER ORDERED that, with regard to any correspondence, pleadings, or notifications related to this Order, service on the Commission shall be performed by personal or facsimile delivery (but not delivery by U.S. Mail) to the attention of:

Harold E. Kirtz, Esq.
Federal Trade Commission
225 Peachtree Street, Suite 1500
Atlanta, Georgia 30303,
facsimile number (404)656-1379

before 5:00 pm (EDT) of the day that such service is due.

XV. COURT'S RETENTION OF JURISDICTION

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

SO ORDERED, this 21st day of December, 2006, at this hour of 11:41 a.m.

/s/Charles A. Pannell, Jr.
Charles A. Pannell
United States District Judge