

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

FEDERAL TRADE COMMISSION,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION NO.
	:	1:06-CV-2939-CAP
	:	
HOLIDAY ENTERPRISES, INC.,	:	
et al.	:	
	:	
Defendants.	:	

**FINAL JUDGMENT AND ORDER FOR PRELIMINARY INJUNCTION,  
RESTITUTION, AND OTHER EQUITABLE RELIEF AGAINST  
DEFENDANTS RICHARD ("NICK") J. MORRELL, AND  
RICHARD ("RICK") J. CASCARIO**

This matter comes before the court on the motion for summary judgment [Doc. No. 62] by the plaintiff, the Federal Trade Commission ("FTC"), against defendants Holiday Enterprises, Inc.; Holiday Ink, Inc.; Holiday Ink Half Price, Inc. (collectively, the "Corporate Defendants"); Richard ("Nick") J. Morrell; and Richard ("Rick") J. Cascario (collectively, the "Individual Defendants").

On December 4, 2006, the FTC filed a complaint for a permanent injunction and other equitable relief in this matter pursuant to Sections 5(a), 13(b), and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a), 53(b), and 57b. The FTC charged the defendants with engaging in deceptive acts or practices in connection with the marketing and sale of ink cartridge business opportunities, in violation of Section 5 of the FTC Act, 15 U.S.C.

§ 45, and the Trade Regulation Rule regarding Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures ("Franchise Rule" or "Rule"), 16 C.F.R. Part 436.

The FTC filed a request for entry of default against the Corporate Defendants on January 24, 2007 [Doc. No. 38]; the clerk entered the default the same day. The court granted default judgment against the Corporate Defendants on August 3, 2007 [Doc. No. 75]. The FTC filed its motion for summary judgment against all defendants [Doc. No. 62] prior to the entry of default judgment against the Corporate Defendants. The court grants summary judgment against the remaining defendants in the summary judgment order issued contemporaneously with this order.

This order (the "final order") constitutes a final judgment against Individual Defendants Morrell and Cascario. It is hereby ORDERED, ADJUDGED, AND DECREED:

**FINDINGS**

1. This court has jurisdiction of the subject matter of this case and the parties hereto pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(a), 53(b), and 57b.
2. Venue in the Northern District of Georgia is proper as to all parties.

3. The activities of defendants Holiday Enterprises, Inc., Holiday Ink, Inc., Holiday Ink Half Price, Inc., Richard ("Nick") J. Morrell, and Richard ("Rick") J. Cascario are in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44.
4. The complaint states a claim upon which relief may be granted against the defendants under Sections 5(a), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b), and 57b.
5. This final order is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.
6. Entry of this final order is in the public interest.

#### **DEFINITIONS**

For the purpose of this order, the following definitions shall apply:

1. "Business opportunity or venture" means any written or oral business arrangement, however denominated, whether or not covered by the Franchise Rule, in which a participant or purchaser:
  - a. pays consideration for 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. receives the promise of, or actual, advice, instruction, or assistance (including, but not limited to referrals to any person providing or promising location services), 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.
2. "Defendants" means Holiday Enterprises, Inc., Holiday Ink, Inc., Holiday Ink Half Price, Inc., Richard ("Nick") J. Morrell, and Richard ("Rick") J. Cascario.
3. "Corporate Defendants" means Holiday Enterprises, Inc., Holiday Ink, Inc., and Holiday Ink Half Price, Inc.
4. "Individual Defendants" means Richard ("Nick") J. Morrell, and Richard ("Rick") J. Cascario.
5. "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.

6. "Franchise Rule or Business Opportunity Rule" means:
- a. The FTC Trade Regulation Rule codified at 16 C.F.R. Part 436, until the effective date of the amendments to the FTC Trade Regulation Rule titled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures," approved by the FTC on January 22, 2007;
  - b. After the effective date of the amendments to the FTC Trade Regulation Rule titled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures," approved by the FTC on January 22, 2007:
    - 1) The FTC Trade Regulation Rule titled "Disclosure Requirements Concerning Franchising," to be codified at 16 C.F.R. Part 436, or as it may be amended; and
    - 2) The FTC Trade Regulation Rule titled "Disclosure Requirements concerning Business Opportunities," to be codified at 16 C.F.R. Part 437, or as it may be amended. The "Franchise Rule" or "Rule" means the FTC Trade Regulation Rule entitled "Disclosure Requirements and Prohibitions Concerning

Franchising and Business Opportunity Ventures," 16  
C.F.R. Part 436.

7. "Franchise" is defined as that term is defined in Sections 436.2(a) and (c) of the Franchise Rule, 16 C.F.R. § 436.2(a) and (c), and includes "business opportunity ventures" as defined in Sections 436.2(a)(1)(ii) and (2) of the Rule, and discussed in the FTC's Final Interpretive Guide for the Franchise Rule, 44 Fed. Reg. 49966-68 (August 24, 1979). The term "franchise" in this final order shall also encompass any successor definition of "franchise," "business opportunity," and "business opportunity venture" in any future trade regulation, rule, or rules that may be promulgated by the FTC to modify or supercede the Franchise Rule, in whole or part, from the date any such rule takes effect.
8. "Material" means likely to affect a person's choice of, or conduct regarding, goods or services.
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. "Representatives" means a defendant's successors, assigns, officers, agents, directors, servants, employees, independent

contractors, and all other persons or entities in active concert or participation with him who receive actual notice of this order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division or other device.

11. The term "and" also means "or," and the term "or" also means "and."

**INJUNCTIVE RELIEF, RESTITUTION, AND EQUITABLE REMEDIES**

**I. Prohibited Business Activities**

A. IT IS ORDERED that defendant Richard J. Morrell is hereby permanently restrained and enjoined from promoting, advertising, marketing, offering to sell, or selling any franchise, business opportunity, or business venture.

B. IT IS FURTHER ORDERED, in connection with the advertising, promotion, offering for sale, or sale, in or affecting commerce, of any business opportunity or venture, franchise, or any other good or service, that the Individual Defendants and their representatives are hereby permanently restrained and enjoined from making, or assisting in the making, of any statement or representation of material fact that is fraudulent, false, or misleading, whether directly or by implication, orally or in writing, including, but not limited to, any of the following:

1. The income, profits, or sales volume that a purchaser is likely to achieve;
2. The income, profits, or sales volume actually achieved by prior purchasers;
3. The length of time that it is likely to take a purchaser to recoup the entire purchase price or investment;
4. The independence or authenticity of any third party references, including persons represented to be prior purchasers, that are provided to potential purchasers;
5. The amount of competition within, or a purchaser's territorial rights to, any geographic territory;
6. The availability, existence, or quality of profitable locations in a purchaser's geographic area;
7. The terms and conditions of any assurances, refunds, cancellation rights, exchange rights, repurchase policies, or guarantees of profitability that relate to any location service that the defendant offers or location company to which the defendant refers a purchaser;
8. Any material restriction, limitation, or condition to purchase, receive, or use any business opportunity or venture, franchise, or any other good or service; and



9. Any material aspect of the performance, efficacy, nature, or central characteristic of any business opportunity or venture, franchise, or any other good or service.

**II. Prohibition Against Violation of the Franchise Rule or Business Opportunity Rule**

IT IS FURTHER ORDERED that in connection with the advertising, promotion, offering for sale, or sale, in or affecting commerce, of any business opportunity or venture, franchise, or any other good or service, that the Individual Defendants and their representatives are hereby restrained and enjoined from violating or assisting others to violate any provisions of the Franchise Rule or Business Opportunity Rule by, including, but not limited to:

- A. Failing to provide each prospective purchaser with a complete and accurate disclosure document as prescribed by the Franchise Rule or Business Opportunity Rule;
- B. Failing to have a reasonable basis for any earnings claim or financial performance representation at the time such claim or representation is made, as required by the Franchise Rule or Business Opportunity Rule;
- C. Failing to provide prospective purchasers with required disclosures for any earnings claim or financial performance representations, as required by the Franchise Rule or Business Opportunity Rule;

- D. Failing to disclose, in immediate conjunction with any earnings claim or financial performance representation, and in a clear and conspicuous manner, that material which constitutes a reasonable basis for the earnings claim or financial performance representation is available to prospective franchisees, as required by the Franchise Rule or Business Opportunity Rule;
- E. Failing to provide material which constitutes a reasonable basis for any earnings claim or financial performance representation to prospective purchasers, the FTC, or its staff upon reasonable demand, as required by the Franchise Rule or Business Opportunity Rule; and
- F. Failing to disclose, in immediate conjunction with any generally disseminated ("advertised") earnings claim or financial performance representation, information required by the Franchise Rule or Business Opportunity Rule, including the number and percentage of prior purchasers known by the franchisor or business opportunity seller to have achieved the same or better results, as required by the Franchise Rule or Business Opportunity Rule.

**III. Prohibitions Against Distribution of Customer Information**

IT IS FURTHER ORDERED that the Individual Defendants and their representatives are permanently restrained and enjoined from selling, renting, leasing, transferring or otherwise disclosing the individual or corporate name, address, telephone number, credit card number, bank account number or other identifying information of any person who paid any money to the defendants, at any time, in connection with the advertising, promotion, offering for sale, or sale of business opportunities or ventures, franchises, or location services; provided, however, that the Individual Defendants may disclose such identifying information to a law enforcement agency, or as required by any law, regulation or court order.

**IV. Consumer Redress and Other Equitable Relief**

IT IS FURTHER ORDERED that judgment is hereby entered jointly and severally against defendants Richard ("Nick") J. Morrell and Richard ("Rick") J. Cascario in the amount of \$8,980,880.44<sup>1</sup> for equitable monetary relief, including but not limited to consumer redress and disgorgement. Any funds not used for such equitable relief shall be deposited to the Treasury as disgorgement. The

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<sup>1</sup> The Individual Defendants shall be jointly and severally liable for this amount with the Corporate Defendants. The court's August 3, 2007, final judgment [Doc. No. 75] against the Corporate Defendants provided that the Corporate Defendants were also liable for damages in the amount of \$8,980,880.44. This figure represents the total amount of damages attributable to all defendants.

defendants shall have no right to challenge the FTC's choice of remedies under this Paragraph.

A. All funds paid pursuant to this Final order shall be deposited into a fund administered by the FTC 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 complete, the FTC may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the defendants' practices alleged in the complaint. Any funds not used for such equitable relief shall be deposited to the Treasury as disgorgement. The defendants shall have no right to challenge the FTC's choice of remedies under this Paragraph.

B. The Individual Defendants shall cooperate fully with the FTC and its agents in all attempts to collect the amount due pursuant to this Paragraph if the defendants fail to pay fully the amount due at the time specified herein. In such event, the Individual Defendants agree to provide the FTC with their federal and state tax returns for the

preceding two years, and to complete new standard-form financial disclosure forms fully and accurately within ten (10) business days of receiving a request from the FTC to do so. The defendants shall further authorize the FTC to verify all information provided on their financial disclosure forms with all appropriate third parties, including but not limited to financial institutions.

- C. In accordance with 31 U.S.C. § 7701, the Individual Defendants are hereby required, unless they have done so already, to furnish to the FTC their taxpayer identifying numbers (social security numbers or employer identification numbers) which shall be used for purposes of collecting and reporting on any delinquent amount arising out of the defendants' relationships with the government.
- D. The Individual Defendants further are ordered, if they have not already done so, to provide the FTC with clear, legible, and full-size photocopies of all valid driver's licenses they possess, which will be used for collection, reporting, and compliance purposes.
- E. 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 FTC may initiate to enforce this final order.

- F. The Individual Defendants are enjoined from filing any lawsuit, arbitration, or other action, or enforcing any judgment or award obtained prior to or after entry of this final order against any customer or franchisee of any defendant or of any entity owned or controlled by any defendant.

**V. Compliance Monitoring**

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this final order,

- A. Within ten (10) days of receipt of written notice from a representative of the FTC, the Individual Defendants each shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in 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 final order by all lawful means, including but not limited to the following:

1. Obtaining discovery from any person, without further leave of court, using the procedures prescribed by Federal Rules of Civil Procedure 30, 31, 33, 34, 36, and 45;
  2. Posing as consumers and suppliers to Holiday Enterprises, Inc., Holiday Ink, Inc., Holiday Ink Half Price, Inc., Richard ("Nick") J. Morrell, and Richard ("Rick") J. Cascario; the employees of these defendants; or any other entity managed or controlled in whole or part by the Individual Defendants, without the necessity of identification or prior notice; and
- C. The Individual Defendants 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 final order. The person interviewed may have counsel present.

Nothing in this final 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)).

**VI. COMPLIANCE REPORTING BY DEFENDANTS**

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this final order may be monitored:

A. For a period of five (5) years from the date of entry of this final order,

1. Each Individual Defendant shall notify FTC of the following:

a. Any changes in residence, mailing addresses, and telephone numbers of defendant, within ten (10) days of the date of such change;

b. Any changes in employment status (including self-employment) of the defendant, and any change in the ownership of the 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 any 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 defendant's



duties and responsibilities in connection with the business or employment; and

c. Any changes in the defendant's name or use of any aliases or fictitious names;

2. The Individual Defendants shall notify the FTC of any changes in corporate structure of the Corporate Defendants, or any business entity that an Individual Defendant directly or indirectly controls or has an ownership interest in, that may affect compliance obligations arising under this final order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this final 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 the defendant(s) learns less than thirty (30) days prior to the date such action is to take place, the defendant(s) shall notify the

FTC as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this final order, the Individual Defendants shall each provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this final order. This report shall include, but not be limited to:

1. The then-current residence address, mailing addresses, and telephone numbers of the defendant;
2. The then-current employment and business addresses and telephone numbers of the defendant, a description of the business activities of each such employer or business, and the title and responsibilities of the defendant for each such employer or business; and
3. A copy of each acknowledgment of receipt of this final order, obtained pursuant to Paragraph X below;
4. A statement describing the manner in which the defendant has complied and is complying with the provisions set forth in Paragraphs I-IV above; and

5. Any other changes required to be reported under subparagraph A of this Paragraph.
- C. Upon written request by a representative of the FTC, each Individual Defendant shall submit additional written reports (under oath, if requested) and produce documents on fifteen (15) days' notice with respect to any conduct subject to this final order;
- D. For the purposes of this final order, the defendants shall, unless otherwise directed by the FTC's authorized representatives, mail all written notifications to the FTC to:
- Associate Director  
Division of Enforcement  
Federal Trade Commission  
601 New Jersey Ave., Room 2119  
Washington, D.C. 20580  
Re: FTC v. Holiday Enterprises, et al.,  
Civil Action No. 1:06-CV-2939-CAP.
- E. For the purposes of this final order, "employment" includes the performance of services as an employee, consultant, or independent contractor; and "employer" includes any individual or entity for whom any defendant performs services as an employee, consultant, or independent contractor.

F. For purposes of the compliance reporting and monitoring required by this final order, the FTC is authorized to communicate directly with any defendant.

**VII. Recordkeeping Provisions**

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this final order, the Individual Defendants, in connection with the Corporate Defendants or with those businesses where any Individual Defendant is the majority owner or otherwise controls the business, and their officers, directors, agents, employees, corporations, successors, and assigns, and other entities or persons directly or indirectly under their control, and all persons or entities in active concert or participation with any of them who receive actual notice of this final order by personal service, facsimile, or otherwise, whether acting directly or through any corporation, subsidiary, division or other device, 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, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;
- D. Complaints and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests;
- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials; and
- F. All records and documents necessary to demonstrate full compliance with each provision of this final order, including but not limited to copies of acknowledgments of receipt of this Final order, required by Paragraph X, and all reports submitted to the FTC pursuant to Paragraph VII.

**VIII. ACCESS TO BUSINESS PREMISES**

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this final order, for the purpose of

further determining compliance with this final order, each Individual Defendant shall permit representatives of the FTC, within three (3) business days of receipt of written notice from the FTC representatives:

- A. Access during normal business hours to any office, or facility storing documents, of any business where the defendant is the majority owner of the business or directly or indirectly manages or controls the business;
- B. In providing such access, the defendant shall:
  1. Permit representatives of the FTC to inspect and copy all documents relevant to any matter contained in this final order; and shall permit FTC representatives to remove documents relevant to any matter contained in this final order, for a period not to exceed three (3) business days, so that the documents may be inspected, inventoried, and copied; and
  2. To interview the officers, directors, and employees, including all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors, or otherwise, of any business to which Paragraph A of

this section applies, concerning matters relating to compliance with the terms of this final order. The person interviewed may have counsel present. However, upon application of the FTC and for good cause shown, the court may enter an ex parte order granting immediate access to any defendant's business premises for the purposes of inspecting and copying all documents relevant to any matter contained in this final order.

**IX. DISTRIBUTION OF ORDER BY DEFENDANTS**

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this final order, the Individual Defendants shall deliver copies of the Final order as directed below:

- A. Individual Defendants as Control Persons: For any business that Richard ("Nick") J. Morrell or Richard ("Rick") J. Cascario has a majority ownership interest, that defendant must deliver a copy of this final order to all principals, officers, directors, and managers of that business. That Individual Defendant must also deliver copies of this final order to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Final order. For

current personnel, delivery shall be within five (5) days of service of this final order upon the defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities.

- B. Individual Defendants as Employees or Non-control Persons: for any business where Richard ("Nick") J. Morrell or Richard ("Rick") J. Cascario is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this final order, the defendant must deliver a copy of this final order to all principals and managers of such business before engaging in such conduct.
- C. The Individual Defendants must secure a signed and dated statement acknowledging receipt of the final order, within thirty (30) days of delivery, from all persons receiving a copy of the final order pursuant to this Paragraph.

**X. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT**

IT IS FURTHER ORDERED that each Individual Defendant, within five (5) business days of receipt of this final order as entered by the court, must submit to the FTC a truthful sworn statement acknowledging receipt of this final order.



**XI. 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 final order.

SO ORDERED, this 5th day of February, 2008.

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