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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FEDERAL TRADE COMMISSION
Plaintiff,

vs.

MORRONE'S WATER ICE, INC,
a Pennsylvania Corporation;
FRANCHISE CONSULTANTS
CORPORATION, a Pennsylvania
corporation, d/b/a, FRANCHISE
CONSULTANTS GROUP;
ICE AMERICA CORPORATION,
a Pennsylvania corporation;
WATER ICE SYSTEMS, INC.,
A Pennsylvania corporation;
JMS SALES, INC., a Pennsylvania
corporation;
STEPHEN D. ALEARDI, a/k/a STEVE
ALEARDI, individually and as an officer
of FRANCHISE CONSULTANTS
CORPORATION, ICE AMERICA
CORPORATION, WATER ICE
SYSTEMS, INC., JMS SALES, INC.;
and, JOHN J. MORRONE, III,
individually and as an officer of ICE
AMERICA CORPORATION, WATER
ICE SYSTEMS, INC., and JMS SALES
INC.

Defendants.

CIVIL ACTION

NO. 02-3720

FILED

JUN 18 2002

By Michael E. Kunz, Clerk
Dep. Clerk

**EX PARTE TEMPORARY RESTRAINING ORDER AND ORDER TO
SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

The Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), having filed a
Complaint for Injunctive and Other Equitable Relief, including redress to consumers, 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, and the FTC's Trade Regulation Rule entitled "Disclosure
Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" (the

ENTERED

JUN 18 2002

A TRUE COPY CERTIFIED TO FRANK...
DATED: 6/18/02
TEST: Frank D. Del...
CLERK, UNITED STATES DISTRICT COURT

"Franchise Rule" or the "Rule"), 16 C.F.R. Part 436, and having moved ex parte for a Temporary Restraining Order pursuant to Rule 65 of the Federal Rules of Civil Procedure, and the Court having considered the Complaint, declarations, exhibits, and memorandum of law filed in support of the Plaintiff's motion, makes the following finding of facts and conclusions of law:

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.
2. There is good cause to believe that the Corporate Defendants (Morrone's Water Ice, Inc., Franchise Consultants Corporation d/b/a Franchise Consultants Group, Ice America Corporation, Water Ice Systems, Inc., and JMS Sales, Inc.), and the Individual Defendants (Stephen D. Aleardi, a/k/a Steve Aleardi and John J. Morrone, III), have engaged and are likely to engage in acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), or the Franchise Rule, 16 C.F.R. Part 436, and that the Commission is therefore likely to prevail on the merits of this action.
3. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief in the form of monetary restitution or disgorgement will occur from the sale, transfer, or other disposition or concealment by the Corporate and Individual Defendants of their assets or corporate records unless the Corporate and Individual Defendants are immediately restrained and enjoined by Order of this Court.
4. Weighing the equities and considering the Commission's likelihood of ultimate success, a Temporary Restraining Order is in the public interest.
5. As an agency of the United States, no security is required of the Commission for the issuance of a restraining order. See Fed. R. Civ. P. 65(c).

DEFINITIONS

For the purpose of this Temporary Restraining Order ("TRO"), the following definitions shall apply:

1. "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.
2. "Business venture" means any written or oral business arrangement, however denominated, whether as a license or otherwise, and regardless of whether it is 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 (regardless of whether they are 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 Morrone's Water Ice, Inc., Franchise Consultants Corporation d/b/a Franchise Consultants Group, Ice America Corporation, Water Ice Systems, Inc., JMS Sales, Inc., and their successors, assigns, affiliates and subsidiaries.
4. "Individual Defendants" means Stephen D. Aleardi, a/k/a Steve Aleardi, and John J. Morrone, III.

5. "Defendants" means: (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 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).*
6. "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 is a separate document within the meaning of the term.
7. "Person" means a natural person, organization or other legal entity, including a corporation, partnership, proprietorship, association, or cooperative, or any other group or combination acting as an entity.

ORDER

I. VIOLATIONS OF SECTION 5 OF THE FTC ACT PROHIBITED

IT IS THEREFORE ORDERED that, in connection with the offering for sale or selling of any business venture, including franchises, Defendants are hereby temporarily 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 a business venture, including but not limited to, the following:

- A. That consumers who purchase Defendants' business ventures have earned, will earn, or are likely to earn substantial income or profits, or have achieved, will achieve or are likely to achieve substantial gross sales or revenues, or any specific level or amount of gross or net income or profits, or gross sales or revenues; and
- B. That the performance of Defendants' company-owned outlets is indicative of how the business ventures sold by Defendants perform.

II. VIOLATIONS OF THE FRANCHISE RULE PROHIBITED

IT IS FURTHER ORDERED that Defendants are hereby temporarily restrained and enjoined, in connection with the sale of any franchise, including any license, from violating or assisting others to violate any provision of the Franchise Rule, 16 C.F.R. Part 436, including but not limited to:

- A. Failing to provide a prospective purchaser with a complete and accurate disclosure document as required by the Franchise Rule, 16 C.F.R. § 436.1(a);
- B. Failing to provide a prospective purchaser with an earnings claim document as required by the Franchise Rule, 16 C.F.R. § 436.1(b)-(e);
- C. 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)-(e);
- D. 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;
- E. Failing to provide material which constitutes a reasonable basis for any earnings claim to prospective purchasers, the Commission, or its staff upon reasonable demand;

F. Making any claim or representation to prospective purchasers that is contradictory to the information required to be disclosed by Section 436.1 of the Rule.

III. DEFENDANTS' TRANSFER OF BUSINESS AND PERSONAL ASSETS

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

- A. Transferring, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, or otherwise disposing of any assets, wherever located, except for the payment of ordinary and necessary business or personal expenses, that are (a) owned or controlled, in whole or in part, by any Corporate Defendant or Individual Defendant; (b) titled or held in the name, singly or jointly, of any Corporate Defendant or Individual Defendant; (c) in the actual or constructive possession of any Corporate Defendant or Individual 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 Corporate Defendant or Individual Defendant, including, but not limited to, any assets held by or for any Corporate Defendant or Individual Defendants 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. Incurring charges or cash advances on any credit card, debit card, or checking card, except for the payment of ordinary and necessary business or personal expenses, issued in the name, singly or jointly, of any Corporate Defendant or Individual Defendant;

C. 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 Corporate Defendant or Individual Defendant;

Provided, however, that the assets affected by this Section shall include: (1) all of the assets of the Corporate Defendants and Individual Defendants 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 the Corporate Defendant and the Individual Defendants that are derived from or otherwise related to the sale of business ventures, including franchises.

IV. DEFENDANTS' DUTY TO PRESERVE BUSINESS RECORDS

IT IS FURTHER ORDERED that all Defendants are temporarily restrained and enjoined from failing to keep and maintain business records in the ordinary course of business, and from directly or indirectly destroying, mutilating, erasing, altering, concealing, transferring or otherwise disposing of any documents or records in any manner that relate to the business practices or business or personal finances of any Corporate Defendant or Individual Defendant.

V. DEFENDANTS' OBLIGATION TO PROVIDE FINANCIAL STATEMENTS

IT IS FURTHER ORDERED that, at least (5) five days prior to the preliminary injunction hearing in this matter, and in no event later than one week after entry of this Order, each Corporate Defendant and Individual Defendant shall provide to the Commission a sworn financial statement, completed on forms to be provided by the Commission, accurate as of the date of service of this Order upon the Defendant. Each Corporate and Individual Defendant shall also attach to the financial statement a complete listing of any assets transferred since January 1,

1996, to another Defendant, or to an out-of-state or out-of-country third party, including any bank or financial institution.

VI. DEFENDANTS' OBLIGATION TO PROVIDE OTHER DOCUMENTS

IT IS FURTHER ORDERED that the Defendants shall produce the names, addresses and telephone numbers of all persons who purchased, or inquired about purchasing, licenses or business ventures from any Defendant after January 1, 2001, together with the license agreement entered into with each purchaser. Defendants shall provide this information to Plaintiff not later than five (5) business days before the preliminary injunction hearing.

VII. 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.

VIII. 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 Russell Deitch, Counsel for the Commission, at the Federal Trade Commission, 600 Pennsylvania Ave., N.W., Room 238, Washington, DC 20580, facsimile number (202) 326-3395 before 4:45 p.m. (EST) of the day such service is due.

IX. PRELIMINARY INJUNCTION HEARING

IT IS FURTHER ORDERED that each of the Corporate Defendants and Individual Defendants shall appear before this Court on the 28th day of June, 2002, at 10:00 o'clock A.M., in Courtroom 12-B, United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania, to show cause, if any there be, why this Court should not enter a preliminary injunction, pending final ruling on the Complaint, against said Defendants enjoining them from further violations of 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 imposing such additional relief as may be appropriate.

X. PAPERS ON MOTION FOR PRELIMINARY INJUNCTION AND PLEADINGS

- A. Defendants shall file and serve, not later 4:00 P.M., on June 24, 2002, (1) an answer or other response to the Complaint and (2) a response to the Application for Temporary Restraining Order with Supporting Memorandum of Law;
- B. The Commission shall file and serve, not later than 4:00 P.M., on June 26, 2002, a reply to defendants' responses to Plaintiff's Application for Temporary Restraining Order;
- C. The Commission and defendants shall file and serve, not later than 4:00 P.M., on June 27, 2002, (1) proposed findings of fact and conclusions of law, (2) a memorandum of law (or supplemental memorandum of law) discussing the facts of the case and the applicable law, (3) a witness list, and (4) a proposed order;
- D. Two (2) copies of each of the aforesaid documents shall be served on the Court (Chambers, Room 12613) at the time the originals are filed; and,

D. All exhibits which the parties intend to present at the Preliminary Injunction Hearing shall be numbered and exchanged in advance of the hearing. At the commencement of the hearing, the Court shall be furnished with two (2) copies of each exhibit and three (3) copies of an exhibit list.

XI. DISCOVERY FROM NON-PARTIES


IT IS FURTHER ORDERED that the parties are granted leave, at any time after service of this Order, to request the production of documents from any person or entity not a party to this action. Production shall be made within five (5) days after receipt of the request for production.

XII. COURT'S RETENTION OF JURISDICTION

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

SO ORDERED, this 18th day of June, 2002, at this hour of 12:05 PM.

BY THE COURT:



JAN E. DUBOIS
UNITED STATES DISTRICT JUDGE