

1 WILLIAM E. KOVACIC
General Counsel

2
3 JOE LIPINSKY
THOMAS P. ROWAN
Federal Trade Commission
4 915 Second Avenue, Suite 2896
Seattle, WA 98174
5 Phone (206) 220-4473/ Fax (206) 220-6366

6 BLAINE T. WELSH
Assistant United States Attorney
7 333 Las Vegas Blvd, South, Suite 5000
Las Vegas, NV 89101
8 Phone (702) 388-6336/ Fax (702) 388-6787

9 ATTORNEYS FOR PLAINTIFF

10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 FEDERAL TRADE COMMISSION,

13 Plaintiff,

14 vs.

15 VENDCO, LLC, a Nevada limited liability
company;

16 CURT BRIGUGLIO, a.k.a. Curt Briggs,
17 individually and as an officer or director of the
above named company; and

18 JOHAN BRIGUGLIO, a.k.a. Jo Briggs,
19 individually and as an officer or director of the
above named company,

20 Defendants.
21

CV-S-02-0816-PAL

**STIPULATED PERMANENT
INJUNCTION AND FINAL
JUDGMENT**

22 Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), has filed a complaint
23 for permanent injunction and other equitable relief pursuant to Sections 13(b) and 19 of the
24 Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § § 53(b) and 57b, charging defendants
25 Vendco, LLC, Curt Briguglio, and Johan Briguglio (hereinafter referred to collectively as
26 “defendants”) with deceptive acts and practices in connection with the sale of vending machines
27 to consumers. The Commission’s complaint alleges that defendants’ deceptive acts and practices
28 violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC's Trade Regulation Rule

1 entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business
2 Opportunity Ventures" ("Franchise Rule" or "Rule"), 16 C.F.R. § 436.

3 Defendants and the Commission, have agreed to entry of this Stipulated Permanent
4 Injunction ("Order" or "Stipulated Judgment") by this Court in order to resolve all matters in
5 dispute between them in this action. Defendants have consented to the entry of this Order
6 without trial or adjudication of any issue of law or fact herein. **NOW, THEREFORE**, these
7 defendants and the Commission having requested the Court to enter this Order, **IT IS HEREBY**
8 **ORDERED, ADJUDGED, AND DECREED** as follows:

9 **FINDINGS**

10 1. This is an action by the Commission instituted under Section 13(b) and 19 of the
11 FTC Act, 15 U.S.C. §§ 53(b) and 57b. Pursuant to these sections, the Commission has the
12 authority to seek the relief contained herein.

13 2. The Commission's complaint states a claim upon which relief may be granted
14 against defendants under Sections 5(a), 13(b) and 19 of the Federal Trade Commission Act
15 ("FTC Act"), 15 U.S.C. §§ 45(a), 53(b), and 57b.

16 3. This Court has jurisdiction over the subject matter of this case and all parties
17 hereto. Venue in the District of Nevada is proper.

18 4. The alleged activities of defendants are in or affecting commerce, as defined in
19 Section 4 of the FTC Act, 15 U.S.C. § 44.

20 5. The parties shall each bear their own costs and attorney's fees incurred in this
21 action and have waived all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, and
22 all rights to seek judicial review, or otherwise to challenge the validity of this Stipulated
23 Judgment.

24 6. This Stipulated Judgment does not constitute, and shall not be interpreted to
25 constitute, either an admission by defendants or a finding by the Court that defendants have
26 engaged in any violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), the Franchise Rule,
27 16 C.F.R. § 436, or any other law or regulation.

28 7. Entry of this Stipulated Judgment is in the public interest.

1 **ORDER**

2 **Definitions**

3 A. “Defendants” means (a) Vendco, LLC, and its successors, assigns, affiliates or
4 subsidiaries (“Vendco”); (b) Curtis Briguglio, a.k.a., Curt Briggs (“Curt”); (c) Johan Briguglio,
5 a.k.a., Jo Briggs; (d) and their officers, agents, servants, and employees, and all other persons or
6 entities in active concert or participation with them who receive actual notice of this Order by
7 personal service or otherwise. *See* Fed. R. Civ. P. 65(d).

8 **I. BAN ON CLAIMS**

9 **IT IS THEREFORE ORDERED** that Vendco and Curt are permanently restrained and
10 enjoined from making any representation, expressly or by implication, concerning:

11 A. The income a consumer will make if the consumer purchases a vending machine
12 sold or provided by defendants; and

13 B. The location at which any vending machine sold or provided by defendants will
14 be placed.

15 **II. PROHIBITED PRACTICES**

16 **IT IS FURTHER ORDERED** that Defendants, in connection with the sale of any
17 product or service, are hereby restrained and enjoined from:

18 A. Misrepresenting expressly or by implication any fact material to a consumer’s
19 decision to purchase the good or service;

20 B. Misrepresenting expressly or by implication the income a consumer will make if
21 the consumer purchases the good or service;

22 C. Misrepresenting expressly or by implication the terms of any significant
23 assistance defendants provide a consumer; and

24 D. In connection with the sale of any product or service that is subject to the
25 Franchise Rule, as described in the Rule, violating or assisting others to violate any provision of
26 the Rule, including, but not limited to:

27 1. failing to provide a prospective purchaser with a complete and accurate
28 disclosure document as prescribed by the Franchise Rule, 16 C.F.R.

1 § 436.1(a), or the Uniform Franchise Offering Circular, as prescribed by
2 the North American Securities Administrators' Association;

- 3 2. failing to have a reasonable basis for any earnings claim at the time such
4 claim is made, as required by the Franchise Rule, 16 C.F.R. § 436.1(b)-
5 (e);
- 6 3. failing to disclose, in immediate conjunction with any earnings claim, and
7 in a clear and conspicuous manner, that material which constitutes a
8 reasonable basis for the earnings claim is available to the prospective
9 purchasers as prescribed by the Franchise Rule, 16 C.F.R. § 436.1(b)(2)
10 and (c)(2); and
- 11 4. failing to provide a prospective purchaser with an earnings claim
12 document as prescribed by the Franchise Rule, 16 C.F.R. § 436.1(b)-(e).

13 **III. LAWSUITS**

14 **IT IS FURTHER ORDERED** that Defendants shall dismiss with prejudice any pending
15 lawsuit it has initiated against customers of Vendco, LLC, or TCIS, Inc., within thirty (30) days
16 from the date of entry of this Order.

17 **IV. DISCLOSURE OF CUSTOMER LISTS**

18 **IT IS FURTHER ORDERED** that Defendants are permanently restrained and enjoined
19 from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone
20 number, credit card number, bank account number, e-mail address, or other identifying
21 information of any person who paid any money to any defendant, at any time prior to entry of
22 this Order, in connection with promoting, offering for sale, selling, or participating in the sale of,
23 directly or indirectly, of vending machines. Provided, however, that defendants may disclose
24 such identifying information to a law enforcement agency or as required by any law, regulation,
25 or court order. Defendants may also provide the name, address, telephone number, and e-mail
26 address of any customer for the purpose of providing prospective customers with references.

1 **V. CONSUMER REDRESS**

2 **IT IS FURTHER ORDERED** that:

3 A. Defendants are jointly and severally liable to the Commission for monetary
4 equitable relief in the amount of \$1.8 million. Provided, however, that if the Defendants pay
5 \$10,000.00 within thirty (30) days of the date from entry of this Order, then this judgment shall
6 be suspended upon Defendants, subject, however, to Paragraph VI of this Order (the Right to
7 Reopen provision).

8 B. In the event of a default in payment that has not been cured within thirty (30) days
9 from the date of the default, the full judgment amount of \$1.8 million shall become immediately
10 due and payable to the Commission.

11 C. All funds paid and collected pursuant to this Paragraph constitute equitable relief
12 solely remedial in nature for purposes of redress and are not a fine, penalty, punitive assessment,
13 or forfeiture. All amounts paid and collected shall be deposited into a fund administered by the
14 Commission or its agent to be used for equitable relief, including but not limited to consumer
15 redress and any attendant expenses for the administration of any redress fund. In the event that
16 direct redress to consumers is wholly or partially impracticable or funds remain after redress is
17 completed, the Commission may apply any remaining funds for such other equitable relief
18 (including consumer information remedies) as it determines to be reasonably related to the
19 defendants' practices alleged in the complaint. Any funds not used for such equitable relief shall
20 be deposited in the United States Treasury as disgorgement. Defendants shall have no right to
21 challenge the Commission's choice of remedies under this Paragraph.

22 D. In accordance with 31 U.S.C. § 7701, defendants are hereby required to furnish to
23 the Commission their respective taxpayer identifying numbers (social security numbers or
24 employer identification numbers) which shall be used for purposes of collecting and reporting on
25 any delinquent amount arising out of the defendants' relationship with the government.

26 **VI. RIGHT TO REOPEN**

27 **IT IS FURTHER ORDERED** that, by agreeing to this Order, Defendants reaffirm and
28 attest to the truthfulness, accuracy, and completeness of the Financial Disclosure Forms

1 transmitted to the FTC on November 14, 2002. Plaintiff's agreement to this Order is expressly
2 premised upon the truthfulness, accuracy, and completeness of defendants' financial condition as
3 represented in the Financial Disclosure Forms referenced above, which contain material
4 information upon which plaintiff relied in negotiating and agreeing to the terms of this Order. If,
5 upon motion by the Commission, this Court finds that Defendants failed to disclose any material
6 asset, or materially misrepresented the value of any asset, or made any other material
7 misrepresentation in, or omission from, the Financial Disclosure Forms, the Court shall enter
8 judgment against the offending defendants, in favor of the Commission, in the amount of \$1.8
9 million, and the entire amount of the judgment shall become immediately due and payable, less
10 any payment already made. *Provided, however,* that in all other respects this Order shall remain
11 in full force and effect unless otherwise ordered by the Court; and provided further, that
12 proceedings instituted under this Paragraph are in addition to, and not in lieu of, any other civil
13 or criminal remedies as may be provided by law, including any other proceedings plaintiff may
14 initiate to enforce this Order. For purposes of this Paragraph, Defendants waive any right to
15 contest any of the allegations in the complaint filed in this matter in any subsequent litigation
16 filed by the Commission to enforce its rights pursuant to this Order, including but not limited to
17 a non-dischargeability complaint in any bankruptcy proceeding.

18 **VII. MONITORING COMPLIANCE OF SALES PERSONNEL**

19 **IT IS FURTHER ORDERED** that Defendants, in connection with any business where
20 (1) a defendant is the majority owner of the business or directly or indirectly manages or controls
21 the business and (2) the business is engaged in the marketing, offering for sale, or sale of any
22 vending machine or in assisting others engaged in said business, are hereby permanently
23 restrained and enjoined from:

24 A. Failing to take reasonable steps sufficient to monitor and ensure that all
25 employees and independent contractors engaged in sales or other customer service functions
26 comply with Paragraphs I and II of this Order. Such steps shall include, at a minimum, the
27 following: (1) establishing a procedure for receiving and responding to consumer complaints;
28 and (2) ascertaining the number and nature of consumer complaints regarding transactions in

1 which each employee or independent contractor is involved; *provided* that this Paragraph does
2 not authorize or require the defendants to take any steps that violate any federal, state, or local
3 laws;

4 B. Failing promptly to investigate fully any consumer complaint received by any
5 business to which this Paragraph applies; and

6 C. Failing to take corrective action with respect to any sales person whom defendants
7 determine is not complying with this Order, which may include training, disciplining, and/or
8 terminating such sales person.

9 **VIII. RECORD KEEPING PROVISIONS**

10 **IT IS FURTHER ORDERED** that, for a period of six (6) years from the date of entry of
11 this Order, Defendants, in connection with any business where (1) a defendant is the majority
12 owner of the business or directly or indirectly manages or controls the business and (2) the
13 business is engaged in the marketing, offering for sale, or sale of any vending machine or in
14 assisting others engaged in said business, are hereby restrained and enjoined from failing to
15 create and retain the following records:

16 A. Accounting records that reflect the cost of goods or services sold, revenues
17 generated, and the disbursement of such revenues;

18 B. Personnel records accurately reflecting: the name, address, and telephone number
19 of each person employed in any capacity by such business, including as an independent
20 contractor; that person's job title or position; the date upon which the person commenced work;
21 and the date and reason for the person's termination, if applicable;

22 C. Customer files containing the names, addresses, phone numbers, dollar amounts
23 paid, quantity of items or services purchased, and description of items or services purchased, to
24 the extent such information is obtained in the ordinary course of business;

25 D. Complaints and refund requests (whether received directly, indirectly or through
26 any third party) and any responses to those complaints or requests; and

27 E. Copies of all sales scripts, training materials, advertisements, or other marketing
28 materials.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **IX. DISTRIBUTION OF ORDER BY DEFENDANTS**

2 **IT IS FURTHER ORDERED** that, for a period of three (3) years from the date of entry
3 of this Order,

4 A. Vendco, LLC, shall deliver a copy of this Order to all principals, officers,
5 directors, managers, employees, agents, and representatives having responsibilities with respect
6 to the subject matter of this Order, and shall secure from each such person a signed and dated
7 statement acknowledging receipt of the Order. Vendco LLC shall deliver this Order to current
8 personnel within thirty (30) days after the date of service of this Order, and to new personnel
9 within thirty (30) days after the person assumes such position or responsibilities.

10 B. Curt Briguglio and Johan Briguglio shall deliver a copy of this Order to the
11 principals, officers, directors, managers and employees under their control for any business that
12 (a) employs or contracts for personal services from them and (b) has responsibilities with respect
13 to the subject matter of this Order. Curt Briguglio and Johan Briguglio shall secure from each
14 such person a signed and dated statement acknowledging receipt of the Order within thirty (30)
15 days after the date of service of the Order or the commencement of the employment relationship.
16

17 **X. COMPLIANCE REPORTING BY DEFENDANTS**

18 **IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this
19 Order may be monitored:
20

- 21 A. For a period of years (3) years from the date of entry of this Order,
22
23 1. Curt and Johan Briguglio shall notify the Commission of the following:
24 a. Any changes in defendant’s residence, mailing addresses, and
25 telephone numbers, within ten (10) days of the date of such change;
26 b. Any changes in defendant’s employment status (including self-
27 employment) within ten (10) days of the date of such change. Such notice shall
28 include the name and address of each business that defendant is affiliated with,

1 employed by, or performs services for; a statement of the nature of the business;
2 and a statement of defendant's duties and responsibilities in connection with the
3 business;

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

6 2. Defendants shall notify the Commission of any changes in corporate
7 structure that may affect compliance obligations arising under this Order, including but
8 not limited to a dissolution, assignment, sale, merger, or other action that would result in
9 the emergence of a successor corporation; the creation or dissolution of a subsidiary,
10 parent, or affiliate that engages in any acts or practices subject to this Order; the filing of
11 a bankruptcy petition; or a change in the corporate name or address, at least thirty (30)
12 days prior to such change, *provided* that, with respect to any proposed change in the
13 corporation about which the defendant learns less than thirty (30) days prior to the date
14 such action is to take place, defendant shall notify the Commission as soon as is
15 practicable after obtaining such knowledge.

16 B. One hundred eighty (180) days after the date of entry of this Order, Curt
17 Briguglio, Johan Briguglio, and Vendco each shall provide a written report to the FTC, sworn to
18 under penalty of perjury, setting forth in detail the manner and form in which they have complied
19 and are complying with this Order. This report shall include, but not be limited to:
20

- 21 1. Any changes required to be reported pursuant to subparagraph (A) above;
22 2. A copy of each acknowledgment of receipt of this Order obtained by defendant
23 pursuant to Paragraph IX. A. and B;

24 C. For the purposes of this Order, defendant shall, unless otherwise directed by the
25 Commission's authorized representatives, mail all written notifications to the Commission to:
26
27
28

1 Regional Director, Northwest Region
2 Federal Trade Commission
3 915 Second Avenue, Room 2896
4 Seattle, WA 98174
5 Re: FTC v. Vendco, LLC., et. al. CV-S-02-0816-PAL

6 D. For purposes of the compliance reporting required by this Paragraph, the
7 Commission is authorized to communicate directly with Defendants.

8 **XI. ACCESS TO BUSINESS PREMISES**

9 **IT IS FURTHER ORDERED** that, for a period of three (3) years from the date of entry
10 of this Order, for the purpose of further determining compliance with this Order, defendants shall
11 permit representatives of the Commission, within three (3) business days of receipt of written
12 notice from the Commission:

13 A. Access during normal business hours to any office or facility storing documents,
14 of any business located in the U.S., where any defendant is the majority owner of the business or
15 directly or indirectly manages or controls the business, and where the business is engaged
16 directly or indirectly in marketing, offering for sale, or sale of any vending machine or assisting
17 others engaged in marketing, offering for sale, or sale of any vending machine. In providing
18 such access, defendants shall permit representatives of the Commission to inspect and copy all
19 documents, at the Commission's expense, relevant to any matter contained in this Order; and
20 shall permit Commission representatives to remove documents relevant to any matter contained
21 in this Order for a period not to exceed five (5) business days so that the documents may be so
22 inspected, inventoried, and copied; and

23 B. To interview the officers, directors, and employees, including all personnel
24 involved in responding to consumer complaints or inquiries, and all sales personnel, whether
25 designated as employees, consultants, independent contractors or otherwise, of any business
26 located in the U.S., where any defendant is the majority owner of the business or directly or
27 indirectly manages or controls the business, and the business engages in performing any function
28

1 in connection with marketing, offering for sale, or sale of any vending machine or assisting
2 others engaged in marketing, offering for sale, or sale of any vending machine, concerning
3 matters relating to compliance with the terms of this Order. The person interviewed may have
4 counsel present.

5 *Provided* that, upon application of the Commission and for good cause shown, the Court
6 may enter an *ex parte* order granting immediate access to defendants' business premises for the
7 purposes of inspecting and copying all documents relevant to any matter contained in this Order.

8 **XII. COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE**

9 **IT IS FURTHER ORDERED** that, for the purpose of monitoring and investigating
10 compliance with any provision of this Order,
11

12 A. Within twenty (20) days of receipt of written notice from a representative of the
13 Commission, Defendants shall submit additional written reports, sworn to under penalty of
14 perjury; produce documents for inspection and copying; appear for deposition; and/or provide
15 entry during normal business hours to any business location in such defendant's possession or
16 direct or indirect control to inspect the business operation;

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

- 19 1. obtaining discovery from any person, without further leave of court, using the
20 procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
- 21 2. posing as consumers and suppliers to: Defendants employees, or any other entity
22 managed or controlled in whole or in part by Defendants, without the necessity of
23 identification or prior notice;
- 24

25 **Provided** that nothing in this Order shall limit the Commission's lawful use of compulsory
26 process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any
27 documentary material, tangible things, testimony, or information relevant to unfair or deceptive
28 acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

1 C. Defendants shall permit representatives of the Commission to interview any
2 employer, consultant, independent contractor, representative, agent, or employee who has agreed
3 to such an interview, relating in any way to any conduct subject to this Order. The person
4 interviewed may have counsel present.

5 **XIII. ACKNOWLEDGMENT OF RECEIPT OF JUDGMENT BY DEFENDANTS**

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

9 **XIV. RETENTION OF JURISDICTION**

10 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for
11 purposes of construction, modification and enforcement of this Order.
12

13
14 SO ORDERED, this _____ day of _____, 2003, at _____.

15
16
17 _____
18 Honorable Peggy A. Leen
19 United States Magistrate Judge
20
21
22
23
24
25
26
27
28

1 The parties, by their respective counsel, hereby consent to the terms and conditions of the
2 Order as set forth above and consent to entry thereof. Defendants waive any rights that may
3 arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, amended by Pub. L. 104-121, 110
4 Stat. 847, 863-64 (1996).

5 DATED: _____, 2003.

Curt Briguglio, individually and as
president of Vendco, LLC

7 DATED: _____, 2003.

Johan Briguglio, individually

9 DATED: _____, 2003.

Douglas Ritchie
Tobler & Truman
Attorney for Defendants

12 DATED: _____, 2003.

Joe Lipinsky
Tom Rowan
Attorneys for Federal Trade Commission