

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

FEDERAL TRADE COMMISSION, and
STATE OF MARYLAND

Plaintiffs,

v.

ACCENT MARKETING, INC. d/b/a
ACCENT MARKETING OF
ALABAMA, INC.,
an Alabama corporation, et al.)

Defendants.

FILED APR 2 03 PM 2 15 USDCAL
FILED APR 21 03 AM 9 35 USDCAL

No. 02-0405-CB-M

STIPULATED FINAL JUDGMENT AND ORDER
FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

This matter comes before the Court on stipulation of Plaintiff Federal Trade Commission ("FTC" or "Commission"), Plaintiff State of Maryland ("Maryland") and Defendants Accent Marketing, Inc., Monarch Vending, Inc., Vend 1 One, Inc., John Nolan White, and John Byron White. On June 4, 2002, the Commission and Maryland 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, the FTC's Trade Regulation Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" (the "Franchise Rule" or the "Rule"), 16 C.F.R. Part 436, and the Maryland Business Opportunity Sales Act, Md. Code Bus. Reg. §§ 14-101 et seq. (Maryland Business Opportunity Act). The Commission also immediately moved *ex parte* for a

Temporary Restraining Order ("TRO") pursuant to Rule 65 of the Federal Rules of Civil Procedure. On June 11, 2002, this Court, having considered the Complaint as well as the memorandum of law, declarations, and other exhibits filed in support of the FTC's motion, issued a TRO, froze Defendants' assets, and appointed a temporary receiver. On July 1, 2002, following a hearing, the Court found that the FTC is likely to succeed on the merits of its claims and entered a Preliminary Injunction against Defendants. Now, the FTC, Maryland, and all of the Defendants offer the following Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief (the "Final Order").

Upon the joint motion of Plaintiffs and Defendants, it is hereby **ORDERED, ADJUDGED, and DECREED** as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and the parties hereto.
2. Venue is proper as to all parties in the Southern District of Alabama under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b) and (c).
3. The activities of Defendants are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. The Complaint alleges claims upon which relief may be granted against Defendants under §§ 5(a)(1), 13(b), and 19 of the

FTC Act, 15 U.S.C. §§ 45(a)(1), 53(b), and 57b, under the Franchise Rule, 16 C.F.R. Part 436, and the Maryland Business Opportunity Act, Md. Code Bus. Reg. §§ 14-101 et seq.

5. While Defendants do not admit the allegations of the Complaint, Plaintiffs and Defendants stipulate and agree to this Final Order to settle and resolve all matters in dispute arising from the Complaint to the date of entry of this Final Order.

6. Defendants waive all rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996).

7. Defendants acknowledge that they have read the provisions of this Final Order and have agreed to abide by them.

8. Defendants waive all rights to seek appellate review or otherwise challenge or contest the validity of this Final Order.

9. Defendants waive and release any claim they may have against the FTC, Maryland, the Receiver, and the employees, representatives or agents of any of the foregoing.

10. Entry of this Final Order is in the public interest.

DEFINITIONS

For the purposes of this Final Order, 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 (regardless of whether the arrangement is covered by the Franchise Rule, 16 C.F.R. Part 436) 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, whereby:

- a. A buyer pays any consideration for the right or means to offer, sell, or distribute goods or services (regardless of whether the goods or services are identified by a trademark, service mark, trade name, advertising, or other commercial symbol); and
- b. The seller offers to provide or provides more than nominal assistance to the buyer;

3. "Corporate Defendants" means Accent Marketing, Inc., Monarch Vending, Inc., and Vend 1 One, Inc., and their successors, assigns, affiliates or subsidiaries;

4. "Individual Defendants" means John Nolan White a/k/a Nolan White, and John Byron White a/k/a Byron White;

5. "Defendants" means the Corporate Defendants and the Individual Defendants.

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, 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; and

8. "Receiver" means S. Felton Mitchell, as previously appointed by this Court.

ORDER

I. PERMANENT BAN

IT IS THEREFORE ORDERED that John Nolan White a/k/a Nolan White, and John Byron White a/k/a Byron White, whether acting directly or through any corporation, limited liability company,

subsidiary, division, or other device, are hereby permanently restrained and enjoined from:

- A. Advertising, marketing, promoting, offering for sale, or selling any business venture to any person; and
- B. Receiving any remuneration of any kind whatsoever from, holding any ownership interest, share, or stock in, or serving as an employee, officer, director, trustee, general manager of, or consultant or advisor to, any business entity engaged in or assisting in the advertising, marketing, promoting, offering for sale, or sale of any business venture to any person.

II. PROHIBITED REPRESENTATIONS

IT IS FURTHER ORDERED that in connection with the advertising, marketing, promoting, offering for sale, or sale of any goods or services, Defendants, and their successors, assigns, agents, servants, employees, officers, and all persons or entities directly or indirectly under their control, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, and each such person, whether acting directly or through any corporation, limited liability company, subsidiary, division, or other device, are hereby permanently restrained and

enjoined from misrepresenting, expressly or by implication, any fact material to a consumer's decision to buy or accept the goods or services.

**III. BAN AGAINST OFFERING BUSINESS OPPORTUNITIES
UNDER MARYLAND LAW**

IT IS FURTHER ORDERED, that John Nolan White a/k/a Nolan White, and John Byron White a/k/a Byron White, whether acting directly or through any corporation, limited liability company, subsidiary, division, or other device, are hereby permanently restrained and enjoined from offering or selling in Maryland or to any Maryland residents, any "business opportunity" as defined under the Maryland Business Opportunity Act.

IV. RECEIVERSHIP

IT IS FURTHER ORDERED that:

- A. The Receiver for the Corporate Defendants, S. Felton Mitchell, Esq., shall continue to have all the powers and duties set forth in the Preliminary Injunction, and shall wind down the affairs and marshal the records and assets of the receivership. Within 90 days after entry of this Final Order or such other time as the Court may order, the Receiver shall file with the Court, and serve on the parties, a final report describing the wind-up of the business of the Corporate Defendants and the scope of the Receiver's activities;

- B. The Receiver and all personnel hired by the Receiver as authorized by the Court shall be entitled to reasonable compensation for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them, from the assets now held by or in the possession or control of, or which may be received by, the receivership. Within 90 days after entry of this Final Order or such other time as the Court may order, the Receiver shall file with the Court, and serve on the parties, a final accounting and request for the payment of such reasonable compensation and expenses;
- C. After entry by the Court of an order ruling on the Receiver's final accounting and request for compensation, the Receiver shall transfer to the FTC all monies of the receivership estate, less fees and expenses allowed by the Court, in partial satisfaction of the Judgment herein, and the receivership shall be terminated.

V. REDRESS AND OTHER EQUITABLE RELIEF

IT IS FURTHER ORDERED that:

- A. Judgment is entered jointly and severally against the Corporate Defendants in the amount of Eighteen Million Dollars (\$18,000,000);

- B. Judgment is entered jointly and severally against the Individual Defendants in the amount of Two Million Dollars (\$2,000,000);
- C. The judgment shall be partially satisfied by:
1. The transfer by the Individual Defendants to the Receiver, upon their execution of this Final Order, of all dominion, title and control to all assets listed in the Schedule of Assets attached hereto as Attachment "A."
 2. The transfer by John Nolan White to the Receiver of any and all tax refunds that may become due and owing to him for the 2002 tax year or any prior tax year. In connection with the foregoing, John Nolan White shall: (a) engage an accounting firm that is mutually acceptable to him and the Receiver to prepare his tax returns in accordance with applicable federal and state tax laws, rules, and regulations; provided, however, that the expenses of preparing the returns up to a limit of \$2,500 shall be paid by the Receiver from the receivership estate; (b) cooperate with the accounting firm by timely furnishing all information necessary to prepare all tax returns; (c) request that the taxing authorities directly deposit any refund checks in the Receiver's bank

account (or if the taxing authority cannot direct deposit, to request that the taxing authority send any and all refunds directly to the Receiver and, in that event, John Nolan White hereby grants the Receiver a power of attorney to endorse any and all such refund checks on behalf of John Nolan White); (d) file the returns no later than 30 days after receipt of Form K-1 from the Receiver for the 2002 tax year; and (e) deliver copies of all returns (including any subsequently filed amended returns) filed for the 2002 tax year to the Receiver and the FTC within 3 days of filing the returns; and

3. The payment by the Receiver to the Commission of all monies of the receivership estate, less fees and expenses allowed by the Court;
- D. Upon receipt by the Receiver of the transfers of assets from the Individual Defendants required in Subsection C of this Section, the remainder of the judgment against the Individual Defendants shall be suspended. Upon receipt by the Commission of all payments from the Receiver required by Subsection C of this Section, the remainder of the judgment against the Corporate Defendants shall be suspended;

D. All funds paid to the Commission pursuant to this Section 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 pay any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices as alleged in the Complaint. Any funds not used for such equitable relief may be shared between the Commission and Maryland. The Commission shall deposit any funds not used for such equitable relief into the U.S. Treasury as disgorgement. Defendants shall have no right to challenge the Commission's choice of remedies under this Subsection.

VI. RIGHT TO REOPEN

IT IS FURTHER ORDERED that:

A. The Commission and Maryland's agreement to this Final Order is expressly premised upon the financial condition of the Defendants as represented in the sworn financial statements provided to the Commission by John

Nolan White dated September 24, 2002, and by John Byron White dated July 24, 2002, which include material information upon which the Commission and Maryland relied in negotiating and consenting to this Final Order;

- B. If, upon motion by the Commission or Maryland, this Court finds that any Defendant made a material misrepresentation or omitted material information concerning any Defendant's financial condition, then the Court shall enter a modified judgment reversing any suspension of the judgment and holding any such Defendant(s) liable to the Commission and Maryland in the amount of Eighteen Million Dollars (\$18,000,000), which the parties stipulate is the amount of consumer injury caused by Defendants. This amount, less the sum of payments previously made pursuant to this Order, shall become immediately due and payable by such Defendant, together with interest computed at the rate prescribed under 28 U.S.C. § 1961, as amended;
- C. While Defendants do not admit the allegations of the Complaint, they agree that the facts as alleged in the Complaint filed in this action shall be taken as true in any subsequent litigation filed by the Commission or Maryland to enforce their rights pursuant to this

Order, including, but not limited to, a nondischargeability complaint filed in any bankruptcy proceeding;

- D. Any proceedings instituted under this Section are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings that the FTC or Maryland may initiate to enforce this Order.

VII. CUSTOMER LISTS

IT IS FURTHER ORDERED that Defendants and their successors, assigns, agents, servants, employees, officers, and all persons or entities directly or indirectly under their control, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, and each such person, whether acting directly or through any corporation, limited liability company, subsidiary, division, or other device, are permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit card number, bank account number, e-mail address, or other identifying information of any person who paid any money to any of the Defendants at any time prior to the entry of this Final Order in connection with the sale of business ventures; provided that Defendants may disclose such identifying information to a

law enforcement agency or as required by any law, regulation, or court order.

VIII. RECORD KEEPING

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Final Order, in connection with any business where any of the Defendants are the majority owner of the business or directly or indirectly manage or control the business, Defendants 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; and
- E. Copies of sales and customer service scripts, training materials, advertisements, form letter responses, or other marketing or customer service materials.

IX. COMPLIANCE REPORTING

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, each Individual Defendant shall notify the Commission of the following:
 - 1. Any changes in his residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change; and
 - 2. Any changes in his employment status (including self-employment) within thirty (30) days of such change. Such notice shall include the name and address of each business he is affiliated with or employed by, a statement of the nature of the business, and a statement of his duties and responsibilities in connection with the business or employment;

- B. One hundred eighty (180) days after the date of entry of this Final Order, each Defendant shall 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. Defendant's then current residence address and telephone number;
 2. Defendant's then current employment, business addresses and telephone numbers, a description of the business activities of each such employer, and Defendant's title and responsibilities for each employer;
 3. A copy of each acknowledgment of receipt of this Final Order obtained by the Defendant pursuant to this Final Order; and
 4. A statement describing the manner in which Defendant has complied and is complying with the injunctive provisions of this Final Order, including, but not limited to, the monitoring, record keeping, and compliance portions of this Final Order;
- C. Upon written request by a representative of the Commission, each 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 purposes of this Final Order, each Defendant 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
Room 238
600 Pennsylvania Ave, N.W.
Washington, DC 20580
Re: *FTC v. Accent Marketing, Inc., et al.*

- E. For purposes of this Section, "employment" includes the performance of services as an employee, consultant, or independent contractor, and "employers" include any individual or entity for whom John Nolan White or John Byron White performs services as an employee, consultant, or independent contractor;
- F. For purposes of the compliance reporting required by this Section, the Commission is authorized to communicate directly with Defendants.

X. COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE

IT IS FURTHER ORDERED that the Commission is authorized to monitor Defendants' compliance with this Final Order by all lawful means, including but not limited to the following:

- A. The Commission is authorized, without further leave of the Court, to obtain discovery from any person through the methods provided by the Federal Rules of Civil Procedure, Rules 27-34, 36-37, and the use of compulsory process pursuant to Rule 45, for the purpose of monitoring and investigating the Individual Defendants' compliance with any provision of this Final Order. Any discovery conducted pursuant to this provision is in addition to, and not subject to, the numerical limits on discovery set forth in the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Southern District of Alabama;
- B. The Commission is authorized to use representatives posing as consumers and suppliers to Defendants or their employees, or any other entity managed or controlled in whole or in part by any Defendant, without the necessity of identification or prior notice;
- C. Nothing in this Final Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to investigate whether any of the Defendants have violated any provision of this Final Order or Section 5 of the FTC Act, 15 U.S.C. § 45; and

D. For purposes of the compliance monitoring authorized by this Paragraph, the Commission, and its agents, are authorized to communicate directly with Defendants and any employees thereof, or any other entity managed or controlled in whole or in part by any Defendant.

XI. 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, Defendants shall permit representatives of the Commission, within three (3) business days of receipt of written notice from the Commission:

A. Access during normal business hours to any office, or facility storing documents, of any business where any Defendant owns the majority of the business or directly or indirectly manages or controls the business. In providing such access, Defendants shall permit representatives of the Commission to inspect and copy all documents relevant to any matter contained in this Final Order; and shall permit Commission representatives to remove documents relevant to any matter contained in this Final Order for a period not to exceed five (5) business days so that the documents may be inspected, inventoried, and copied; and

B. 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 Subsection A of this Section applies, concerning matters relating to compliance with the terms of this Final Order. The person interviewed may have counsel present.

Provided that, the Commission may avail itself of any other process provided by law, including upon application of the Commission and for good cause shown, an ex parte order from a Court granting immediate access to any business premises for the purposes of inspecting and copying all documents relevant to any matter contained in this Final Order.

XII. ACKNOWLEDGMENT OF RECEIPT OF FINAL ORDER

IT IS FURTHER ORDERED that, within five (5) business days after receipt of this Final Order as entered by the Court, Defendants shall each submit to the Commission a truthful sworn statement, in the form attached hereto as Attachment "B," acknowledging receipt of this Final Order.

XIII. DISTRIBUTION OF FINAL ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Final Order:

- A. Each Defendant shall provide a copy of this Final Order to, and obtain a signed and dated acknowledgment of receipt of same from, each officer or director, and each individual serving in a management capacity, immediately upon employing or retaining any such persons, for any business where any of the Defendants owns the majority of the business or directly or indirectly manages or controls the business;
- B. Each Defendant shall maintain for a period of five (5) years after creation, and upon reasonable notice, make available to representatives of the Commission, the original signed and dated acknowledgments of the receipt of copies of this Final Order, as required in Subsection A of this Section.

XIV. COSTS

IT IS FURTHER ORDERED that each party shall bear its own costs and attorneys fees incurred in connection with this action.

XV. DUTY TO COOPERATE

IT IS FURTHER ORDERED that Defendants shall:

- A. Cooperate with the Receiver in all reasonable requests relating to implementation of this Final Order, including the transfer of assets pursuant to Section V of this Order. This cooperation and assistance shall include, but not be limited to, providing any


information and executing any documents that the Receiver deems necessary to exercising the authority and discharging the responsibilities of the Receiver under orders of this Court; and

- B. Cooperate with the FTC and Maryland in any continuing litigation of this matter or any ancillary matter. This cooperation includes, but is not limited to, maintaining all documents relevant to this litigation and assisting in the preparation of testimony and testifying fully, truthfully and completely at any hearing in this matter, if called upon to do so.

XVI. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for the purpose of enabling the parties to apply to the Court at any time for such further orders and directives as may be necessary or appropriate for the interpretation or modification of this Final Order, for the enforcement of compliance therewith, or for the punishment of violations thereof.

DONE AND ORDERED, this 2^d day of April, 2002, in Mobile, Alabama.


Chief United States District Judge

U.S. DISTRICT COURT
SOU. DIST. ALA.
FILED THIS THE
2nd DAY OF April,
2003, JUDGEMENT ENTRY
NO. 11624
BY Charles R. Diard Jr. CLERK
Walter M. Gennep
DEPUTY CLERK

**JUDGEMENT ENTERED
ON DOCKET**

SO STIPULATED:

Dated: 11/15/2002

S. Felton Mitchell
S. Felton Mitchell (MITCS7098)
Court Appointed Receiver
11 Midtown Park East
Mobile, AL 36606
(251) 476-4100

Dated: 3/20/2003

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Michael P. Mora
James H. Davis
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600 Pennsylvania Ave., N.W.
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J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL OF MARYLAND

Dated: 3/22/2003

Dale Cantone (by MPM w/permission)
By: Dale Cantone
Assistant Attorney General
Office of the Attorney General
200 Saint Paul Place
Baltimore, MD 21202-2020
Telephone: (410) 576-6368

Dated: November 18, 2002

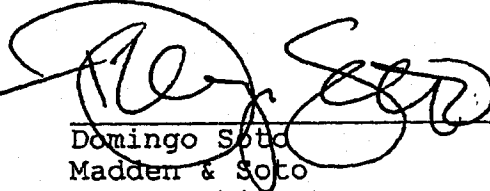
Thomas R. McAlpine
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Whitfield & McAlpine
1155 Government Street
Mobile, AL 36604
Counsel for Defendants Nolan White,
Accent Marketing, and
Monarch Vending

Dated: _____



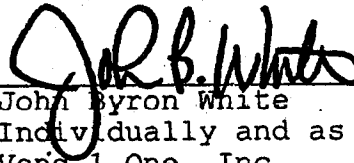
John Nolan White
Individually and as an officer of
Accent Marketing, Inc. and Monarch
Vending, Inc.

Dated: 11/25/02



Domingo Soto
Madden & Soto
465 Dauphin St
Mobile, AL 36602
Counsel for Defendants John Byron
White and Vend 1 One, Inc.

Dated: 11/25/02



John Byron White
Individually and as an officer of
Vend 1 One, Inc.