

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

FEDERAL TRADE COMMISSION and
STATE OF MARYLAND

Plaintiffs,

v.

Civ. Action No.: 02-405-CB-M

ACCENT MARKETING, INC. d/b/a
ACCENT MARKETING OF ALABAMA,
INC., an Alabama corporation;

MONARCH VENDING, INC.
an Alabama corporation;

VEND 1 ONE, INC., an Alabama
corporation;

JOHN NOLAN WHITE a/k/a NOLAN
WHITE, individually and as
an officer or director
of one or more of the above
corporations;

and

JOHN BYRON WHITE a/k/a BYRON
WHITE, individually and as an
officer or director
of one or more of the above
corporations

Defendants.

(PROPOSED)
PRELIMINARY INJUNCTION

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This matter comes before the Court on the *Ex Parte* Temporary Restraining Order and Order to Show Cause Why a Preliminary Injunction Should Not Issue entered against Defendants on June 11, 2002. Pursuant to Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a), 53(b), the Court temporarily enjoined Defendants from making false or misleading claims in connection with the sale of business ventures, and from violating the FTC's Franchise Rule. 16 C.F.R. Part 436. Further, the Court froze Defendants' assets, appointed a temporary Receiver for the corporate Defendants, and issued other ancillary equitable relief.

The Court ordered each of the Defendants to appear at a hearing on June 21, 2002, to show cause, if any there be, why this Court should not enter a preliminary injunction against Defendants pending a final ruling on the Complaint, enjoining them from further violations of Section 5(a) of the FTC Act and the Franchise Rule, continuing the asset freeze, appointing a permanent receiver, and imposing such additional relief as may be appropriate.

A hearing was held on June 21, 2002. The Court having considered the record, and now being advised in the premises, finds that:

1. This Court has jurisdiction of the subject matter of this case and there is good cause to believe it will have jurisdiction of all parties hereto;

2. There is good cause to believe that Defendants Accent Marketing, Inc. d/b/a Accent Marketing of Alabama, Inc., Monarch Vending, Inc., Vend 1 One, Inc., John Nolan White a/k/a Nolan White, and John Byron White a/k/a Byron White, 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), and 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 harm will result from Defendants' ongoing violations of Section 5 of the FTC Act and the Franchise Rule unless Defendants are restrained and enjoined by Order of this Court;

4. Unless the Court continues the asset freeze and appoints a permanent receiver, there is a substantial likelihood that Defendants will conceal, dissipate, or otherwise divert their assets, and defeat the Court's ability to grant effective final relief in the form of equitable monetary relief for consumers;

5. Weighing the equities and considering the Commission's likelihood of ultimate success, a Preliminary Injunction with an asset freeze, appointment of a permanent Receiver, and other equitable relief is in the public interest; and

6. No security is required of any agency of the United States for issuance of a restraining order. Fed. R. Civ. P. 65(c).

Definitions

For the purpose of this 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, however denominated, regardless of whether 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 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 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 (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.

ORDER

I. PROHIBITION AGAINST VIOLATION OF SECTION 5 OF FTC ACT

IT IS THEREFORE ORDERED that, in connection with the offering for sale or selling of any business venture, including franchises, Defendants are hereby 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 are likely to earn substantial income;

B. that references have purchased the Defendants' business ventures or will provide reliable descriptions of experiences with the business venture; or

C. that the Defendants or locating companies they provide or recommend have obtained the consent of store owners in the prospective purchaser's geographic area for the placement of vending machines.

II. PROHIBITION AGAINST VIOLATION OF THE FRANCHISE RULE

IT IS FURTHER ORDERED that Defendants are hereby temporarily restrained and enjoined from violating or assisting others to

violate any provisions of the Franchise Rule, 16 C.F.R. Part 436, including but not limited to:

A. failing to provide a prospective purchaser with a complete and accurate disclosure document as prescribed by the Franchise Rule, 16 C.F.R. § 436.1(a);

B. failing to provide a prospective purchaser with an earnings claim document as prescribed by the Franchise Rule, 16 C.F.R. § 436.1(b)-(e);

C. failing to disclose, in immediate conjunction with any generally disseminated ("advertised") earnings claim, information required by the Franchise Rule including the number and percentage of prior purchasers known by the Defendants to have achieved the same or better results, as required by the Franchise Rule, 16 C.F.R. § 436.1(e)(3)-(4);

D. failing to have a reasonable basis for any earnings claim at the time such claim is made, as required by the Franchise Rule, 16 C.F.R. § 436.1(b)-(e);

E. failing to disclose, in immediate conjunction with any earnings claim, and in a clear and conspicuous manner, that material which constitutes a reasonable basis for the earnings claim is available to the prospective purchasers;
or

F. failing to provide material which constitutes a reasonable basis for any earnings claim to prospective

purchasers, the Commission, or its staff upon reasonable demand.

III. ASSET FREEZE

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

A. Transferring, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, or otherwise disposing of any assets, wherever located, that are (a) owned or controlled, in whole or in part, by any 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. Opening or causing to be opened any safe deposit boxes titled in the name of or subject to access by any Corporate Defendant or Individual Defendant;

Notwithstanding provisions of this Section, Defendants shall transfer all assets of the Corporate Defendants to the Receiver pursuant to Paragraph IX of this Order.

Provided, however, that the assets affected by this Paragraph 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 Defendants and the Individual Defendants that are derived from the sale of business ventures.

IV. DUTIES OF ASSET HOLDERS

IT IS FURTHER ORDERED that any financial or brokerage institution, business entity, or person that holds, controls or maintains custody of any account or asset titled in the name of, held for the benefit of, or otherwise under the control of any Corporate Defendant or Individual Defendant, or has held, controlled or maintained custody of any such account or asset at any time since January 1, 1995, shall:

A. Prohibit any person or entity from withdrawing, removing, assigning, transferring, pledging, encumbering,

disbursing, dissipating, converting, selling, or otherwise disposing of any such asset except:

1. as directed by further order of the Court; or
2. for assets held in the name or for the benefit of any Corporate Defendant, as directed by the Receiver appointed herein;

B. Deny any person or entity access to any safe deposit box that is:

1. titled in the name of any Corporate Defendant or Individual Defendant, either individually or jointly; or
2. otherwise held for the benefit of or subject to access by any Corporate Defendant or Individual Defendant.

Notwithstanding these subsections, the Receiver appointed herein shall be provided with access to any safe deposit box individually or jointly titled in the name of, subject to access by, or held for the benefit of any Corporate Defendant.

C. Provide counsel for the Commission and the Receiver appointed herein, within five (5) business days of receiving a copy of this Order, a sworn statement setting forth:

1. the identification number of each such account or asset titled in the name, individually or jointly, or

held on behalf of, or for the benefit of, any Corporate Defendant or Individual Defendant;

2. the balance of each such account, or a description of the nature and value of such asset as of the time this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and

3. the identification of any safe deposit box that is either titled in the name, individually or jointly, or is otherwise subject to access by any Corporate Defendant or Individual Defendant;

D. Upon the request by the Receiver or the Commission, promptly provide the Receiver and the Commission with copies of all records or other documentation pertaining to such account or asset, including but not limited to originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs; and

E. Cooperate with all reasonable requests of the Receiver relating to implementation of this Order, including the transferring of funds.

V. FOREIGN ASSET REPATRIATION

IT IS FURTHER ORDERED that within five (5) business days following the service of this Order, each Corporate Defendant and Individual Defendant shall:

A. Provide the Commission and the Receiver with a full accounting of all funds, documents, and assets outside of the United States which are: (1) titled in the name, individually or jointly, of any Corporate Defendant or Individual Defendant; or (2) held by any person or entity for the benefit of any Corporate Defendant or Individual Defendant; or (3) under the direct or indirect control, whether jointly or singly, of any Corporate Defendant or Individual Defendant;

B. Transfer to the territory of the United States and deliver to the Receiver all funds, documents, and assets located in foreign countries which are (1) titled in the name individually or jointly of any defendant; or (2) held by any person or entity, for the benefit of any defendant; or (3) under any Defendant's direct or indirect control, whether jointly or singly;

C. Provide the Commission access to all records of accounts or assets of the Corporate Defendant and Individual Defendant held by financial institutions located outside the territorial United States by signing the Consent to Release of Financial Records attached to this Order as Attachment "A."

VI. INTERFERENCE WITH REPATRIATION

IT IS FURTHER ORDERED that the Defendants are hereby restrained and enjoined from taking any action, directly or indirectly, which may result in the encumbrance or dissipation of foreign assets, or in the hindrance of the repatriation required by the Paragraph V of this Order, including but not limited to:

A. Sending any statement, letter, fax, e-mail or wire transmission, telephoning or engaging in any other act, directly or indirectly, that results in a determination by a foreign trustee or other entity that a "duress" event has occurred under the terms of a foreign trust agreement, until such time that all assets have been fully repatriated pursuant to Paragraph V of this Order;

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

assets have been fully repatriated pursuant to Paragraph V of this Order.

VII. APPOINTMENT OF RECEIVER

IT IS FURTHER ORDERED that S. Felton Mitchell, Jr. is appointed as Receiver for the Corporate Defendants (Accent Marketing, Inc., Monarch Vending, Inc., Vend 1 One, Inc. and their successors, assigns, affiliates, and subsidiaries), with the full powers of an equity receiver. The Receiver shall be the agent of this Court in acting as Receiver under this Order.

VIII. DUTIES AND AUTHORITY OF RECEIVER

IT IS FURTHER ORDERED that the Receiver is directed and authorized to accomplish the following consistent with this order, the FTC Act and the Franchise Rule:

A. Assume full control of the Corporate Defendants by removing all Individual Defendants, and any officer, independent contractor, employee, or agent of the Corporate Defendants, from control and management of the affairs of the Corporate Defendants;

B. Take exclusive custody, control, and possession of all the funds, property, mail and other assets of, in the possession of, or under the control of the Corporate Defendants, wherever situated. The Receiver shall have full power to sue for, collect, receive and take possession of all goods, chattels, rights, credits, moneys, effects, land,

leases, books, records, work papers, and records of accounts, including computer-maintained information, and other papers and documents of the Corporate Defendants, including documents related to customers or clients whose interest are now held by or under the direction, possession, custody or control of the Corporate Defendants;

C. Take all steps necessary to secure the business premises and any storage or other facilities of the Corporate Defendants or under their control, including but not limited to premises located at 29000 Highway 98, Buildings A and C, 6475 Van Buren Street, and 6483 Van Buren Street, in Daphne, Alabama.

D. Preserve, hold and manage all receivership assets, and perform all acts necessary to preserve the value of those assets, in order to prevent any loss, damage or injury to customers or clients;

E. Prevent the withdrawal or misapplication of funds entrusted to the Corporate Defendants, and otherwise protect the interests of customers or clients;

F. Manage and administer the Corporate Defendants by performing all acts incidental thereto that the Receiver deems appropriate, including hiring or dismissing any and all personnel or suspending operations;

G. Collect all money owed to the Corporate Defendants;

H. Initiate, defend, compromise, adjust, intervene in, dispose of, or become a party to any actions or proceedings in state, federal or foreign court necessary to preserve or increase the assets of the receivership defendants or to carry out his or her duties pursuant to this Order;

I. Choose, engage and employ attorneys, accountants, appraisers, and other independent contractors and technical specialists, as the Receiver deems advisable or necessary in the performance of duties and responsibilities under the authority granted by this Order;

J. Issue subpoenas to obtain documents and records pertaining to the receivership, and conduct discovery in this action on behalf of the receivership estate at any time, including before the discovery conference. See Fed. R. Civ. P. 26(f);

K. Open one or more bank accounts as designated depositories for funds of the Corporate Defendants. The Receiver shall deposit all funds of the Corporate Defendants in such designated accounts and shall make all payments and disbursements from the receivership estate from such accounts; and

L. Make payments and disbursements from the receivership estate that are necessary or advisable for carrying out the directions of, or exercising the authority granted by, this Order. The Receiver shall apply to the Court for prior approval of any payment of any debt or obligation incurred by the Corporate Defendants prior to the date of entry of this Order, except for payments that the Receiver deems necessary or advisable to secure assets of the Corporate Defendants;

M. Liquidate all assets of the Corporate Defendants and hold such assets pending further of the Court;

N. Vacate the business premises occupied by the Corporate Defendants and consolidate all records and other assets by moving assets and records currently located outside of this District to a secure facility maintained within this District; and

O. Make periodic reports, observations, and recommendations to this Court, upon reasonable notice to the parties, and seek guidance and instructions from this Court, if the Receiver deems it necessary.

IX. TURNOVER OF PROPERTY TO THE RECEIVER

IT IS FURTHER ORDERED that, immediately upon service of this Order upon them, defendants and any other person or entity served with a copy of this Order, shall immediately or within such time as permitted by the Receiver in writing, deliver over to the

Receiver:

A. Possession and custody of all funds, assets, property, and all other assets, owned beneficially or otherwise, wherever situated, of the Corporate Defendants;

B. Possession and custody of documents of the Corporate Defendants, including but not limited to, all books and records of accounts, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), client lists, title documents and other papers;

C. Possession and custody of all assets being held by or on behalf of the Corporate Defendants or on behalf of the Corporate Defendants' customers;

D. All keys, computer passwords, entry codes, and combinations to locks necessary to gain or to secure access to any of the assets or documents of the Corporate Defendants, including but not limited to, access to the Corporate Defendants' business premises, means of communication, accounts, computer systems, or other property; and

E. Information identifying the accounts, employees, properties or other assets or obligations of the Corporate Defendants.

X. DUTY TO COOPERATE WITH THE RECEIVER

IT IS FURTHER ORDERED that defendants and all other persons

or entities served with a copy of this Order shall cooperate fully with and assist the Receiver. This cooperation and assistance shall include, but not be limited to, providing any information to the Receiver that the Receiver deems necessary to exercising the authority; providing any password required to access any computer or electronic files in any medium; and discharging the responsibilities of the Receiver under this Order, and advising all persons who owe money to the Corporate Defendants that all debts should be paid directly to the Receiver.

XI. STAY OF ACTIONS

IT IS FURTHER ORDERED that except by leave of the Court, during the pendency of the Receivership ordered herein, the defendants and all other persons and entities be and hereby are stayed from taking any action to establish or enforce any claim, right or interest for, against, on behalf of, in, or in the name of, the Corporate Defendants, the Receiver, receivership assets, or the Receiver's duly authorized agents acting in their capacities as such, including but not limited to, the following actions:

A. Commencing, prosecuting, litigating or enforcing any suit, except that actions may be filed to toll any applicable statute of limitations;

B. Accelerating the due date of any obligation or claimed obligation, enforcing any lien upon, or taking or attempting to take possession of, or retaining possession

of, property of the Corporate Defendants or any property claimed by the Corporate Defendants, or attempting to foreclose, forfeit, alter or terminate any of the Corporate Defendants' interests in property, whether such acts are part of a judicial proceeding or otherwise;

C. Using self-help or executing or issuing, or causing the execution or issuance of any court attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking possession of or interfering with, or creating or enforcing a lien upon any property, wherever located, owned by or in the possession of the Corporate Defendants, or the Receiver, or any agent of the Receiver; and

D. Doing any act or thing to interfere with the Receiver taking control, possession or management of the property subject to the receivership, or to in any way interfere with the Receiver or the duties of the Receiver; or to interfere with the exclusive jurisdiction of this Court over the property and assets of the Corporate Defendants.

This Paragraph does not stay the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power.

XIII. COMPENSATION OF RECEIVER

IT IS FURTHER ORDERED that the Receiver and all personnel hired by the Receiver as herein authorized, including counsel to

the Receiver, are 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 Corporate Defendants. The Receiver shall file with the Court and serve on the parties periodic requests for the payment of such reasonable compensation, with the first such request filed no more than sixty (60) days after the date of this Order. The Receiver shall not increase the hourly rates used as the bases for such fee applications without prior approval of the Court.

XIII. RECEIVER'S BOND

IT IS FURTHER ORDERED that for the duration of the receivership the Receiver shall maintain on file with the Clerk of this Court a bond in the sum of \$100,000, with sureties to be approved by the Court, conditioned that the Receiver will well and truly perform the duties of the office and abide by and perform all acts the Court directs.

XIV. MAINTENANCE OF RECORDS

IT IS FURTHER ORDERED that all defendants are restrained and enjoined from directly or indirectly destroying, mutilating, erasing, altering, concealing or disposing of, in any manner any

documents that relate to the business practices or business or personal finances of any Corporate Defendant or Individual Defendant.

XV. SERVICE OF ORDER BY FAX

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of any Corporate Defendant or Individual Defendant, or that may be subject to any provision of this Order.

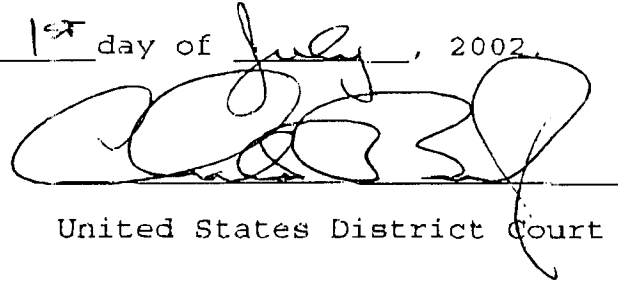
XVI. FINANCIAL STATEMENT

IT IS FURTHER ORDERED that, within five (5) days after entry of this Order, each Individual Defendant shall provide to the Commission and to the Receiver a completed financial statement, on the form attached to this Order as Attachment "B," accurate as of the date of service of this Order upon that defendant.

XVII. COURT'S RETENTION OF JURISDICTION

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

SO ORDERED, this 1st day of July, 2002.



A handwritten signature in black ink, consisting of several loops and a long tail, is written over a horizontal line. The signature is positioned above the text 'United States District Court Judge'.

United States District Court Judge