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 DISTRICT OF NEVADA

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12  
 13  
 14 UNITED STATES DISTRICT COURT  
 15 DISTRICT OF NEVADA

16 FEDERAL TRADE COMMISSION,  
 17 Plaintiff,  
 18 v.  
 19 BIKINI VENDING CORP., a Nevada  
 20 corporation, dba Kiosk USA; MYMART,  
 21 INC., a Nevada corporation; 360  
 22 WIRELESS CORP, a Nevada corporation;  
 and EDWARD BEVILACQUA, II,  
 23 individually and as an officer or director  
 of one or more of the above corporations,  
 24 Defendants.

CV-S-05-0439-LDG-RJJ

25  
 26  
 27 **STIPULATED JUDGMENT AND**  
**ORDER FOR PERMANENT**  
 28 **INJUNCTION**

WHEREAS Plaintiff, the Federal Trade Commission ("Commission" or "FTC"),  
 has commenced this action by filing the Complaint herein; Defendants Bikini Vending

1 Corp., Mymart, Inc., 360 Wireless Corp., and Edward Bevilacqua, II have waived  
2 service of the Summons and Complaint; the parties have been represented by the  
3 attorneys whose names appear hereafter; and the parties have agreed to settlement of this  
4 action upon the following terms and conditions;

5 THEREFORE, upon stipulation of Plaintiff and Defendants, it is hereby  
6 ORDERED, ADJUDGED, and DECREED as follows:

7  
8 **FINDINGS**

9 1. This Court has jurisdiction over the subject matter of this case and jurisdiction  
10 over all parties.

11 2. Venue in this district is proper under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b).

12 3. The activities of Defendants are in or affecting commerce, as defined in the FTC  
13 Act, 15 U.S.C. § 44.

14 4. The Complaint states a claim upon which relief can be granted against  
15 Defendants under Sections 5(a), 13(b), and 19 of the Federal Trade Commission Act  
16 (“FTC Act”), 15 U.S.C. §§ 45(a), 53(b), and 57b, and under the Franchise Rule, 16  
17 C.F.R. Part 436.

18 5. Plaintiff and Defendants, by and through their counsel, have agreed that the entry  
19 of this Order resolves all matters of dispute between them arising from the Complaint in  
20 this action, up to and including the date of entry of this Order. This Order, however,  
21 shall have no preclusive effect as to any action brought by any other state or federal law  
22 enforcement agency.

23 6. This Order does not constitute, and shall not be interpreted to constitute, either an  
24 admission by Defendants or a finding by the Court that Defendants engaged in any  
25 violation of law or in any of the acts alleged in the Complaint.

26 7. Defendants waive all rights to seek judicial review or otherwise challenge or  
27 contest the validity of this Order. Defendants also waive any claims that they may have  
28 held under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the

1 prosecution of this action to the date of this Order.

2 8. Each party shall bear its own costs and attorneys' fees.

3 9. Entry of this Order is in the public interest.

4 **DEFINITIONS**

5 For purposes of this Order, the following definitions shall apply:

6 A. "Business Venture" means any written or oral business arrangement,  
7 however denominated, whether or not covered by the Commission's Franchise Rule, 16  
8 C.F.R. Part 436, in which the participant or purchaser pays any consideration for:

- 9 1. the right or means to offer, sell, or distribute goods or services  
10 (whether or not identified by a trademark, service mark, trade  
11 name, advertising, or other commercial symbol); and  
12 2. more than nominal assistance to any person or entity in connection  
13 with or incident to the establishment, maintenance, or operation of  
14 a new business or the entry by an existing business into a new line  
15 or type of business.

16 B. "Corporate Defendants" means Bikini Vending Corp., Mymart, Inc., and  
17 360 Wireless Corp.

18 C. "Defendants" means Corporate Defendants and Individual Defendant.

19 D. "Document" is synonymous in meaning and equal in scope to the usage of  
20 the term in Federal Rule of Civil Procedure 34(a) and includes writings, drawings,  
21 graphs, charts, photographs, audio and video recordings, computer records, and other  
22 data compilations from which the information can be obtained and translated, if  
23 necessary, through detection devices into reasonably usable form. A draft or  
24 non-identical copy is a separate document within the meaning of the term.

25 E. The "Franchise Rule" or "Rule" means the FTC Trade Regulation Rule  
26 entitled "Disclosure Requirements and Prohibitions Concerning Franchising and  
27 Business Opportunity Ventures," 16 C.F.R. Part 436.

28 F. "Franchise" and "Franchisor" are defined as those terms are defined in

1 Sections 436.2(a) and (c) of the Franchise Rule, 16 C.F.R. §§ 436.2(a) and (c), and  
2 include "business opportunity ventures" as defined in Sections 436.2(a)(1)(ii) and (2) of  
3 the Rule, and discussed in the FTC's Final Interpretive Guide for the Franchise Rule, 44  
4 Fed. Reg. 49966-68 (August 24, 1979). The term "franchise" in this Order shall also  
5 encompass any successor definition of "franchise," "business opportunity" and  
6 "business opportunity venture" in any future trade regulation rule or rules that may be  
7 promulgated by the Commission to modify or supersede the Franchise Rule, in whole or  
8 part, from the date any such rule takes effect.

9 G. "Individual Defendant" means Edward Bevilacqua, II.

10 H. "Person" means a natural person, organization or other legal entity,  
11 including a corporation, partnership, proprietorship, association, or cooperative, or any  
12 other group, or combination acting as an entity.

## 14 ORDER

### 15 I.

#### 16 **BAN ON SALE OF FRANCHISES AND BUSINESS VENTURES**

17 **IT IS THEREFORE ORDERED** that Defendants are hereby permanently  
18 restrained and enjoined from:

- 19 A. Advertising, marketing, promoting, offering for sale, selling, or assisting  
20 any other person in the sale of any Business Venture or Franchise; or  
21 B. Receiving any remuneration of any kind whatsoever from, holding any  
22 ownership interest, share, or stock in, or serving as an officer, director,  
23 trustee, general manager of, or consultant or advisor to, any person  
24 engaged in advertising, marketing, promoting, offering for sale, or selling  
25 any Business Venture or Franchise.

26 Nothing in this Order shall be read as an exception to this paragraph.

### 27 II.

#### 28 **PROHIBITED REPRESENTATIONS**



1 service is likely to achieve;

2 C. The source of any income or profit sent to a purchaser of such good or  
3 service; or

4 D. The availability or existence of locations or profitable locations for such  
5 good or service.

6 **IV.**

7 **SUSPENDED JUDGMENT**

8 **IT IS FURTHER ORDERED** that:

9 A. Judgment is hereby entered jointly and severally against Defendants in the  
10 amount of eighteen million dollars (\$18,000,000.00); provided, however,  
11 that this judgment shall be suspended subject to the conditions set forth in  
12 Paragraph V of this Order.

13 B. Defendants shall release any and all claims they may have to any assets  
14 seized from Bank of America Accounts in the name of Bikini Vending  
15 Corporation by the Federal Bureau of Investigation, including one million,  
16 five hundred twenty-four thousand, eight hundred seventy-three dollars  
17 and twenty-seven cents (\$1,524,873.27), within five (5) business days of  
18 the date of entry of this Order. Defendants agree that these assets or their  
19 proceeds may be transferred by the Office of the United States Marshal, or  
20 its designated agent, to the Federal Trade Commission, or its designated  
21 agent, to be used for consumer redress in accordance with the provisions  
22 in this Section.

23 C. Funds transferred pursuant to this Section shall be deposited into a fund  
24 administered by the FTC, or its designated agent, to be used for equitable  
25 relief, including, but not limited to, restitution and any attendant expenses  
26 for the administration of any monetary fund. In the event that direct  
27 restitution for consumers is wholly or partially impracticable or funds  
28 remain after restitution is completed, the FTC may apply any remaining

1 funds for any other equitable relief (including consumer information  
2 remedies) that it determines to be reasonably related to Defendants'  
3 practices alleged in the Complaint. Any funds not used for this equitable  
4 relief shall be deposited into the U.S. Treasury as disgorgement.  
5 Defendants shall have no right to challenge the FTC's choice of remedies  
6 under this Section.

7 **V.**

8 **TERMINATION OF SUSPENSION**

9 **IT IS FURTHER ORDERED** that:

- 10 A. The Commission's agreement to, and the Court's approval of, this Order is  
11 expressly premised upon the truthfulness, accuracy, and completeness of  
12 Defendants' financial conditions, as represented in their financial  
13 statements dated November 10, 2004, March 4, 2005, March 14, 2005,  
14 and March 18, 2005, including any attachments, and in any other  
15 documents submitted by Defendants, upon which the Commission relied  
16 in negotiating and agreeing to the terms of this Order.
- 17 B. If, upon motion by the Commission to the Court, the Court finds that  
18 Defendants failed to disclose any material asset, materially misrepresented  
19 the value of any asset, or made any other material misrepresentation or  
20 omission in the above-referenced financial statements and information, the  
21 suspension of the monetary judgment will be terminated and the entire  
22 judgment amount of eighteen million dollars (\$18,000,000), representing  
23 the approximate amount of consumer injury, less the sum of transfers  
24 made pursuant to Section IV above, shall become immediately due and  
25 payable by Defendants, and interest computed at the rate prescribed under  
26 28 U.S.C. § 1961, as amended, shall begin immediately to accrue on the  
27 unpaid balance.
- 28 C. The FTC and Defendants acknowledge and agree that no portion of this

1 judgment for equitable monetary relief shall be deemed a fine, penalty,  
2 punitive assessment, or forfeiture.

3 D. Defendants agree that the facts as alleged in the Complaint filed in this  
4 action shall be taken as true for the purpose of any nondischargeability  
5 action in a bankruptcy proceeding.

6 **VI.**

7 **CUSTOMER LISTS**

8 **IT IS FURTHER ORDERED** that Defendants and their officers, agents,  
9 servants, employees, and attorneys, and those persons or entities in active concert or  
10 participation with them who receive actual notice of this Order by personal service,  
11 facsimile, or otherwise, are hereby enjoined from selling, renting, leasing, transferring,  
12 or otherwise disclosing the name, address, telephone number, credit card number, bank  
13 account number, email address, or other identifying information of any person who  
14 purchased one of Defendants' business ventures; provided that Defendants may disclose  
15 such identifying information to a law enforcement agency or as required by any law,  
16 regulation, or court order.

17 **VII.**

18 **COOPERATION WITH COMMISSION COUNSEL**

19 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of  
20 entry of this Order, Individual Defendant must, in connection with this action or any  
21 subsequent investigations related to, or associated with, the transactions or the  
22 occurrences that are the subject of the Commission's Complaint, cooperate in good faith  
23 with the Commission and appear at such places and times as the Commission shall  
24 reasonably request, after written notice to him and to his counsel of record, for  
25 interviews, conferences, pretrial discovery, review of documents, and for such other  
26 matters as may be reasonably requested by the Commission. If requested in writing by  
27 the Commission, Individual Defendant must appear and provide truthful testimony in  
28 any trial, deposition, or other proceeding related to, or associated with, the transactions



1 or the occurrences that are the subject of the Complaint. Individual Defendant agrees to  
2 accept service of any subpoena to appear and provide such testimony.

3 *Provided, however,* that nothing in this Paragraph shall be construed as a waiver  
4 of Individual Defendant's Fifth Amendment privilege against self-incrimination.

5 **VIII.**

6 **COMPLIANCE MONITORING**

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

9 A. Within ten (10) days of receipt of written notice from a representative of  
10 the Commission, Bikini Vending Corp., Mymart, Inc., 360 Wireless Corp.,  
11 and Edward Bevilacqua, II each shall submit additional written reports,  
12 sworn to under penalty of perjury; produce documents for inspection and  
13 copying; appear for deposition; and/or provide entry during normal  
14 business hours to any business location in such defendant's possession or  
15 direct or indirect control to inspect the business operation;

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

- 19 1. Obtaining discovery from any person, without further leave of  
20 court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33,  
21 34, 36, and 45;
- 22 2. Posing as consumers and suppliers to Bikini Vending Corp.,  
23 Mymart, Inc., 360 Wireless Corp., or Edward Bevilacqua, II;  
24 employees of Bikini Vending Corp., Mymart, Inc., 360 Wireless  
25 Corp., or Edward Bevilacqua, II; or any other entity managed or  
26 controlled in whole or in part by Bikini Vending Corp., Mymart,  
27 Inc., 360 Wireless Corp., or Edward Bevilacqua, II, without the  
28 necessity of identification or prior notice; and

1 C. Bikini Vending Corp., Mymart, Inc., 360 Wireless Corp., and Edward  
2 Bevilacqua, II shall permit representatives of the Commission to interview  
3 any employer, consultant, independent contractor, representative, agent, or  
4 employee who has agreed to such an interview, relating in any way to any  
5 conduct subject to this Order. The person interviewed may have counsel  
6 present.

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

## 12 IX.

### 13 COMPLIANCE REPORTING BY DEFENDANT(S)

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

- 16 A. For a period of four (4) years from the date of entry of this Order:
- 17 1. Individual Defendant shall notify the Commission of the following:
    - 18 a. Any changes in residence, mailing addresses, and telephone  
19 numbers of Individual Defendant, within ten (10) days of the  
20 date of such change;
    - 21 b. Any changes in employment status (including self-  
22 employment) of Individual Defendant, and any change in  
23 ownership of Individual Defendant in any business entity,  
24 within ten (10) days of the date of such change. Such notice  
25 shall include the name and address of each business that  
26 Individual Defendant is affiliated with, employed by, creates  
27 or forms, or performs services for; a statement of the nature  
28 of the business; and a statement of Individual Defendant's

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

3 c. Any changes in Individual Defendant's name or use of any  
4 aliases or fictitious names; and

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

20 B. One hundred eighty (180) days after the date of entry of this Order, Bikini  
21 Vending Corp., Mymart, Inc., 360 Wireless Corp., and Edward  
22 Bevilacqua, II each shall provide a written report to the FTC, sworn to  
23 under penalty of perjury, setting forth in detail the manner and form in  
24 which they have complied and are complying with this Order. This report  
25 shall include, but not be limited to:

26 1. For Individual Defendant:

27 a. The then-current residence address, mailing addresses, and  
28 telephone numbers of Individual Defendant;



1 successors, and assigns, and those persons in active concert or participation with them  
2 who receive actual notice of this Order by personal service or otherwise, in connection  
3 with any business where any Defendant is the majority owner of the business or directly  
4 or indirectly manages or controls the business, are hereby restrained and enjoined from  
5 failing to create and retain the following records:

- 6 A. Accounting records that reflect the cost of goods or services sold,  
7 revenues generated, and the disbursement of such revenues;
- 8 B. Personnel records accurately reflecting: the name, address, and telephone  
9 number of each person employed in any capacity by such business,  
10 including as an independent contractor; that person's job title or position;  
11 the date upon which the person commenced work; and the date and reason  
12 for the person's termination, if applicable;
- 13 C. Customer files containing the names, addresses, phone numbers, dollar  
14 amounts paid, quantity of items or services purchased, and description of  
15 items or services purchased, to the extent such information is obtained in  
16 the ordinary course of business;
- 17 D. Complaints and refund requests (whether received directly, indirectly or  
18 through any third party) and any responses to those complaints or requests;
- 19 E. Copies of all sales scripts, training materials, advertisements, or other  
20 marketing materials; and
- 21 F. All records and documents necessary to demonstrate full compliance with  
22 each provision of this Order, including, but not limited to, copies of  
23 acknowledgments of receipt of this Order, required by Section XI, and all  
24 reports submitted to the FTC pursuant to Section IX.

25 **XI.**

26 **DISTRIBUTION OF ORDER BY DEFENDANT(S)**

27 **IT IS FURTHER ORDERED** that, for a period of four (4) years from the date  
28 of entry of this Order, Defendants shall deliver copies of the Order as directed below:

- 1           A.    **Corporate Defendants:** Corporate Defendants must deliver a copy of this  
2           Order to all of their current and future principals, officers, directors, and  
3           managers. Corporate Defendants also must deliver copies of this Order to  
4           all of their current and future employees, agents, and representatives who  
5           engage in conduct related to the subject matter of the Order. For current  
6           personnel, delivery shall be within five (5) days of service of this Order  
7           upon Defendant. For new personnel, delivery shall occur prior to them  
8           assuming their responsibilities.
- 9           B.    **Individual Defendant as Control Person:** For any business that  
10          Individual Defendant controls, directly or indirectly, or in which  
11          Individual Defendant has a majority ownership interest, Individual  
12          Defendant must deliver a copy of this Order to all principals, officers,  
13          directors, and managers of that business. Individual Defendant must also  
14          deliver copies of this Order to all employees, agents, and representatives  
15          of that business who engage in conduct related to the subject matter of the  
16          Order. For current personnel, delivery shall be within five (5) days of  
17          service of this Order upon Defendant. For new personnel, delivery shall  
18          occur prior to them assuming their responsibilities.
- 19          C.    **Individual Defendant as employee or non-control person:** For any  
20          business where Individual Defendant is not a controlling person of a  
21          business but otherwise engages in conduct related to the subject matter of  
22          this Order, Individual Defendant must deliver a copy of this Order to all  
23          principals and managers of such business before engaging in such  
24          conduct.
- 25          D.    Corporate and Individual Defendants must secure a signed and dated  
26          statement acknowledging receipt of the Order, within thirty (30) days of  
27          delivery, from all persons receiving a copy of the Order pursuant to this  
28          Part.

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**XII.**

**ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT(S)**

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

**XIII.**

**RETENTION OF JURISDICTION**

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

Dated: \_\_\_\_\_

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U.S. DISTRICT COURT JUDGE

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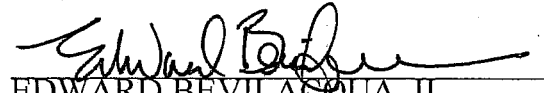
2 FOR PLAINTIFF.

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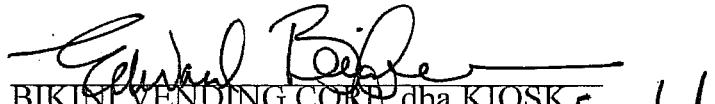
4 LISA D. ROSENTHAL  
5 KERRY O'BRIEN  
6 GWENDOLYN FANGER  
7 JEROME M. STEINER, JR.  
8 Federal Trade Commission  
9 901 Market Street, Suite 570  
10 San Francisco, CA 94103  
11 Phone (415) 848-5100  
12 Fax (415) 848-5184  
13 Email: lrosenthal@ftc.gov

14 Attorneys for Plaintiff  
15 Federal Trade Commission  
16 Dated: 3/31/05

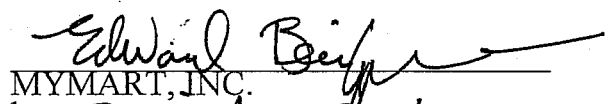
FOR DEFENDANTS:



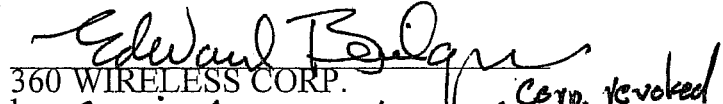
EDWARD BEVILACQUA, II,  
individually and as officer of BIKINI  
VENDING CORP., MYMART, INC., and  
360 WIRELESS CORP.  
Dated: 3/21/05



BIKINI VENDING CORP. dba KIOSK  
USA *corp. revoked*  
by President E. BEVILACQUA  
Dated: 3/21/05



MYMART, INC.  
by President E. BEVILACQUA  
Dated: 3/21/05



360 WIRELESS CORP.  
by President E. BEVILACQUA *Corp. revoked*  
Dated: 3-21-05



Mark Dzarnoski, Esq.  
Attorney for Defendants  
Dated: 3-21-05

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