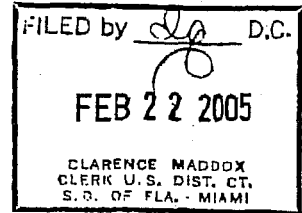


UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No. 04-22431-CIV-MARTINEZ



FEDERAL TRADE COMMISSION,

Plaintiff,

v.

AMERICAN ENTERTAINMENT  
DISTRIBUTORS, INC. et al.,

Defendants.

**DEFAULT JUDGMENT  
AND FINAL ORDER FOR  
PERMANENT  
INJUNCTION AS TO  
DEFENDANTS  
AMERICAN  
ENTERTAINMENT  
DISTRIBUTORS, INC.,  
AUTOMATED  
ENTERTAINMENT  
MACHINES, INC., AND  
JAMES MACARTHUR**

This matter comes before the Court on motion of Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), for default judgment against defendants American Entertainment Distributors, Inc. ("AED"), Automated Entertainment Machines, Inc. ("AEM"), and James MacArthur (collectively referred to hereinafter as the "Defaulting Defendants"). On September 28, 2004, the Commission filed a Complaint against, *inter alia*, the Defaulting Defendants, for a Permanent Injunction and Other Relief, including redress to consumers, pursuant to Sections 13(b) and 19(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b(a). The Commission charged the defendants with engaging in deceptive trade practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and violating the disclosure requirements and prohibitions of the Franchise Rule, 16 C.F.R. Part 436, in connection with marketing and selling business opportunity ventures. Concurrently with the filing of the Complaint, the Commission also moved *ex parte* for a Temporary Restraining Order ("TRO") against the defendants pursuant to Rule 65 of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 65.

On September 29, 2004, this Court, having considered the Complaint, declarations, exhibits, and memorandum of law filed in support of Plaintiff's motion, issued a TRO with an asset freeze, appointed Gerald Wald, Esq., as Receiver for the Corporate Defendants – including

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*bb*

AED and AEM – and ordered other ancillary equitable relief. On October 21, 2004, the Court entered a Stipulated Preliminary Injunction against defendants AED and James MacArthur.

The Clerk of the Court has entered default against each of the Defaulting Defendants for failing to file an answer to the Complaint. The Court having considered Plaintiff's Motion for Default Judgment against the Defaulting Defendants, and the declarations and memorandum of law filed in support thereof,

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiff's Motion for Default Judgment against the Defaulting Defendants is **GRANTED**. (DE#117)

The Court makes the following findings of fact and conclusions of law:

1. This Court has jurisdiction of the subject matter of this case and over the Defaulting Defendants.
2. Venue is proper as to all parties in the Southern District of Florida.
3. The activities of the Defaulting Defendants are in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44.
4. The Complaint states a claim upon which relief may be granted against the Defaulting Defendants under Section 5 of the FTC Act, 15 U.S.C. § 45(a).
5. Issuance of this Order is in the public interest.
6. In accordance with Rule 65(d) of the Federal Rules of Civil Procedure, this Order shall be binding upon the Defaulting Defendants, their agents, servants, employees, and upon those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise.

#### **DEFINITIONS**

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, lines of credit, 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 AED and AEM, and their successors, assigns, affiliates or subsidiaries.

4. “Defaulting Defendants” means (a) AED, (b) AEM, and (c) James MacArthur.

5. “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;

6. “Receiver” shall mean the receiver appointed in Section V of this Order and any deputy receivers that may be named by the receiver;

7. “Receivership Defendants” shall mean AED and AEM.

### **CONDUCT PROHIBITIONS**

#### **I. BAN AGAINST ANY INVOLVEMENT WITH BUSINESS VENTURES**

**IT IS THEREFORE ORDERED** that James MacArthur, whether acting directly or through any corporation, limited liability company, subsidiary, division, or other device, and any person insofar as he or she is acting in the capacity of an officer, agent, servant, employee or attorney of James MacArthur, and 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)) is permanently enjoined from:

1. Advertising, marketing, promoting, offering for sale, or selling any business venture; and
2. 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.

## **II. PROHIBITION AGAINST FALSE OR MISLEADING STATEMENTS**

**IT IS FURTHER ORDERED** that, in connection with advertising, marketing, promoting, offering for sale, or sale of any good or service, James MacArthur, whether acting directly or through any corporation, limited liability company, subsidiary, division, or other device, and any person insofar as he or she is acting in the capacity of an officer, agent, servant, employee or attorney of James MacArthur, and 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)), is permanently enjoined from misrepresenting, expressly or by implication, any fact material to a consumer's decision to buy or accept the good or service.

## **III. ASSET FREEZE**

**IT IS FURTHER ORDERED** that the asset freeze previously ordered by the Court as to the Defaulting Defendants pursuant to the Stipulated Preliminary Injunction against AED and James MacArthur, and the Temporary Restraining Order as to AEM, shall remain in effect until further order of the Court after the FTC and the Receiver notify the Court that all frozen assets of the Defaulting Defendants have been liquidated and transferred to the Receiver or to the FTC.

## **IV. MONETARY JUDGMENT**

**IT IS FURTHER ORDERED** that Defaulting Defendants are jointly and severally liable to the FTC for nineteen million two hundred one thousand four hundred three dollars (\$19,201,403.00), which represents the amount of consumer injury caused by Defaulting Defendants' unlawful practices, and the FTC is awarded a monetary judgment in that amount. Funds collected to satisfy this judgment shall be used for consumer redress or disgorgement.

1. This monetary judgment is equitable monetary relief, solely remedial in nature, and not a fine, penalty, punitive assessment or forfeiture.

2. Any proceedings to enforce this Section shall be 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 may initiate to enforce this Permanent Injunction.

3. All funds paid to the FTC or its designated agent pursuant to this Permanent Injunction shall be deposited into a redress fund, administered by the FTC or its designated 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 FTC may apply any remaining funds to such other equitable relief (including consumer education remedies) as they determine to be reasonably related to the Defaulting Defendants' unlawful practices. All funds not so used for such equitable relief shall be paid to the United States Treasury as disgorgement. The FTC in its sole discretion may use a designated agent to administer consumer redress.

#### **V. COMPLETION OF RECEIVERSHIP**

**IT IS FURTHER ORDERED** that Gerald Wald, Esq., the Receiver for the Corporate Defendants appointed by prior order of this Court, is hereby appointed as permanent Receiver for the Corporate Defendants for the purpose of taking the necessary steps to wind down the businesses of the Corporate Defendants, liquidate their assets, and pay any net assets to the FTC to satisfy the monetary judgment in this Permanent Injunction. In acting as Receiver under this Permanent Injunction, the Receiver shall be the agent of this Court and shall be accountable directly to this Court. In carrying out these duties, the Receiver is authorized and directed to:

1. Take any and all actions that the Receiver concludes are appropriate to wind down the Corporate Defendants;

2. Take all steps necessary or advisable to locate and liquidate all other assets of the Corporate Defendants, cancel the Corporate Defendants' contracts, collect on amounts owed to the Corporate Defendants, and take such other steps as may be necessary to terminate and dissolve the Corporate Defendants efficiently;

3. Provide the FTC, upon request, with any customer records or other business records of the Corporate Defendants necessary for paying consumer redress;

4. Continue to exercise full control over the Corporate Defendants and continue to collect, marshal, and take custody, control and possession of all the funds, property, premises, accounts, documents, mail and other assets of, or in the possession or under the control of, the Corporate Defendants, wherever situated, the income and profits therefrom, and all sums of money now or hereafter due or owing to the Corporate Defendants, with full power to collect, receive and take possession of all goods, chattels, rights, credits, monies, effects, lands, leases, books and records, limited partnership records, work papers, and records of accounts, including computer-maintained information, contracts, financial records, monies on hand in banks and other financial institutions, and other papers and documents of other individuals, partnerships or corporations whose interests are now held by or under the direction, possession, custody or control of the Corporate Defendants;

5. Dispose of, or arrange for the disposal of, the records of the Corporate Defendants no later than six months after the Court's approval of the Receiver's final report;

6. Continue to perform all acts necessary or advisable to complete an accounting of the Receivership assets, and prevent unauthorized transfer, withdrawal, or misapplication of assets;

7. 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 Permanent Injunction. 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 the temporary restraining order in this action, except payments that the Receiver deems necessary or advisable to secure and liquidate assets of the Corporate Defendants, such as rental payments or payment of liens;

8. Enter into contracts and purchase insurance as advisable or necessary;

9. Perform all incidental acts that the Receiver deems to be advisable or necessary, which includes retaining, hiring, or dismissing any employees, independent contractors, or agents;

10. Continue to institute, compromise, adjust, appear in, intervene in, or become party to such actions or proceedings in state, federal or foreign courts or arbitration proceedings as the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Permanent Injunction, including but not limited to, actions challenging fraudulent or voidable transfers;

11. Continue to defend, compromise, adjust, or otherwise dispose of any or all actions or proceedings instituted in the past or in the future against the Receiver in his role as Receiver, or against the Corporate Defendants, as the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Permanent Injunction;

12. Issue subpoenas to obtain documents and records pertaining to the receivership, and conduct discovery in this action on behalf of the Receivership estate;

13. Open and maintain one or more bank accounts as designated depositories for funds of the Corporate Defendants, and make all payments and disbursements from the Receivership estate from such an account. The Receiver shall serve copies of monthly account statements on all parties;

14. Continue to maintain accurate records of all receipts and expenditures that he makes as Receiver; and

15. Continue to cooperate with reasonable requests for information or assistance from any state or federal law enforcement agency.

## **VI. COMPENSATION OF RECEIVER**

**IT IS FURTHER ORDERED** that the Receiver and all personnel hired by the Receiver, including counsel to the Receiver and accountants, are entitled to reasonable compensation for the performance of duties pursuant to this Permanent Injunction and for the cost of actual out-of-pocket expenses incurred by them, from the assets now held by, in the possession or control of, or which may be received by, the Corporate Defendants. The Receiver must not increase the hourly rates used as the bases for such fee applications without prior approval of the Court.

## VII. RECEIVER'S FINAL REPORT AND DISBURSEMENT OF ASSETS OF THE CORPORATE DEFENDANTS

**IT IS FURTHER ORDERED** that:

1. The Receiver shall liquidate the assets of the Corporate Defendants. No later than sixty (60) days from the date of the entry of this Permanent Injunction, the Receiver shall file and serve on the parties a report (the "Final Report") to the Court that details the steps taken to dissolve the Receivership estate. The Final Report must include an accounting of the Receivership estate's finances and total assets and a description of what other actions, if any, must be taken to wind-down the Receivership. Promptly thereafter, but no later than thirty (30) days after submission of the Final Report, the Receiver shall file an application for payment of compensation and expenses associated with his performance of duties as Receiver. The Receiver shall mail copies of the Final Report to all known creditors of the Corporate Defendants with a notice stating that any objections to paying any assets of the Corporate Defendants to satisfy the Receiver's costs and expenses and the monetary judgment set forth in this Permanent Injunction must be submitted to the Court and served by mail upon the Receiver and the parties within thirty days of the mailing of the Final Report. If subsequent actions (such as the completion of tax returns or further actions to recover funds for the Receivership) are appropriate, the Receiver shall file additional report or reports (the "Supplemental Reports") describing the subsequent actions and a subsequent application for the payment of fees and expenses related to the subsequent acts.

2. The Court will review the Final Report and any objections to the report and, absent a valid objection, will issue an order directing that the Receiver:

a. Pay the reasonable costs and expenses of administering the Receivership, including compensation of the Receiver and the Receiver's personnel authorized by Section VI of this Permanent Injunction or other orders of this Court, and the actual out-of-pocket costs incurred by the Receiver in carrying out his duties;

b. To the extent that funds remain, pay all remaining funds to the FTC or its designated agent to reduce the monetary judgment in Section IV.



3. With Court approval, the Receiver may hold back funds for a specified period as a reserve to cover additional fees and costs related to actions to be addressed in a Supplemental Report. If the Receiver does not make a supplemental application for fees and expenses within the specified period, or if funds remain in the reserve fund after the payments of fees and expenses approved by the Court in response to such a supplemental application, all funds remaining in the reserve fund will be paid to the FTC or its designated agent.

#### VIII. COMPLIANCE MONITORING

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

1. Within ten (10) days of receipt of written notice from a representative of the Commission, defendant James MacArthur shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in his possession or direct or indirect control to inspect the business operation;

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

a. obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;

b. posing as consumers and suppliers to: James MacArthur, James MacArthur's employees, or any other entity managed or controlled in whole or in part by James MacArthur, without the necessity of identification or prior notice; and

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

*Provided, however,* that nothing in this 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 obtain any documentary material, tangible things, testimony, or information relevant to unfair or

deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

### IX. COMPLIANCE REPORTING

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

1. For a period of five (5) years from the date of entry of this Order,
  - a. James MacArthur shall notify the Commission of the following:
    - i. Any changes in his residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
    - ii. Any changes in his employment status (including self-employment), and any change in the ownership of James MacArthur in any business entity, within ten (10) days of the date of such change. Such notice shall include the name and address of each business that James MacArthur is affiliated with, employed by, creates or forms, or performs services for; a statement of the nature of the business; and a statement of his duties and responsibilities in connection with the business or employment; and
    - iii. Any changes in James MacArthur's name or use of any aliases or fictitious names; and
  - b. James MacArthur shall notify the Commission of any changes in corporate structure of any business entity that he directly or indirectly control(s), or has an ownership interest in, that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which James MacArthur learns less than thirty (30) days prior to the date such action is to take place, James MacArthur shall notify the Commission as soon as is practicable after obtaining such knowledge.

2. One hundred eighty (180) days after the date of entry of this Order, James MacArthur shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which he has complied and is complying with this Order. This report shall include, but not be limited to:

- a. His then-current residence address, mailing addresses, and telephone numbers;
- b. His then-current employment and business addresses and telephone numbers, a description of the business activities of each such employer or business, and the title and responsibilities of James MacArthur, for each such employer or business;
- c. Any other changes required to be reported under subparagraph A of this Section; and
- d. A copy of each acknowledgment of receipt of this Order, obtained pursuant to Section XII of this Order;

3. For the purposes of this Order, James MacArthur shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director, Division of Marketing Practices  
Federal Trade Commission  
600 Pennsylvania Ave. NW, Room H-238  
Washington, D.C. 20580  
Re: FTC v. American Entertainment Distributors, Inc., et al., Civil  
Action No. 04-22431 (S.D. Fla)

4. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with James MacArthur.

#### **X. RECORD KEEPING PROVISIONS**

**IT IS FURTHER ORDERED** that, for a period of eight (8) years from the date of entry of this Order, with respect to any business that James MacArthur controls, directly or indirectly, or in which he has a majority ownership interest, James MacArthur and his agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or

participation with him who receive actual notice of this Order by personal service or otherwise, are permanently enjoined from failing to create and retain the following records:

1. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
2. 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;
3. 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;
4. Complaints and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests;
5. Copies of all sales scripts, training materials, advertisements, or other marketing materials; and
6. All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, copies of acknowledgments of receipt of this Order, required by Section XII and all reports submitted to the FTC pursuant to this Order.

#### **XI. DISTRIBUTION OF ORDER BY DEFENDANT JAMES MACARTHUR**

**IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this Order, James MacArthur shall distribute copies of the Order as directed below:

1. For any business that James MacArthur controls, directly or indirectly, or in which he has a majority ownership interest, James MacArthur must deliver a copy of this Order to all principals, officers, directors, and managers of that business. James MacArthur must also deliver copies of this Order to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within (5) days of service of this Order upon Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities.

2. For any business where James MacArthur is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, James MacArthur must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.

3. James MacArthur must secure a signed and dated statement acknowledging receipt of the Order, within thirty days of delivery, from all persons receiving a copy of the Order pursuant to this Part.

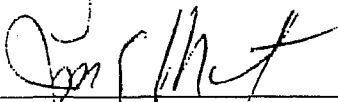
**XII. ACKNOWLEDGMENT OF RECEIPT OF ORDER**

**IT IS FURTHER ORDERED** that James MacArthur, 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.

*Signed*  
~~Printed~~ **SO ORDERED**, this 22 day of February, at 1:50 p.m., Eastern Daylight Time.

  
\_\_\_\_\_  
JOSE E. MARTINEZ  
UNITED STATES DISTRICT JUDGE