

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
Miami Division
Case No. 04-22431-CIV-MARTINEZ/BROWN**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

AMERICAN ENTERTAINMENT
DISTRIBUTORS, INC. et al.,

Defendants.

**FINAL ORDER AND PERMANENT
INJUNCTION AS TO DEFENDANT
RUSSELL G. MacARTHUR, JR.**

This matter is before the Court on the motion of Plaintiff Federal Trade Commission (“FTC”) for judgment against Defendant Russell G. MacArthur, Jr. (D.E. No. 250). The Court makes the following findings and conclusions, and enters a permanent injunction against Defendant Russell G. MacArthur, Jr. pursuant to § 13(b) of the FTC Act, 15 U.S.C. § 53(b).

FINDINGS

1. The FTC is an independent agency of the United States Government created by statute, 15 U.S.C. § 41 *et seq.* The FTC is charged with, *inter alia*, enforcing Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce, and the Franchise Rule, 16 C.F.R. Part 436 (2003), which imposes full and accurate disclosure requirements on brokers and sellers of franchises and business opportunities. The FTC is authorized to initiate court proceedings to enjoin violations of the FTC Act, and to secure such equitable relief as may be appropriate in each case, including restitution and disgorgement. 15 U.S.C. § 53(b).

2. From November 2003 through September 2004, American Entertainment Distributors, Inc. (“AED”) sold business opportunities to own and operate DVD vending machines. *See* Exhibit A, Factual Resume attached to the plea agreement of Defendant Russell G. MacArthur, Jr. in the criminal case, *United States v. MacArthur*, Case No. 05-60203-CR-MARTINEZ, ¶ 2 (hereinafter “*Factual Resume*”).

3. Defendant Russell G. MacArthur, Jr. was involved in creating and organizing AED in the summer of 2003. *Id.* ¶ 1.

4. Defendant Russell G. MacArthur, Jr. was involved in leading, directing, and managing AED until he left the business in the spring of 2004. *Id.* ¶ 1.

5. AED marketed the business opportunity through television commercials, Internet advertising, and unsolicited faxes. *Id.* ¶ 2.

6. During the marketing and promoting of the AED business opportunity, Defendant Russell G. MacArthur, Jr. falsely represented to consumers, directly or by implication, that purchasers of the business opportunity could earn substantial income from the business opportunity. *Id.* ¶ 5.

7. During the marketing and promoting of the AED business opportunity, Defendant Russell G. MacArthur, Jr. falsely represented to consumers, directly or by implication, that AED would provide purchasers of the business opportunity with assistance in finding locations to place the DVD rental machines and misrepresented the quality of those locations. *Id.* ¶ 5.

8. Defendant Russell G. MacArthur, Jr. made additional material misrepresentations to consumers in direct mail materials AED sent to consumers and in telemarketing sales calls to consumers. *Id.* ¶¶ 5-7.

9. AED urged prospective purchasers of the business opportunity to call references for AED. *Id.* ¶ 8.

10. Defendant Russell G. MacArthur, Jr. was involved in soliciting individuals to become references for AED and knew that some of these references had not purchased vending machines from AED. *Id.* ¶ 8.

11. Defendant Russell G. MacArthur, Jr. knew that some of the AED references were not genuine or neutral purchasers of the AED business venture. *Id.* ¶ 8.

12. AED failed to disclose, in sales materials or otherwise, the actual length of time AED had offered or sold business opportunities. *Id.* ¶ 7.

13. In sales materials AED sent to consumers, AED falsely stated that AED was in business since 2000. *Id.* ¶ 7.

14. Defendant Russell G. MacArthur, Jr. knew that the AED sales materials contained misrepresentations concerning the actual length of time AED had offered or sold business opportunities. *Id.* ¶ 7.

15. On June 12, 2002, the FTC filed an action against Defendant Russell G. MacArthur, Jr. in this District for operating a deceptive business opportunity scheme, *FTC v. Associated Record Distributors, Inc.*, Case No. 02-21754-CV-MARTINEZ (“ARD”). D.E. No. 59, Answer of Russell G. MacArthur, Jr. to Plaintiff’s Complaint (herein, “Answer”) ¶ 11.

16. On May 21, 2003, this Court entered a final order in that action (“ARD final order”) permanently enjoining Defendant Russell G. MacArthur, Jr. from marketing or selling any business venture, or receiving any remuneration whatsoever or having any other involvement with the sale of any business venture. Answer ¶ 11.

17. Defendant Russell G. MacArthur, Jr., in sales materials or otherwise, failed to disclose his involvement in AED. *Factual Resume* ¶ 9.

18. Defendant Russell G. MacArthur, Jr., in sales materials or otherwise, failed to disclose that a 2003 federal court order permanently prohibited him from, directly or indirectly, advertising, marketing, promoting, offering for sale or selling any business venture. *Id.* ¶ 9.

19. Defendant Russell G. MacArthur's participation in AED violated the ARD final order. *Id.* ¶ 9.

20. On May 20, 2008, this Court entered a judgment in *United States v. MacArthur*, Case No. 05-60203-CR-MARTINEZ, in which it ordered Defendant Russell G. MacArthur, Jr., to pay restitution in the amount of \$19,617,947, jointly and severally with co-defendants in that criminal proceeding. This judgment is based on the losses suffered by victims of MacArthur's participation in AED and the mail fraud, wire fraud, and criminal contempt charged in that proceeding. *See* DE 570 in *United States v. MacArthur*, Case No. 05-60203-CR-MARTINEZ.

CONCLUSIONS OF LAW

21. The activities of Defendant Russell G. MacArthur, Jr. described above were in or affecting commerce within the meaning of the FTC Act, 15 U.S.C. §§ 44, 45.

22. Through the conduct described above, Defendant Russell G. MacArthur, Jr. engaged in deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

23. Through the conduct described above, Defendant Russell G. MacArthur, Jr. violated the Franchise Rule, 16 C.F.R. Part 436 (2003).

24. A violation of the Franchise Rule constitutes an unfair or deceptive act or practice in violation of Section 5 of the FTC Act. 16 C.F.R. § 436.1 (2003)

25. Pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, the FTC has the authority to seek relief in the form of a permanent injunction for unfair or deceptive acts or practices that violate the FTC Act or the Franchise Rule.

26. Entry of a permanent injunction against Defendant Russell G. MacArthur, Jr. is in the public interest.

27. Pursuant to Federal Rule of Civil Procedure 54(b), the Court finds there is no just reason for delay in entering this Order as a final judgment and the Clerk of Court immediately shall enter this Order as a final judgment as to Defendant Russell G. MacArthur, Jr.

DEFINITIONS

A. “Assets” means any legal or equitable interest in, right to, or claim to, any real or 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.

B. “Business Opportunity Rule” means the FTC Trade Regulation Rule titled “Disclosure Requirements and Prohibitions Concerning Business Opportunities,” codified at 16 C.F.R. Part 437, or as it may be amended.

C. “Business venture” means any written or oral business arrangement, however denominated, that is covered by the Franchise Rule or the Business Opportunity Rule, or consists of the payment of any consideration in exchange for:

1. 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
2. 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.

D. "Document" is synonymous in meaning and equal in scope to the usage of the term in Federal 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.

E. "Franchise Rule" means the FTC Trade Regulation Rule titled "Disclosure Requirements and Prohibitions Concerning Franchising," codified at 16 C.F.R. Part 436, or as it may be amended.

F. "Investment opportunity" means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.

G. "Receiver" shall mean Gerald B. Wald, Esq., the receiver appointed in this action for the Receivership Defendants.

H. "Receivership Defendants" means Corporate Defendants American Entertainment Distributors, Inc., American Entertainment Dispensers, Inc., American Entertainment Machines, Inc., Universal Cybercom Corporation and Universal Technical Support, Inc.

I. "Representatives" means Defendant Russell G. MacArthur, Jr.'s successors, assigns, officers, agents, servants, and employees, and those persons in active concert or participation with Defendant Russell G. MacArthur, Jr.

ORDER

The FTC has urged this Court to use its broad injunctive powers under the FTC Act to permanently enjoin the Defendant from engaging in any business ventures or investment opportunities. The Court, however, is only empowered under the FTC Act to enjoin unlawful activities under that Act. The Court may, however, also provide ancillary injunctive relief to help ensure that the Defendant does not disregard this injunction, as he has disregarded injunctions in the past. *See Federal Trade Com'n v. SlimAmerica, Inc.*, 77 F.Supp.2d 1263 (S.D. Fla. 1999) (awarding a broad injunctive relief and ancillary equitable relief in the form of monitoring authorization, to prevent repeated violations of injunctions).

I. PROHIBITIONS AGAINST FALSE OR MISLEADING STATEMENTS

IT IS THEREFORE ORDERED that Defendant Russell G. MacArthur, Jr., whether acting directly or through any corporation, limited liability company, subsidiary, division, or other device, is permanently enjoined from:

In connection with the advertising, marketing, promoting, offering for sale, or sale of any good or service, Defendant Russell G. MacArthur, Jr., whether acting directly or through any corporation, limited liability company, subsidiary, division, or other device, and any

Representative of Defendant Russell G. MacArthur, Jr. who receives actual notice of this Order by personal service or otherwise (*see* Fed. R. Civ. P. 65(d)(2)), are permanently enjoined from:

A. Falsely representing, expressly or by implication, any fact material to a consumer's decision to buy, accept, or use the good or service, including making any false representation of:

1. The total cost to purchase, receive, or use, and the quantity of, any goods or services that are subject to the sales offer;
 2. Any material restrictions, limitations, or conditions to purchase, receive, or use the goods or services;
 3. Any material aspect of the nature or terms of a refund, cancellation, exchange, or repurchase policy for the goods or services; or
 4. The income, profits, or sales volume likely to be achieved from goods or services;
- and

B. Providing substantial assistance to any third party to make any material misrepresentation, including, but not limited to, those misrepresentations prohibited by Paragraph A, above.

II. BAN AGAINST DISCLOSURE OF CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendant Russell G. MacArthur, Jr. and any Representative of Defendant Russell G. MacArthur, Jr. who receives actual notice of this Order by personal service or otherwise (*see* Fed. R. Civ. P. 65(d)(2)) are permanently restrained and enjoined from selling, renting, leasing, transferring or otherwise disclosing the name, address, telephone number, credit card number, bank account number, electronic mail address, or other identifying information of any person who paid any money to any of the Defendants named in the

Complaint in this action, at any time prior to the entry of this Final Order, in connection with the advertising, promotion, offering for sale, or sale of business opportunities or ventures, franchises, or location services; *provided*, however, that Defendant and his Representatives may disclose such identifying information to a law enforcement agency, or as required by any law, regulation or court order.

III. COMPLIANCE MONITORING

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

- A. Within ten (10) days of receipt of written notice from a representative of the Commission, Defendant Russell G. MacArthur, Jr. 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 such his possession or direct or indirect control to inspect the business operation;
- B. In addition, the Commission is authorized to monitor compliance with this Order by all other lawful means, including but not limited to the following:
1. 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;
 2. posing as consumers and suppliers to Defendant Russell G. MacArthur, Jr., his employees, or to any entity managed or controlled in whole or in part by Defendant Russell G. MacArthur, Jr., without the necessity of identification or prior notice; and

C. Defendant Russell G. MacArthur, Jr. 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)).

IV. COMPLIANCE REPORTING BY DEFENDANT RUSSELL G. MACARTHUR, JR.

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

- A. For a period of five (5) years following his release from federal custody, Defendant Russell G. MacArthur, Jr. shall notify the Commission of any changes in his residence, mailing addresses, and telephone numbers within ten (10) days of the date of such change.
- B. From the entry of this Final Order until five (5) years following his release from federal custody, Defendant Russell G. MacArthur, Jr. shall notify the Commission of:

1. Any changes in his employment status (including self-employment), and any change in the ownership of any business entity, within ten (10) days of the date of such change. Such notice shall include the name and address of any business that Defendant Russell G. MacArthur, Jr. is affiliated with, employed by, creates or forms, or performs services for; a statement of the nature of the business; and a statement of

Defendant Russell G. MacArthur, Jr.'s duties and responsibilities in connection with the business or employment;

2. Any changes in the structure of any business entity that he directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order, including, but not limited to incorporation or other organization; 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; or a change in the business name or address, and shall provide notice of any change in the name or structure of such a business entity at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which Defendant Russell G. MacArthur, Jr. learns less than thirty (30) days prior to the date such action is to take place, Defendant Russell G. MacArthur, Jr. shall notify the Commission as soon as is practicable after obtaining such knowledge; and

3. Any changes in his name or use of any aliases or fictitious names.

C. One hundred eighty (180) days after the date of entry of this Order, Defendant Russell G. MacArthur, Jr. shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth the name, addresses, and telephone numbers of each business, if any, that Defendant Russell G. MacArthur, Jr. is affiliated with, is employed by, or performs services for; a detailed description of the nature of the business; and a detailed description of Defendant Russell G. MacArthur, Jr.'s duties and responsibilities in connection with the business or employment.

D. Defendant Russell G. MacArthur, Jr. shall notify the Commission of the filing of a bankruptcy petition within fifteen (15) days of filing.

E. For the purposes of this Order, Defendant Russell G. MacArthur, Jr. shall, unless otherwise directed by the Commission's authorized representatives, send by overnight courier all reports and notifications required by this Order to the Commission, to the following address:

Associate Director for Enforcement
Federal Trade Commission
600 Pennsylvania Avenue, N.W., Room NJ-2122
Washington, DC 20580
**Re: FTC v. American Entertainment Distributors, Inc., et al., Civil
Action No. 04-22431 (S.D. Fla)**

Provided, that, in lieu of overnight courier, Defendant Russell G. MacArthur, Jr. may send such reports or notifications by first-class mail, but only if Defendant Russell G. MacArthur, Jr. contemporaneously sends an electronic version of such report or notification to the Commission at DEBrief@ftc.gov.

F. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with Defendant Russell G. MacArthur, Jr.

V. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, from the entry of this Final Order until eight (8) years following his release from federal custody, if Defendant Russell G. MacArthur, Jr. engages in the sale or marketing of goods or services, Defendant Russell G. MacArthur, Jr. and any Representative of Defendant Russell G. MacArthur, Jr. with actual notice of this Order are hereby restrained and enjoined from failing to create and retain the following records concerning the Defendants' sale or marketing activities:

- 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 descriptions 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 all sales scripts, training materials, advertisements, or other marketing.
- F. 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 VIII, and all reports submitted to the FTC pursuant to Section VI.

VI. DISTRIBUTION OF ORDER BY DEFENDANT

IT IS FURTHER ORDERED that, from the entry of this Final Order until five (5) years following his release from federal custody, Defendant Russell G. MacArthur, Jr. shall deliver copies of the Order as directed below:

- A. For any business that Defendant Russell G. MacArthur, Jr. controls, directly or indirectly, or in which Defendant Russell G. MacArthur, Jr. has a majority ownership interest, Defendant Russell G. MacArthur, Jr. must deliver a copy of this Order to (1) all principals, officers,

directors, and managers of that business; (2) all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure set forth in Subsection B.2 of the Section titled "Compliance Reporting by Defendant Russell G. MacArthur, Jr." For current personnel, delivery shall be within five (5) days of service of this Order upon such Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in structure set forth in Subsection B.2 of the Section titled "Compliance Reporting," delivery shall be at least ten (10) days prior to the change in structure.

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

C. Defendant Russell G. MacArthur, Jr. must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Section.


VII. ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that Defendant Russell G. MacArthur, Jr., 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.

VIII. 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.

DONE AND ORDERED in Chambers at Miami, Florida, this 20 day of July, 2009.



JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE