

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

FEDERAL TRADE COMMISSION,)
)
)
 Plaintiff,)
)
 v.) CIVIL ACTION NO. 3:02-CV-0679-D
)

9. Defendants

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.

5. **“Material”** means likely to affect a person’s choice of, or conduct regarding, goods or services.

6. **“Person”** means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

7. **“Majority owner of the business”** means that the subject person owns more than fifty percent (50%) of the ownership interest in the business.

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

9. **“Business venture”** means any written or oral business arrangement, however denominated, whether or not 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 (whether or not identified by a trademark, service mark, trade name, advertising, or other commercial symbol); and

- b. The promise or provision of assistance to any person in connection with (1) the establishment, maintenance, or operation of any new business; or (2) the entry by an existing business into a new line or type of business, including, but not limited to, referrals to one or more persons providing location services.

ORDER

I. PERMANENT BAN

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

- A. Receiving any compensation or remuneration in exchange for serving as a reference; and
- B. Using the names Affiliated Vendors Association, Inc., North American Business Registry, or any variation thereof, including but not limited to, AVA, Affiliated Vendors and NABR.

II. PROHIBITED REPRESENTATIONS

IT IS FURTHER ORDERED that in connection with any business that reports information on a franchise, business opportunity or business venture to consumers, and/or assists others engaged in reporting information on a franchise, business opportunity or business venture to consumers, Defendants and their officers, directors, agents, servants, employees, salespersons, and all other persons or entities directly or indirectly under their control, and all other persons or entities in active concert or p3Ondirectly undeynxip75 C

- A. That Defendants provide independent and reliable reports which accurately describe the franchise, business opportunity or business venture;
- B. That Defendants protect consumers from unethical and fraudulent franchises, business opportunities or business ventures;
- C. That Defendants monitor and/or report information about the way a franchise, business opportunity or business venture operates;
- D. That Defendants monitor and/or report information about the way a franchise, business opportunity or business venture handles complaints;
- E. Concerning whether a franchise, business opportunity or business venture has a quality product;
- F. Concerning whether a franchise, business opportunity or business venture responds quickly to problems brought to its attention;
- G. Concerning the number of complaints about a franchise, business opportunity or business venture, either oral or written, that Defendants have received; or
- H. Concerning the length of time a franchise, business opportunity or business venture has operated, and/or the length of time a person has been in a particular industry.

III. PROHIBITION AGAINST DISTRIBUTION OF CUSTOMER LISTS

IT IS FURTHER ORDERED that Defendants and their officers, directors, agents, servants, employees, salespersons, and all other persons or entities directly or indirectly under their control, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, and each of them are permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit card

number, bank account number, or other identifying information of any person who contacted any Defendant seeking information about one of Defendants' members. *Provided, however*, that Defendants may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order.

IV. SUSPENDED JUDGMENT

IT IS FURTHER ORDERED that judgment is entered against Defendants, jointly and severally, in the amount of \$400,000 provided, however, that this judgment shall be suspended subject to the conditions set forth in Paragraph V. of this Order.

V. RIGHT TO REOPEN

IT IS FURTHER ORDERED that the Commission's agreement to this Order is expressly premised upon the truthfulness, accuracy and completeness of financial statements provided by Defendants to the Commission on April 10, 2002, April 30, 2002, and May 21, 2002. Said financial statements contain material information upon which the FTC has relied in negotiating and agreeing to the terms of this Order. The Commission is authorized to verify all information provided in the financial statements and with all appropriate third parties, including, but not limited to, financial institutions. If, upon motion by the Commission to the Court, the Court finds that any Defendant failed to disclose any material asset, or materially misrepresented the value of any asset, or made any other material misrepresentation in or omission from their financial statements, the suspension of the monetary judgment will be terminated and the entire judgment amount of \$400,000 will be immediately due and payable. For purposes of this Paragraph, and any subsequent proceedings to enforce payment, each Defendant stipulates to all of the allegations in the Commission's Complaint.

VI. ASSET FREEZE LIFTED

IT IS FURTHER ORDERED that the freeze against Defendants' assets pursuant to the Stipulated Preliminary Injunction entered by this Court on April 8, 2002 shall be lifted upon entry of this Order.

VII. ACCESS TO BUSINESS PREMISES

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, for the purpose of further determining compliance with this Order, Defendants shall permit representatives of the Commission, within three (3) business days of receipt of written notice from the Commission:

- A. Access during normal business hours to any office, or facility storing documents, of any business where
 - 1. either Individual Defendant is the majority owner of the business or directly or indirectly manages or controls the business, or where both Individual Defendants own more than 50% of the business, and where
 - 2. the business reports information on a franchise, business opportunity or business venture to consumers, and/or assists others engaged in reporting information on a franchise, business opportunity or business venture to consumers.

In providing such access, the Individual Defendants shall permit representatives of the Commission to inspect and copy all documents relevant to any matter contained in this Order, and shall permit Commission representatives to remove documents relevant to any matter contained in this Order for a period not to exceed five (5) business days so that the documents may be inspected, inventoried, and copied; and

3. Any proposed change in the structure of any business entity owned or controlled by the Individual Defendant, such as creation, incorporation, dissolution, assignment, sale, merger, creation, dissolution of subsidiaries, proposed filing of a bankruptcy petition, or change in the corporate name or address, or any other change that may affect compliance obligations arising out of this Order, thirty (30) days prior to the effective date of any proposed change; ***provided, however,*** that, with respect to any proposed change in the corporation about which such Individual Defendant learns less than thirty (30) days prior to the date such action is to take place, he or she shall notify the Commission as soon as is practicable after learning of such proposed change;

4. A statement describing the manner in which each Defendant has complied and is complying with this Order.
- C. Upon written request by a representative of the Commission, each Defendant shall submit additional written reports (under oath, if requested) and produce documents on fifteen (15) days' notice with respect to any conduct subject to this Order;
 - D.

- A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt of same from, each officer or director, each individual serving in a management capacity, all personnel involved in communicating with consumers and responding to consumer complaints or inquiries, whether designated as employees, consultants, independent contractors or otherwise, immediately upon employing or retaining any such persons, for any business where
1. either Individual Defendant is the majority owner of the business or directly or indirectly manages or controls the business, or where both Individual Defendants own more than 50% of the business, and where
 2. the business reports information on a franchise, business opportunity or business venture to consumers, and/or assists others engaged in reporting information on a franchise, business opportunity or business venture to consumers, and
- B. Maintain for a period of three (3) years after creation, and upon reasonable notice, make available to representatives of the Commission, the original signed and dated acknowledgments of the receipt of copies of this Order, as required in Subsection (A) of this Paragraph.

X. COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE

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

- A. The Commission is authorized, without further leave of court, to obtain discovery from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26 - 37, including the use of compulsory process pursuant to Fed. R. Civ. P.

45, for the purpose of monitoring and investigating the Individual Defendant's compliance with any provision of this Order;

- B. The Commission is authorized to use representatives posing as consumers and suppliers to the Individual Defendants, their employees, or any other entity managed or controlled in whole or in part by either Individual Defendant, without the necessity of identification or prior notice;
- C. 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 investigate whether any Defendant has violated any provision of this Order or Section 5 of the FTC Act, 15 U.S.C. § 45.

XI. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, in connection with any business where: (1) either Individual Defendant is the majority owner of the business or directly or indirectly manages or controls the business, or where both Individual Defendants own more than 50 % of the business, and (2) where the business reports information on a franchise, business opportunity or business venture to consumers, and/or assists others engaged in reporting information on a franchise, business opportunity or business venture to consumers, such Individual Defendant and his or her agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from failing to create and maintain the following records:

- A. Accounting records that reflect the cost of 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. Files containing the names, addresses, phone numbers, dollar amounts paid, and quantity of services purchased, to the extent such information is obtained in the ordinary course of business;
- D. Complaints and relief 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 materials.

XII. ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that, within five (5) business days after entry of this Order, Defendants shall each submit to the Commission a truthful sworn and notarized statement, in the form shown on Exhibit A to this Order, that shall acknowledge receipt of this Order as entered.

XIII. FEES AND COSTS

IT IS FURTHER ORDERED that each party to this Order hereby agrees to bear its own costs and attorneys' fees incurred in connection with this action.

XIV. JURISDICTION

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

SO ORDERED, this _____ day of _____, 2002, at _____ o'clock a.m. / p.m.

SIDNEY A. FITZWATER
UNITED STATES DISTRICT JUDGE

STIPULATED TO BY:

Plaintiff Federal Trade Commission:

Date: _____

Dana C. Barragate
Ohio Bar Number 0065748
An Attorney for Plaintiff
Federal Trade Commission
East Central Region
1111 Superior Avenue, Suite 200
Cleveland, OH 44114

Telephone: 216-263-3402
Facsimile: (216)263-3426

Defendants:

Date: _____

Maurice Billion, on behalf of the corporate defendant, **Affiliated Vendors Association, Inc.**

Date: _____

Maurice Billion, individually and as an officer of the corporate defendant **Affiliated Vendors Association, Inc.**

Date: _____

Joyce Billion, individually and as an officer of the corporate defendant Affiliated Vendors Association, Inc.