

FILED
J
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 03-617-CV-ALTONAGA

CLARENCE MADDOX
CLERK U.S. DIST. CT.
S.D. OF FLA. - MIAMI

UNITED STATES OF AMERICA,

PLAINTIFF,

vs.

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**CLOSED
CIVIL**

DEFENDANT.
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**STIPULATED JUDGMENT AND
ORDER FOR PERMANENT INJUNCTION**

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("FTC" or the "Commission"), has

commenced this action by filing the Complaint herein, and Defendant Greaves Stewart &/s/ Lee

3 The activities of the Defendant are in or affecting commerce as defined in Section

4 of the FTC Act, 15 U.S.C. § 44.

4. The Complaint states a claim upon which relief may be granted against the Defendant, under Sections 5(a), 5(m)(1)(A), 9, 13(b) and 19 of the Federal Trade Commission

Act ("FTC Act"), 15 U.S.C. §§ 45(a), 45(m)(1)(A), 49, 53(b), and 57b.

5. Defendant has entered into this Stipulated Judgment and Order ("Order") freely

and without coercion. Defendant further acknowledges that he has read the provisions of this

2. "Business Venture" means any written or oral business arrangement, however

denominated, whether or not covered by the Franchise Rule, in which a participant or purchaser

or services (whether or not identified by a trademark, service mark, trade name

6. "Income-generating product or service" means any product or service designed,

intended, or represented to be, available for sale to the general public.

7. "Franchise or broker" is defined as that term is defined in Section 436.2(i) of the

Franchise Rule, 16 C.F.R. § 436.2(i). The term "Franchise" is defined as follows:

ORDER

I. BAN ON SALE OF FRANCHISES AND BUSINESS VENTURES

IT IS ORDERED, ADJUDGED AND DECREED that, for a period of three years after entry of this Order, Defendant, and each of his successors, assigns, agents, servants or employees, and those persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, are hereby permanently restrained and enjoined from engaging or participating in the advertising, promotion, offering for sale, or sale of any Business Venture or Franchise. Nothing in this Order shall be read as an exception to this paragraph.

II. BOND REQUIREMENT

IT IS ORDERED that:

2. The bond shall be continuous and remain in full force and effect as long as

defendant Grover Stewart engages in any Bond Covered Activity, and it shall

Covered Activities;

3. The bond shall cite this Order as the basis of the bond, and shall provide surety thereunder to consumers against financial loss resulting from any violation of the provisions of this Order or Section 5(a) of the FTC Act.

None of the other Paragraphs of this Order shall relieve defendant Stewart from complying with this Paragraph as a precondition to selling, or assisting others to sell, Franchises or Business Ventures.

III. COMPLIANCE WITH FRANCHISE RULE

IT IS FURTHER ORDERED that in connection with the advertising, telemarketing

reasonable basis for the claim, estimate, calculation, or projection at the time such claim, estimate, calculation, or projection is made, as required by Sections 436.1(b)-(e) of the Franchise Rule and

E. Engaging in any other act or practice prohibited by the Franchise Rule, 16 C.F.R. Part 436, or failing to fulfill any obligation imposed by the Rule.

Provided, however, that if the Commission promulgates a rule...

B. The income, profit or sales volume actually achieved by prior purchasers;

C. The length of time that it is likely to take a purchaser to recoup the entire purchase price or investment;

D. The independence or authenticity of any third-party references, including persons represented to be prior purchasers, that are provided to potential purchasers;

F. The amount of competition within a purchaser's territorial rights to any

geographic territory;

F. The availability or existence of profitable locations in a purchaser's geographic area; and

G. The terms and conditions of any assurances, refunds or warranties of profitability;

that relate to any location, service or opportunity which Defendant has a purchaser

VI. CONSUMER REDRESS AND OTHER EQUITABLE RELIEF

IT IS FURTHER ORDERED that judgment is hereby entered against defendant Grover Stewart in the amount of NINETY THOUSAND DOLLARS (\$90,000); *provided, however*, that this judgment shall be suspended until further order of the Court, and *provided further* that this

judgment shall be subject to the conditions set forth in Section VII of this Order

A. All funds paid pursuant to this Order shall be deposited into a fund administered

by the Commission on the part of the State of California

his financial disclosure forms with all appropriate third parties, including but not limited to financial institutions.

C. In the event of default on the payment required to be made by this Paragraph, the

Premium Cigar Distributors, Corp., customers or franchisees (with the intent or result that a negative item was placed on the customer's or franchisee's credit report) that such negative item should be removed from the customer's or client's credit report.

H. Defendant is enjoined from enforcing any judgment he or Nationwide Premium Cigar Distributors, Corp. obtained prior to entry of this Order against any customer or franchisee

related to payment of amounts due to Defendant or Nationwide Premium Cigar Distributors, Corp., in connection with the sale of any franchise or business opportunity.

VII. RIGHT TO REOPEN

A. Plaintiff's agreement to and the Court's approval of this Order is expressly

C. The Defendant agrees that the facts set forth in this Order shall be taken as true in any subsequent litigation filed by Plaintiff or the Commission to enforce their rights pursuant to this Order, including, but not limited to, a nondischargeability complaint filed in any bankruptcy proceeding.

D. Should this Order be modified pursuant to this Section, this Order, in all other respects, shall remain in full force and effect unless otherwise ordered by the Court. Any proceedings instituted under this Section are 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 Plaintiff or

controls, or has a majority ownership interest in, that is engaged in the sale or distribution of any Franchise, Business Venture, or income-generating product or service, or assisting others engaged in these activities; and

B. Maintain for a period of three (3) years after creation and upon reasonable notice

make available to representatives of Plaintiff or the Commission the original signed and dated

the manner and form in which he has complied and is complying with this Order. This report

[REDACTED]

1. Any changes required to be reported pursuant to subsection (A) above:

[REDACTED]

2. A copy of each acknowledgment of receipt of this Order obtained by

service, or assisting others engaged in these activities, Defendant and his Representatives are

A. Failing to take reasonable steps sufficient to monitor and ensure that all employees and independent contractors engaged in sales or other customer service functions comply with Paragraphs III and IV of this Order. Such steps shall include adequate monitoring of sales presentations or other calls with customers and shall also include

following:

1. Listening to the oral representations made by persons engaged in sales or other customer service functions;
2. Establishing a procedure for receiving and responding to consumer

XII. RECORD-KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of

this Order, in connection with any business that Defendant did or

controls or has a majority ownership interest in, that is engaged in the sale or distribution of any

D. _____ Records that reflect for every written or oral consumer complaint or refund request received by Defendant or his Representatives, whether directly or indirectly or through any third party: (1) the customer's name, address, telephone number; (2) the dollar amount paid by the consumer; (3) the written complaint or refund request, if any; (4) the basis of the complaint or refund request, including the name of any salesperson complained about; (5) the nature and result of any investigation conducted concerning the complaint or refund request; (6) each response and the date of the response to the complaint or refund request; and (7) any final resolution of the complaint or refund request, and the date of the resolution; and (8) in the event of a denial of a refund request, the reason for the denial; and

E. _____ Copies of all sales scripts, training materials, advertisements, or other marketing

materials utilized, which shall be retained for three (3) years after the last date of their

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

2. posing as consumers and suppliers to Defendant Defendant's employees

or any other entity managed or controlled in whole or in part by Defendant, without the necessity of identification or prior notice;

Provided 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)).

C Defendant shall maintain the confidentiality of the information obtained pursuant to this Order.

agree that the entry of the foregoing Order shall constitute a full, complete and final settlement of

[REDACTED]

FOR THE DEPARTMENT.

FOR THE DEPARTMENT.

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COLLEEN ROBBINS
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Federal Trade Commission
Washington, D.C. 20580
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FAX: 202 326 3205

The Clerk of Court is instructed to CLOSE this case.

SO ORDERED this 29 day of March, 2004.

Carly M. Alford