

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF KENTUCKY  
CENTRAL DIVISION AT LEXINGTON

Filed Electronically

Eastern District of Kentucky  
**FILED**

**MAY 09 2014**

AT FRANKFORT  
ROBERT R. CARR  
CLERK U.S. DISTRICT COURT

_____	)	
FEDERAL TRADE COMMISSION,	)	
	)	
STATE OF ILLINOIS,	)	
	)	
COMMONWEALTH OF KENTUCKY, and	)	
	)	
STATE OF NORTH CAROLINA,	)	
	)	
Plaintiffs,	)	No. 5:13-cv-123-KSF
	)	
v.	)	
	)	
FORTUNE HI-TECH MARKETING, INC.,	)	
a Kentucky corporation, <i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	

**STIPULATED ORDER FOR PERMANENT INJUNCTION  
AND MONETARY JUDGMENT**

Plaintiffs, Federal Trade Commission (“FTC” or “Commission”), State of Illinois, Commonwealth of Kentucky, and State of North Carolina filed their Complaint For Permanent Injunction and Other Equitable Relief (“Complaint”), pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), Section 7(a) of the Illinois Consumer Fraud Act, 815 ILCS 505/7(a), the Kentucky Consumer Protection Act, K.R.S. 367.010 *et seq.*, the Kentucky Pyramid Sales Act, K.R.S. 367.832 *et seq.*, the North Carolina Pyramid and Chain Schemes Statute, N.C. Gen. Stat. § 14-291.2, and the North Carolina Unfair and Deceptive Practices Act, N.C. Gen. Stat. § 75-1.1 *et seq.*, and moved *ex parte* for a Temporary Restraining

Order with Asset Freeze, Appointment of a Receiver, Other Equitable Relief and Order to Show Cause Why a Preliminary Injunction Should Not Issue pursuant to Rule 65 of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 65, which was granted and entered on January 24, 2013, by Judge John W. Darrah of the United States District Court for the Northern District of Illinois (“*ex parte* TRO”). The parties subsequently agreed to a Stipulated Preliminary Injunction, which was entered by Judge Karl S. Forester of the United States District Court for the Eastern District of Kentucky on May 28, 2013 (“Stipulated Injunction”).

Defendants in this action are Fortune Hi-Tech Marketing, Inc., FHTM, Inc., Alan Clark Holdings, LLC, FHTM Canada, Inc., Fortune Network Marketing (UK) Limited, Paul C. Orberon, and Thomas A. Mills (“Defendants”). Defendant Paul C. Orberon died on December 5, 2013. Therefore, Orberon’s estate (“Estate”) is often referred to herein in lieu of Paul C. Orberon. For purposes of this Order, the term “Defendants” shall not refer to the Estate unless otherwise noted. The Defendants have been represented by counsel and, acting by and through said counsel, stipulate to the entry of this Stipulated Order for Permanent Injunction and Monetary Judgment (the “Order”) to resolve all matters in dispute in this action between them.

**THEREFORE, IT IS ORDERED** as follows:

**FINDINGS**

1. This Court has jurisdiction over this matter.
2. The Complaint charges that Defendants participated in deceptive acts and practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, Sections 2 and 2A of the Illinois Consumer Fraud Act, 815 ILCS 505/2 and 505/2A, the Kentucky Consumer Protection Act, K.R.S. 367.010 *et seq.*, the Kentucky Pyramid Sales Act, K.R.S. 367.832 *et seq.*, the North

Carolina Pyramid and Chain Schemes Statute, N.C. Gen. Stat. § 14-291.2, and the North Carolina Unfair and Deceptive Practices Act, N.C. Gen. Stat. § 75-1.1 *et seq.* The Complaint seeks both permanent injunctive relief and consumer redress for Defendants' alleged deceptive acts or practices.

3. Defendants neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Defendants admit the facts necessary to establish jurisdiction.

4. Defendants waive and release any claims that they may have against Plaintiffs, the Receiver, and their agents that relate to this action, including but not limited to, any claim under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agree to bear their own costs and attorney fees. The Receiver will not sue or bring causes of action of any nature whatsoever against Defendants and their children, spouses, ex spouses, parents, or siblings, in any capacity, related to the facts or allegations asserted in this lawsuit, regardless of whether the allegations, claims, or causes of action were asserted in this lawsuit or could have been asserted in this lawsuit. If the Receiver brings any action that results in a third party or similar claim against any of the Defendants or their children, spouse, ex spouses, parents, or siblings, in any capacity, then it will not seek to enforce or recover any award or other recovery against any such persons and would return to such persons any actual recovery obtained by the third party from such persons and paid to the Receiver.

5. Plaintiffs Illinois, Kentucky, and North Carolina will not sue or bring causes of action under their Consumer Protection statutes which their Attorneys General could bring

against Defendants and all of their past and present officers, directors, shareholders, employees, agents, representatives, subsidiaries, divisions, parents, predecessors, successors, heirs, assigns, and transferees for conduct related to the facts or allegations asserted in this lawsuit, regardless of whether the allegations, claims, or causes of action were asserted in this lawsuit or could have been asserted in this lawsuit.

6. Plaintiffs and Defendants waive all rights to appeal or otherwise challenge or contest the validity of this Order.

### **DEFINITIONS**

For purposes of this Order, the following definitions apply:

1. **“Class Action Lawsuits”** means the following putative class action matters presently pending in this Court involving some of the individuals and entities named as Defendants herein; being specifically, *Yvonne Day et al. v. Fortune Hi-Tech Marketing, Inc., et al*, No. 5:10-CV-00305 and *Wallace et al. v. Fortune Hi-Tech Marketing, Inc., et al*, No. 5:11-CV-127.
2. **“Corporate Defendants”** means Fortune Hi-Tech Marketing, Inc., FHTM, Inc., Alan Clark Holdings, LLC, FHTM Canada, Inc., and Fortune Network Marketing (UK) Limited, and their successors and assigns, as well as any subsidiaries, and any fictitious business entities or business names created or used by these entities.
3. **“Individual Defendants”** means Paul C. Orberson and Thomas A. Mills, and by whatever other names each may be known.
4. **“Defendants”** means all of the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination.

5. **“Multi-level Marketing Program”** means any marketing program in which participants pay money to the program promoter in return for which the participants obtain the right to: (a) recruit additional participants, or have additional participants placed by the promoter or any other person into the program participant’s downline, tree, cooperative, income center, or other similar program grouping; (b) sell products or services; and (c) receive payment or other compensation that is based, in whole or in part, upon the sales of those in the participant’s downline, tree, cooperative, income center, or similar program grouping;

6. **“Plaintiffs”** means the Federal Trade Commission, State of Illinois, Commonwealth of Kentucky, and State of North Carolina.

7. **“Prohibited Marketing Program”** means any marketing program or plan in which any participant pays money or valuable consideration in return for which the participant receives the right to receive rewards in return for recruiting other participants into the program or plan, which are unrelated to the sales of products or services to ultimate users. For the purposes of this definition, “sale of products or services to ultimate users” does not include sales to other participants or recruits or to the participants’ own accounts.

8. **“Receivership Estate”** includes, but is not limited to, all assets identified in paragraphs III.C-H below, as well as all assets of the Corporate Defendants referred to in Section VI of the Stipulated Injunction.

**I. BAN ON PROHIBITED MARKETING PROGRAMS  
AND MULTI-LEVEL MARKETING PROGRAMS**

**IT IS ORDERED** that Defendants, whether acting directly or indirectly, are permanently restrained and enjoined from engaging in, participating in, or assisting others in the advertising, marketing, promotion, or operation of any Prohibited Marketing Program or Multi-level

Marketing Program.

## **II. PROHIBITED MISREPRESENTATIONS**

**IT IS FURTHER ORDERED** that Defendants, Defendants' officers, agents, servants, employees, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, or sale of any product, service, plan, or program, are hereby restrained and enjoined from misrepresenting, or assisting others in misrepresenting, including by providing others with the means and instrumentalities with which to misrepresent, expressly or by implication:

1. The amount of sales, income, or profits that a consumer can reasonably expect to achieve;
2. The amount of sales, income, or profits that participating consumers have actually achieved;
3. That consumers can reasonably expect to recoup their investment;
4. That all or most of the people who fail to make significant income failed to devote substantial or sufficient effort;
5. That consumers will or are likely to receive substantial income; and
6. Any other fact material to consumers concerning any product, service, plan, or program, such as: the total costs; any material restrictions, limitations, or conditions; or any material aspect of the performance, efficacy, nature, or central characteristics.

## **III. MONETARY JUDGMENT AND PARTIAL SUSPENSION**

**IT IS FURTHER ORDERED** that:

A. Judgment in the amount of **One Hundred Sixty Nine Million U.S. Dollars (\$169,000,000)** is entered in favor of Plaintiffs and against Individual Defendants and Corporate Defendants, jointly and severally, as equitable monetary relief;

B. Defendants are ordered to pay \$3,541,000 to the Commission in equitable monetary relief. Such payment must be made within 30 days from the delivery of the letters from the Commission referred to in Section VII, unless otherwise ordered by the probate court handling the Estate. For purposes of this paragraph, the amounts of any retirement accounts used to make any portion of this payment by Defendant Thomas A. Mills shall be credited by the Commission at their full amount and shall not be reduced by taxes withheld and penalties incurred as a result of withdrawals from those accounts. Payments shall be made by electronic fund transfer in accordance with instructions provided by a representative of the Commission. Upon such payment, and the satisfaction of all obligations set forth in Subsections C through F and H below, the remainder of the judgment is suspended, subject to the Subsections below;

C. Within seven (7) days of the date of entry of this Order, the Estate shall cooperate fully and take such steps as the Receiver may require, including executing any documents and providing any necessary information, to cause the transfer to the Receiver, or to his qualified settlement fund, possession and legal and equitable title to the real property described in paragraph A of **Attachment A** to this Order (collectively, "Orberson Real Property"). Following transfer of title and possession, the Receiver shall be responsible for all maintenance, utilities, taxes, homeowner's association fees, and all other expenses of any nature related to the Orberson Real Property. The Estate represents that there are no liens or encumbrances on the Orberson Real Property, and that it will not add any such encumbrances after signing this Order. The costs

and expenses of transferring the Orberson Real Property shall be paid by the Receivership. The Estate expressly agrees that the Orberson Real Property is not homestead property, and further hereby forever waives, releases, discharges, and disclaims all right, title, and interest in the Orberson Real Property described in this sub-paragraph. Until the Estate transfers title and possession of the Orberson Real Property, the Estate shall maintain and take no action to diminish the value of the Orberson Real Property, including any structures, fixtures, and appurtenances thereto, in the same condition as on the date Defendant Orberson executed his sworn financial statement dated February 11, 2012 [sic 2013]. Until the Estate transfers title and possession of the Orberson Real Property to the Receiver, the Estate shall remain current on all amounts due and payable on the Orberson Real Property, including but not limited to tax, insurance, homeowner's assessments, reasonable and necessary maintenance, and similar fees. In order to transfer possession of the Orberson Real Property, the Estate shall vacate the Orberson Real Property in "broom clean condition," and deliver all keys and security codes, if any, to the Receiver along with written notice that possession is surrendered.

D. Within seven (7) days of the date of entry of this Order, the Estate shall cooperate fully and take such steps as the Receiver may require, including executing any documents and providing any necessary information, to cause the transfer to the Receiver, or to his qualified settlement fund, possession and legal and equitable title (if applicable) of the personal property described in paragraph B of **Attachment A** to this Order (collectively, "Orberson Personal Property"). Following transfer of title (if applicable) and possession, the Receiver shall be responsible for all maintenance, utilities, taxes, insurance, and all other expenses of any nature related to the Orberson Personal Property. The Estate represents that there are no liens or



encumbrances on the Orberson Personal Property and that it will not add any such encumbrances after signing this Order. The costs and expenses of transferring the Orberson Personal Property shall be paid by the Receivership. The Estate hereby forever waives, releases, discharges, and disclaims all right, title, and interest in the Orberson Personal Property described in this subparagraph. Until the Estate transfers title (if applicable) and possession of the Orberson Personal Property, the Estate shall maintain and take no action to diminish the value of the Orberson Personal Property, including any structures, fixtures, and appurtenances thereto, in the same condition as on the date he executed his sworn financial statement dated February 11, 2012 [sic 2013]. Until the Estate transfers title (if applicable) and possession of the Orberson Personal Property to the Receiver, the Estate shall remain current on all amounts due and payable on the Orberson Personal Property, including but not limited to tax, insurance, reasonable and necessary maintenance, and similar fees.

E. Within seven (7) days of the date of entry of this Order, Defendant Thomas A. Mills shall cooperate fully and take such steps as the Receiver may require, including executing any documents and providing any necessary information, to cause the transfer to the Receiver, or to his qualified settlement fund, possession and legal and equitable title to the real property described in paragraph C of **Attachment A** to this Order (“Mills Real Property”). Following transfer of title and possession, the Receiver shall be responsible for all maintenance, utilities, taxes, homeowner’s association fees, and all other expenses of any nature related to the Mills Real Property. Defendant Mills represents that there are no liens or encumbrances on the Mills Real Property and that he will not add any such encumbrances after signing this Order. The costs and expenses of transferring the Mills Real Property shall be paid by the Receivership.

Defendant Mills expressly agrees that the Mills Real Property is not homestead property, and further hereby forever waives, releases, discharges, and disclaims all right, title, and interest in the Mills Real Property described in this sub-paragraph. Until the transfer of title and possession of the Mills Real Property, Defendant Mills shall maintain and take no action to diminish the value of the Mills Real Property, including any structures, fixtures, and appurtenances thereto, in the same condition as on the date Defendant Mills executed his sworn financial statement dated February 8, 2012 [sic 2013]. Until Defendant Mills transfers title and possession of the Mills Real Property to the Receiver, Defendant Mills shall remain current on all amounts due and payable on the Mills Real Property, including but not limited to tax, insurance, homeowner's assessments, reasonable and necessary maintenance, and similar fees. In order to transfer possession of the Mills Real Property, Defendant Mills shall vacate the Mills Real Property in "broom clean condition," and deliver all keys and security codes, if any, to the Receiver along with written notice that possession is surrendered.

F. Within seven (7) days of the date of entry of this Order, Defendant Thomas A. Mills shall cooperate fully and take such steps as the Receiver may require, including executing any documents and providing any necessary information, to cause the transfer to the Receiver, or to his qualified settlement fund, possession and legal and equitable title (if applicable) of the personal property described more fully in paragraph D of **Attachment A** to this Order (collectively, "Mills Personal Property"). Following transfer of title (if applicable) and possession, the Receiver shall be responsible for all maintenance, utilities, taxes, and all other expenses of any nature related to the Mills Personal Property. Defendant Mills represents that there are no liens or encumbrances on the Mills Personal Property, and that he will not add any

such encumbrances after signing this Order. The costs and expenses of transferring the Mills Personal Property shall be paid by the Receivership. Defendant Mills hereby forever waives, releases, discharges, and disclaims all right, title, and interest in the Mills Personal Property described in this sub-paragraph. Until he transfers title (if applicable) and possession of the Mills Personal Property, Defendant Mills shall maintain and take no action to diminish the value of the Mills Personal Property, including any structures, fixtures, and appurtenances thereto, in the same condition as on the date he executed his sworn financial statement dated February 8, 2012 [sic 2013]. Until Defendant Mills transfers title (if applicable) and possession of the Mills Personal Property to the Receiver, Defendant Mills shall remain current on all amounts due and payable on the Mills Personal Property, including but not limited to tax, insurance, reasonable and necessary maintenance, and similar fees.

G. Within twelve (12) months of the date of entry of this Order, Defendant Thomas A. Mills will sell the personal property described in paragraph E of **Attachment A** to this Order (“Mills Other Personal Property”), and pay the proceeds to the Commission by electronic fund transfer in accordance with instructions provided by a representative of the Commission; provided, however, that Defendant Mills is obligated to pay \$550,000 to the Commission under this paragraph, regardless of whether sales of the Mills Other Personal Property are sufficient to satisfy this obligation. The costs and expenses associated with the sales of the Mills Other Personal Property shall be paid by Defendant Mills.

H. Within seven (7) days of the date of entry of this Order, Defendant Thomas A. Mills and the Estate shall cooperate fully and take such steps as the Receiver may require, including executing any documents and providing any necessary information, to cause the

transfer to the Receiver, or to his qualified settlement fund, possession and legal and equitable title to the property described in paragraph F of **Attachment A** to this Order (“Kentucky Farm”). Following transfer of title and possession, the Receiver shall be responsible for all maintenance, utilities, taxes, insurance, care of animals, and all other expenses of any nature related to the Kentucky Farm. Defendant Mills and the Estate represent that no encumbrances to the Kentucky Farm have been added since the execution of the sworn financial statement dated February 8, 2012 [sic 2013], and February 11, 2012 [sic 2013], respectively, and that they will not add any such encumbrances after signing this Order. The costs and expenses of transferring the Kentucky Farm shall be paid by the Receiver. Following transfer of title and possession, the Receiver shall timely make all payments due under the mortgage and shall satisfy any liens on the Kentucky Farm from the Receivership Estate. Defendant Mills and the Estate expressly agree that the Kentucky Farm is not homestead property, and further hereby forever waive, release, discharge, and disclaim all right, title, and interest in the Kentucky Farm described in this sub-paragraph. Until they transfer title and possession of the Kentucky Farm, Defendant Mills and the Estate shall maintain and take no action to diminish the value of the Kentucky Farm, including any structures, fixtures, and appurtenances thereto, in the same condition as on the date Defendant Mills and Defendant Orberon executed their sworn financial statements dated February 8, 2012 [sic 2013], and February 11, 2012 [sic 2013], respectively. Until Defendant Mills and the Estate transfer title and possession of the Kentucky Farm to the Receiver, Defendant Mills and the Estate shall remain current on all amounts due and payable on the Kentucky Farm, including but not limited to the mortgage, tax, insurance, homeowner’s assessments, reasonable and necessary maintenance, and similar fees. In order to transfer

possession of the Kentucky Farm, Defendant Mills and the Estate shall vacate the Kentucky Farm in “broom clean condition,” and deliver all keys and security codes, if any, to the Receiver along with written notice that possession is surrendered.

I. Plaintiffs’ agreement to the suspension of part of the judgment is expressly premised upon the truthfulness, accuracy, and completeness of Defendants’ sworn financial statements and related documents (collectively, “financial representations”) submitted to Plaintiffs, namely: (1) the Financial Statement of Individual Defendant Paul C. Orberon dated February 11, 2012 [sic 2013], including the attachments; (2) the Financial Statement of Individual Defendant Thomas A. Mills dated February 8, 2012 [sic 2013], including the attachments; and (3) additional documentation submitted by (a) letter from Defendants’ counsel to the Commission dated February 12, 2013, (b) email from Defendants’ counsel to the Commission dated June 4, 2013, and (c) email from Defendants’ counsel to the Commission dated July 5, 2013;

J. The suspension of the judgment will be lifted as to any Defendant if, upon motion by Plaintiffs, the Court finds that Defendant failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial representations identified above;

K. If the suspension of the judgment is lifted, the judgment becomes immediately due as to that Defendant in the amount specified in Subsection A above (which the parties stipulate only for purposes of this Section represents the consumer injury alleged in the Complaint), less any payment previously made pursuant to this Section, plus interest computed from the date of entry of this Order;

L. Defendants and the Estate relinquish dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets;

M. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation against Defendants by or on behalf of any Plaintiff, in a proceeding to enforce their rights to any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case. The facts alleged in the Complaint establish all elements necessary to sustain an action by Plaintiffs against Defendants pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes. This Section is not intended to be, nor shall it be, construed as an admission of liability by Defendants with respect to the allegations set forth in the Complaint with respect to any claims or demands by any third parties; and

O. Defendants acknowledge that their Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which Defendants previously submitted to Plaintiffs, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.

**IV. CONSUMER REDRESS/CLASS ACTION RELIEF**

All money paid to the Commission pursuant to this Order shall be deposited into a fund administered by the Commission or its designee to be used for equitable relief, including consumer redress, after any payments allowed by the Court, and any attendant expenses for the administration of any redress fund. Plaintiffs reserve the right to oppose any request for payment for any attorneys fees or payments to class representatives associated with the Class Action Lawsuits; provided, however, that no other costs or expenses relating to the Class Action Lawsuits shall be paid out of such redress fund. If the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, Plaintiffs may apply any remaining money for such other equitable relief (including consumer information remedies) as they determine to be reasonably related to Defendants' practices alleged in the Complaint. Any money not used for such equitable relief is to be deposited to the U.S. Treasury as disgorgement. Defendants have no right to challenge any actions Plaintiffs or their representatives may take pursuant to this Subsection.

**V. PROHIBITED DISCLOSURE OF CUSTOMER INFORMATION**

**IT IS FURTHER ORDERED** that Defendants, Defendants' officers, agents, servants, employees, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from:

A. failing to provide sufficient customer information to enable Plaintiffs to efficiently administer consumer redress. If a representative of Plaintiffs requests in writing any information in Defendants' possession related to redress, Defendants must provide it, in the form

prescribed by Plaintiffs, within 14 days;

B. disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), that any Defendant obtained prior to entry of this Order, in connection with the advertising, marketing, promotion, offering for sale, or sale of any Multi-Level Marketing Program or right to participate in any Multi-Level Marketing Program;

C. failing to destroy such customer information in all forms in their possession, custody, or control within 30 days after receipt of written direction to do so from a representative of Plaintiffs.

Provided, however, that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by law, regulation, court order, or in defense of claims.

#### **VI. PROHIBITION ON COLLECTING ON ACCOUNTS**

**IT IS FURTHER ORDERED** that Defendants, Defendants' officers, agents, servants, employees, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from attempting to collect, collecting, or assigning any right to collect payment from any consumer who purchased or agreed to purchase any product, service, plan, or program from Defendants.

#### **VII. DISSOLUTION OF STIPULATED INJUNCTION AND ASSET FREEZE**

**IT IS FURTHER ORDERED** that the freeze on the assets of the Individual Defendants



is modified to permit the payments and other transfers of assets identified in the Monetary Judgment and Partial Suspension section. Upon completion of all payment and other obligations identified in the Monetary Judgment and Partial Suspension section, (other than the sale of Mills Other Personal Property and Mills' subsequent payment of \$550,000 referred to in Section III paragraph G herein), the asset freeze and Stipulated Injunction are dissolved, except as provided in the Section titled Receivership. A financial institution shall be entitled to rely upon a letter from the Commission stating that the freeze on the assets of Defendants Paul C. Orberson and Thomas A. Mills has been lifted, and the Commission shall, immediately upon request, provide any such letters as required to enable Defendants and the Estate to satisfy their obligations under this Agreement.

#### **VIII. RECEIVERSHIP**

**IT IS FURTHER ORDERED** that the appointment of Robb Evans & Robb Evans and Associates, LLC, as Permanent Equity Receiver ("Receiver") for the Corporate Defendants and any of their affiliates, subsidiaries, divisions, or sales or customer service operations, wherever located, with the full power of an equity receiver, entered on May 28, 2013, is hereby continued in full force and effect except as modified in this Section. The Receiver shall complete its tasks set forth in the Class Action Settlement Agreement and Release in the Class Action Lawsuits. The Receiver shall complete liquidation of all assets of the Corporate Defendants and of the assets described in Section III.C–F and H without further order of the Court. The Receiver shall use the proceeds of the sales of these assets to pay any legitimate liens and necessary expenses relating to the sales. Upon liquidation of these assets, the Receiver shall submit his final report and application for fees and expenses relating to the receivership over the Corporate Defendants

and the liquidation of the assets described in Section III.C-F and H of this Order, and upon approval of the same by the Court, shall pay any remaining funds, less claims approved by the Court, to the Commission. Upon the Court's approval of the Receiver's final report as to the Corporate Defendants, and the payment of any remaining funds to the Commission under this Section, the Receivership over the Corporate Defendants shall be terminated. Upon termination of the Receivership, the Receiver shall return or provide copies to the Defendants of all of Defendants' documents seized by the Receiver.

#### **IX. COOPERATION WITH THE RECEIVER**

**IT IS FURTHER ORDERED** that Defendants, Defendants' officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, shall fully cooperate with and assist the Receiver. This cooperation and assistance shall include, but not be limited to providing any information to the Receiver that is reasonably necessary to enable the Receiver to exercise its authority and discharge its responsibilities under this Order.

#### **X. ORDER ACKNOWLEDGMENTS**

**IT IS FURTHER ORDERED** that Defendants obtain acknowledgments of receipt of this Order:

- A. Each Defendant, within 7 days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For 3 years after entry of this Order, each Individual Defendant for any business that such Defendant, individually or collectively with any other Defendant, is the majority owner or controls directly or indirectly, and each Corporate Defendant, must deliver a copy of this

Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which a Defendant delivered a copy of this Order pursuant to Section X B above, that Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

#### **XI. COMPLIANCE REPORTING**

**IT IS FURTHER ORDERED** that Defendants make timely submissions to the Commission:

A. One year after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury:

1. Each Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of Plaintiffs may use to communicate with Defendant; (b) identify all of that Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, recruitment, and sales, and the involvement of any other Defendant (which Individual Defendant Mills must describe if he knows or should know due to his own involvement); (d) describe in detail whether and how that Defendant is in compliance

with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

2. Additionally, Defendant Mills must: (a) identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences; (b) identify all business activities, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest; and (c) describe in detail such Defendant's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For 10 years after entry of this Order, each Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Each Defendant must report any change in: (a) any designated point of contact; or (b) the structure of any Corporate Defendant or any entity that Defendant has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

2. Additionally, Defendant Mills must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which Defendant Mills performs services whether as an employee or otherwise and any entity in which Defendant Mills has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.

C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Defendant

within 14 days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: \_\_\_\_\_” and supplying the date, signatory’s full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *FTC v. Fortune Hi-Tech Marketing, Inc., et al.*, No. X130022.

## **XII. RECORDKEEPING**

**IT IS FURTHER ORDERED** that Defendants must create certain records for 10 years after entry of the Order, and retain each such record for 5 years. Specifically, Corporate Defendants and Defendant Mills for any business that such Defendant, individually or collectively with any other Defendant, is a majority owner or controls directly or indirectly, must create and retain the following records:

A. accounting records showing the revenues from all products, services, plans, or programs sold;

B. personnel records showing, for each person providing services, whether as an employee or otherwise, that person’s: name; addresses; telephone numbers; job title or position;

dates of service; and (if applicable) the reason for termination;

C. records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;

D. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and

E. a copy of each unique advertisement, other marketing material, and contract with any supplier.

#### **XIV. COMPLIANCE MONITORING**

**IT IS FURTHER ORDERED** that, for the purpose of monitoring Defendants' compliance with this Order, including the financial representations upon which part of the judgment was suspended, and any failure to transfer any assets as required by this Judgment:

A. Within 14 days of receipt of a written request from a representative of Plaintiffs, each Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. Plaintiffs are also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

B. For matters concerning this Judgment, Plaintiffs are authorized to communicate directly with each Defendant; provided, however, that the Defendant may have counsel present if they choose. Defendant must permit representatives of Plaintiffs to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. Plaintiffs may use all other lawful means, including posing, through its representatives as consumers, suppliers, or other individuals or entities, to Defendants or any individual or entity affiliated with Defendants, without the necessity of identification or prior notice. Nothing in this Judgment limits 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.

**XV. RETENTION OF JURISDICTION**

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Judgment.

**SO ORDERED.**



Judge, United States District Court  
For the Eastern District of Kentucky

**So Stipulated:**

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General Counsel

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State of North Carolina

Jeffrey Orberon, as Executor of the Estate  
of Paul C. Orberon  
On behalf of the Estate

Thomas A. Mills  
Individually and on behalf of Defendants  
Fortune Hi-Tech Marketing, Inc., FHTM,  
Inc., Alan Clark Holdings, LLC, FHTM  
Canada, Inc., and Fortune Network  
Marketing (UK) Limited



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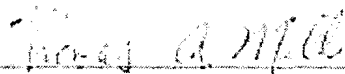
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On behalf of the Estate

  
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Thomas A. Mills  
*Individually and on behalf of Defendants  
Fortune Hi-Tech Marketing, Inc., FHTM,  
Inc., Alan Clark Holdings, LLC, FHTM  
Canada, Inc., and Fortune Network  
Marketing (UK) Limited*

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF KENTUCKY  
CENTRAL DIVISION AT LEXINGTON

Filed Electronically

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FEDERAL TRADE COMMISSION,	)
	)
STATE OF ILLINOIS,	)
	)
COMMONWEALTH OF KENTUCKY, and	)
	)
STATE OF NORTH CAROLINA,	)
	)
Plaintiffs,	) No. 5:13-cv-123-KSF
	)
v.	) <b>ATTACHMENT A</b>
	)
FORTUNE HI-TECH MARKETING, INC.,	) <b>PROPERTY SCHEDULE</b>
a Kentucky corporation, <i>et al.</i> ,	)
	)
Defendants.	)
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The following are the property descriptions referred to in Section III (Monetary Judgment and Partial Suspension) of the Stipulated Final Order and Order for Permanent Injunction and Monetary Judgment:

A. The Orberson Real Property referred to in Section III.C includes the real property, together with the structures, improvements, appurtenances, hereditaments, and other rights appertaining or belonging thereto, situated at 215 Ferryman Lane, Daniel Island, South Carolina 29492 with legal description Lot B-28, Block B, Parcel G, Daniel Island Park;

B. The Orberson Personal Property referred to in Section III.D includes:

1. 2003 Jeep Wrangler, with identification number LJ4FA39S83P373872;

2. 2007 Crownline with identification number JTC69159B707;

C. The Mills Real Property referred to in Section III.E includes the real property, together with the structures, improvements, appurtenances, hereditaments, and other rights appertaining or belonging thereto, situated at 7092 Placida Road, Palm Island Village, Unit 1624, Cape Haze, Florida 33946 with legal description of Unit 1624, Palm Island Village Condominium, according to the plat thereof, recorded in Condominium Book 4, Page 24A et. Seq. as amended, and being further described in that certain Declaration of Condominium recorded in Official Records Book 740, Page 1183, et. seq., as amended of the Public Records of Charlotte County, Florida.

D. The Mills Personal Property referred to in Section III.F includes:

1. 2012 BMW X5, titled to Thomas Mills , with identification number 5UXZV4C5XCL985075;
2. Bullion listed in item 17 Financial Statement of Individual Defendant Thomas A. Mills signed on February 8, 2012 [sic 2013];
3. Coins listed in item 17 Financial Statement of Individual Defendant Thomas A. Mills signed on February 8, 2012 [sic 2013] ;
4. 2010 Sea Ray boat, titled to Tom Mills;
5. Two 2007 Yamaha jet skis titled to Tom Mills;

E. The Mills Other Personal Property referred to in Section III.G includes sports memorabilia listed in item 17 Financial Statement of Individual Defendant Thomas A. Mills signed on February 8, 2012 [sic 2013], up to \$550,000 in value. Defendant Mills shall have until the expiration of 12 months after the entry of this Final Order to fully comply with Section III.G.

F. The Kentucky Farm referred to in Section III.H includes the real property, together with the structures, improvements, appurtenances, hereditaments, all cows except 20 cow/calf pairs, round hay bales, , inventory, and other rights appertaining or belonging thereto, excluding corral panels, situated at 3600 Lebanon Road, Danville, Kentucky 40422; with legal description of All of parcel 'A1' consisting of 268.632 acres, including Kenny Dr. and Pond St., all of parcel '2', tract '1', consisting of 32.294 acres (430-B), all of parcel '2', tract '2', consisting of 25.246 acres (430-B), and all of Rothwell Estates Lots 16, 17, 18, 19, 20, 21, and 22 inclusive, each consisting of 0.916 acres (282-B), and all of Rothwell Estates Lot 24A, consisting of 1.039 acres (1273-B), all totaling 333.623 acres, and all as reflected on the retracement plat 1526-B and, in addition, All of Rothwell Estates, Lot Twenty Three (23) consisting of 0.916 acres as reflected on plat 282-B.