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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION**

IN THE MATTER OF DETERMINING
Whether there has been a violation
of the Business Opportunity Fraud Act of the State of
Washington by:

Mark 5, Inc., Robert D. King, Troy A. Whitworth,
their employees and agents,

Respondents.

Order No. S-04-025-04-FO02

FINAL ORDER TO CEASE AND DESIST

THE STATE OF WASHINGTON TO:

Troy A. Whitworth
10716 Pickfair Dr.
Austin, TX 78750-4012

STATEMENT OF CHARGES

On March 30, 2004, the Securities Administrator of the State of Washington issued Summary Order to Cease and Desist S-04-025-04-TO01, hereinafter referred to as the "Summary Order", against Respondents Mark 5, Inc., Robert D. King, Troy A. Whitworth, their employees and agents. On or about April 4, 2004, the Summary Order to Cease and Desist, together with a Notice of Opportunity to Defend and Opportunity for Hearing (hereinafter referred to as "Notice of Opportunity for Hearing") and an Application for Adjudicative Hearing (hereinafter referred to as "Application for Hearing"), was served via certified mail and/or regular U.S. Mail on Mark 5, Inc., Robert D. King and Troy A. Whitworth. The Notice of Opportunity for Hearing advised Mark 5, Inc., Robert D. King and Troy A. Whitworth that each had twenty days from the date the notice was received to file a written application for an adjudicative hearing on the Summary Order to Cease and Desist. The Summary Order to Cease and Desist and the Notice of Opportunity for Hearing further advised that if any respondent did not request a hearing, the Securities Administrator intended to adopt the Tentative Findings of Fact and Conclusions of Law set forth in the Summary Order to Cease and Desist as final as to that respondent. Troy A. Whitworth returned the Application for Hearing

1 form to the Securities Division by U.S. Mail on April 13, 2004, and signed the form on which he indicated that he
2 did not request a hearing.

3 The Securities Administrator therefore adopts as final the findings of fact and conclusions of law as set
4 forth in the Summary Order.

5 The Securities Administrator finds as follows:

6 **FINDINGS OF FACT**

7 **I.**

8 Mark 5, Inc. is a Texas corporation that maintains its principal business address at 908 Town & Country
9 Boulevard, #120, Houston, Texas. Mark 5, Inc. is the seller of distributorships for the sale of jewelry items (the
10 “jewelry opportunity”). Mark 5, Inc. was registered to offer and/or sell its business opportunity in Washington
11 from November 10, 1998 to November 10, 1999. Mark 5, Inc. has not been registered since November 10, 1999.

12 Robert D. King (King) is the President of Mark 5, Inc. and served in such capacity at all times relating to
13 the offer and sale of Mark 5, Inc. jewelry distributorship business opportunities.

14 Troy A. Whitworth (Whitworth) is the National Marketing Director for Mark 5, Inc, and served in such
15 capacity at all times relating to the offer and sale of Mark 5, Inc. jewelry distributorship business opportunities.

16 **II.**

17 On March 8, 2000, the Division issued Summary Order to Cease and Desist against Mark 5, Inc. and Robert D.
18 King for violations of the registration and antifraud provisions of the Washington Business Opportunity Fraud Act.

19 On March 13, 2000, the company was served, by certified mail, the Summary Order to Cease and Desist, a Notice
20 of Opportunity to Defend and Notice of Hearing, and an Application for Hearing.

21 Respondents failed to reply to the Summary Order and failed to notify the Division within twenty days of service
22 that they wished to make a request and/or application for hearing.

1 III.

2 Respondents Mark 5, Inc. and/or Troy A. Whitworth placed or caused to be placed an advertisement in the
3 Vancouver Columbian newspaper published in Vancouver, Washington on at least January 31, 2004. A Washington
4 resident responded to the ad by calling the toll-free number contained in the advertisement to obtain further information
5 about a route sales opportunity. The Washington resident spoke with Whitworth, who identified himself as the National
6 Marketing Director for Mark 5, Inc. and referred the Washington resident to an Internet website: www.mark5inc.com, at
7 which he found a second toll-free number.

8 The Washington resident called the second toll-free number and spoke to King, who told the Washington resident
9 that the opportunity had a “one-year return policy.” The Washington resident at that time requested and subsequently
10 obtained from Mark 5, Inc. and Troy A. Whitworth offering and promotional materials concerning the jewelry
11 opportunity. The materials included a “Wholesale Distributor Training Manual” for Mark 5, Inc. and a sample
12 distributorship agreement.

13 King told the Washington resident that for the best “package deal” cost \$12,500 and included locating services for
14 30 display racks. The purchase price included 720 pairs of earrings, 30 display racks, banners, toppers, a training manual,
15 and telephonic training if necessary. King told the Washington resident sales were split 70/30 between the “distributor”
16 and the location owner. King told the Washington resident that he would earn 50% on each sale.

17 The Washington resident spoke to King again on February 20, 2004. The Washington resident asked King if
18 Mark 5, Inc. was registered to sell its business opportunity in Washington. King told the Washington resident that Mark
19 5, Inc. was “fully licensed” to sell its jewelry business in Washington.

20 Respondents Mark 5, Inc, King and Whitworth failed to disclose the existence of the previous administrative
21 ordered issued by the Division. Respondents failed to provide the Washington resident with a disclosure document
22 containing complete material information regarding the opportunity, including but not limited to a financial statement for
23 the seller.

1 IV.

2 Mark 5, Inc. is not currently registered with the Washington Securities Division to offer or sell business
3 opportunities in the state of Washington and was not so registered at the time of the offer of the jewelry distributorship
4 business opportunity to the Vancouver, Washington resident. It is in the public interest that the offer and/or sale of the
5 above-described jewelry opportunity in violation of the Washington Business Opportunity Fraud Act cease.

6 Based upon the above Findings of Fact, the following Conclusions of Law are made:

7 **CONCLUSIONS OF LAW**

8 I.

9 The offer and/or sale of the jewelry opportunity as described in Findings of Fact I and III constitutes the offer
10 and/or sale of a business opportunity as defined in RCW 19.110.020(1).

11 II.

12 The offer and/or sale of the jewelry opportunity as described in Findings of Fact I through III was made in
13 violation of RCW 19.110.070 and RCW 19.110.120 because Respondents failed to provide a Washington purchaser
14 with a disclosure document containing complete material information regarding the opportunity, including, but not
15 limited to, a financial statement for the seller and disclosure of the previous administrative order from the Division.

16 III.

17 The offer and/or sale of the jewelry opportunity as described in Findings of Fact I through IV was made in
18 violation of RCW 19.110.050(1) because no business opportunity registration had been made nor a permit issued
19 to Respondents for the offer and/or sale of the business opportunity in this state at the time of the offer or sale to
20 the Washington resident.

1 **FINAL ORDER**

2 Based upon foregoing,

3
4 NOW, THEREFORE, IT IS HEREBY ORDERED that Troy A. Whitworth cease and desist from violating RCW
5 19.110.070 and RCW 19.110.120, the disclosure document and antifraud provisions of the Business Opportunity Fraud
6 Act, respectively.


7 It is further ORDERED that Troy A. Whitworth cease and desist from violations of RCW 19.110.050(1), the
8 registration requirement provision of the Business Opportunity Fraud Act.

9 **AUTHORITY AND PROCEDURE**

10 This Order is entered pursuant to the provisions to the provisions of RCW 19.110.150 and chapter 34.05
11 RCW.

12 **WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.**

13 DATED this 10th day of May, 2004.

14 
15 MICHAEL E. STEVENSON
16 Securities Administrator

17 Approved by:

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19 SUZANNE SARASON
20 Chief of Enforcement

21 Presented by:

22 
23 MARTIN CORDELL

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Financial Legal Examiner