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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
Washington by:

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

Respondents

Order Number S-04-025-08-CO01

CONSENT ORDER AND ORDER VACATING
S-04-025-04-FO02 AS TO TROY WHITWORTH

On May 10, 2004, the Securities Administrator of the State of Washington issued a Final Order to Cease and Desist, number, S-04-025-04-FO02, hereinafter referred to as the “Final Order” against Troy Whitworth. Pursuant to the Business Opportunity Fraud Act of Washington, RCW 19.110, the Securities Division of the Department of Financial Institutions and Troy Whitworth do hereby enter into this CONSENT ORDER in settlement of the matters alleged herein. Respondent neither admits nor denies the Findings of Fact and Conclusions of Law stated below.

FINDINGS OF FACT

I. RESPONDENTS

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

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

1 Troy A. Whitworth (Whitworth) was the sales manager for Mark 5, Inc, from 2004 to 2007 and served in such
2 capacity at all times relating to the offer and sale of Mark 5, Inc. jewelry distributorship business opportunities during
3 that time period.

4 II. NATURE OF THE OFFERING

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

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

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

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

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

5 III. REGISTRATION STATUS

6 Mark 5, Inc. is not currently registered with the Washington Securities Division to offer or sell business
7 opportunities in the state of Washington and was not so registered at the time of the offer of the jewelry
8 distributorship business opportunity to the Vancouver, Washington resident.

9 Based upon the above Findings of Fact, the following Conclusions of Law are made:
10

11 CONCLUSIONS OF LAW

12 I.

13 The offer and/or sale of the jewelry opportunity as described in Findings of Fact I and III constitutes the
14 offer and/or sale of a business opportunity as defined in RCW 19.110.020(1).
15

16 II.

17 The offer and/or sale of the jewelry opportunity as described in Findings of Fact I through III was
18 made in violation of RCW 19.110.070 and RCW 19.110.120 because Respondents failed to provide a Washington
19 purchaser with a disclosure document containing complete material information regarding the opportunity, including,
20 but not limited to, a financial statement for the seller and disclosure of the previous administrative order from the
21 Division.
22

23 III.

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

5
6 **CONSENT ORDER**

7 Based upon the foregoing:

8 IT IS AGREED AND ORDERED that Respondent Troy Whitworth shall cease and desist from
9 offering or selling business opportunities in violations of RCW 19.110.050, the registration section of the
10 Business Opportunity Fraud Act of the State of Washington.

11 IT IS FURTHER AGREED AND ORDERED that Respondent Troy Whitworth shall cease and
12 desist from violating RCW 19.110.070, the disclosure document section of the Business Opportunity
13 Fraud Act of the State of Washington.

14 IT IS FURTHER AGREED AND ORDERED that Respondent Troy Whitworth shall cease and
15 desist from violating RCW 19.110.120, the anti-fraud section of the Business Opportunity Fraud Act of
16 the State of Washington.

17 IT IS FURTHER ORDERED that Final Order, S-04-025-04-FO02 is hereby vacated.

18 IT IS FURTHER AGREED that the Securities Division has jurisdiction to enter this Order.

19
20
21 IT IS FURTHER AGREED that in consideration of the foregoing Respondent waives his rights to
22 a hearing in this matter and judicial review of this order.

1 SIGNED this 27 day of October, 2008.

2 Signed by:

3
4 /s/ Troy Whitworth

5 _____
6 Troy Whitworth, individually
7
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9 --

9 SIGNED and ENTERED this 3rd day of November, 2008 by

10
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13 _____
14 Michael E. Stevenson
15 Securities Administrator

16 Presented by:

17 

18 _____
19 Martin Cordell
20 Chief of Enforcement