

1 **STATE OF WASHINGTON**
2 **DEPARTMENT OF FINANCIAL INSTITUTIONS**
3 **SECURITIES DIVISION**

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

8 Mark 5, Inc., Robert D. King, their employees and
9 agents,

10 Respondents.

SDO - 29 - 00

SUMMARY ORDER TO CEASE AND DESIST

Case No. 99-11-0343

11 THE STATE OF WASHINGTON TO:

12 Mark 5, Inc.
13 Robert D. King
14 908 Town & Country Blvd., #120
15 Houston, TX 77024

16 **STATEMENT OF CHARGES**

17 Please take notice that the Securities Administrator of the State of Washington has reason to believe
18 that Respondents, Mark 5, Inc. and Robert D. King, have violated the Business Opportunity Fraud Act and
19 that their violations justify the entry of an order of the Securities Administrator under RCW 19.110.150 to
20 cease and desist from such violations. The Securities Administrator finds that delay in ordering the
21 Respondents to cease and desist from such violations would be hazardous to the investors and to the public
22 and that a Summary Order to Cease and Desist should be entered immediately. The Securities Administrator
23 finds as follows:

24 **TENTATIVE FINDINGS OF FACT**

I.

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"). Robert D. King is the President of Mark 5, Inc.

II.

SUMMARY ORDER TO CEASE AND DESIST

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DEPARTMENT OF FINANCIAL INSTITUTIONS
Securities Division
PO Box 9033
Olympia, WA 98507-9033
(360) 902-8760

Mark 5, Inc.

1 Respondents placed or caused to be placed an advertisement in the Bellingham Herald newspaper
2 published in Bellingham, Washington in at least August, 1998. A Bellingham, Washington resident
3 responded to the ad by calling the toll-free number contained in the advertisement to obtain further
4 information about the jewelry opportunity. The Washington resident spoke with Robert D. King, who
5 assured the Washington resident that the opportunity had a “one year return policy.” The Washington
6 resident at that time requested and subsequently obtained from Mark 5, Inc. and Robert D. King offering
7 and promotional materials concerning the jewelry opportunity. The materials included a “Wholesale
8 Distributor Training Manual” for Mark 5, Inc., doing business under the name “Fifth Avenue,” and a
9 document entitled “Mark 5, Inc./Fifth Avenue Agreement” (the “Agreement”). The “Wholesale
10 Distributor Training Manual” provided information about conducting the business, and the Agreement
11 outlined the contract terms between Mark 5, Inc. and the prospective Washington purchaser. The
12 Agreement indicated that upon payment in the amount of \$3,515, the purchaser (identified as a
13 “Distributor” in the document) would have an assigned territory and would be provided a “Start Up Kit”
14 including 720 pairs of Fifth Avenue earrings, display cards, a training manual, business cards and
15 promotional materials, display racks, consignment and reorder forms, and catalogs. The Agreement also
16 contained, in relevant part, the following language:

17 Mark 5 INC. offers an END OF ONE YEAR BUYBACK. If I have not made AT LEAST the
18 amount of my initial investment back within ONE YEAR, MARK 5 INC. will refund the
19 difference between amount invested and NET PROFITS. This includes amount spent on
INVENTORY AND DISPLAYS. Otherwise, all transactions between me and MARK 5 INC. are
final/nonrefundable.

20 Based in part upon Robert D. King’s assurance and the Agreement language relating to a one year
21 buyback, the Washington resident determined to purchase the jewelry opportunity “Start Up Kit” for
22 \$3,515 and charged that amount to a personal Visa credit card account on or about September 9, 1998.
23 Prior to the sale, Respondents failed to provide the Bellingham, Washington resident with a disclosure
24 document containing complete material information regarding the jewelry opportunity, including but not
limited to a financial statement for the seller.

1 On November 2, 1998, Robert D. King on behalf of Mark 5, Inc., filed an application for
2 registration of the jewelry opportunity with the Securities Division. A registration permit (in conjunction
3 with File No. B-O0424) was subsequently issued for the period of November 10, 1998 to November 10,
4 1999. This was, however, after the offer and sale of at least one jewelry opportunity in September, 1998,
5 to the Bellingham, Washington resident.

6 The Bellingham, Washington resident for a period of approximately eleven months after the
7 September, 1998, purchase attempted to operate the jewelry business with the materials provided and in
8 accordance with the "Wholesale Distributor Training Manual, but earned only a fraction of the initial
9 investment amount. In August, 1999, the resident contacted Robert D. King and requested a refund of the
10 difference between the amount invested and net profits. Robert D. King on behalf of Mark 5, Inc. refused
11 to consider providing the Washington resident a refund in accordance with the Agreement.

12 III.

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

18 An emergency exists in that further sales of the business opportunity described above would be
19 hazardous to investors and the public of this state.

20 Based upon the above Tentative Findings of Fact, the following Conclusions of Law are made:
21
22

23 CONCLUSIONS OF LAW

24 I.

The offer and/or sale of the jewelry opportunity as described in Tentative Findings of Fact

1 I and II constitutes the offer and/or sale of a business opportunity as defined in RCW 19.110.020(1).

2 II.

3 The offer and/or sale of the jewelry opportunity as described in Tentative Findings of Fact I and II
4 was made in violation of RCW 19.110.070 and RCW 19.110.120 because Respondents failed to provide
5 at least one Washington purchaser of the opportunity with a disclosure document containing complete
6 material information regarding the opportunity, including but not limited to a financial statement for the
7 seller.

8 III.

9 The offer and/or sale of the jewelry opportunity as described in Tentative Findings of Fact I
10 through III was made in violation of RCW 19.110.050(1) because no business opportunity registration had
11 been made nor a permit issued to Respondents for the offer and/or sale of the business opportunity in this
12 state at the time of the offer or sale to the Bellingham, Washington resident.

13 The Securities Administrator finds that this action is necessary and appropriate in the public
14 interest and for the protection of investors and that the public safety and welfare require emergency
15 action.

16 SUMMARY ORDER

17 Based on the premises of the foregoing,

18 IT IS THEREFORE HEREBY SUMMARILY ORDERED That Mark 5, Inc. and Robert D. King,
19 their employees and agents, each cease and desist from violations of RCW 19.110.070 and RCW
20 19.110.120, the disclosure document and antifraud provisions of the Business Opportunity Fraud Act,
21 respectively.

22 IT IS THEREFORE HEREBY SUMMARILY ORDERED That Mark 5, Inc. and Robert D. King,
23 their employees and agents, each cease and desist from violations of RCW 19.110.050(1), the registration
24 requirement provision of the Business Opportunity Fraud Act.

AUTHORITY AND PROCEDURE

1 This Summary Order is entered pursuant to the provisions of RCW 19.110.150 and chapter 34.05
2 RCW. The Respondents may each make a written request for hearing as set forth in the Notice of
3 Opportunity to Defend and Opportunity for Hearing accompanying this order. A request for a hearing
4 should be in writing and sent to Deborah R. Bortner, Securities Administrator, Department of Financial
5 Institutions, P.O. Box 9033, Olympia, Washington 98507-9033 to the attention of Brad Ferber. If a
6 respondent does not request a hearing as set forth in the Notice of Opportunity to Defend and Opportunity
7 for Hearing, the Securities Administrator intends to adopt the Tentative Findings of Fact and Conclusions
8 of Law as final and make this Summary Order to Cease and Desist permanent as to that respondent.

9 WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

10
11 Dated this _____ day of _____, 2000.

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13 _____
Deborah R. Bortner
Securities Administrator

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15 Presented by: _____
Brad Ferber
Securities Examiner

16 Approved by: _____
Michael E. Stevenson
Chief of Compliance

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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, their employees and
agents,

Respondents.

SDO - 29A - 00

NOTICE OF OPPORTUNITY TO DEFEND AND
OPPORTUNITY FOR HEARING

Case No. 99-11-0343

THE STATE OF WASHINGTON TO:

Mark 5, Inc.
Robert D. King
908 Town & Country Blvd., #120
Houston, TX 77024

YOU ARE HEREBY NOTIFIED that a Summary Order To Cease And Desist has been filed by the
Department of Financial Institutions, a true and correct copy of which is attached and made a part hereof.

YOU ARE HEREBY NOTIFIED that you may file an application for an adjudicative hearing before the
Washington State Department of Financial Institutions on the Summary Order. Service of this notice is deemed
complete upon deposit in the United States mail. YOUR APPLICATION MUST BE RECEIVED BY THE
DEPARTMENT OF FINANCIAL INSTITUTIONS WITHIN TWENTY (20) DAYS FROM THE DATE YOU
RECEIVED THIS NOTICE. If you demand a hearing, you will be notified of the time and place for the hearing
at least seven (7) days in advance of the hearing date.

At the hearing, you may appear personally, and by counsel, if you desire. The hearing will be as
informal as is practical within the requirements of the Administrative Procedure Act (see chapter 34.05 RCW).
The hearing will be recorded. The primary concern will be getting to the truth of the matter insofar as the
Summary Order is concerned. Technical rules of evidence will not be binding at the hearing except for the rules
of privilege recognized by law. You have the right to present evidence and witnesses in your own behalf, and to
cross-examine those witnesses presented in support of the Summary Order. You may require the attendance of

1 witnesses by subpoena. If you are limited English- speaking or hearing impaired, you have the right to have an
2 interpreter appointed at no cost to you, as discussed below.

3 INTERPRETER AVAILABILITY. If you or a witness for you is a person who, because of non-
4 English-speaking cultural background, cannot readily speak or understand the English language, or if you or a
5 witness for you is a person who, because of a hearing impairment or speech defect, cannot readily understand or
6 communicate in spoken language, including persons who are deaf, deaf and blind, or hard of hearing, AND
7 YOU NEED AN INTERPRETER, then a qualified interpreter will be appointed at no cost to you or to the
8 witness. You may request the appointment of a qualified interpreter by indicating your request on the attached
9 Application for Adjudicative Hearing form.

10 YOU ARE FURTHER NOTIFIED that if the Department of Financial Institutions does not RECEIVE
11 the Application for Adjudicative Hearing form within twenty (20) days from the date you received this notice,
12 this will constitute a waiver of your right to a hearing and the director will find that you do not contest the
13 allegations of the Summary Order. Upon such a finding by the director a final order will be immediately entered
14 disposing of this matter and ordering you to cease and desist as described in the Summary Order. If you desire a
15 hearing in this matter, please return the attached Application for Adjudicative Hearing to:

16 Washington State Department of Financial Institutions
17 Securities Division
18 Attn: Brad Ferber
19 Post Office Box 9033
20 Olympia, Washington 98507-9033

21 Dated this _____ day of _____, 2000.

22 _____
23 Deborah R. Bortner
24 Securities Administrator

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I.

I [REQUEST] [DO NOT REQUEST] a formal hearing in this matter.

II.

I [WILL] [WILL NOT] be represented by an attorney. His/her name and address are:

III.

I [REQUEST] [DO NOT REQUEST] that a qualified interpreter be appointed at no cost to me to interpret for (myself) or (my witness(es)). My, or my witness's(es') primary language is _____ (identify language). My, or my witness's(es'), hearing impaired status is _____ (identify hearing impaired status). I understand that a qualified interpreter will be appointed at no cost to me or to my witness(es).

IV.

You have the right: To demand a hearing; to be represented by an attorney at your own expense; to subpoena witnesses to the hearing or subpoena the production of books or documents and to otherwise defend against the Summary Order.

WARNING: FAILURE TO COMPLETE AND MAIL THIS DOCUMENT SO THAT IT IS RECEIVED BY THE SECURITIES DIVISION WITHIN 20 DAYS AFTER YOU RECEIVED THE SUMMARY ORDER TO CEASE AND DESIST WILL RESULT IN THE DISPOSITION OF THIS CASE AS AUTHORIZED BY RCW 34.05.440.

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Dated this _____ day of _____, 2000.

Mark 5, Inc.

Signature

Print Name and Title

Address (if facing page is incorrect):

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Dated this _____ day of _____, 2000.

Robert D. King, as President of Mark 5, Inc., and individually:

Signature

Address (if facing page is incorrect):

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