

VF Works / DMX Works Epilogue: Almost Two Decades Later, the Lawsuits Continue

Editorial Staff

An article in the [March 8, 1999 edition](#) of *Dynamic Chiropractic* examined whether then-VF Works / Nu-Best Franchising was selling its franchises illegally to doctors of chiropractic.¹ The franchise included video fluoroscopy equipment mounted in a van with the claim, "\$500,000 - \$1 million dollars average annual income." The franchise fee, van and equipment cost, beginning inventory, marketing and working capital cost the purchasers a hefty \$189,500. Added to this was a 5 percent royalty, 3 percent advertising contribution, \$3,000 estimated monthly insurance expense and \$2,000 monthly additional expenses.

As of the date of that article, of the 11 DCs who provided us with information, their average annual income was just over \$88,000, with almost 64 percent of the responding franchises out of business, no longer using the equipment, or in litigation with Nu-Best.

But the price tag and ongoing expenses were only part of the issue. Seven months before the publication of our article, the Office for Compliance for the Center of Devices and Radiological Health of the Food and Drug Administration (FDA) issued a four-page "[Program Disapproval Letter](#)" addressed to John Postlethwaite, president/owner of VF Works, Inc., listing violations of the Electronic Product Radiation Control (EPRC) regulations.²

On Aug. 7, 1998, the director of the Florida district of the FDA issued a "[warning letter](#)" regarding an inspection of the VF Works device. This letter echoed the violations in the FDA's "program disapproval letter," but added:³ "You should know that these are serious violations of the law that may result in FDA taking regulatory action *without further notice to you*. (Emphasis added) The actions include, but are not limited to, seizing your product inventory, obtaining a court injunction against further marketing of the product, or assessing civil money penalties."

Later that year, VF Works and Dr. Postlethwaite received a letter from the FDA granting a Quality Control & Testing program disapproval rescission subject to the provisions detailed in the complete letter from the agency. An additional letter stated that the FDA's Center for Devices and Radiological Health was "classifying this as a Class II recall and has assigned a recall number Z-1242-9 to this activity."

Sadly, the saga that began almost 20 years ago appears to be continuing to this day. Several recent lawsuits have been filed by VF Works' / DMX Works' clients:

- On April 27, 2012, the Tennessee Court of Appeals confirmed a trial court's entry of a judgment against DMX Works, Inc. The trial court awarded the doctor "actual damages of \$111,090.49, which the court trebled to \$333,271.47."⁴

- On Nov. 17, 2015, a Pinellas County (Florida) circuit court ordered the recovery by a chiropractic practice of \$104,262.24 from DMX Works, Inc.⁵
- A third lawsuit filed in South Carolina District Court against DMX-Works Imaging, Inc. is ongoing as of press time.⁶

References

1. "Big Problems for VF Works/Nu-Best Franchising." *Dynamic Chiropractic*, March 8, 1999.
2. FDA Program Disapproval Letter, July 28, 1998.
3. Regional FDA Warning Letter, Aug. 7, 1998.
4. *Ron Fausnaught, Jr, M.D., v. DMX Works, Inc.* Affirmation of judgment, April 27, 2012.
5. *Chiropractie Hellevoetsluis B.V., Plaintiff, vs. DMX Works, Inc., Defendant.* Final judgment, Nov. 17, 2015.
6. *Stone Spine & Disc Imaging LLC et al v. DMX-Works Imaging Inc et al.* Filed in South Carolina District Court, May 29, 2015.

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