

1 DEBRA A. VALENTINE
General Counsel

2
3 JEROME M. STEINER, JR.
GERALD E. WRIGHT
4 DAVID M. NEWMAN
Federal Trade Commission
901 Market Street, Suite 570
5 San Francisco, CA 94103
Phone (415) 356-5282/ fax (415) 356-5284

6
7 BLAINE T. WELSH
Assistant United States Attorney
701 E. Bridger Ave, Suite 600
8 Las Vegas, NV 89101
Phone (702) 388-6336/ fax (702) 388-6787

9 Attorneys for Plaintiff
10 Federal Trade Commission

11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE DISTRICT OF NEVADA**

13
14 _____)
15 FEDERAL TRADE COMMISSION,)

16 Plaintiff,)

17 v.)

18 ASQ, INC., a Nevada Corporation,)
sometimes doing business as Resort World;)

19 FRANK A. ABATANGELO, JR., individually)
and as an officer of Resort World; and)

20 ALLEN H. ABOLAFIA, individually and as an)
21 officer of Resort World,)

22 Defendants.)
23 _____)

No. CV-S-99-0915-JBR-RLH

STIPULATED FINAL ORDER FOR
PERMANENT INJUNCTION AND
SETTLEMENT OF CLAIMS FOR
CONSUMER REDRESS

24
25 Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), commenced this action by
26 filing its complaint for permanent injunction and other relief pursuant to Section 13(b) of the Federal

1 Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), charging Defendants ASQ, Inc., sometimes dba
2 Resort World (“Resort World”), and Frank A. Abatangelo, Jr., individually and as an officer of ASQ,
3 Inc. The Commission later amended its complaint to name as a defendant Allen H. Abolafia, individually
4 and as an officer of Resort World. The amended complaint alleges that Defendants engaged in unfair or
5 deceptive acts or practices in violation of Section 5 of the FTC Act (“FTC Act”), 15 U.S.C. § 45, and
6 seeks a permanent injunction and monetary relief pursuant to Section 13(b) of the FTC Act. The
7 Commission and these Defendants, as hereinafter defined, hereby stipulate to the entry of this Final Order
8 for Permanent Injunction and Settlement of Claims for Consumer Redress (“Order”) to resolve all matters
9 of dispute between them in this action.

10 NOW, THEREFORE, Plaintiff Federal Trade Commission and Defendants ASQ, Inc., dba Resort
11 World, Frank A. Abatangelo, Jr., and Allen H. Abolafia, having requested the Court to enter this Order,

12 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

13 **FINDINGS**

14 A. This Court has jurisdiction over the subject matter and the parties.

15 B. Venue is proper as to all parties in the District of Nevada.

16 C. The activities of Defendants are in or affecting commerce, as defined in the FTC Act,
17 15 U.S.C. § 44.

18 D. The Complaint states a claim upon which relief may be granted against Defendants under
19 §§ 5(a)(1) and (13)(b) of the FTC Act, 15 U.S.C. §§ 45(a)(1) and 53(b).

20 E. Defendants have waived any and all rights that may arise under the Equal Access to
21 Justice Act, 28 U.S.C. § 2412, amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996).

22 F. Plaintiff and Defendants, by and through their counsel, have agreed that the entry of this
23 Order resolves all matters of dispute between them arising from the Complaint in this action, up to
24 the date of entry of this Order.

1 G. Plaintiff and Defendants waive all rights to seek appellate review or otherwise challenge or
2 contest the validity of this Order. Defendants further waive and release any claim they may have
3 against the Commission, its employees, agents, and representatives.

4 H. This Order is for settlement purposes only and does not constitute and shall not be
5 interpreted to constitute an admission by Defendants that they have engaged in violations of any
6 law or regulation, including but not limited to the FTC Act, or that the facts alleged in the
7 Complaint, other than the jurisdictional facts, are true.

8 I. Entry of this Order is in the public interest.

9 **ORDER**

10 **DEFINITIONS**

11 **I.**

12 A. “Material” means likely to affect a person’s choice of, or conduct regarding, goods or
13 services;

14 B. Unless otherwise indicated, the term “Defendants” refers to and includes ASQ, Inc.,
15 Resort World, The Travel Factory, Frank A. Abatangelo, Jr., and Allen H. Abolafia (sometimes
16 known as Allan H. Abolafia)..

17 C. “ASQ, Inc.” means that business entity doing business as ASQ, Inc., which sometimes has
18 done or is doing business as Resort World or The Travel Factory.

19 D. “Travel Services” means any product(s) or service(s) that purport(s) to provide
20 transportation, accommodations, or amenities usable during travel. This definition specifically
21 includes, but is not limited to: travel planning services; booking and reservation services;
22 transportation or accommodation tickets; certificates, vouchers, coupons, reservation forms or
23 other documents that purport to be full or partial payment, or redeemable, for transportation or
24 accommodations, car rental, tours, sports or other activities, meals, drinks, or entrance to special
25 events or locations.

1 **PROHIBITED BUSINESS ACTIVITIES**

2 **II.**

3 **IT IS THEREFORE ORDERED** that, in connection with the advertising, promotion, offering
4 for sale, sale or provision of any travel service(s), the Defendants and each of their successors, assigns,
5 officers, agents, servants, employees, subsidiaries and affiliates, and those persons in active concert or
6 participation with them who receive actual notice of this Order by personal service or otherwise, whether
7 acting directly or through any entity, corporation, subsidiary, division, or other device, are hereby
8 restrained and enjoined from, directly or indirectly:

9 A. Making or assisting in the making of, expressly or by implication, orally or in writing, any
10 false or misleading statement or representation of material fact, including but not limited to
11 representations that:

12 1. Defendants will provide vacation travel packages that will include lodging at or
13 around specific or "competitive" prices or for the dates and destinations consumers
14 request, if such is not the case; or

15 2. Defendants will fill consumers' vacation travel needs in a timely manner., if such is
16 not the case; and

17 B. Failing to disclose, in a clear and conspicuous manner, before a consumer pays for any of
18 the goods or services that are the subject of the sales offer, all material restrictions, limitations, or
19 conditions to receive the goods or services that are the subject of the sales offer, including but not
20 limited to additional costs and conditions.

21 C. Advertising, offering for sale or selling any travel services, including but not limited to
22 prepaid airfares or lodging, at a stated price, unless the Defendants have the present capability of
23 providing such package or component thereof at the stated price.

24 //

25 //

26 //

27

1 **BOND PROVISION**

2 **III.**

3 **IT IS FURTHER ORDERED THAT:**

4 A. Each Defendant is enjoined from engaging, whether directly, in concert with others, or

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

1 **MONETARY RELIEF**

2 **IV.**

3 **IT IS FURTHER ORDERED:**

4 A. That judgment is hereby entered against each of the Defendants, jointly and severally, in
5 the amount of SEVENTY-FIVE (\$75,000) for equitable monetary relief, including but not limited
6 to consumer redress, and for paying any attendant expenses of administering any redress fund.
7 This \$75,000 judgment shall be separate and in addition to any assets turned over to the
8 Commission pursuant to Paragraph V of this Order. Such payment shall be made by cashier's
9 check or certified check payable to the Federal Trade Commission and shall be delivered to the
10 Federal Trade Commission, 901 Market Street, Suite 570, San Francisco, CA 94103 no later
11 than five (5) business days after entry of this Order.

12 B. That any funds paid by Defendants pursuant to Paragraphs III or VI of this Order shall be
13 paid into a redress fund administered by the Commission. If the Commission, in its sole
14 discretion, determines that redress is wholly or partially impractical, any funds not so used shall be
15 deposited into the United States Treasury as an equitable disgorgement remedy. Defendants shall
16 have no right to contest the manner of distribution chosen by the Commission or its designated
17 agent.

18 C. The Commission's agreement to this Order, requiring that Defendants be liable for less
19 than the full amount of consumer injury, is expressly premised upon the truthfulness, accuracy and
20 completeness of the financial statements and related documents submitted by Defendant
21 Abatangelo on September 13, 1999, and by Defendant Abolafia on 10/15/99, and on the
22 deposition testimony provided by them on October 26, 1999. Such financial statements,
23 supporting documents, and deposition testimony contain material information upon which the
24 Commission relied in negotiating and agreeing to this Consent Decree. If, upon motion by the
25 Commission, this Court finds that Defendants Frank A. Abatangelo, Jr. or Allen H. Abolafia have
26 failed disclose any material asset or materially misstated the value of any asset in the financial
27

1 statements and related documents described above, or has made any other material misstatement
2 or omission in the financial statements and related documents described above, the Court shall
3 enter judgment in the amount of Two Million Two Hundred Thousand Dollars (\$2,200,000),
4 against such defendant. For the purposes of this Part, Defendants Frank A. Abatangelo, Jr. and
5 Allen H. Abolafia waive any right to contest any of the allegations in the Amended Complaint
6 filed in this matter;

7 D. In the event that Defendants default on the \$75,000 payment set forth in Part A of this
8 Paragraph: 1) the amount of Two Million Two Hundred Thousand Dollars (\$2,200,000), less the
9 sum of payments made pursuant to Part A of this Paragraph, becomes immediately due and
10 payable by Defendants, and interest computed at the rate prescribed under 28 U.S.C. § 1961, as
11 amended, shall immediately begin to accrue on the unpaid balance; and 2) The Commission shall
12 provide notice of such default to Mr. Babero, Defendants' current attorney; and.

13 E. That any funds paid by Defendants pursuant to Parts C and D above shall be paid into the
14 redress fund described in Part B of this Paragraph.

15 16 **CUSTOMER LISTS**

17 **V.**

18 **IT IS FURTHER ORDERED** that Defendants, and each of their successors, assigns,
19 officers, agents, servants, employees, subsidiaries and affiliates, and those persons in active concert or
20 participation with them who receive actual notice of this Order by personal service or otherwise, are
21 permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing
22 the name, address, telephone number, credit card number, bank account number, e-mail address, or
23 other identifying information of any person who paid any money to any Defendant, at any time prior to
24 entry of this Order, in connection with travel services; *Provided*, however, that Defendants may
25 disclose such identifying information with the express written consent of the person whose information is
26 disclosed, to a law enforcement agency, or as required by any law, regulation, or court order.

1 **VI.**

2 **TURNOVER OF FROZEN ASSETS**

3 **IT IS FURTHER ORDERED** THAT all funds in the following previously frozen accounts shall
4 be transferred to the Commission:

5 Pioneer Citizens Bank:

6 account number 68176893, (approx, balance = \$31,366.57)

7 Colonial Bank:

8 account number #0112013465 (app. balance = \$12,875.04)

9 account number #0112014089 (app. balance = \$ 942.93)

10 account number #0111008980 (app. balance = \$ 127.97)

11 account number #0112013465 (app. balance unknown)

12 Imperial Bank:

13 account number 61-604-820 (app. balance unknown)

14 **ORDER DISTRIBUTION**

15 **VII.**

16 **IT IS FURTHER ORDERED** that, for a period of three (3) years from the date of entry of this
17 Order, each individual Defendant shall:

18 A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt
19 of same from, each officer or director, each individual serving in a management capacity, all
20 personnel involved in responding to consumer complaints or inquiries, and all sales personnel,
21 whether designated as employees, consultants, independent contractors or otherwise, immediately
22 upon employing or retaining any such persons, for any business where

23 1. that individual Defendant is the majority owner of the business or otherwise
24 directly or indirectly manages or controls the business, and where

25 2. the business engages in, or assists others engaged in, the sale of travel services; and

1 B. Maintain for a period of three (3) years after creation, and upon reasonable notice,
2 make available to representatives of the Commission, the original signed and dated
3 acknowledgments of the receipt of copies of this Order, as required in Subpart A of this
4 Paragraph.

5 **RECORD KEEPING PROVISIONS**

6 **VIII.**

7 **IT IS FURTHER ORDERED** that, for a period of three (3) years from the date of entry of
8 this Order, each individual Defendant and his officers, agents, servants, and employees, and all other
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 3. Records containing the names, addresses, phone numbers, dollar amounts paid,
2 quantity of items, services or investments purchased, and description of items, services, or
3 investments purchased for all consumers to whom such business has sold, invoiced or
4 shipped any good, service, or investment;

5 4. Records that reflect, for every consumer complaint or refund request, whether
6 received directly or indirectly or through any third party:

7 a. the consumer's name, address, telephone number and the dollar amount
8 paid by the consumer;

9 b. the written complaint or refund request, if any, and the date of the
10 complaint or refund request;

11 c. the basis of the complaint, including the name of any salesperson
12 complained against, and the nature and result of any investigation conducted
13 concerning any complaint;

14 d. each response and the date of the response;

15 e. any final resolution and the date of the resolution; and

16 f. in the event of a denial of a refund request, the reason for the denial;
17 and

18 5. Copies of all sales scripts, training materials, advertisements, or other marketing
19 materials utilized; *provided* that copies of all sales scripts, training materials,
20 advertisements, or other marketing materials utilized shall be retained for three (3) years
21 after the last date of dissemination of any such materials.

22 B. Destroying, throwing away, mutilating, changing, concealing, altering, transferring, or
23 otherwise disposing of, in any manner, directly or indirectly, any books, records, tapes, discs,
24 accounting data, checks (fronts and backs), correspondence, forms, advertisements, brochures,
25 manuals, electronically stored data, banking records, consumer lists, files, invoices, telephone
26 records, ledgers, payroll records, or other business or financial documents of any kind,
27

1 including information stored in computer-maintained form, in the possession, custody, or control of
2 Defendant or any other person or entity in active concert or participation with Defendant.

3 **COMPLIANCE REPORTING BY DEFENDANTS**

4 **IX.**

5 **IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this Order
6 may be monitored:

7 A. For a period of five (5) years from the date of entry of this Order, Defendants shall notify
8 the Commission of the following:

9 1. Any changes in any individual Defendant's residence, mailing addresses, and
10 telephone numbers, within ten (10) days of the date of such change;

1 B. One hundred eighty (180) days after the date of entry of this Order, Defendants shall
2 provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the
3 manner and form in which Defendants have complied and are complying with this Order. This
4 report shall include but not be limited to:

- 5 1. The individual Defendant's then current residence address and telephone number;
- 6 2. The individual Defendant's then current employment, business addresses and

1 G. For purposes of the compliance reporting required by this Part, the Commission is
2 authorized to communicate directly with Defendants.

3
4 **COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE**

5 **X.**

6 **IT IS FURTHER ORDERED** that the Commission is authorized to monitor Defendants'
7 compliance with this Order by all lawful means, including but not limited to the following means:

8 A. The Commission is authorized, without further leave of court, to obtain discovery from
9 any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R.
10 Civ. P. 26 - 37, including the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the
11 purpose of monitoring and investigating Defendants' compliance with any provision of this Order;

12
13 B. The Commission is authorized to use representatives posing as consumers or suppliers to:
14 Defendants, Defendants' employees, or any other entity managed or controlled in whole or in part
15 by any Defendant, without the necessity of identification or prior notice; and

16 C. Nothing in this Order shall limit the Commission's lawful use of compulsory process,
17 pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to investigate whether
18 Defendants have violated any provision of this Order, or Section 5 of the FTC Act, 15 U.S.C. §
19 45.

20 **XI.**

21 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this
22 Order, for the purpose of further determining compliance with this Order, Defendants shall permit
23 representatives of the Commission, within five (5) business days of receipt of written notice from the
24 Commission:

25 A. Access during normal business hours to any office, or facility storing documents, of any
26 business where (1) any Defendant is the majority owner of the business or directly or indirectly
27

1 manages or controls the business, and where (2) the business is engaged in the advertising,
2 promotion, offering for sale, sale or provision of any travel service, or in assisting others engaged
3 in such business. In providing such access, Defendants shall permit representatives of the
4 Commission to inspect and copy all documents relevant to any matter contained in this Order; and
5 shall permit Commission representatives to remove documents relevant to any matter contained in
6 this Order for a period not to exceed five (5) business days so that the documents may be
7 inspected, inventoried, and copied; and

8 B. To interview the officers, directors, and employees, including all personnel involved in
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

1 **XIV.**

2 **RETENTION OF JURISDICTION**

3 **IT IS FURTHER ORDERED** that this Court will retain jurisdiction of this matter for the
4 purpose of enabling any of the parties to this Order to apply to the Court at any time for such further
5 orders or directives as may be necessary or appropriate for the interpretation or modification of this
6 Order, for the enforcement of compliance therewith or the punishment of violations thereof.

7
8 The parties, by their respective counsel, hereby consent to the terms and conditions of the
9 Stipulated Final Order for Permanent Injunction and Settlement of Claims for Consumer Redress as set
10 forth above and consent to the entry thereof.

11 **FOR THE DEFENDANTS**