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12 ATTORNEYS FOR PLAINTIFF

13
14 UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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17 FEDERAL TRADE COMMISSION

18 Plaintiff,

19 v.

20 CERKVENIK-ANDERSON TRAVEL, INC.,
doing business as College Tours, Student
21 Tours, and Mexico Tours; and

22 ANDY ANDERSON, individually and as an
officer of Cerkvenik-Anderson Travel, Inc.,

23 Defendants.
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99-cv-01374-MHM

**STIPULATED FINAL JUDGMENT
AND ORDER FOR PERMANENT
INJUNCTION AS TO ALL
DEFENDANTS**

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26 Plaintiff, the Â€”½ Trade Commission (“Commission” or “FTC”), has filed a complaint
27 for a permanent injunction and other equitable relief pursuant to Section 13(b) of the Â€”½
28 Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), alleging defendants Cerkvenik-Anderson

1 Travel, Inc., doing business as College Tours, Student Tours, and Mexico Tours, and Andy
2 Anderson, performed deceptive acts and practices in connection with the advertising and sale of
3 student travel vacation packages to Mexico to consumers throughout the United States. The
4 Commission's complaint alleges that defendants' deceptive acts and practices violate Section 5(a)
5 of the FTC Act, 15 U.S.C. § 45(a).

6 The Commission and defendants Cerkvenik-Anderson Travel, Inc., and Andy Anderson
7 (collectively "defendants"), having been represented by counsel and acting by and through such
8 counsel, for the purpose of settlement of the matters alleged in the complaint filed in this case,
9 have consented to the entry of this Stipulated Final Judgment and Order for Permanent Injunction
10 ("Order") without a trial or adjudication of the validity of any alleged issue of law or fact herein.

11 NOW, THEREFORE, the Commission and defendants, having requested the Court to
12 enter this Order, it is ORDERED, ADJUDGED, AND DECREED as follows:

13 FINDINGS

14 1. This is an action by the Commission instituted under Section 13(b) of the FTC Act, 15
15 U.S.C. § 53(b). Pursuant to this section, the Commission has the authority to seek the relief
16 contained herein.

17 2. The Commission's complaint states a claim upon which relief may be granted
18 against defendants under Sections 5 and 13(b) of the FTC Act, 15 U.S.C. §§ 45 and 53(b).

19 3. This Court has jurisdiction over the subject matter of this case and all parties
20 hereto. Venue in the District of Arizona is proper.

21 4. The alleged activities of defendants are in or affecting commerce, as defined in
22 Section 4 of the FTC Act, 15 U.S.C. § 44.

23 5. The defendants enter into this Order freely, without coercion, and acknowledge
24 that they understand the provisions of this Order and are prepared to abide by them. Plaintiff and
25 defendants agree that this Order does not constitute evidence or an admission regarding the
26 existence or non-existence of any issue, fact, or violation of any act or law alleged in the
27 Commission's complaint.

28 6. The parties shall each bear their own costs and attorney's fees incurred in this

1 action and have waived all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, and
2 all rights to seek judicial review, or otherwise challenge the validity of this Order.

3 7. Entry of this Order is in the public interest.

4 **DEFINITIONS**

5 For purposes of this Order, the following definitions shall apply:

6 1. “Defendants” means Cerkvenik-Anderson Travel, Inc., and Andy Anderson, and
7 each of them, by whatever names each might be known, as well as their successors, assigns,
8 officers, directors, agents, servants, employees, salespersons, independent contractors, attorneys,
9 corporations, subsidiaries, affiliates, and all other persons or entities directly or indirectly under
10 their control or under common control with them, and all other persons or entities in active
11 concert or participation with them who receive actual notice of this Order by personal service or
12 otherwise, whether acting directly or through any entity, corporation, subsidiary, division, or
13 other device, unless specified otherwise.

14 2. “In or affecting commerce” shall mean as defined in Section 4 of the FTC Act, 15
15 U.S.C. § 44.

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

23 **I.**

24 **PROHIBITED BUSINESS ACTIVITIES**

25 **IT IS THEREFORE ORDERED** that defendants and their agents, servants, employees,
26 attorneys, and all persons or entities directly or indirectly under their control, and all other persons
27 or entities in active concert or participation with them who receive actual notice of this Order by
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1 personal service or otherwise, and each such person, are hereby permanently restrained and
2 enjoined from making or assisting others in making, directly or by implication, orally or in writing,
3 any misrepresentation of material fact in connection with the advertising, promotion, offering for
4 sale, or sale of any travel-related product or service, including but not limited to:

5 A. Falsely representing that consumers who purchase any travel-related product or
6 service from defendants will stay at the hotel of their choice, at a hotel of a certain value or
7 quality, or in a room with a certain or limited number of occupants;

8 B. Falsely representing that consumers who purchase any travel-related product or
9 service from defendants will receive certain special benefits, entertainment, or other amenities,
10 including but not limited to free or discounted meals or beverages, or free or discounted
11 admission to nightclubs, parties, or other activities or events; and

12 C. Falsely representing that defendants provide support, assistance, or a safe and
13 secure environment for consumers who purchase any travel-related product or service from
14 defendants.

15 II.

16 RIGHT TO REOPEN

17 **IT IS FURTHER ORDERED** that:

18 A. Within three (3) business days from the date of entry of this Order, defendants
19 shall submit to the Commission a sworn statement, in the form shown in Appendix A to this
20 Order, that shall reaffirm and attest to the truthfulness, accuracy, and completeness of defendants'
21 financial statements that were submitted to the plaintiff on February 14, 2001 (hereinafter
22 "Financial Statements"). The Commission's agreement to this Order is expressly premised upon
23 the truthfulness, accuracy, and completeness of defendants' financial condition as represented in
24 the Financial Statements referenced above, which contain material information upon which the
25 Commission relied in negotiating and agreeing to the terms of this Order; and

26 B. If upon motion of the Commission, the Court finds that defendants failed to file the
27 sworn statement required by this Section, or filed Financial Statements that failed to disclose any
28 material asset, or materially misrepresented the value of any asset, or made any other material

1 misrepresentation in or omission from the Financial Statements, the judgment herein shall be
2 reopened for the purpose of determining an appropriate amount for defendants to pay as redress
3 to consumers; provided, further, that proceedings instituted under this Section are in addition to,
4 and not in lieu of, any other civil or criminal remedies that may be provided by law, including but
5 not limited to contempt proceedings, or any other proceedings that the Commission or the United
6 States might initiate to enforce this Order.

7 **III.**

8 **ACKNOWLEDGMENT OF RECEIPT**

9 IT IS FURTHER ORDERED that, within five (5) business days after receipt by each
10 defendant of this Order as entered by the Court, each defendant shall submit to the Commission a
11 truthful sworn statement, in the form shown on Appendix B to this Order, that shall acknowledge
12 receipt of this Order.

13 **IV.**

14 **DISTRIBUTION OF ORDER BY DEFENDANTS**

15 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry
16 of this Order, defendants shall:

17 A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of
18 receipt of same from, each officer or director, each individual serving in a management capacity,
19 all personnel involved in responding to customer complaints or inquiries, and all sales personnel,
20 whether or not designated as employees, immediately upon employing or retaining such persons,
21 for any business in which: (1) any defendant is an owner of the business or directly or indirectly
22 manages or controls the business; and (2) the business is engaged in or assists others in engaging
23 in the advertising, promotion, offering for sale, or sale of any travel-related product or service;
24 and

25 B. Maintain for a period of three (3) years after execution and, upon reasonable
26 notice, make available to representatives of the Commission the original signed and dated
27 acknowledgments of the receipt of copies of this Order as required in subsection A of this
28 Section.

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V.

MONITORING BY DEFENDANTS

IT IS FURTHER ORDERED that defendants, in connection with any business in which:

(1) any defendant is an owner of the business or directly or indirectly manages or controls the business; and (2) the business is engaged in, or assists others in engaging in the advertising, promotion, offering for sale, or sale of any travel-related product or service, are hereby permanently restrained and enjoined from:

A. Failing to take reasonable steps sufficient to monitor and ensure that all employees and independent contractors engaged in sales or other customer service functions comply with Section I of this Order. Such steps shall include adequate monitoring of sales presentations or other calls with customers, and shall also include, at a minimum, the following: (1) listening to the oral representations made by persons engaged in sales or other customer service functions; (2) establishing a procedure for receiving and responding to customer complaints; and (3) ascertaining the number and nature of customer complaints regarding transactions in which each employee or independent contractor is involved; provided that this Section does not authorize or require defendants to take any steps that violate any federal, state, or local law;

B. Failing to investigate promptly and fully any customer complaint received by any business to which this Section applies; and

C. Failing to take corrective action with respect to any sales person whom defendants determine is not complying with this Order, which may include training, disciplining, and/or terminating such sales person.

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VI.

1 **RECORD KEEPING**

2 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry
3 of this Order, defendants, in connection with any business in which: (1) any defendant is an owner
4 of the business or directly or indirectly manages or controls the business; and (2) the business is
5 engaged in or assists others in engaging in the advertising, promotion, offering for sale, or sale of
6 any travel-related product or service, are hereby restrained and enjoined from failing to create,
7 and from failing to retain for a period of three (3) years following the date of such creation, unless
8 otherwise specified:

9 A. Books, records, and accounts that, in reasonable detail, accurately and fairly reflect
10 the cost of goods or services sold, revenues generated, and the disbursement of such revenues;

11 B. Records accurately reflecting: the name, address, and telephone number of each
12 person employed in any capacity by such business, including as an independent contractor; that
13 person’s job title or position; the date upon which the person commenced work; and the date and
14 reason for the person’s termination, if applicable. Any business subject to this Section shall retain
15 such records for any terminated employee for a period of two (2) years following the date of
16 termination;

17 C. Records containing the names, addresses, telephone numbers, dollar amounts paid,
18 quantity of items or services purchased, and description of items or services purchased, for all
19 customers to whom such business has sold, invoiced, or shipped any goods or services;

20 D. Records that reflect, for every customer complaint or refund request, whether
21 received directly or indirectly or through any third party:

22 1. the customer’s name, address, telephone number, and the dollar amount
23 paid by the customer;

24 2. the written complaint or refund request, if any, and the date of the
25 complaint or refund request;

26 3. the basis of the complaint, including the name of any sales person
27 complained against, and the nature and result of any investigation conducted concerning
28 any complaint;

- 1 4. each response and the date of the response;
- 2 5. any final resolution and the date of the resolution; and
- 3 6. in the event of a denial of a refund request, the reason for the denial; and

4 E. Copies of all sales scripts, training materials, advertisements, or other marketing
5 materials utilized; provided that copies of all sales scripts, training materials, advertisements, or
6 other marketing materials utilized shall be retained for three (3) years after the last date of
7 dissemination of any such materials.

8 VII.

9 COMPLIANCE REPORTING BY DEFENDANTS

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

12 A. For a period of three (3) years from the date of entry of this Order, defendants
13 shall notify the Commission of the following:

- 14 1. Any changes in defendants' residence, mailing address, or telephone
15 numbers, within ten (10) days of the date of such change;
- 16 2. Any changes in defendants' employment status (including self-employment)
17 within ten (10) days of such change. Such notice shall include the name and address of
18 each business that any defendant is affiliated with or employed by, a statement of the
19 nature of the business, and a statement of the defendant's duties and responsibilities in
20 connection with the business or employment; and
- 21 3. Any proposed change in the structure of any business entity owned or
22 controlled by defendants, such as creation, incorporation, dissolution, assignment, sale,
23 merger, creation or dissolution of subsidiaries, proposed filing of a bankruptcy petition, or
24 change in the corporate name or address, or any other change that could affect compliance
25 obligations arising out of this Order, thirty (30) days prior to the effective date of any
26 proposed change; provided, however, that with respect to any proposed change in the
27 business about which any defendant learns less than thirty (30) days prior to the date such
28 action is to take place, the defendant shall notify the Commission as soon as is practicable

1 after learning of such proposed change;

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

6 1. Defendants' then-current residence address and telephone number;

7 2. Defendants' then-current employment, business addresses and telephone
8 numbers, a description of the business activities of each such employer, and defendants'
9 titles and responsibilities for each employer;

10 3. A copy of each acknowledgment of receipt of this Order obtained by any
11 defendant pursuant to Section IV, supra; and

12 4. A statement describing the manner in which each defendant has complied
13 and is complying with Sections I, III, IV, V, and VI of this Order;

14 C. For a period of five (5) years from the date of entry of this Order, upon written
15 request by a representative of the Commission, each defendant shall submit additional written
16 reports (under oath, if requested) and produce documents on fifteen (15) days' notice with
17 respect to any conduct subject to this Order;

18 D. For the purposes of this Order, defendants shall, unless otherwise directed by the
19 Commission's authorized representatives, mail all written notifications to the Commission to:

20 Âé¶¹«Ã½ Trade Commission
21 Director, Northwest Region
22 915 Second Avenue, Suite 2896
Seattle, Washington 98174
Re: FTC v. Cerkenik-Anderson Travel, Inc., *et al.*;

23 E. For the purposes of this Section, "employment" includes the performance of
24 services as an employee, consultant, or independent contractor; and "employers" include any
25 individual or entity for whom any defendant performs services as an employee, consultant, or
26 independent contractor; and

27 F. For purposes of the compliance reporting required by this Section, the Commission
28 is authorized to communicate directly with defendants.

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VIII.

COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE

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

A. The Commission is authorized, without further leave of Court, to obtain discovery from any person in the manner provided by Chapter V of the *1961* Federal Rules of Civil Procedure, Fed. R. Civ. P. 26-37, including the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and investigating defendants' compliance with any provision of this Order;

B. The Commission is authorized to use representatives posing as consumers and suppliers to defendants, defendants' employees, or any other entity managed or controlled in whole or in part by defendants, in which: (1) any defendant is an owner of the business or directly or indirectly manages or controls the business; and (2) the business is engaged in or assists others in engaging in the advertising, promotion, offering for sale, or sale of any travel-related product or service, without the necessity of identification or prior notice; and

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

IX.

ACCESS TO BUSINESS PREMISES

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, for the purpose of further determining compliance with this Order, defendants shall permit representatives of the Commission, within three (3) business days of receipt of written notice from the Commission to defendants and defendants' counsel in connection with any business in which: (1) any defendant is an owner of the business or directly or indirectly manages or controls the business; and (2) the business is engaged in or assists others in engaging in the advertising, promotion, offering for sale, or sale of any travel-related product or service:

1 Order, which shall constitute a final judgment in this action that completely resolves all issues
2 relating to the allegations in the complaint filed in this action.

3
4 SIGNED AND STIPULATED BY:

5 Dated: _____, 2001

NADINE S. SAMTER
MARY T. BENFIELD
FEDERAL TRADE COMMISSION

7 ATTORNEYS FOR PLAINTIFF

8
9 Dated: _____, 2001

ANDY ANDERSON
Individually and as an officer of
Cerkvenik-Anderson Travel, Inc.

11 DEFENDANTS
12 (Appearing Pro Se)

13
14
15 **IT IS SO ORDERED**, this ____ day of _____, 2001.

16
17 _____
Honorable Mary H. Murguia
United States District Judge

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2 **APPENDIX A**

3 to FTC v. Cerkvenik-Anderson Travel, Inc., et al.
4 Stipulated Judgment and Order for Permanent Injunction

5 **UNITED STATES DISTRICT COURT**
6 **FOR THE DISTRICT OF ARIZONA**

6 _____)
7 FEDERAL TRADE COMMISSION,)
8)
9 Plaintiff,)
10 v.) CV-99-1374-PHX-RGS
11 CERKVENIK-ANDERSON TRAVEL, INC., et al.,) **DECLARATION OF ANDY**
12) **ANDERSON**
13 Defendants.)
14 _____)

15 I, Andy Anderson, hereby state that the information contained in the financial statements
16 for myself and Cerkvenik-Anderson Travel, Inc., provided to the FTC on
17 February 14, 2001, were true, accurate, and complete at such time. I have not acquired
18 significant assets nor have my liabilities decreased significantly since that time.

19 I swear under penalty of perjury that the foregoing statement is true and correct.

20 Executed on this _____ day of _____, 2001.

21 _____
22 **ANDY ANDERSON**
23 Individually and as an officer of Cerkvenik-
24 Anderson Travel, Inc.

1 **APPENDIX B**

2 to Â€™½ Trade Commission v. Cerkvenik-Anderson Travel, Inc., et,al.
3 Stipulated Judgment and Order for Permanent Injunction

4 **UNITED STATES DISTRICT COURT**
5 **FOR THE DISTRICT OF ARIZONA**

6 FEDERAL TRADE COMMISSION,)

7 Plaintiff,)

8 v.)

CV-99-1374-PHX-RGS

9 CERKVENIK-ANDERSON TRAVEL, INC., et al.,)

10 Defendants.)

11
12 I, Andy Anderson, hereby state the following:

13 1. My name is Andy Anderson. My current residence address is 47 W. Sierra Vista
14 Drive, Phoenix, Arizona 85013. I am a citizen of the United States and am over the age of
15 eighteen. I have personal knowledge of the facts set forth in this Declaration.

16 2. I am a defendant and the President of defendant Cerkvenik-Anderson Travel, Inc.,
17 in Â€™½ Trade Commission v. Cerkvenik-Anderson Travel, Inc., et,al.(United States District
18 Court for the District of Arizona).

19 3. On _____, I received a copy of the Stipulated Final
20 Judgment and Order for Permanent Injunction as to all Defendants (“Order”), which was signed
21 by the Honorable Mary H. Murguia, and entered by the Court on _____
22 _____. A true and correct copy of the Order I received is attached to this
23 Appendix.

24 I declare under penalty of perjury under the laws of the United States that the foregoing is
25 true and correct. Executed on _____, 2001, at Phoenix, Arizona.

26
27 _____
28 Andy Anderson,
Individually and as an officer of Cerkvenik-
Anderson Travel, Inc.