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11
12 UNITED STATES DISTRICT COURT
13 DISTRICT OF NEVADA

14 FEDERAL TRADE COMMISSION,

15 Plaintiff,

16 v.

17 NATIONAL AUDIT DEFENSE
18 NETWORK, INC., et al.,

19 Defendants.

CV-S-02-0131-LDG (PAL)

FINAL JUDGMENT AND
ORDER FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF AGAINST
WESTON J. COOLIDGE,
ORYAN MANAGEMENT, INC.,
AND AL RODRIGUES

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21 Plaintiff, the Federal Trade Commission (“Commission”), commenced this action
22 on January 30, 2002, by filing its Complaint for Injunctive and Other Equitable Relief
23 pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C.
24 § 53(b), charging that Defendants National Audit Defense Network, Inc. (“NADN”), Tax
25 Coach, Inc. dba Tax Ready (“Tax Ready”), Robert Bennington, individually and as an
26 officer of NADN and Tax Ready, Cort Christie, individually and as an officer of NADN,
27 and Al Rodrigues (“Rodrigues”) were engaged in deceptive acts or practices in violation
28 of Section 5 of the FTC Act, 15 U.S.C. § 45, and that NADN and Tax Ready were

1 engaged in violations of Section 166 of the Truth in Lending Act, 15 U.S.C. § 1666e, all
2 in connection with a money-back guarantee of refunds as part of the advertising, offering
3 for sale, and sale of tax savings programs and services. On January 17, 2003, the

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1 and assigns.

2 3. “Defendants” means both of the Individual Defendants and the Corporate
3 Defendant, individually, collectively, or in any combination.

4 4. “Document” is equal in scope and synonymous in meaning to the usage of
5 the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings,
6 graphs, charts, photographs, audio and video recordings, computer records, and any other
7 data compilations from which information can be obtained and translated, if necessary,
8 through detection devices into reasonably usable form. A draft or non-identical copy is a
9 separate document within the meaning of the term.

10 5. “Consumer” means an actual or potential purchaser, customer, member, or
11 subscriber.

12 6. “Person” means a natural person, organization, or other legal entity,
13 including a corporation, partnership, proprietorship, association, cooperative, government
14 or governmental subdivision or agency, or any other group or combination acting as an
15 entity.

16 7. “Timely manner” means within the time required by the Truth in Lending
17 Act, 15 U.S.C. §§ 1601-1666j, for transactions to which it applies, or within the time
18 period a Defendant has represented to a consumer prior to that consumer’s purchase,
19 *provided* that if neither of these is applicable, “timely manner” means within ten (10)
20 business days.

21 8. “Credit-Related Product” means any product, program, or service which is
22 advertised, offered for sale, or sold as a method by which persons may establish or obtain
23 any extension of credit or credit device, including, but not limited to, credit cards, loans,
24 or financing, or as a method to consolidate, liquidate, or reduce debts.

25 9. The terms “and” and “or” in this Order shall be construed conjunctively or
26 disjunctively as necessary, to make the applicable phrase or sentence inclusive rather
27 than exclusive.

I.

PROHIBITED REPRESENTATIONS

IT IS THEREFORE ORDERED that, in connection with the marketing, advertising, promotion, labeling, distribution, offer for sale, or sale of any product or service, each Defendant, whether acting directly or indirectly through any corporation, partnership, subsidiary, division, agent, or other device, and each Defendant's officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with each Defendant who receive actual notice of this Order by personal service or otherwise, are hereby permanently restrained and enjoined from falsely representing, misrepresenting, or omitting any material term or condition of sale, including, but not limited to:

- A. The availability of refunds to consumers;
- B. The time within which refunds will be provided to consumers; and
- C. The procedures consumers must follow to request and obtain a refund.

II.

CONDUCT REGARDING MONEY-BACK GUARANTEES AND REFUNDS

IT IS FURTHER ORDERED that, in connection with the marketing, advertising, promotion, labeling, distribution, offer for sale, or sale of any product or service, each Defendant, whether acting directly or indirectly through any corporation, partnership, subsidiary, division, agent, or other device, and each Defendant's officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with each Defendant who receive actual notice of this Order by personal service or otherwise, are hereby permanently restrained and enjoined from:

- A. Failing to disclose clearly and conspicuously to the consumer prior to purchase all material terms and conditions of any money-back guarantee or refund policy or, if no money-back guarantee or refund policy exists, that fact. Material terms and

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1 Doc. ##130 and 131, and \$325,136.66, the amount for which Defendant Rodrigues is
2 jointly and severally liable with Defendants Coolidge and Oryan);

3 C. Any funds received by the Commission pursuant to this Order shall be
4 deposited into a fund administered by the Commission or its agent to be used for
5 equitable relief, including, but not limited to, restitution and any attendant expenses for
6 the administration of any monetary fund. In the event that direct restitution to consumers
7 is wholly or partially impracticable or funds remain after restitution is completed, the
8 Commission may apply any remaining funds for such other equitable relief, including but
9 not limited to consumer information remedies, as the Commission determines to be
10 reasonably related to the activities found by the Court in this matter to have been in
11 violation of Section 5 of the FTC Act, 15 U.S.C. § 45. Any funds not used for such
12 equitable relief shall be deposited to the U.S. Treasury as equitable disgorgement.
13 Defendants shall have no right to challenge the Commission's choice of remedies or the
14 manner of distribution. No portion of any payments under this Order shall be deemed a
15 payment of any fine, penalty, punitive assessment, or forfeiture;

16 D. Defendants relinquish all dominion, control, and title to any funds received
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1 VI.

2 COMPLIANCE MONITORING

3 IT IS FURTHER ORDERED that, for the purpose of monitoring and
4 investigating compliance with any provision of this Order,

5 A. Within ten (10) business days of receipt of written notice from a
6 representative of the Commission and in addition to the reports required by Paragraph B
7 of Section VII below, Defendants each shall submit written reports, which are true and
8 accurate and sworn to under penalty of perjury; produce documents for inspection and
9 copying; appear for deposition; and provide entry during normal business hours to any
10 business location in each Defendant's possession or direct or indirect control to inspect
11 the business operation;

12 B. In addition, the Commission is authorized to use all other lawful means
13 including but not limited to the following:

14 1. Obtaining discovery from any person, without further leave of court,
15 using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, 45,
16 and 69; and

17 2. Having its representatives pose as consumers and suppliers to
18 Defendants, their employees, or any other entity managed or controlled in
19 whole or in part by any Defendant, without the necessity of identification
20 or prior notice; and

21 C. Defendants each shall permit representatives of the Commission to
22 interview any employer, consultant, independent contractor, representative, agent, or
23 employee who has agreed to such an interview, relating in any way to any conduct
24 subject to this Order. The person interviewed may have counsel present.

25 ***Provided, however,*** that nothing in this Order shall limit the Commission's lawful
26 use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C.
27 §§ 49 and 57b-1, to obtain any documentary material, tangible things, testimony, or
28 information relevant to unfair or deceptive acts or practices in or affecting commerce

1 (within the meaning of 15 U.S.C. § 45(a)(1)).

2 VII.

3 COMPLIANCE REPORTING BY DEFENDANTS

4 IT IS FURTHER ORDERED that, in order that compliance with the provisions

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1 sale, merger, or other action; the creation or dissolution of a subsidiary,
2 parent, or affiliate that engages in any acts or practices subject to this
3 Order; or a change in the business name or address, at least thirty (30)
4 calendar days prior to such change, *provided* that with respect to any such
5 change in the business entity about which a Defendant learns less than
6 thirty (30) calendar days prior to the date such action is to take place, such
7 Defendant shall notify the Commission as soon as is practicable after
8 obtaining such knowledge;

9 B. One hundred eighty (180) calendar days after the date of entry of this Order
10 and annually thereafter for a period of five (5) years, Defendants each shall provide a
11 written report to the Commission, which is true and accurate and sworn to under penalty
12 of perjury, setting forth in detail the manner and form in which they have complied and
13 are complying with this Order. This report shall include, but not be limited to:

14 1. For each Individual Defendant:

15 a. Such Defendant's then-current residence address, mailing
16 addresses, and telephone numbers;

17 b. Such Defendant's then-current employment status (including
18 self-employment), including the name, addresses, and telephone
19 numbers of each business that such Defendant is affiliated with,
20 employed by, or performs services for; a detailed description of the
21 nature of the business; and a detailed description of such
22 Defendant's duties and responsibilities, in connection with the
23 business or employment; and

24 c. Any other changes required to be reported under Paragraph A
25 of this Section VII; and

26 2. For all Defendants:

27 a. A copy of each acknowledgment of receipt of this Order,
28 obtained pursuant to Section IX below; and

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b. Any other changes required to be reported under Paragraph A of this Section VII;

C. Each Defendant shall notify the Ci(is Se)28

1 receive actual notice of this Order by personal service or otherwise, are hereby restrained
2 and enjoined from failing to create and retain the following records:

3 A. Accounting records that reflect the cost of goods or services sold, refunds
4 (if any), revenues generated, and the disbursement of such revenues;

5 B. Personnel records accurately reflecting: the name, address, and telephone
6 number of each person employed in any capacity by such business, including as an
7 independent contractor; that person's job title or position; the date upon which the person
8 commenced work; and the date and reason for the person's termination, if applicable;

9 C. Customer files containing the names, addresses, phone numbers, dollar
10 amounts paid, dollar amounts refunded, quantity of items or services purchased, and
11 description of items or services purchased, to the extent such information is obtained in
12 the ordinary course of business;

13 D. Complaints and refund requests (whether received directly or indirectly,
14 such as through any third party) and any responses to those complaints or requests;

15 E. Copies of all sales scripts, training materials, advertisements, or other
16 marketing materials; and

17 F. All records and documents necessary to demonstrate full compliance with
18 each provision of this Order, including but not limited to, copies of acknowledgments of
19 receipt of this Order, required by Sections IX and X below, and all reports submitted to
20 the Commission pursuant to Sections VI and VII above.

21 IX.

22 DISTRIBUTION OF ORDER BY DEFENDANTS

23 IT IS FURTHER ORDERED that, for a period of five (5) years from the date of
24 entry of this Order, Defendants shall deliver copies of the Order as directed below:

25 A. Corporate Defendant must deliver a copy of this Order to (1) all of its
26 principals, officers, directors, and managers; (2) all of its employees, agents, and
27 representatives who engage in conduct related in any way to the promise, offer,
28 provision, payment, or denial of refunds or other fulfillment of a money-back guarantee;

1 and (3) any business entity resulting from any change in structure set forth in Paragraph
2 A.2 of Section VII. For current personnel, delivery shall be within five (5) business days

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