

1 EMILY COPE BURTON
2 eburton@ftc.gov
3 SHAMEKA L. GAINNEY
4 sgainey@ftc.gov
5 ROBERT G. SCHOSHINSKI
6 rschoshinski@ftc.gov
7 Federal Trade Commission
8 600 Pennsylvania Avenue, NW, H-286
9 Washington, DC 20580
10 202-326-2728 (Burton)
11 202-326-2570 (Gainey)
12 202-326-3219 (Schoshinski)
13 202-326-3395 (Fax)

9 BLAINE T. WELSH
10 blaine.welsh@usdoj.gov
11 Assistant United States Attorney
12 Nevada Bar No. 4790
13 333 Las Vegas Blvd. South, Suite 5000
14 Las Vegas, NV 89101
15 702-388-6336
16 702-388-6787 (Fax)

14 Attorneys for Plaintiff Federal Trade Commission

15 UNITED STATES DISTRICT COURT
16 DISTRICT OF NEVADA

17 FEDERAL TRADE COMMISSION,

18 Plaintiff,

19 v.

20 IVY CAPITAL, INC., a Nevada Corporation;

21 Defendants, and

22 CHERRYTREE HOLDINGS, LLC, a Nevada
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1 Plaintiff, the Federal Trade Commission ("FTC"), filed its Complaint for Permanent Injunction
2 and Other Equitable Relief ("Complaint") pursuant to Sections 13(b) and 19 of the Federal Trade
3 Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b and applied for *ex parte* temporary
4 restraining order with asset freeze and receiver and for an order to show cause why a preliminary
5 injunction should not issue pursuant to Rule 65(f) of the Federal Rules of Civil Procedure, Fed.
6 R. Civ. P. 65(b). This Court having considered the Complaint, declarations, exhibits, and
7 memoranda, entered a Temporary Restraining Order including an asset freeze and receiver, on
8 February 22, 2011. The Court, having conducted a hearing to show cause why a preliminary
9 injunction should not issue and having considered the Complaint, declarations, exhibits,
10 memoranda, and oral arguments presented by the parties, makes the following findings of fact and
11 conclusions of law:

12 13 FINDINGS

- 14 1. This Court has jurisdiction over the subject matter of this case, and there is good
15 cause to believe it will have jurisdiction of all parties hereto and that venue in this
16 district is proper;
- 17 2. There is good cause to believe that Defendants Ivy Capital, Inc.; Fortune Learning
18 System, LLC; Fortune Learning, LLC; Vianet, Inc.; Enrich Wealth Group, LLC;
19 Business Development Division, LLC; NetScout Corporate Division, Inc.; Corporate
20 Credit Division, LLC; CreditRepair Division, LLC; Tax Planning Division, LLC;
21 Zyzac Commerce Solutions, Inc.; The Shipper, LLC d/b/a Wholesalematch.com; 3

1 Sonnenberg; James G. Hanchett; and Joseph Wickman have engaged in and are
2 likely to engage in acts and practices that violate Section 5(a) of the FTC Act, 15
3 U.S.C. § 45(a), and the FTC's Trade Regulation Rule entitled Telemarketing Sales
4 Rule ("TSR" or "Rule"), 16 C.F.R. Part 316, and that the FTC is therefore likely to
5 prevail on the merits of this action;

6 3. There is good cause to believe that immediate and irreparable harm will result from
7 the Defendants' ongoing violations of Section 5 of the FTC Act and the TSR unless
8 Defendants are preliminarily enjoined by Order of this Court;

9 4. There is good cause to believe that Defendants transferred substantial amounts of
10 money they obtained from consumers to Relief Defendants Cherrytree Holdings,
11 LLC; Oxford Financial, LLC; S&T Time LLC; Virtucon, LLC; Curva, LLC;
12 Mowab, Inc.; Kierston Kirschbaum; Melyna Harrison; Tracy Lyman; and Leanne
13 Hoskins and Relief Defendants have no legitimate claim to those funds;

14 5. Good cause exists for (a) the continuation of a Receiver over Corporate
15 Defendants; (b) the freezing of Defendants and Relief Defendants' assets; and (c) the
16 ancillary relief ordered below;

17 6. Weighing the equities and considering Plaintiff's likelihood of ultimate success on
18 the merits, a preliminary injunction with an asset freeze, the appointment of a
19 Receiver, and other equitable relief is in the public interest. The FTC is an
20 independent agency of the United States of America and no securi

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1. "Asset" means any legal or equitable interest in, right, or claim to, any real, personal, or intellectual property including, but not limited to, chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, contracts, mail or other deliveries, shares or stock, sAssecurit sharinv fioryatteckharlimsharaccoun

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LLC; Revsynergy, LLC; Sell It Visions, LLC; and their successors, assigns, affiliates or subsidiaries.

4. "Corporate Relief Defendant" means Cherrytree Holdings, LLC; Oxford Financial,

- 1 7. "Individual Defendants" means Kyle G. Kirschbaum; John H. Harrison; Steven E.
2 Lyman; Benjamin E. Hoskins; Christopher Zelig; Steven J. Sonnenberg; James G.
3 Hanchett; and Joshua F. Wickman.
- 4 8. "Material" means likely to affect a person's choice of, or conduct regarding, goods
5 or services.
- 6 9. "Person" means a natural person, organization, or other legal entity, including a
7 corporation, partnership, proprietorship, association, cooperative, government or
8 governmental subdivision or agency, or other group or combination acting as an
9 entity.
- 10 10. "Plaintiff

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ORDER

I.

PROHIBITED BUSINESS ACTIVITIES

IT IS THEREFORE ORDERED that, in connection with the advertising, marketing, promotion, offering for sale, or sale of any product or service, Corporate Defendants, Individual Defendants, and their Representatives, whether directly or through any entity, corporation, subsidiary, division, director, manager, member, affiliate, independent contractor, accountant, financial advisor, or other device, are hereby preliminarily restrained and enjoined from:

A. Making, or assisting others in making, any false or misleading statement or representation of material fact, including, but not limited to:

1. Representing, directly or indirectly, expressly or by implication that:

- a. consumers who purchase and use Defendants' business coaching program are likely to earn substantial income from their Internet business endeavors; and
- b. purchasers' Internet businesses will generate income equal to or greater than the amount they paid to purchase the program within six months;

2. Representing, directly or indirectly, expressly or by implication, that:

- a. Defendants will provide the services necessary for consumers to establish successful Internet businesses, including coaching sessions, online resources, and website design and development, for six months, or until purchasers recoup their initial investment; and
- b. Defendants will provide numerous other products and services relating to the business coaching program; and

3. Representing, directly or indirectly, expressly or by implication, that Defendants will provide a refund to consumers who request one within three days;

B. Failing to disclose, or disclose adequately, to consumers material aspects of Defendants' refund policy, including that:

- 1. consumers must request a refund within three days; and
- 2. consumers must sign a "non-disparagement" agreement in order to receive a refund.

II.

PROHIBITIONS AGAINST DECEPTIV E AND ABUSIVE TELEMARKETING PRACTICES

IT IS FURTHER ORDERED that, in connection with telemarketing, Corporate Defendants, Individual Defendants, and their Representatives hereby preliminarily restrained and enjoined from engaging in or causing or assisting other persons to engage in, violations of any provision of the TSR, including, but not limited to, the following:

A. Misrepresenting, directly or by implication, in the sale of goods or services, any material aspect of the performance, efficacy, or other essential characteristics of their products and services, in violation of Section 310.3(a)(2)(iii) of the TSR, 16 C.F.R. § 310.3(a)(2)(iii), such as:

- 1. consumers who purchase and use Defendants' business coaching program are likely to earn substantial income from their Internet business endeavors;
- 2. purchasers' Internet businesses will generate income equal to or greater than the amount they paid to purchase the program within six months;

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- 3. Defendants will provide the services necessary for consumers to establish successful Internet businesses, including coaching sessions, online resources, and website design and development, for six months, or until purchasers recoup their initial investment; and
- 4. Defendants will provide numerous other products and services relating to the business coaching program;

B. Failing to disclose, or disclose adequately in a clear and conspicuous manner, all material terms and conditions of Defendants' refund policy, in violation of Section 310.3(a)(1)(iii) of the TSR, 16 C.F.R. §.310.3(a)(1)(iii), including that:

- 1. consumers must request a refund within three days after purchase; and
- 2. consumers must sign a "non-disparagement" agreement in order to receive a refund;

C. Misrepresenting, directly or by implication, the sale of their business coaching program and related upsell products and services, material aspects of the nature and terms of

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trust, or other entity that is directly or indirectly owned, managed, controlled

1 following entry of this Order, if such assets derived from the conduct alleged in the
2 Commission's Complaint.

3 IV.

4 DUTIES OF ASSET HOLDERS

5 IT IS FURTHER ORDERED that any financial or brokerage institution, credit card
6 processing company, payment processor, merchant bank, acquiring bank, business entity, or
7 person who receives actual notice of this Order (by personal service otherwise) that (a) holds,
8 controls, or maintains custody of any account or asset of any Defendant, (b) holds, controls, or
9 maintains custody of any asset associated with credit or debit card charges made on behalf of any
10 Defendant, including but not limited to, reserve funds held by payment processors, or (c) has
11 held, controlled, or maintained custody of any account or asset at any time since the date of
12 entry of this Order shall:

13 A. Hold and retain within its control and prohibit the withdrawal, removal, assignment,
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1 The financial statements shall be accurate as of the date of entry of this Order. Each Defendant
2 shall include in the financial statements a full accounting of all funds and assets, whether located
3 inside or outside of the United States that are: (a) titled in the name of such Defendant, jointly,
4 severally, or individually (b) held by any person or entity for the benefit of such Defendant; or
5 (c) under the direct or indirect control of such Defendant.

6 *Provided* that a Defendant does not have to provide such information identified by
7 this Section V if (1) the Defendant has already provided such information pursuant to Section V
8 of the Temporary Restraining Order; and (2) the information provided has not changed.

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10 VI.

11 REPATRIATION OF ASSETS AND DOCUMENTS

12 IT IS FURTHER ORDERED that within three (3) days following the service of this
13 Order, each Defendant shall:

14 A. Provide the Commission and the Receiver with a full accounting of all funds,
15 documents, and assets outside of the United States are: (1) titled in the name, individually
16 or jointly, of any Defendant; or (2) held by any person or entity for the benefit of any Defendant;
17 or (3) under the direct or indirect control, whether jointly or singly, of any Defendant;

18 B. Transfer to the territory of the United States and deliver to the Receiver all funds,
19 documents, and assets located in foreign countries which are: (1) titled in the name individually
20 or jointly of any Defendant; or (2) held by any person or entity, for the benefit of any Defendant;
21 or (3) under the direct or indirect control of any Defendant, whether jointly or singly; and

22 C. Provide the Commission access to all records of accounts or assets of any Defendant
23 held by financial institutions located outside the territorial United States by signing the Consent
24 to Release of Financial Records appended to this Order Attachment C.

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Provided that a Defendant does not have to provide information, documents, or release

VIII.

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1 mail address, or other identifying information of any person who paid money to the Defendants
2 for products or services, or who were contacted or are listed to be contacted by the
3 Defendants; provided that the Defendants may disclose such identifying information to a law
4 enforcement agency or as required by any law, regulation, or court order.

5 XI.

6 APPOINTMENT OF RECEIVER

7 IT IS FURTHER ORDERED

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1 therefrom and all sums of money now or hereafter due or owing to the Receivership Defendants.
2 Provided, however, that the Receiver shall not attempt to collect any amount from a consumer if
3 the Receiver believes the consumer was a victim of the unfair or deceptive acts or practices or
4 other violations of law alleged in the Complaint in this matter, without prior Court approval;

5 C. Take all steps necessary to secure and take the exclusive custody of each location
6 from which the Receivership Defendants operate their business. Such steps may include, but are
7 not limited to, any of the following, as the Receiver deems necessary or advisable: (1) serving
8 this Order; (2) completing a written inventory of Receivership assets; (3) obtaining pertinent
9 information from all employees and other agents of the Receivership Defendants, including, but
10 not limited to, the name, home address, Social Security Number, job description, passwords or
11 access codes, method of compensation and accrued and unpaid commissions and
12 compensation of each such employee or agent; (4) photographing and video taping any or all
13 portions of the location; (5) securing the location by changing the locks and disconnecting any
14 computer modems or other means of access to computer or other records maintained at that
15 location; and (6) requiring any persons present on the premises at the time this Order is served to
16 leave the premises, to provide the Receiver with proof of identification, or to demonstrate to the
17 satisfaction of the Receiver that such persons are not removing from the premises documents or
18 assets of the Receivership Defendants. Law enforcement personnel, including, but not limited
19 to, police or sheriffs, may assist the Receiver in implementing the provisions in order to keep
20 the peace and maintain security. If requested by the Receiver, the United States Marshal will
21 provide appropriate and necessary assistance to the Receiver to implement this Order and is
22 authorized to use any necessary and reasonable force to do so;

23 D. Conserve, hold, and manage all assets of the Receivership Defendants, and
24 perform all acts necessary or advisable to preserve the value of those assets in order to prevent
25 any irreparable loss, damage, or injury to consumers or creditors of the Receivership Defendants,

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1 XIII.

2 TRANSFER OF RECEIVERSHIP PROPERTY TO RECEIVER

3 IT IS FURTHER ORDERED that Defendants, their Representatives, and any other person,
4 with possession, custody or control of property or records relating to the Receivership
5 Defendants shall upon notice of this Order by personal service or otherwise immediately notify
6 the Receiver of, and, upon receiving a request from the Receiver, immediately transfer or deliver
7 to the Receiver possession, custody, and control of, the following:

8 A. All assets of the Receivership Defendants;

9 B. All documents of the Receivership Defendants, including, but not limited to, books
10 and records of accounts, all financial and accounting records, balance sheets, income statements,
11 bank records (including monthly statements, canceled checks, records of wire transfers, and

1 sheriff or deputy sheriff of any county, or any other federal or state law enforcement officer, to
2 seize the asset, document, or other item covered by this Section and to deliver it to the Receiver.

3 XIV.

4 PROVISION OF INFORMATION TO RECEIVER

5 IT IS FURTHER ORDERED that Defendants shall provide to the Receiver, immediately
6 upon request, the following:

7 A. A list of all assets and property, including accounts, of the Receivership
8 Defendants that are held in any name other than the name of a Receivership Defendant, or by any
9 person or entity other than a Receivership Defendant; and

10 B. A list of all agents, employees, officers, servants or those persons in active
11 concert and participation with the Individual Defendants and Receivership Defendants, who have
12 been associated or done business with the Receivership Defendants.

13 XV.

14 COOPERATION WITH THE RECEIVER

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1 taking action that would interfere with the exclusive jurisdiction of this Court over the assets or
2 documents of the Receivership Defendants, including, but not limited to:

3 A. Petitioning, or assisting in the filing of a petition, that would cause any Receivership
4 Defendant to be placed in bankruptcy;

5 B. Commencing, prosecuting, or continuing a judicial, administrative, or other action or
6 proceeding against the Receivership Defendants, including the issuance or employment of
7 process against the Receivership Defendants, except such actions may be commenced if
8 necessary to toll any applicable statute of limitations;

9 C. Filing or enforcing any lien on any asset of the Receivership Defendants, taking or
10 attempting to take possession, custody, or control of any asset of the Receivership Defendants; or
11 attempting to foreclose, forfeit, alter, or terminate any interest in any asset of the Receivership
12 Defendants, whether such acts are part of a judicial proceeding, are acts of self-help, or
13 otherwise; or

14 D. Initiating any other process or proceeding that would interfere with the Receiver
15 managing or taking custody, control, possession of, the assets and documents subject to this
16 receivership.

17 *Provided that*, this Order does not stay: (i) the commencement or continuation of a criminal
18 action or proceeding; (ii) the commencement or continuation of an action or proceeding by a
19 governmental unit to enforce such governmental unit's police or regulatory power; or (iii) the
20 enforcement of a judgment, other than a monetary judgment, obtained in an action or proceeding by
21 a governmental unit to enforce such governmental unit's police or regulatory power.

22 XVIII.

23 COMPENSATION OF RECEIVER

24 IT IS FURTHER ORDERED that the Receiver and all personnel hired by the Receiver
25 as herein authorized, including counsel to the Receiver and accountants, are entitled to

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1 inspected, inventoried, and copied for the purpose of preserving discoverable material in
2 connection with this action, following which they will be returned to the premises from which
3 they were removed.

4 Furthermore, the Receiver shall allow the Defendants reasonable access to the premises
5 and business records of the Receivership Defendants within his possession for the purpose of
6 inspecting and copying materials relevant to this case. The Receiver shall have the discretion
7 to determine the time, manner, and reasonable conditions of such access.

8 XXI.

9 NONINTERFERENCE WITH CONSUMER WITNESSES

10 IT IS FURTHER ORDERED that:

11 A. Defendants and their Representatives, whether acting directly or through any entity,
12 corporation, subsidiary, division, director, manager, member, affiliate, independent contractor,
13 accountant, financial advisor, or other device, are hereby preliminarily restrained and enjoined
14 from taking any action, directly or indirectly, that may result in the intimidation and
15 noncooperation of consumer witnesses, including, but not limited to:

- 16 i. Requiring consumers seeking a refund to sign an agreement preventing
17 them from providing information about Corporate Defendants or sharing
18 their experiences with Corporate Defendants.
- 19 ii. Enforcing such agreements; and
- 20 iii. Sending any statement, letter, fax, email or wire transmission, or
21 telephoning or engaging in any other manner, directly or indirectly, that results
22 in the intimidation or noncooperation of consumers or potential witnesses;

23 B. Consumers may cooperate with the FTC and the Receiver without regard to any
24 existing agreement preventing consumers from communicating with outside parties about
25 Corporate Defendants.

XXII.

DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED

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1 premises of Defendants, and upon any financial institution or other entity or person that may
2 have possession, custody or control of any documents or assets of any Defendant, or that may be
3 subject to any provision of this Order, by employees of the FTC, by employees of any other law
4 enforcement agency, by any agent of Plaintiff or by any agent of any process service retained by
5 Plaintiff.

6 XXV.

7 CORRESPONDENCE

8 IT IS FURTHER ORDERED that, for the purpose of this Order, all correspondence
9 and service of pleadings on Plaintiff shall be addressed to:

10 Emily Cope Burton
11 Shameka L. Gainey
12 Robert G. Schoshinski
13 Federal Trade Commission
14 600 Pennsylvania Avenue NW, Maildrop 286
15 Washington, DC 20580
16 FAX: 202-326-3395
17 Email: eburton@ftc.govsl0ik1y