

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

FEDERAL TRADE COMMISSION; and
STATE OF FLORIDA, OFFICE OF THE
ATTORNEY GENERAL, DEPARTMENT
OF LEGAL AFFAIRS,

Plaintiffs,

vs.

Case No. 6:13-cv-789-Orl-37DAB

SHELDON LEE COHEN, individually
and as an owner, officer, or manager of
Vacation Communications Group, LLC,
and d/b/a Universal Timeshare Sales
Associates and M.G.M. Universal
Timeshares; MARK RUSSELL
GARDNER, individually and as
manager/member of Gardner Cline
L.L.C.; and TAMMIE LYNN CLINE,
individually and as manager/member of
Gardner Cline L.L.C.,

Defendants.

**ORDER AND PRELIMINARY INJUNCTION AS TO DEFENDANTS
VACATION COMMUNICATIONS GROUP, LLC AND SHELDON LEE COHEN**

This cause is before the Court on Plaintiffs' Motion for Preliminary Injunction (Doc. 20), filed June 5, 2013.

INTRODUCTION

On May 20, 2013, Plaintiffs, the Federal Trade Commission ("FTC"), and the State of Florida, Office of the Attorney General, Department of Legal Affairs ("the State of Florida"), filed





sufficient evidence before the Court to find that Mr. Cohen has received notice of this action and the previously issued temporary restraining order while, at the same time, he attempted to evade formal service. In view of these circumstances, the Court concludes that entry of a preliminary injunction is necessary to prevent future violations of the FTC Act by Defendants Vacation Communication Group, LLC and Sheldon Lee Cohen.

Accordingly, it is hereby **ORDERED, ADJUDGED, AND DECREED** that Plaintiffs' Motion for Preliminary Injunction is **GRANTED** as follows:

Definitions

1. "Asset" or "Assets" means any legal or equitable interest in, right to, or

to such an account or utilizing such a system; or (5) acting as an officer or director of a business entity.

3. “Corporate Defendant” means Vacation Communications Group, LLC, and its successors and assigns, as well as any subsidiaries, and any fictitious business entities or business names created or used by these entities.

4. “Defendants” means Sheldon Lee Cohen and Vacation Communications Group, LLC, individually, collectively, or in any combination.

5. “Document” or “Documents” means any materials listed in Fed. R. Civ. P. 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data or data compilations, stored in any medium, from which information can be obtained either directly or, if necessary, after translation into a reasonably usable form through detection devices. A draft or non-identical copy is a separate “document” within the meaning of this term.

6. “Financial Institution” means any bank, savings and loan institution, credit union, or any financial depository of any kind, including, but not limited to, any brokerage house, trustee, broker-dealer, escrow agent, title company, commodity trading company, or precious metal dealer.

7. “Individual Defendant” means Sheldon Lee Cohen, also doing business as Universal Timeshare Sales Associates and M.G.M. Universal Timeshares, and by whatever other names he may be known.

8. “Material” means likely to affect a Person’s choice of, or conduct regarding, goods or services.

9. “Person” means a natural Person, an organization, or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company,

association, cooperative, or any other group or combination acting as an entity.

10. "Plaintiffs" means the Federal Trade Commission ("Commission" or "FTC") and the State of Florida, Office of the Attorney General ("State of Florida").

11. "Receivership Defendants" means Vacation Communications Group, LLC, Gardner Cline L.L.C., their successors, assigns, affiliates, or subsidiaries, and each of them by whatever names each might be known; and Defendant Sheldon Lee Cohen when doing business as Universal Timeshare Sales Associates and M.G.M. Universal Timeshares.

12. "Receivership Estate" means and includes the estate of the Receivership Defendants created by this Order, and as may be modified or expanded by subsequent orders of this Court, including, but not limited to, all Receivership Defendants' Assets as defined herein, regardless of whether such Assets are held by any Defendant, or third party not presently a party to the above-referenced action.

13. "Telemarketing" means any plan, program, or campaign (whether or not

CONDUCT PROHIBITIONS

I. PROHIBITION AGAINST MISREPRESENTATIONS

IT IS THEREFORE ORDERED that Defendants, and their officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, members, partners, corporations, subsidiaries, affiliates, successors and assigns, and all other persons or entities in active concert or participation with any of them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division or other device, or any of them, in connection with the telemarketing, advertising, marketing, promoting, offering for sale, or sale of any timeshare rental or resale services, are hereby restrained and enjoined from:

A. Misrepresenting, or Assisting Others in misrepresenting, directly or indirectly, expressly or by implication, any material fact, including, but not limited to:

1. That Defendants have a renter or buyer for a consumer's Timeshare Property who will pay a specified price; or
2. That Defendants will quickly rent or sell a consumer's Timeshare;

B. Violating, or Assisting Others in violating, any provision of the TSR, including, but not limited to:

1. Section 310.3(a)(4) of the TSR, 16 C.F.R. § 310.3(a)(4), by making any false or misleading statement to induce any Person to pay for goods or services;
2. Section 310.4(b)(1)(iii)(B) of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B), by engaging in, or causing others to engage in, initiating an outbound telephone call to a Person's telephone number on the National Do Not Call

Registry in connection with Telemarketing; and

3. Section 310.8 of the TSR, 16 C.F.R. § 310.8, by initiating or causing others to initiate, in connection with Telemarketing, an outbound telephone call to a telephone number within a given area code when Defendants have not, either directly or through another Person, paid the required annual fee for access to the telephone numbers within that area code that are included in the National Do Not Call Registry;

C.

B. Benefitting from or using the name, address, birth date, telephone number, email address, Social Security number, credit card number, bank account number, or other financial or identifying personal information of any Person from whom or about whom any Defendant obtained such information in connection with activities alleged in the Complaint.

Provided however, that Defendants may disclose such financial or identifying personal information to a law enforcement agency or as required by any law, regulation, or court order.

ASSET PROVISIONS

III. ASSET FREEZE

IT IS FURTHER ORDERED that Defendants, and their officers, agents, directors, servants, employees, salespersons, independent contractors, members, partners, corporations, subsidiaries, affiliates, successors and assigns, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division or other device, or any of them, except as provided

are:

1. Owned, controlled or held by, in whole or in part, for the benefit of, or subject to access by, or belonging to, any Defendant;
- 2.

signatory;

2. The balance of each such account, or a description and appraisal of the value of each such Asset, as of the close of business on the day on which notice of this Order is received, and, if the account or Asset has been closed or removed, or more than \$500 withdrawn or transferred from it within the last one hundred and twenty (120) days, the date of the closure or removal of funds, the total funds removed or transferred, and the name and account number of the Person or entity to whom such account, funds, or other Asset was remitted; and
- 3.

Asset of any Defendant at any time since January 1, 2008, by facsimile transmission, hand delivery, or overnight carrier. The Assets affected by this Section shall include both existing Assets and Assets acquired after the effective date of this Order.

V. APPOINTMENT OF PERMANENT RECEIVER

IT IS FURTHER ORDERED that Brian McDowell is appointed the permanent receiver ("Receiver") for Receivership Defendants and any of their affiliates, subsidiaries, divisions, or sales operations, wherever located, with the full power of an equity receiver. The Receiver is directed to

C. Use any means necessary to take possession of and to secure each and every business premises of the Receivership Defendants. Such steps may include, but are not limited to, any of the following, as the Receiver deems necessary or advisable: (1) serving this Order; (2) completing a written inventory of all receivership Assets; (3) obtaining pertinent information from all employees and other agents of the Receivership Defendants, including, but not limited to, the name, home address, Social Security number, job description, passwords or access codes, method of compensation, and all accrued and unpaid commissions and compensation of each such employee or agent; (4) photographing and videotaping any or all portions of the location; (5) securing the location by changing the locks and disconnecting any computer modems, servers, network access, or other means of access to the computer or other records maintained at that location; and (6) requiring any persons present on the premises at the time this Order is served to leave the premises, to provide the Receiver with proof of identification, or to demonstrate to the satisfaction of the Receiver that such persons are not removing from the premises Documents or Assets of the Receivership Defendants. Law enforcement personnel, including, but not limited to, police or sheriffs, may assist the Receiver in implementing these provisions in order to keep the peace and maintain security. The Receiver is authorized to provide continued access to any business premises of the Receivership Defendants to law enforcement officers, as he deems fit; and to refer to those law enforcement officers any documents or information that may appear to be relevant to his duties.

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

K. Take whatever action is necessary to ensure that any web site used by any Defendant for the telemarketing, advertising, marketing, promotion, offering for sale, or sale of Timeshare rental or resale services, including, but not limited to, the websites located at www.universaltimesharesa.com and www.vacationcommunicationsgroup.com, prominently displays the following statement:

The Federal Trade Commission and the State of Florida have filed a lawsuit against Vacation Communications Group, Sheldon Lee Cohen, doing business as Universal Timeshare Sales Associates and M.G.M. Universal Timeshares, Gardner Cline L.L.C., Mark Russell Gardner, and Tammie Lynn Cline, alleging that they have engaged in deceptive practices relating to the telemarketing, advertising, marketing, promotion, offering for sale, rental, or resale of timeshares. The United States District Court for the

Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order;

N.

VI.



increase the Receiver's fee billed to the Receivership Estate without prior approval of the Court.

VIII. BOND

IT IS FURTHER ORDERED that pursuant to Fed. R. Civ. P. 65(c), the Receiver is not required to post a bond with the Clerk of this Court.

IX. ACCESS TO BUSINESS OFFICES AND RECORDS

IT IS FURTHER ORDERED that Defendants, and their officers, agents, servants, employees, and attorneys, and all other Persons in active concert or participation with any of them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, and the Receiver, shall allow the Commission's representatives, agents, and assistants, as well as the Receivership Defendants' representatives, and Defendant Cohen himself or his representatives, reasonable access to all of Receivership Defendants' business premises, or any other premises where the Receivership Defendants conduct business or telephone sales or customer service operations.

The purpose of this access shall be to inspect and copy any and all books, records, Documents, accounts, and other property owned by, or in the possession of, the Receivership Defendants or their agents. The Receiver shall have the discretion to determine the time, manner, and reasonable conditions of such access. The Commission may remove materials from the Receivership Defendants' business premises to inspect, inventory, and copy such materials.

X. DELIVERY OF RECEIVERSHIP PROPERTY

IT IS FURTHER ORDERED that, immediately upon service of this Order upon

them, or within such time as may be permitted by the Receiver, Defendants, or any other person or entity served with a copy of this Order, shall transfer or deliver possession, custody and control of the following to the Receiver:

A. All Assets of the Receivership Defendants (including, but not limited to, Desktop and laptop computers and network servers), including Assets subject to repatriation pursuant to Section XIII, *infra*;

B. All Documents of the Receivership Defendants, including, but not limited to, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), customer lists, title documents, contracts, accounting data, written or electronic correspondence, advertisements, computer tapes, disks, or other computerized records, books, written or printed records, handwritten notes, telephone logs, telephone scripts, membership records and lists, refund records, receipts, ledgers, personal and business canceled checks and check registers, appointment books, copies of federal, state, or local business, personal income, or property tax returns, and other Documents or records of any kind that relate to the Receivership Defendants' business practices;

C. All funds and other Assets belonging to members of the public now held by the Receivership Defendants; and

D. All keys, codes, and passwords, entry codes, combinations to locks, and information or devices required to open or gain access to any Asset or Document, including, but not limited to, access to their business premises, means of communication, accounts, computer systems, or other property.

XI. NON-

of the name and location of the Financial Institution or other entity that is the recipient of such funds, Documents or Assets; and (2) serve this Order on any such Financial Institution or other entity;

C. Provide Plaintiffs with a full accounting of all funds, Documents, and Assets outside of the territory of the United States held either: (1) by the Defendants; (2) for the Defendants' benefit; or (3) under the Defendants' direct or indirect control, individually or jointly; and

D. Provide Plaintiffs with access to all records of accounts or assets of Defendants held by Financial Institutions whether located outside the territorial United States or otherwise by signing the Consent to Release of Financial Records attached to this Order as Attachment A.

XIV.

repatriated pursuant to the Section XIII of this Order.

XV. FINANCIAL STATEMENTS AND INFORMATION

IT IS FURTHER ORDERED that, to the extent not already provided, each Defendant shall serve upon counsel for Plaintiffs, within five (5) days of service of this Order:

A. A completed financial statement, accurate as of the date of entry of this Order, for Defendant Cohen in the form provided as Attachment B, "Financial Statement of Individual Defendant," and for Defendant Vacation Communications Group, LLC, in the form provided as Attachment C, "Financial Statement of Corporate Defendant." The financial statements shall include all Assets held, whether inside or outside the territory of the United States, shall be accurate as of the date of entry of this Order, and shall be verified under oath. Defendants shall attach to these completed financial statements copies of all local, state, provincial, and federal income and property tax returns, along with other attachments and schedules as called for by the instructions to the financial statements; and

B. The name, address and telephone number of each accountant, financial planner, investment advisor, stock broker or other individual, corporation, or partnership whom they have used for financial, business or tax advice or services, since January 1, 2008.

XVI. PRESERVATION OF RECORDS

IT IS FURTHER ORDERED that Defendants, and their officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, members, partners, corporations, subsidiaries, affiliates, successors and assigns, and all other persons or entities in active concert or participation with them who receive actual notice

of this Order by personal service or otherwise, whether acting directly or through any

description of the business entity's intended activities.

XVIII. LIMITED EXPEDITED DISCOVERY

IT IS FURTHER ORDERED that pursuant to Federal Rules of Civil Procedure 30(a), 31(a), 34, and 45, and notwithstanding the provisions of Federal Rules of Civil Procedure 26(d) and (f), 30(a)(2)(A), and 31(a)(2)(A), Plaintiffs are granted leave, at any time after entry of this Order to:

A. Take the deposition of any Person or entity, whether or not a party, for the purpose of discovering:

1. The nature, location, status, and extent of Assets of Defendants, or their affiliates, subsidiaries, successors, or assigns;
2. The location of any premises where Defendants, directly or through any third party, conduct business operations;
3. The nature and location of Documents and business records of Defendants or their affiliates, subsidiaries, successors, or assigns;
4. Compliance with this Order; or
5. The Defendants' whereabouts; and

B. Demand the production of Documents from any Person or entity, whether or not a party, relating to any of the subjects identified in Section XVIII.A., above.

C. Three (3) days' notice shall be deemed sufficient for any such deposition, five (5) days' notice shall be deemed sufficient for the production of any such Documents, and twenty-four (24) hours' notice shall be deemed sufficient for the production of any such Documents that are maintained or stored only as electronic data.

The provisions of this Section shall apply both to parties to this case and to non-parties.

The limitations and conditions set forth in Federal Rules of Civil Procedure 30(a)(2)(A)

and 31(a)(2)(A) regarding subsequent depositions of an individual shall not apply to depositions taken pursuant to this Section. Any such depositions taken pursuant to this Section shall not be counted toward any limit on the number of depositions under the Federal Rules of Civil Procedure or the Local Rules of Civil Procedure for the United States District Court for the Middle District of Florida, including those set forth in Federal Rules of Civil Procedure 30(a)(2)(A) and 31(a)(2)(A). Service of discovery upon a party, taken pursuant to this Section, shall be sufficient if made through the means described in Section XXI of this Order.

XIX. CREDIT REPORTS

IT IS FURTHER ORDERED that Plaintiffs may obtain credit reports concerning Defendant Cohen and that, upon written request, any credit reporting agency froming

employees of Plaintiffs, by agents or employees of the Receiver, by any law enforcement agency, foreign or domestic, or by private process server, foreign or domestic, upon any Person, Financial Institution, or other entity that may have possession or control of any property, property right, Asset or Document of any Defendant, or that may be subject to any provision of this Order. Service upon any branch or office of any Financial Institution or entity shall effect service upon the entire Financial Institution or entity.

XXII. CORRESPONDENCE WITH AND NOTICE TO PLAINTIFFS

IT IS FURTHER ORDERED that, for purposes of this Order, all correspondence and pleadings to the Federal Trade Commission shall be addressed to:

Mary T. Benfield, Esq.
Federal Trade Commission
915 Second Avenue, Suite 2896
Seattle, Washington
(206) 220-4472 (telephone)
(206) 220-6350 (facsimile)

Notice may be provided by email to mabenfield@ftc.gov. All correspondence and pleadings to the State of Florida shall be addressed to:

Denise Kim, Esq.
Assistant Attorney General
Office of the Attorney General
Consumer Protection Division
135 West Central Blvd., Suite 1000
Orlando, Florida 32801
(407) 999-5588 (telephone)
(407) 245-0365 (facsimile)

Notice may be provided by email to Denise.Kim@myfloridalegal.com.

XXIII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED