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U.S. DISTRICT COURT
DISTRICT OF MARYLAND

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DEPUTY

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

**HOLIDAY VACATIONS MARKETING
CORP., et al.,**

Defendants.

JFM-11-1319

Case No.

~~(PROPOSED)~~ TEMPORARY
RESTRAINING ORDER AND
ORDER TO SHOW CAUSE

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), having filed a complaint for injunctive and other equitable relief in this matter pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), and having moved *ex parte* for the issuance of a temporary restraining order and for an order to show cause why a preliminary injunction should not issue pursuant to Rule 65(b) of the Federal Rules of Civil Procedure; and the Court, having considered the complaint, the temporary restraining order motion, and the declarations and exhibits filed in support thereof, finds that:

1. This Court has jurisdiction over the subject matter of the case, and there is good cause to believe it will have jurisdiction over all parties hereto;
2. There is good cause to believe that venue lies properly with this Court;

3. There is probable cause to believe that defendants Holiday Vacations Marketing Corp., Happy Life Carribbean [sic] Corp., Happy Life Corporation of America, Inc., Dario A. Jimenez Lopez, and Victor M. Ramirez have engaged in and are likely to engage in acts or practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and that the Plaintiff is therefore likely to prevail on the merits of this action;

4. There is a reasonable likelihood that Defendants will violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), in the future unless Defendants are restrained and enjoined by an Order of this Court.

5. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief will result from the sale, transfer, or other disposition or concealment by the Defendants of their assets or business records, unless the Defendants are immediately restrained and enjoined by Order of this Court. The FTC's memorandum in support of its TRO motion and the accompanying declarations and exhibits demonstrate that the Defendants have engaged in a concerted course of illegal activity by deceptively marketing vacation packages and by charging consumers without authorization. The evidence cited in the memorandum further shows that the Defendants previously have engaged in efforts to evade law enforcement. Thus, there is good cause to believe that the Defendants will continue with these deliberate illegal actions and concealment if not restrained from doing so by Order of this Court.

6. The Commission has not provided notice to the Defendants due to the likelihood that advance notice of this action will cause the Defendants to evade service of process and abscond with or destroy evidence. The Commission's request for this emergency *ex parte* relief is based on the nature of the Defendants' unlawful conduct;

7. Weighing the equities and considering Plaintiff's likelihood of success on the merits, a TRO providing for expedited discovery, an asset freeze, and other equitable relief is in the public interest;

8. This Court has authority to issue this Order pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b); Rule 65 of the Federal Rules of Civil Procedure; and the All Writs Act, 28 U.S.C. § 1651; and

9. Fed. R. Civ. P. 65(c) does not require security of the United States or an officer or agency thereof for the issuance of a restraining order.

DEFINITIONS

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

1. "Assets" means any legal or equitable interest in, right to, or claim to any real or personal property of any Defendant, or held for the benefit of any Defendant, wherever located, including, but not limited to, "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," "notes" (as those terms are defined in the Uniform Commercial Code), chattels, leaseholds, contracts, mails, other deliveries, shares of stock, lists of participants, intellectual property, accounts, credits, receivables, cash, and trusts, including, but not limited to any trust held for the benefit of any Defendant, any Defendant's minor children, or any Defendant's spouse.

2. "Corporate Defendants" means Holiday Vacations Marketing Corp.; Happy Life Carribbean [sic] Corp.; Happy Life Corporation of America, Inc.; and their successors and assigns.

3. "Defendants" means the Individual Defendants and the Corporate Defendants,

individually, collectively, or in any combination.

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

5. “Individual Defendants” means Dario A. Jimenez Lopez and Victor M. Ramirez.

6. “Plaintiff” means the Federal Trade Commission.

ORDER

CONDUCT PROHIBITIONS

I.

IT IS HEREBY ORDERED that Defendants, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and their officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, or otherwise, in connection with the advertising, marketing, promotion, offering for sale, or sale of any product or service, are temporarily restrained and enjoined from making or assisting others in making any false or misleading oral or written statement of material fact, including but not limited to:

A. That a consumer has won a contest;

- B. That a consumer will receive hotel accommodations, park tickets, or other vacation-related goods, products or services; or
- C. That a consumer will receive hotel accommodations of a specified duration.

II.

IT IS FURTHER ORDERED that Defendants, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and their officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, or otherwise, in connection with the advertising, marketing, promotion, offering for sale, or sale of any product or service, are temporarily restrained and enjoined from failing to disclose any material fact or assisting others in failing to disclose any material fact, including but not limited to:

- A. That consumers are required to make additional payments to receive goods, products, or services;
- B. That consumers are subject to age, income, or marital status requirements to receive goods, products, or services; or
- C. That consumers must attend timeshare presentations to receive goods, products, or services.

III.

IT IS FURTHER ORDERED that Defendants, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and their officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with them who receive actual

notice of this Order by personal service, facsimile, or otherwise, are temporarily restrained and enjoined from obtaining consumers' bank account or credit card information or charging or debiting those accounts without consumers' express informed consent.

CONSUMER INFORMATION

IV.

IT IS FURTHER ORDERED that Defendants, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and their officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, or otherwise, are temporarily restrained and enjoined from selling, transferring, using, or disclosing consumer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a consumer's account (including, but not limited to, a credit card, bank account, telephone billing account or other financial account), of any person or entity, which any Defendant obtained prior to the entry of this Order in connection with Defendants' marketing and sale of vacation-related goods, products, or services.

PRESERVATION AND PRODUCTION OF RECORDS

V.

IT IS FURTHER ORDERED that Defendants, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and their officers, agents, servants, employees, and

attorneys, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, or otherwise, are temporarily restrained and enjoined from destroying, erasing, mutilating, failing to preserve, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any Documents that relate to the business practices, or business or personal finances, of any Defendant.

VI.

IT IS FURTHER ORDERED that Defendants shall contact Sarah Waldrop at (202) 326-3444 or Elsie Kappler at (202) 326-2466, within three (3) days of the service of this Order, to make arrangements for production of the following Documents for inspection, inventory, and/or copying. The following Documents should be produced in sealed boxes, along with an inventory of the Documents contained in each box:

- A. All promotional and advertising materials used to market Defendants' vacation-related or travel-related goods and services;
- B. All Documents reflecting any contracts or agreements with any person relating to any vacation-related or travel-related goods or services that Defendants advertised, marketed, promoted, offered for sale, or sold;
- C. For each consumer who provided financial information to Defendants:
 - 1. The consumer's full name, address, email address, and telephone number;
 - 2. Amount and date of any charge any Defendant made to that consumer;
 - 3. Amount and date of any refund; and
 - 4. Any complaints;

- D. All Documents reflecting any communication or correspondence Defendants had with any person, including but not limited to (1) internal communications, (2) communications with consumers, or (3) communications with any other third party, in connection with the advertisement, marketing, promotion, offering for sale, or sale of any vacation-related or travel-related goods or services or in connection with the billing of any person's financial account;
- E. The full names, addresses, phone numbers, and titles of all of Defendants' current and former employees, directors, officers, consultants, subsidiaries, affiliates, attorneys, independent contractors, representatives, and any persons or entities in active concert or participation with any of them; and
- F. All records, including monthly statements, deposit slips, check registers, and canceled checks for every bank account into which Defendants deposited funds received from any consumer who provided financial information to claim Defendants' vacation-related or travel-related goods or services.

ASSET FREEZE

VII.

IT IS FURTHER ORDERED that Defendants, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and their officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, or otherwise, are temporarily restrained and enjoined

from:

- A. Transferring, liquidating, converting, encumbering, pledging, loaning, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, gifting, conveying, granting a lien or security interest or other interest in, or otherwise disposing of any funds, real or personal property, accounts, contracts, customer lists, shares of stock, or other Assets, or any interest therein, wherever located, whether within the United States or within a jurisdiction outside the United States, that are:
1. Owned or controlled by Defendants, in whole or in part;
 2. Held for the benefit of Defendants, in whole or in part;
 3. In the actual or constructive possession of Defendants, in whole or in part;
 4. Owned, controlled by, or in the actual or constructive possession of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by Defendants, including, but not limited to, any Assets held by or for, or subject to access by, Defendants, at any financial institution or with any credit card processing agent or agent providing electronic funds transfer services or automated clearing house processing, or with any bank debit processing agent, network transaction processor, customer service agent, commercial mail receiving agency, or mail holding or forwarding company, or any credit union, retirement fund custodian, money market or mutual fund, storage company, or depository of any kind; or
 5. Held by an agent of Defendants as a retainer for the agent's provision of services

to Defendants;

- B. Opening or causing to be opened any safe deposit boxes titled in the name(s) of Defendants, or subject to access by Defendants;
- C. Incurring charges or cash advances on any debit card issued in the name, singly or jointly, of any Defendant, or any corporation, partnership, or other entity directly or indirectly controlled by Defendants;
- D. Obtaining a secured loan encumbering the Assets of Defendants;
- E. Incurring liens or other encumbrances on real property, personal property or other Assets titled in the name, singly or jointly, of any Defendant; or
- F. Failing to disclose to the Commission, immediately upon service of this Order, information that fully identifies each Asset of any Defendant, and each entity holding such Asset, including, without limitation, the entity's name, address, and telephone number, the number of the account, and the name under which the account is held.

The Assets affected by this Section shall include: (1) all Assets of the Defendants, as of the time this Order was entered; and (2) Assets obtained after this Order was entered if the Assets are derived from the conduct alleged in the Commission's complaint.

VIII.

IT IS FURTHER ORDERED that any financial institution, credit card processing company, payment processor, merchant bank, acquiring bank, business entity, or other person served with this Order that: (a) has possession, custody, or control of any records of any Defendant, or of any account, safe deposit box, or other Asset held in the name of or for the benefit of any Defendant, (b) has

possession, custody, or control of any credit card or debit card-related Asset of any Defendant, including but not limited to reserve funds held by payment processors, or (c) has maintained any such account, safe deposit box, or other Asset at any time since June 1, 2008, shall:

- A. Hold and retain within its control and prohibit the withdrawal, removal, assignment, transfer, pledge, hypothecation, encumbrance, disbursement, dissipation, conversion, sale, or other disposal of any such Asset, except by further order of the Court;
- B. Deny any person access to any safe deposit box that is titled in the name of, individually or jointly or otherwise subject to access by any Defendant;
- C. Provide the Commission's counsel, within three (3) business days of receiving notice of this Order, a sworn statement setting forth:
 1. The identification number of each such account or Asset titled in the name, individually or jointly, of any Defendant or held on behalf of, or for the benefit of any Defendant;
 2. The balance of each such account, or a description of the nature and value of such Asset as of the close of business on the day on which this Order is served, and, if the account or other Asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person to whom such account or other Asset was remitted; and
 3. The identification of any safe deposit box that is titled in the name, individually or jointly, of any Defendant, or is otherwise subject to access by any Defendant; and
- D. Upon request by the Commission, promptly provide the Commission with all

Documentation pertaining to each such account or Asset, including but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit or credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs.

REPATRIATION OF FOREIGN ASSETS

IX.

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

- A. Provide counsel for Plaintiff with a full accounting of all funds and assets outside of the territory of the United States which are held either: (1) by Defendant(s); (2) for the benefit of any Defendant(s); or (3) under direct or indirect control, individually or jointly, of any Defendant(s), as required by the forms included;
- B. Transfer to the territory of the United States all such funds and assets in foreign countries; and
- C. Hold and retain all repatriated funds and assets, and prevent any disposition, transfer, or dissipation whatsoever of any such assets or funds, except as required by this Order.

X.

IT IS FURTHER ORDERED that Defendants, and each of their successors, assigns, members, officers, agents, servants, employees, and attorneys, and those persons 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 entity, corporation, subsidiary, division, affiliate or other device, are hereby temporarily restrained and enjoined from taking any action, directly or indirectly, which may result in the encumbrance or dissipation of foreign assets, or in the hindrance of the repatriation required by Section IX of this Order, including but not limited to:

- A. Sending any statement, letter, fax, e-mail or wire transmission, telephoning or engaging in any other act, directly or indirectly, that results in a determination by a foreign trustee or other entity that a “duress” event has occurred under the terms of a foreign trust agreement, until such time that all assets have been fully repatriated pursuant to Section IX of this Order; and
- B. Notifying any trustee, protector or other agent of any foreign trust or other related entities of either the existence of this Order, or of the fact that repatriation is required pursuant to a Court Order, until such time that all assets have been fully repatriated pursuant to Section IX of this Order.

FINANCIAL REPORTS

XI.

IT IS FURTHER ORDERED that within seven (7) days after service of this Order, Defendants shall prepare and deliver to counsel for the Commission:

- A. A completed copy of the financial statements contained in **Attachment A** for the Individual Defendants and **Attachment B** for the Corporate Defendants, verified under oath and accurate as of the date of service of this Order upon such Defendant; and

- B. A completed statement, verified under oath and accurate, detailing the number of members of the public whom any Defendant charged or billed for any vacation-related or travel-related product or service, and the aggregate total (gross) of funds received from such members of the public.

NOTIFICATION OF BUSINESS ACTIVITIES

XIII.

IT IS FURTHER ORDERED that:

- A. Defendants are hereby temporarily restrained and enjoined from directly or indirectly creating, operating, or exercising any control over any business entity, including any partnership, limited partnership, joint venture, sole proprietorship or corporation, without first serving on counsel for the Commission a written statement disclosing the following:
1. The name of the business entity;
 2. The address and telephone number of the business entity;
 3. The names of the business entity's officers, directors, principals, managers, and employees; and
 4. A detailed description of the business entity's intended or actual activities; and
- B. Defendants shall notify the Commission at least seven (7) days prior to affiliating with, becoming employed by, or performing any work for any business. Each notice shall include Defendants' new business address and a statement of the nature of the business or

employment and the nature of his duties and responsibilities in connection with that business or employment.

NOTICE TO EMPLOYEES AND AGENTS

XIV.

IT IS FURTHER ORDERED that within three (3) days of the entry of this Order, Defendants shall provide a copy of this Order to each of their representatives. Within five (5) days following this Order, Defendants shall provide the Commission with an affidavit identifying the names, titles, addresses, and telephone numbers of the persons that Defendants have served with a copy of this Order.

LIMITED EXPEDITED DISCOVERY

XV.

IT IS FURTHER ORDERED that, notwithstanding the time periods, notice provisions, and other requirements of Federal Rules of Civil Procedure 26, 30, 31, 34, and 45, or of Local Rule 104, the Commission is granted leave, at any time after service of this Order, to conduct limited expedited discovery for the purpose of discovering the: (1) nature, location, status, and extent of Defendants' Assets, (2) nature and location of Documents reflecting the business transactions of Defendants, or (3) the applicability of any evidentiary privileges to this action, and such discovery shall proceed as follows:

- A. Counsel for the Commission may take the deposition of any person, on three (3) days of notice. The limitations and conditions set forth in Fed. R. Civ. P. 30(a)(2) and 31(a)(2) regarding subsequent depositions of an individual shall not apply to depositions taken

pursuant to this Section. Any such deposition taken pursuant to this Section shall not be counted towards the ten (10) deposition limit set forth in Fed. R. Civ. P. 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 by facsimile or by overnight delivery;

- B. Counsel for the Commission may demand the production of Documents, on five (5) days of notice, from any person, whether or not a party, provided that three (3) days of notice shall be deemed sufficient for the production of any such Documents that are maintained or stored only as electronic data; and
- C. Counsel for the Commission may issue subpoenas to third party persons, requiring the production of Documents or evidence, within ten (10) days.

MONITORING

XVI.

IT IS FURTHER ORDERED that agents or Representatives of the Commission may contact Defendants or their representatives directly and anonymously for the purpose of monitoring compliance of this Order, and may tape record any oral communications that occur in the course of such contacts.

CONSUMER REPORTS

XVII.

IT IS FURTHER ORDERED that pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(1), any consumer reporting agency may furnish a consumer report concerning

ORDER TO SHOW CAUSE

XVIII.

IT IS FURTHER ORDERED pursuant to Fed. R. Civ. P. 65(b), that Defendants shall appear on the 26th day of May, 2011, at 10:30 a.m., at the United States District Court, District of Maryland, Baltimore, Maryland 21201, Courtroom 5A, to show cause, if there is any, why this Court should not enter a Preliminary Injunction, in the form provided by the Federal Trade Commission, enjoining the violations of law alleged in the Commission's Complaint, continuing the freeze of Defendants' Assets, and imposing such additional relief as may be appropriate.

MOTIONS TO DISSOLVE OR MODIFY THIS ORDER

XIX.

IT IS FURTHER ORDERED pursuant to Fed. R. Civ. P. 65(b)(4), that on two days' notice to the Federal Trade Commission, Defendants may appear and move to dissolve or modify the Temporary Restraining Order granted herein.

EXPIRATION OF THIS ORDER

XX.

IT IS FURTHER ORDERED that the Temporary Restraining Order granted herein shall expire fourteen (14) days from the date of entry noted below unless, within such time, the Order is

extended for an additional period not to exceed fourteen (14) days for good cause shown, or unless, Defendants consent to an extension for a longer period.

SERVICE UPON PLAINTIFF

XXI.

IT IS FURTHER ORDERED that for the purposes of this Order, all service on and correspondence to the Commission shall be sent by facsimile transmission to (202) 326-2558, by hand delivery, by Electronic Mail Message to ekappler@ftc.gov and swaldrop@ftc.gov, or by overnight shipment through a third-party commercial carrier, to the Commission, at 600 Pennsylvania Ave., N.W., M-8102B, Washington, D.C. 20580, and addressed to the attention of Elsie Kappler and Sarah Waldrop, unless the parties agree to an alternate means of service.

SERVICE OF THIS ORDER


XXII.

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission, Electronic Mail Message, personal or overnight delivery, or U.S. Express Mail, by agents and employees of the FTC or any state or federal law enforcement agency or by private process server, on Defendants, or any other person that may have possession, custody, or control of any Documents or Assets of Defendants, or that may otherwise be subject to any provision of this Order, including any financial institution. Service upon any branch or office of any financial institution shall effect service upon the entire financial institution.

XXIII.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

IT IS SO ORDERED, this 16th day of May 2011, at 2:00 m.



J. Frederick Motz
United States District Judge
District of Maryland