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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

**PREFERRED ALLIANCE, INC. et
al.,**

Defendants.

**Civil Action File
No. 1:03-CV-0405**

**STIPULATED FINAL
JUDGMENT AND ORDER
FOR PERMANENT
INJUNCTION**

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), has filed its Complaint for permanent injunction and other relief pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101 *et seq.*, charging Defendant Bruno Faillace ("Defendant") with violating Section 5 of the FTC Act, 15 U.S.C. § 45, and the FTC's Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310.

Plaintiff FTC and Defendant Bruno Faillace have agreed to the entry of this Stipulated Final Judgment and Order for

Permanent Injunction ("Order") by this Court to resolve all matters of dispute between them in this action.

NOW, THEREFORE, Plaintiff Federal Trade Commission and Defendant Bruno Faillace having requested the Court to enter this Order,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter and the parties.

2. Venue is proper as to all parties in the Northern District of Georgia.

3. The activities of Defendant are or were in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44.

4. The Complaint states a claim upon which relief may be granted against Defendant under §§ 5(a)(1), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a)(1), 53(b), and 57b; and under the TSR, 16 C.F.R. Part 310.

6. Defendant has waived any and all rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, *amended* by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996).

7. This Order is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.

8. Plaintiff and Defendant waive all rights to seek appellate review or otherwise challenge or contest the validity

of this Order. Defendant further waives and releases any claim he may have against the Commission, its employees, agents, and representatives.

9. No provision of this Order shall be construed as an admission or denial that Defendant has engaged in violations of the FTC Act, the TSR, or the acts or omissions alleged in the Complaint.

10. Entry of this Order is in the public interest.

ORDER

Definitions

A. "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, 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.

B. "Defendant" means Bruno Faillace, doing business as VacantSun Travel Discounts and GenesisCard, or otherwise.

C. "Negative option feature" means an offer or agreement to sell or provide any goods or services under which (a) the consumer must take an affirmative action to reject goods or

services or cancel the agreement, and (b) the consumer's silence or failure to reject goods or services or cancel the agreement is interpreted by the seller or provider as acceptance or continuing acceptance of the goods or services. Negative option feature includes "free-to-pay conversions," as that term is defined in 16 C.F.R. Part 310.2(o) of the TSR. Agreements with negative option features include, but are not limited to, agreements in which the consumer, subsequent to agreeing to the offer, will automatically be billed or charged at the end of the trial period (whether or not there is a fee for the trial period) unless the consumer cancels, and continuity plans in which, subsequent to the consumer's agreement to the plan, the seller or provider automatically provides goods or services to a consumer, unless the consumer notifies the seller or provider within a certain time not to provide the goods or services.

D. "Telemarketing" is as defined in Section 310.2(u) of the TSR, 16 C.F.R. Part 310, or as it may be amended.

PROHIBITED BUSINESS ACTIVITIES

I.

INJUNCTION AGAINST MISREPRESENTATIONS

IT IS HEREBY ORDERED that, in connection with the advertising, marketing, promotion, offering for sale, selling, distribution, or provision of any goods or services, Defendant,

his successors, assigns, officers, agents, servants, and employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise are hereby permanently restrained and enjoined from making or assisting in the making of, expressly or by implication, orally or in writing, any false or misleading statement, representation, or omission of material fact, including but not limited to any representation that:

A. A consumer has agreed to a free-trial offer;

B. A consumer has agreed to have his or her credit or debit card charged or his or her bank account debited for any good or service; and

C. Defendant will not charge any consumer's credit or debit card or debit any consumer's bank account prior to the expiration of a free-trial period.

II.

INJUNCTION AGAINST UNAUTHORIZED BILLING

IT IS FURTHER ORDERED that, in connection with the advertising, marketing, promotion, offering for sale, selling, distribution, or provision of any goods or services, Defendant, his successors, assigns, agents, servants, and employees, and those persons in active concert or participation with them who

receive actual notice of this Order by personal service or otherwise are hereby permanently restrained and enjoined from:

A. Causing a consumer to be billed without first obtaining the consumer's express informed consent for the purchase of any of Defendant's goods or services; and

B. Causing a consumer to be billed prior to the consumer's receipt of any product or service offered by Defendant or prior to the expiration of any free-trial period.

III.

INJUNCTION AGAINST FAILING TO DISCLOSE NEGATIVE OPTION FEATURE

IT IS FURTHER ORDERED that, in connection with the advertising, marketing, promotion, offering for sale, selling, distribution, or provision of any goods or services, Defendant, his successors, assigns, agents, servants, and employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise are hereby permanently restrained and enjoined from failing to disclose, in a clear and conspicuous manner, and prior to requesting or using a consumer's personal financial information, including credit or debit card or bank account number, any negative option features of Defendant's goods or services, including but not limited to:

A. That Defendant will automatically charge the consumer's credit or debit card or debit the consumer's bank account for an annual fee unless the consumer affirmatively cancels and does so in a prescribed manner;

B. That Defendant will automatically charge the consumer's credit or debit card or debit the consumer's bank account for a renewal fee each subsequent year unless the consumer affirmatively cancels and does so in a prescribed manner; and

C. The prescribed manner in which a consumer must cancel, including the inception and expiration dates of any trial offer period.

IV.

COMPLIANCE WITH TSR

IT IS FURTHER ORDERED that, in connection with the advertising, marketing, promotion, offering for sale, selling, distribution, or provision of any goods or services, Defendant, his successors, assigns, agents, servants, and employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise are hereby permanently restrained and enjoined from failing to comply with the TSR, 16 C.F.R. Part 310.

V.

PROHIBITION ON SELLING OF CUSTOMER LISTS

IT IS FURTHER ORDERED that Defendant and his officers, agents, servants, employees, and attorneys, 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, are permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit or debit card number, bank account number, e-mail address, or other identifying information of any person who paid any money to any Defendant, at any time prior to entry of this Order, in connection with Defendant's advertising, marketing, promoting, offering for sale, selling, and distribution of memberships in discount or buying services, or any other service or product.

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

CONSUMER REDRESS

VI.

IT IS FURTHER ORDERED that Judgment is entered against Defendant in the amount of Fifteen Million Nine Hundred and Six Thousand Two Hundred and Fifty-Six Dollars, (\$15,906,256). Based

on the sworn representations in the financial statements of Defendant, the foregoing monetary amount shall be suspended. The Commission's acceptance and the Court's approval of this settlement is expressly premised upon the truthfulness, accuracy, and completeness of Defendant's financial statements signed and dated on November 14, 2003. If, upon motion by the Commission, this Court should find that Defendant made a material misrepresentation or omission concerning his financial condition, then the Court shall enter a judgment against Defendant in the above amount of Fifteen Million Nine Hundred and Six Thousand Two Hundred and Fifty-Six Dollars, (\$15,906,256), without further adjudication.

A. Any funds paid pursuant to this Part shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including, but not limited to, consumer redress and any attendant expenses for the administration of any redress fund. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendant's practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Defendant shall have

no right to challenge the Commission's choice of remedies under this Part;

B. In accordance with 31 U.S.C. § 7701, Defendant is hereby required, unless he has done so already, to furnish to the Commission his taxpayer identifying numbers (social security numbers or employer identification numbers), and driver's license number, which shall be used for purposes of collecting and reporting on any delinquent amount arising out of Defendant's relationship with the government; and

C. Proceedings instituted under this Part are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.

GENERAL REQUIREMENTS

VII.

RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, in connection with any business that Defendant directly or indirectly manages, controls, or has a majority ownership interest in, and that is engaged in advertising, marketing, promoting, offering for sale, selling, distributing, or providing any goods or services, or in assisting others engaged in such business, Defendant and his agents,

employees, officers, corporations, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from failing to retain the following records:

A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues, to the extent such records are used in the ordinary course of business or as required under applicable law;

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

C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased;

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

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

F. Records for each client or call center from which the Defendant obtains billing or other personal financial information

organized and maintained by client or call center name, that show:

1. The total dollar value of trial offers and sales received from the client or call center, both in the aggregate and on a monthly basis;
2. The total number of written and telephone complaints and refund requests relating to each client or call center received by Defendant directly or through third parties, in the aggregate, on a monthly basis, and by type of complaint, including complaints about unauthorized charges; and
3. The total dollar amount of credits issued to consumers by Defendant and the total dollar amount of chargebacks for trial offers and sales by each client or call center, and the percentage of credits and chargebacks to the total trial offers and sales by that client or call center, both in the aggregate and on a monthly basis.

VIII.

COMPLIANCE MONITORING

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

A. Within thirty (30) days of receipt of written notice from a representative of the Commission, Defendant shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; or appear for deposition;

B. In addition, the Commission is authorized to monitor compliance with this Order by all other lawful means, including but not limited to the following:

1. Obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45; and
2. Posing as consumers and suppliers to Defendant or to Defendant's employees, or any other entity managed or controlled in whole or in part by Defendant without the necessity of identification or prior notice; and

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

Provided that 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, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

IX.

COMPLIANCE REPORTING BY DEFENDANT

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

A. For a period of five (5) years from the date of entry of this Order,

1. Defendant shall notify the Commission of the following:

- a. Any changes in Defendant's residence, mailing addresses, and telephone numbers, within thirty (30) days of the date of such change;
- b. Any changes in Defendant's employment status (including self-employment) within thirty (30) days of the date of such change. Such notice shall include the name and address of each business that Defendant is affiliated with, employed by, or on a regular basis performs services for; a statement of the

nature of the business; and a statement of Defendant's duties and responsibilities in connection with the business; and

- c. Any changes in Defendant's name or use of any aliases or fictitious names;

2. Defendant shall notify the Commission of any changes in corporate structure that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which Defendant learns less than thirty (30) days prior to the date such action is to take place, Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge;

B. One hundred eighty (180) days after the date of entry of this Order, Defendant shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which Defendant has complied and is

complying with this Order. This report shall include, but not be limited to:

1. Any changes required to be reported pursuant to Paragraph A above;
2. A copy of each acknowledgment of receipt of this Order obtained by Defendant pursuant to Part X;
and
3. The name and address of any business for which Defendant performed services from the date of entry of this Order until the date of the report, including any business for which Defendant did not perform services on a regular basis;

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

Associate Director
Division of Marketing Practices
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
RE: FTC v. Preferred Alliance, Inc., and

D. For purposes of the compliance reporting required by this Part, the Commission is authorized to communicate directly with Defendant.

X.

DISTRIBUTION OF ORDER

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, Defendant shall deliver a copy of this Order to all principals, officers, directors, and employees serving in a management capacity, or having supervisory responsibility for responding to consumer complaints or inquiries or for sales or marketing, and shall secure from each such person a signed and dated statement acknowledging receipt of the Order. Defendant shall deliver this Order to such current personnel within thirty (30) days after the date of service of this Order, and to new personnel within thirty (30) days after the person assumes such position or responsibilities.

XI.

ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that Defendant, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

XII.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification and enforcement of this Order.

The parties, and their respective counsel, hereby consent to the terms and conditions of the Order as set forth above and consent to the entry thereof.

FOR DEFENDANT

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Individually

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SO ORDERED, this ____ day of _____, 2004.

United States District Judge
Northern District of Georgia
Atlanta Division