

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

APPLY KNOWLEDGE, LLC, et al.,

Defendants.

CASE NO. 14-CV-88 (DB)

**STIPULATED ORDER FOR
PERMANENT INJUNCTION AND
MONETARY JUDGMENT AS TO
DEFENDANT DAVID GREGORY
BEVAN**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), filed its Complaint for Permanent Injunction and Other Equitable Relief in this matter 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 Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108. The Commission and individual defendant David Gregory Bevan (“Defendant Bevan”) stipulate to the entry of this Stipulated Order for Permanent Injunction and Monetary Judgment as to Defendant David Gregory Bevan (“Order”) to resolve all matters in dispute in this action between them.

THEREFORE, IT IS ORDERED as follows:

FINDINGS

1. This Court has jurisdiction over this matter.
2. The Complaint charges that Defendant Bevan participated in deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and the FTC’s trade regulation rule entitled the Telemarketing Sales Rule (the “TSR”), 16 C.F.R. Part 310, in the sale of Business Coaching Programs.

3. Defendant Bevan neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Defendant Bevan admits the facts necessary to establish jurisdiction.
4. Defendant Bevan waives any claim that he may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agrees to bear his own costs and attorney fees.
5. Defendant Bevan waives and releases any claims that he may have against the Commission and its respective agents that relate to this action.
6. Defendant Bevan and the Commission waive all rights to appeal or otherwise challenge or contest the validity of this Order.

DEFINITIONS

For the purpose of this Order, the following definitions apply:

- A. **“Asset”** means any legal or equitable interest in, right to, or claim to, any real, personal, or intellectual property, including chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, contracts, mail or other deliveries, shares of stock, securities, inventory, checks, notes, accounts, credits, receivables (including as those terms are defined in the Uniform Commercial Code), cash, trusts, including asset protection trusts, and reserve funds or other accounts associated with any payments processed on behalf of any defendant, including such reserve funds held by a payment processor, credit card processor, or bank.
- B. **“Business Coaching Program”** means any program, plan, good, or service, including those related to work-at-home-opportunities, that is represented, expressly or by implication, to train or teach a participant or purchaser how to establish a business or earn money or other

consideration through a business or other activity.

C. **“Defendants”** means corporate defendants Apply Knowledge, LLC (d/b/a Apply Knowledge Institute and Coaching Department); DAHM International, LLC; Dominion of Virgo Investments, Inc.; eCommerce Support, LLC; Essent Media, LLC; eVertex Solutions, LLC; EVI, LLC (d/b/a Members Learning Center); Nemrow Consulting, LLC; Novus North, LLC (d/b/a MyMentoring, Yes International, LLC, and Your eCommerce Support International, LLC); Purple Buffalo, LLC (d/b/a Netmarketing); Supplier Source, LLC; 365DailyFit, LLC (d/b/a Net Training); Vensure International, LLC; VI Education, LLC, and their subsidiaries, affiliates, successors, and assigns and individual defendants David Gregory Bevan, Jessica Bjarnson, Phillip Edward Gannuscia, Chad Huntsman, Richard Nemrow, Jeffrey Nicol, Thomas J. Riskas, III, Babata Sonnenberg, and Ken Sonnenberg, individually, collectively, or in any combination.

D. **“Investment Opportunity”** means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.

E. **“Person”** means a natural person, organization, or other legal entity, including a corporation, limited liability company, partnership, proprietorship, association, cooperative, government or governmental subdivision or agency, or any other group or combination acting as an entity.

F. **“Telemarketing”** means any plan, program, or campaign which is conducted to induce the purchase of goods or services by use of one or more telephones, and which involves a telephone call, whether or not covered by the Telemarketing Sales Rule.

ORDER

I. BAN ON MARKETING OR SALE OF BUSINESS COACHING PROGRAMS

IT IS ORDERED that Defendant Bevan is permanently restrained and enjoined from advertising, marketing, promoting, or offering for sale, or assisting in the advertising, marketing, promoting, or offering for sale of any Business Coaching Program.

II. PROHIBITED BUSINESS ACTIVITIES

IT IS FURTHER ORDERED that Defendant Bevan, Defendant Bevan's officers, agents, and employees, and all other Persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with advertising, marketing, promoting, or offering for sale any good or service, are permanently restrained and enjoined from:

A. making, or assisting other Persons in making, in any manner, expressly or by implication, any claim about likely earnings, profit, or income unless the representation is non-misleading, and at the time such representation is made, Defendant Bevan possesses competent and reliable written substantiation for the claim;

B. misrepresenting, expressly or by implication, any material aspect of an Investment Opportunity, including risk and liquidity;

C. misrepresenting any fact material to consumers concerning any good or service, such as:

1. the total cost to purchase;

2. any material aspect of its performance, efficacy, nature, or central characteristics; or

3. any material restriction, limitation, or condition to purchase, receive or use it.

D. violating the TSR, 16 C.F.R. Part 310, a copy of which is attached at Attachment

A.

III. MONETARY JUDGMENT AND PARTIAL SUSPENSION

IT IS FURTHER ORDERED that:

A. Judgment in the amount of Thirty-Two Million, Three Hundred and Fifty-Eight Thousand, Two Hundred and Eighty-Six Dollars (\$32,358,286) is entered in favor of the Commission against Defendant Bevan, jointly and severally, as equitable monetary relief.

B. Defendant Bevan is ordered to pay to the Commission One Hundred Sixteen Thousand, Eight Hundred Seventy-One Dollars and Nineteen Cents (\$116,871.19). Such payment must be made within seven (7) calendar days of entry of this Order by electronic fund transfer in accordance with instructions previously provided by a representative of the Commission. Upon such payment, the remainder of the judgment is suspended, subject to the Subsections below.

C. To assist Defendant Bevan's payment of \$116,871.19 to the Commission, the Court releases from the asset freeze imposed under the Stipulated Preliminary Injunction Order [Docket No. 99] those Assets in the accounts identified on Attachment B (filed under seal) to this Order. The Assets identified on Attachment B to this Order are released from the asset freeze for the sole purpose of allowing Defendant Bevan to transfer them to his attorneys' trust account, if not already in that account, for payment of \$116,871.19 to the Commission within seven (7)

calendar days of the entry of this Order, as provided for in Subsection B of this Section. Upon completion of this payment, the asset freeze is dissolved as to Defendant Bevan.

D. The Commission's agreement to the suspension of part of the judgment is expressly premised upon the truthfulness, accuracy, and completeness of Defendant Bevan's sworn financial statements and related documents (collectively "financial attestations") submitted to the Commission, namely:

1. the Financial Statement of Defendant Bevan signed on February 24, 2014, including the attachments;
2. the corrected Financial Statement of Defendant Bevan submitted on February 27, 2014, including the attachments; and
3. the Seller's Settlement Statement for the real property located at 9713 W. Silverspring Street, Boise, ID 83709, which Defendant Bevan submitted on January 20, 2015.

E. The suspension of the judgment will be lifted as to Defendant Bevan if, upon motion by the Commission, the Court finds that Defendant Bevan failed to disclose any material Asset, materially misstated the value of any Asset, or made any other material misstatement or omission in the financial attestations identified above.

F. If the suspension of the judgment is lifted, the judgment becomes immediately due as to Defendant Bevan in the amount specified in Subsection A above (which the parties stipulate only for purposes of this Section represents the consumer injury alleged in the Complaint), less any payment previously made pursuant to this Section, plus interest computed from the date of entry of this Order.

G. Defendant Bevan relinquishes dominion and all legal and equitable right, title, and interest in all Assets transferred pursuant to this Order and may not seek the return of any Assets.

H. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission, including in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order, such as a non-dischargeability complaint in any bankruptcy case.

I. The facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.

J. Defendant Bevan acknowledges that his Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which he previously submitted to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.

K. All money paid to the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the Complaint. Any money not used for such equitable relief is to be deposited to the U.S. Treasury as disgorgement. Defendant Bevan has no right to challenge any actions the Commission or its representatives may

take pursuant to this Subsection.

IV. CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendant Bevan, Defendant Bevan's officers, agents, and employees, and all other Persons in active concert or participation with any of them, who receive actual notice of this Order, are permanently restrained and enjoined from directly or indirectly:

A. failing to provide sufficient customer information to enable the Commission to efficiently administer consumer redress. If a representative of the Commission requests in writing any information related to redress, Defendant Bevan must provide it, in the form prescribed by the Commission, within fourteen (14) calendar days.

B. disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), that Defendant Bevan obtained prior to entry of this Order in connection with the telemarketing and sale of Business Coaching Programs.

C. failing to destroy such customer information in all forms in Defendant Bevan's possession, custody, or control within thirty (30) calendar days after receipt of written direction to do so from a representative of the Commission.

Provided, however, that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by law, regulation, or court order.

V. COOPERATION

IT IS FURTHER ORDERED that Defendant Bevan must fully cooperate with representatives of the Commission in this case and in any investigation related to or associated with the transactions or the occurrences that are the subject of the Complaint. Defendant Bevan must provide truthful and complete information, evidence, and testimony. Defendant Bevan must appear for interviews, discovery, hearings, trials, and any other proceedings that a Commission representative may reasonably request upon five (5) calendar days written notice, or other reasonable notice, at such places and times as a Commission representative may designate, without the service of a subpoena.

VI. ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendant Bevan obtain acknowledgements of receipt of this Order:

A. Defendant Bevan, within seven (7) calendar days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury. The requirements for submitting an acknowledgment or other statement under penalty of perjury are discussed in Section VII.D of this Order.

B. For ten (10) years after entry of this Order, Defendant Bevan, for any business that he, individually or collectively with any other Defendant, is the majority owner or controls directly or indirectly, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. *See* Section VII of

this Order. Delivery must occur within seven (7) calendar days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which Defendant Bevan delivers a copy of this Order, he must obtain, within thirty (30) calendar days, a signed and dated acknowledgment of receipt of this Order.

VII. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendant Bevan make timely submissions to the Commission:

A. One year after entry of this Order, Defendant Bevan must submit a compliance report, sworn under penalty of perjury. Defendant Bevan must: (1) identify the primary physical, postal, and email address, and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with him; (2) identify all of his telephone numbers and all of his physical, postal, email, and Internet addresses, including all residences; (3) identify all of his businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (4) describe the activities of each of his businesses, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Defendant Bevan must describe if he knows or should know due to his own involvement); (5) identify all business activities, including any business for which he performs services whether as an employee or otherwise and any entity in which he has any ownership interest; (6) describe in detail his involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership; (7) describe in detail whether and how he is in compliance with each Section of this Order; and (8)

provide a copy of each Order Acknowledgment obtained pursuant to this Order, as discussed in Section VI of this Order, unless previously submitted to the Commission.

B. For ten (10) years after entry of this Order, Defendant Bevan must submit a compliance notice, sworn under penalty of perjury, within fourteen (14) calendar days of any change in the following: (1) his designated points of contact; (2) his name, including aliases or fictitious name, or residence address; (3) his title or role in any business activity, including any business for which he performs services whether as an employee or otherwise and any entity in which he has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity; or (4) the structure of any entity that he has an ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

C. Defendant Bevan must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against him within fourteen (14) calendar days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or

sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: FTC v. Apply Knowledge, LLC, David Gregory Bevan, et al. X140018.

VIII. RECORDKEEPING

IT IS FURTHER ORDERED that Defendant Bevan must create certain records for ten (10) years after entry of this Order, and retain each such record for five (5) years. Specifically, Defendant Bevan for any business that he, individually or collectively with any other Defendants, is a majority owner or controls directly or indirectly, must create and retain the following records:

- A. accounting records showing the revenues from all goods or services sold;
- B. personnel records showing, for each Person providing services, whether as an employee or otherwise, that Person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
- D. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission;
- E. a copy of each unique advertisement or other marketing material; and
- F. a copy of each script used in telemarketing goods or services.

IX. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for monitoring Defendant Bevan's compliance with this Order, including the financial attestations upon which part of the judgment was suspended, and any failure to transfer any Assets as required by this Order:

A. Within fourteen (14) calendar days of receipt of a written request from a representative of the Commission, Defendant Bevan must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

B. For matters concerning this Order, the Commission is authorized to communicate directly with Defendant Bevan. Defendant Bevan must permit representatives of the Commission to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. The Commission may use all other lawful means, including posing, through its representatives as consumers, suppliers, or other individuals or entities, to Defendant Bevan or any individual or entity affiliated with Defendant Bevan, without the necessity of identification or prior notice. Nothing in this Order limits 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.

D. Upon written request from a representative of the Commission, any consumer reporting agency must furnish consumer reports concerning Defendant Bevan, pursuant to Section

604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1).

X. RETENTION OF JURISDICTION

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

SO ORDERED this 24th day of June, 2015.



DEE BENSON
UNITED STATES DISTRICT JUDGE

IT IS SO STIPULATED AND AGREED:

/s/ David Gregory Bevan
Defendant David Gregory Bevan

/s/ P. Connell McNulty
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