

RECEIVED *jm*
IN CLERK'S OFFICE
JUL 12 2001
U.S. DISTRICT COURT
MID. DIST. TENN.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

FEDERAL TRADE COMMISSION,)
)
Plaintiff,)
)
v.)
)
VOCATIONAL GUIDES, INC.,)
a Tennessee corporation,)
and)
TIMOTHY SCOTT JACKSON,)
)
Defendants.)

Civil No. 3-01-0170
Judge Robert L. Echols / *E*

STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT INJUNCTION
AGAINST DEFENDANTS VOCATIONAL GUIDES, INC., AND
TIMOTHY SCOTT JACKSON

The Federal Trade Commission ("Commission") commenced this civil action on February 20, 2001. The defendants, as named in the Complaint for Injunction and Other Equitable Relief ("Complaint"), are Vocational Guides, Inc. ("Vocational Guides") and Timothy Scott Jackson ("Jackson"). The Commission and Defendants Vocational Guides and Jackson hereby stipulate to this Final Judgment and Order for Permanent Injunction ("Order").

This document was entered on the docket in compliance with Rule 58 and/or Rule 79(a).

FRCP, on 7/27/01 By *vh*

(36)

FINDINGS

By stipulation of the parties, the Court finds as follows:

1. The Commission brought this action pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b). The Commission seeks both permanent injunctive relief and consumer redress and/or disgorgement for alleged unfair or deceptive acts or practices by the Defendants in connection with the marketing and sale of employment goods and services. The Complaint states a claim upon which relief may be granted against the Defendants.
2. The Commission has the authority under Section 13(b) of the FTC Act to seek the relief it has requested.
3. This Court has jurisdiction over the subject matter of this action and has jurisdiction over Defendants Vocational Guides and Jackson. Venue in the Middle District of Tennessee is proper.
4. The activities of Defendants Vocational Guides and Jackson, as alleged in the Complaint, were in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
5. The Commission and Defendants Vocational Guides and Jackson stipulate and agree to this Order, without trial or final adjudication of any issue of fact or law, to settle and resolve all matters in dispute arising from the Complaint to the date of entry of this Order. Defendants Vocational Guides and Jackson do not admit any of the allegations set forth in the Complaint, other than jurisdictional facts. The Commission and Defendants Vocational Guides and Jackson stipulate and agree that this Order constitutes a settlement agreement pursuant to Federal Rule of Evidence 408.

6. Defendants Vocational Guides and Jackson waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order. They also waive any claim that they may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order. Each settling party shall bear its own costs and attorneys' fees.

7. Defendants Vocational Guides and Jackson waive and release any claim arising from this action that they may have against the Federal Trade Commission, its employees, agents and representatives, the Receiver John McLemore, Esq., and the assets of the receivership estate.

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

9. Pursuant to Federal Rule of Civil Procedure 65(d) the provisions of this Order are binding upon Defendants Vocational Guides and Jackson, and their officers, agents, servants, employees and attorneys, and upon those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise.

DEFINITIONS

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

1. "Assisting others" means providing any of the following goods or services to any person or entity: (a) performing customer service functions, including but not limited to receiving or responding to consumer complaints; (b) formulating or providing, or arranging the formulation or provision of, any telephone sales script or any other written marketing material; (c) providing names of or assisting in the generation of potential customers; (d) performing marketing services of any kind; or (e) acting as an officer or director of a business entity.

2. “Defendants” means Vocational Guides, Inc., and Timothy Scott Jackson, whether acting directly or through any corporation, subsidiary, division, agent, employee, consultant, independent contractor or other device.

3. “Employment goods and services” means any item, product, good or service represented to assist consumers in obtaining employment, including but not limited to preparation or other training for any employment examination.

ORDER

I. PROHIBITED BUSINESS ACTIVITY

IT IS HEREBY ORDERED that Defendants are permanently restrained and enjoined from (1) the advertising, offering for sale, selling, or distributing employment goods and services and (2) assisting others who are engaged in the advertising, offering for sale, selling or distributing of employment goods and services. Nothing in this Order shall be read as an exception to this paragraph.

II. COMPLIANCE WITH § 5 OF THE FTC ACT

IT IS FURTHER ORDERED that Defendants, in connection with the marketing, offering for sale, or sale of any good or service are hereby permanently restrained and enjoined from:

- A. Misrepresenting the benefit of using the good or service;
- B. Misrepresenting the identity of the seller; and
- C. Misrepresenting the affiliation of the seller with any government entity or other organization.

III. PROHIBITIONS REGARDING CONSUMERS

IT IS FURTHER ORDERED that Defendants are permanently restrained and enjoined from:

A. Selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit card number, bank account number, e-mail address, or other identifying information of any customer of Defendants who paid any money to any defendant, at any time prior to entry of this Order; *provided, however*, that Defendants may disclose such identifying information (i) with the express written consent of the person whose information is disclosed, (ii) to a law enforcement agency, or (iii) as required or authorized by any law, regulation, or court order.

B. Seeking to collect or collecting payment, directly or through third party collection services, for postal employment examination materials from customers of Vocational Guides.

IV. MONETARY RELIEF

IT IS FURTHER ORDERED that:

A. Judgment is hereby entered against Defendants for payment of equitable relief, including, but not limited to, consumer redress and/or disgorgement in the amount of \$191,600.00 plus the residual of the receivership estate, as provided in Paragraph VII.A. All payments by Defendants shall be made payable to the Federal Trade Commission and sent to the Regional Director, Federal Trade Commission, Southeast Region, 60 Forsyth Street, S.W. Suite 5M35, Atlanta, Georgia 30303, by certified or cashier's check or a check drawn on the trust

account of Defendants' counsel Feith & Zell, P.C., within five (5) days of the entry of this Order. If payment is not received within five (5) days of the entry of this Order, the Court shall enter judgment in the amount of \$3,137,361.00 in favor of the Commission and against the Defendants, without further notice, which will be immediately due and payable.

B. The funds received by the Commission pursuant to this Paragraph IV shall be deposited into an account to be maintained by the Commission or its agent. Upon the final disposition of this action, such funds shall be (1) distributed as redress to consumers and used to pay expenses of administering the redress fund, and/or (2) paid to the U.S. Treasury as equitable disgorgement (if distribution is deemed impractical).

C. If the Commission determines, in its sole discretion, that redress to consumers is wholly or partially impracticable, any funds not so used shall be deposited into the United States Treasury. Defendants shall have no right to contest the manner of distribution or disposition chosen by the Commission.

D. In establishing a redress plan, the Commission shall have full and sole discretion to determine the criteria and parameters for participation by injured consumers in a redress program, and may delegate any and all tasks connected with such redress program to any individuals, partnerships, or corporations, and pay the fees, salaries, and expenses incurred thereby in carrying out said tasks from the funds received pursuant to this Order.

E. Defendants further agree that the acts as alleged in the Complaint shall be taken as true in the event of any subsequent litigation to collect amounts due pursuant to this Order, including but not limited to a non-dischargeability complaint in any bankruptcy proceeding.

F. The judgment entered pursuant to this Paragraph IV is equitable monetary relief,

solely remedial in nature, and not a fine, penalty, punitive assessment or forfeiture.

V. ASSET FREEZE

IT IS FURTHER ORDERED that upon entry of this Order and the transfer of all assets as required by Paragraph IV, the freeze of Defendants assets provided in the Stipulated Preliminary Injunction Order shall be dissolved.

VI. RIGHT TO REOPEN

IT IS FURTHER ORDERED that within five (5) business days after entry of this Order, Defendants shall submit to the Commission a truthful sworn statement, in the form shown on Appendix A, that shall acknowledge receipt of this Order and shall reaffirm and attest to the truth, accuracy and completeness of the sworn deposition testimony provided by Defendant Jackson on April 5, 2001, Defendants' Financial Disclosure Statements (Plaintiff's Exhibits 40 and 46 used at Defendant Jackson's deposition on April 5, 2001) and Defendant Jackson's affidavit dated April 12, 2001. The Commission's agreement to this Order is expressly premised on the truthfulness, accuracy and completeness of such financial disclosure statements, affidavit and sworn deposition testimony. If, upon motion by the Commission, the Court finds that any financial disclosure statement or Defendant Jackson's affidavit or deposition testimony contains any material misrepresentation or omission, the Court shall enter judgment against Defendants, in favor of the Commission, in the amount of \$3,137,361.00; which is intended to represent the total consumer loss caused by Defendants, which will be immediately due and payable [less any payment already made]. *Provided, however,* that in all other respects this Order shall remain in

full force and effect unless otherwise ordered by the Court. *Provided further*, that proceedings instituted under this provision would be in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings that the Commission may initiate to enforce this Order. Defendants expressly waive all rights to contest the imposition or amount of the judgment specified in this Paragraph VI.

VII. RECEIVERSHIP

IT IS FURTHER ORDERED that:

A. The receivership imposed in the Stipulated Preliminary Injunction Order entered in this proceeding shall continue until the Receiver has completed his duties to liquidate the receivership estate. The Receiver shall make a final request for payment of compensation for the performance of duties and the cost of actual out-of-pocket expenses incurred. Once the Receiver has been compensated in an amount approved by the court, the Receiver shall transfer all remaining funds of the receivership estate to the Commission, at which time the receivership shall be dissolved.

B. The Receiver shall return the records of the Receivership Defendant in his possession to Defendant Jackson at the termination of the receivership and shall provide continued access to the documents until such return of the records is completed.

VIII. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, Defendant Jackson, in connection with any business where he is an officer,

director, manager, partner or majority owner, is hereby restrained and enjoined from:

A. Failing to have such business create, and from failing to have such business retain for a period of three (3) years following the date of such creation, unless otherwise specified:

1. Books, records and accounts that, in reasonable detail, accurately and fairly reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;

2. Records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; 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; *provided* that the business subject to this sub-paragraph shall retain such records for a period of two (2) years following the date of each such person's termination;

3. Records containing the names, addresses, phone numbers, dollar amounts paid, quantity of goods or services purchased, and description of goods or services purchased, for all consumers to whom such business has sold, invoiced or shipped any goods or services;

4. Records that reflect, for every consumer complaint or refund request received directly or indirectly or through any third party: (1) the consumer's name, address, telephone number and the dollar amount paid by the consumer; (2) the written complaint or refund request, if any, and the date of the complaint or refund request; (3) the basis of the complaint, including the name of any salesperson complained against, and the nature and result of any investigation conducted concerning any complaint; (4) each response and the date of the

response; (5) any final resolution and the date of the resolution; and (6) in the event of a denial of a refund request, the reason for the denial; and

5. Copies of all sales scripts, training materials, advertisements, or other marketing materials utilized; *provided* that copies of all sales scripts, training materials, advertisements, or other marketing materials utilized shall be retained for three (3) years after the last date of dissemination of any such materials.

B. Destroying, discarding, mutilating, changing, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any books, records, tapes, discs, accounting data, checks (fronts and backs), correspondence, forms, advertisements, brochures, manuals, electronically stored data, banking records, consumer lists, files, invoices, telephone records, ledgers, payroll records, or other business or financial document of any kind, including information stored in computer-maintained form, in the possession, custody, or control of Defendants.

IX. ACCESS TO BUSINESS PREMISES

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, for the purpose of further determining compliance with this Order, Defendants shall permit representatives of the Commission, within three (3) business days of receipt of written notice from the Commission:

A. Access during normal business hours to any office, or facility storing documents, of any business where such defendant is an officer, director, manager, partner or majority owner. In providing such access, they shall permit representatives of the Commission to inspect and

copy all documents relevant to any matter contained in this Order; and shall permit Commission representatives to remove documents relevant to any matter contained in this Order for a period not to exceed three (3) business days so that the documents may be inspected, inventoried, and copied. Defendants may have counsel present during such access. *Provided that*, upon application of the Commission and for good cause shown, the Court may enter an *ex parte* order granting immediate access to any such business premise for the purpose of inspecting and copying all documents relevant to any matter contained in this Order.

B. To interview the officers, directors, and employees, including all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, of any business to which sub-paragraph A of this Paragraph IX applies, concerning matters relating to compliance with the terms of this Order. The person interviewed may have counsel present.

X. AUTHORITY TO MONITOR COMPLIANCE

IT IS FURTHER ORDERED that the Commission is authorized to monitor Defendants' compliance with this Order by all lawful means, including, but not limited to, the following means:

A. The Commission is authorized, without further leave of Court, to obtain discovery from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26 - 37, including the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring Defendants' compliance with any provision of this Order;

B. The Commission is authorized to use representatives posing as consumers and

suppliers to Defendants, their employees, or any other entity managed or controlled in whole or in part by them, without the necessity of identification or prior notice; and

C. 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 investigate whether Defendants have violated any provision of this Order or Section 5 of the FTC Act, 15 U.S.C. § 45.

XI. SERVICE OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, Defendants shall:

A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt of same from, each officer or director, each individual serving in a management capacity, all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, immediately upon employing or retaining any such persons, for any business where such defendant is an officer, director, partner, or majority owner; and

B. Maintain for a period of three (3) years after creation, and upon reasonable notice, make available to representatives of the Commission as directed by them either at the Commission's Southeast Region office in Atlanta, Georgia, or its offices in Washington, D.C., the original signed and dated acknowledgments of the receipt of copies of this Order, as required in sub-paragraph A of this Paragraph XI.

XII. REPORTS 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, Defendant Jackson shall notify the Commission of the following: (1) any changes in his business address, residential address or telephone number, within ten (10) calendar days of the date of such change; (2) any changes in his employment status (including self-employment) within ten (10) calendar days of such change. Such notice shall include the name and address of each business that he is employed by, a statement of the nature of the business, and a statement of his duties and responsibilities in connection with the business or employment; and (3) any proposed change in the structure of any business entity owned or controlled by him, such as creation, incorporation, dissolution, assignment, sale, merger, creation or dissolution of subsidiaries, proposed filing of bankruptcy petition, or change in the corporate name or address, or any change that may affect compliance obligations arising out of this Order, thirty (30) days prior to the effective date of any proposed change; *provided*, however, that, with respect to any proposed change in the corporation about which he learns less than thirty (30) days prior to the date such action is to take place, he shall notify the Commission as soon as is practicable after learning of such proposed change;

B. One hundred eighty (180) calendar days after the date of entry of this Order, Defendant Jackson shall submit a written report to the Commission, sworn under penalty of perjury, detailing his past and present efforts to comply with this Order. This report shall include, but not be limited to:

1. His then current residential address and telephone number;
2. His then current employment, business address and telephone numbers, a description of the business activities of such employer, and his title and responsibilities for such employer;
3. A copy of each acknowledgment of receipt of this Order obtained pursuant to Paragraph XI of this Order; and
4. A statement describing the manner in which he has complied and is complying with this Order;

C. For a period of five (5) years from the date of entry of this Order, upon written request by a representative of the Commission, Defendant Jackson shall submit written reports (under oath, if requested) and produce documents on fifteen calendar days' notice with respect to any conduct subject to this Order;

D. For the purposes of this Order, Defendant Jackson shall, unless otherwise directed by the Commission's representatives, address all written communications to the Commission to:

REGIONAL DIRECTOR
Federal Trade Commission
Southeast Region
60 Forsyth Street, S.W., Ste. 5M35
Atlanta, Georgia 30303
Re: FTC v. Vocational Guides, Inc., et al., Civil No. 3-01-0170

E. For purposes of this Paragraph XII, "employment" includes the performance of services as an employee, consultant, independent contractor, officer or director; and

F. For purposes of the compliance reporting required by this Paragraph XII, the Commission is authorized to communicate with Defendants' counsel, J. William Eshelman, Feith


& Zell, P.C.

XIII. RETENTION OF JURISDICTION

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

IT IS SO ORDERED.

Dated: July 25, 2001


Robert L. Echols
United States District Judge

The parties hereby stipulate and agree to the terms and conditions set forth and consent to the entry of this Final Judgment and Order.

For Plaintiff, Federal Trade Commission

Dated: July 11, 2001



Chris M. Couillou
Jessica D. Gray
Robin L. Rock
Attorneys for Plaintiff
Suite 5M35
60 Forsyth Street, S.W.
Atlanta, Georgia 30303-2322
(404) 656-1353
(404) 656-1379 (Facsimile)

For Defendants, Vocational Guides and Timothy Scott Jackson

Dated: April 17, 2001

Timothy S. Jackson
Timothy Scott Jackson, (Individually)
625 Mer Rouge Drive
Nolensville, Tennessee 37135
(615) 776-1175
(615) 776-1176 (Facsimile)

Dated: April 17, 2001

Vocational Guides, Inc.
Defendant

Timothy S. Jackson
by Timothy Scott Jackson, President
and Chief Executive Officer
5722 Hickory Plaza Drive, Suite B-5
Nashville, Tennessee 37211

Dated: April 18, 2001

J. William Eshelman by W. Epstein
J. William Eshelman
Attorney for Defendants
Feith & Zell, P.C.
1300 19th Street, N.W., Suite 400
Washington, D.C. 20036
(202) 293-1600
(202) 293-8965 (Facsimile)

Dated: April 17, 2001

Darrell L. West
Darrell L. West
Attorney for Defendants
144 Second Ave., North
Nashville, Tennessee 37201
(615) 726-0915
(615) 726-0917 (Facsimile)

APPENDIX A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

<u>FEDERAL TRADE COMMISSION,</u>)	
)	
Plaintiff,)	
)	
v.)	
)	
<u>VOCATIONAL GUIDES, INC.,</u>)	Civil No. 3-01-0170
a Tennessee corporation,)	Judge Robert Echols
and)	
)	
<u>TIMOTHY SCOTT JACKSON</u>)	
)	
Defendants.)	
)	

**DEFENDANT TIMOTHY SCOTT JACKSON'S AFFIDAVIT
RE: (1) ACKNOWLEDGMENT OF SERVICE OF STIPULATED FINAL JUDGMENT
AND ORDER; AND (2) REAFFIRMATION OF FINANCIAL STATEMENTS**

I, Timothy Scott Jackson, being duly sworn, hereby state as follows:

1. My name is Timothy Scott Jackson. I am a defendant in the above-captioned civil action. I am over the age of eighteen. I have personal knowledge of the facts set forth in this Affidavit.

2. My current business address is _____. My current business telephone number is _____. My current residential address is _____
_____. My current residential telephone number is _____.

3. On _____, 2001, I received a copy of the Stipulated Final Judgment

and Order, which was signed by the Honorable _____ and entered by the Court on _____, 2001. A true and correct copy of the Order that I received is appended to this Affidavit.

4. I reaffirm and attest to the truthfulness, accuracy and completeness of (a) my sworn deposition testimony on April 5, 2001, (b) Defendants' Financial Disclosure Statements (Plaintiff's Exhibits 40 and 46 used at my deposition on April 5, 2001), and (c) my affidavit dated April 12, 2001, all of which I submitted to the Federal Trade Commission.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on _____, 2001, at _____ [*city and state*].

Timothy Scott Jackson

State of _____, City of _____

Subscribed and sworn to before me
this _____ day of _____, 2001.

Notary Public
My Commission Expires:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served this 11h day of July 2001, via:


personal delivery;
 depositing a copy in the United States mail, postage prepaid;
 Federal Express Overnight Delivery
 facsimile
 Other _____

addressed to the following:

William Eshelman, Esquire
Feith and Zell, P.C.
1300 19th St., N.W., Suite 400
Washington, D.C. 20036

Darrell L. West, Esquire
Darrell L. West, P.C.
The Pilcher Bldg., Suite 300
144 Second Ave., North
Nashville, Tennessee 37201

John M. McLemore
Garfinkle, McLemore & Walker, P.L.L.C.
2000 Richard Jones Road, Suite 250
Nashville, TN 37215-8249



Chris M. Couillou
Counsel for Plaintiff
FEDERAL TRADE COMMISSION
Southeast Region
Suite 5M35, Midrise Building
60 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 656-1353; (404) 656-1379 (Fax)
ccouillou@ftc.gov