

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

**COMMISSIONERS: Jon Leibowitz, Chairman
 William E. Kovacic
 J. Thomas Rosch
 Edith Ramirez
 Julie Brill**

In the Matter of)
)
LEGACY LEARNING SYSTEMS, INC.,)
a corporation, and)
)
LESTER GABRIEL SMITH,)
individually and as an officer)
and director of the corporation.)

)

DOCKET NO. C-4323

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondents with violation of the Federal Trade Commission Act, 15 U.S.C § 45 *et seq.*; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order (“consent agreement”), an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of said consent agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in the complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it has reason to believe that the respondents have violated the Federal Trade Commission Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted

the executed consent agreement and placed such consent agreement on the public record for a period of thirty (30) days, and having duly considered the comments filed thereafter by an interested person pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure prescribed in Commission Rule 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Legacy Learning Systems, Inc. is a Tennessee corporation with its principal office or place of business at 624 Grassmere Park, Suite 16, Nashville, TN 37211.

Respondent Lester Gabriel Smith is an officer and director of the corporate respondent, with his principal office or place of business at 624 Grassmere Park, Suite 16, Nashville, TN 37211.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

DEFINITIONS

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

1. Unless otherwise specified, “respondents” shall mean Legacy Learning Systems, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees; and Lester Gabriel Smith, individually, and as an officer and director of Legacy.
2. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
3. “Affiliate Program” shall mean any arrangement whereby any person, through hyperlinks on the World Wide Web, hyperlinks in commercial email messages, or any other Internet-based mechanism, provides respondents with, or refers to respondents, potential or actual customers.
4. “Affiliate” shall mean any person or entity who participates in an Affiliate Program.
5. “Material connection” shall mean any relationship that materially affects the weight or credibility of any endorsement and that would not be reasonably expected by consumers.
6. “Endorsement” shall mean as defined in the Commission’s Guides Concerning the Use of Endorsements and Testimonials in Advertising, 16 C.F.R. § 255.0.

7. “Clearly and prominently” shall mean:
 - A. In textual communications (*e.g.*, printed publications or words displayed on the screen of a computer), the required disclosures are of a type, size, and location sufficiently noticeable for an ordinary consumer to read and comprehend them, in print that contrasts with the background on which they appear;
 - B. In communications disseminated orally or through audible means (*e.g.*, radio or streaming audio), the required disclosures are delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend them;
 - C. In communications disseminated through video means (*e.g.*, television or streaming video), the required disclosures are in writing in a form consistent with subparagraph (A) of this definition and shall appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend them;
 - D. In communications made through interactive media, such as the Internet, online services, and software, the required disclosures are unavoidable and presented in a form consistent with subparagraph (A) of this definition, in addition to any audio or video presentation of them; and
 - E. In all instances, the required disclosures are presented in an understandable language and syntax, and in the same language as the predominant language that is used in the communication, and with nothing contrary to, inconsistent with, or in mitigation of the disclosures used in any communication of them.
8. The term “including” in this order shall mean “without limitation.”
9. The terms “and” and “or” in this order shall be construed conjunctively or disjunctively as necessary, to make the applicable phrase or sentence inclusive rather than exclusive.

I.

IT IS ORDERED that respondents, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, advertising, labeling, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the status of any user or endorser of a product or service, including, but not limited to, misrepresenting that the user or endorser is an independent user or ordinary consumer of the product or service.

II.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, advertising, labeling, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about any user or endorser of such product or service unless they disclose, clearly and prominently, a material connection, when one exists, between such user and endorser and the respondents or any other individual or entity manufacturing, advertising, labeling, promoting, offering for sale, selling, or distributing such product or service.

III.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, advertising, labeling, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, shall take steps sufficient to ensure compliance with Parts I and II of this order. Such steps shall include, at a minimum:

- A. Establishing, implementing, and thereafter maintaining a system to monitor and review their Affiliates' representations and disclosures to ensure compliance with Parts I and II of this order. The system shall be implemented as follows:
 - 1. No later than thirty (30) days after the date of service of this order, and, on a semi-annual basis thereafter, respondents shall determine those Affiliates that generate the most sales for respondents. For respondents' top fifty (50) revenue-generating Affiliates, respondents shall monitor and review each of their web sites on at least a monthly basis at times not disclosed in advance to their Affiliates and in a manner reasonably calculated not to disclose the source of the monitoring activity at the time it is being conducted;
 - 2. For the remainder of respondents' Affiliates, respondents shall monitor and review the web sites of a random sample of fifty (50) on at least a monthly basis at times not disclosed in advance to their Affiliates and in a manner reasonably calculated not to disclose the source of the monitoring activity at the time it is being conducted;
- B. Immediately terminating from any Affiliate Program and ceasing payment to any Affiliate who respondents reasonably conclude:
 - 1. has misrepresented, in any manner, the status of such Affiliate, including, but not limited to, the misrepresentation that such Affiliate is an independent user or ordinary consumer; or

2. has failed to disclose, clearly and prominently, a material connection, when one exists, between such Affiliate and the respondents; and
- C. Creating, and thereafter, maintaining, reports sufficient to show the results of the monthly monitoring required by subpart A of this Part of the order.

IV.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, advertising, labeling, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, to ensure compliance with Parts I and II of this order, shall, for (i) any prospective Affiliate, prior to acceptance into any Affiliate Program or (ii) any current Affiliate, no later than ten (10) days after the date of service of this order:

- A. Provide each such person a copy of this order;
- B. Obtain from each such person a signed and dated statement acknowledging receipt of this order and expressly agreeing to comply with this order; and
- C. Provide written notice that engaging in acts or practices prohibited by this order will result in immediate termination of any Affiliate Program account and forfeiture of all monies earned or owed. Any electronic signature that respondents obtain pursuant to this Part shall comply with the signature requirements of the Electronic Signatures in Global and National Commerce Act (“E-Sign Act”), 15 U.S.C. § 7001 et seq.

V.

IT IS FURTHER ORDERED that respondents shall pay to the Federal Trade Commission the sum of Two Hundred and Fifty Thousand Dollars (\$250,000). This payment shall be made in the following manner:

- A. The payment shall be made by wire transfer made payable to the Federal Trade Commission, the payment to be made no later than fifteen (15) days after the date that this order becomes final; provided that all respondents are primarily liable, jointly and severally, for the payment amount, including any default payment amount if the payment is in default, unless and until payment is made in full.
- B. In the event of any default in payment, which default continues for ten (10) days beyond the due date of payment, the amount due, together with interest, as computed pursuant to 28 U.S.C. § 1961(a), from the date of default to the date of payment, shall immediately become due and payable to the Commission. Respondents agree that, in such event, the facts as alleged in the complaint shall

be taken as true in any subsequent litigation filed by the Commission to enforce its rights pursuant to this order, including, but not limited to, a nondischargeability complaint in any subsequent bankruptcy proceeding.

- C. All funds paid pursuant to this Part, together with any accrued interest, shall be used by the Commission in its sole discretion to provide such relief as it determines to be reasonably related to respondents' practices alleged in the complaint, and to pay any attendant costs of administration. Such relief may include, but shall not be limited to, the rescission of contracts, payment of damages, and/or public notification respecting such unfair or deceptive acts or practices as alleged in the Complaint. If the Commission determines, in its sole discretion, that such relief is wholly or partially impracticable, any funds not so used shall be paid to the United States Treasury. Respondents shall be notified as to how the funds are distributed, but shall have no right to contest the manner of distribution chosen by the Commission. No portion of the payment as herein provided shall be deemed a payment of any fine, penalty, or punitive assessment.
- D. Respondents shall make no claim to or demand for the return of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of any respondent, respondents acknowledge that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.

VI.

IT IS FURTHER ORDERED that respondents shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon reasonable notice make available to the Federal Trade Commission for inspection and copying, any documents, whether prepared by or on behalf of respondents, that:

- A. Comprise or relate to complaints or inquiries, whether received directly, indirectly, or through any third party, concerning any endorsement made by respondents, and any responses to those complaints or inquiries;
- B. Are reasonably necessary to demonstrate full compliance with each provision of this order, including but not limited to, all documents obtained, created, generated, or which in any way relate to the requirements, provisions, terms of this order, and all reports submitted to the Commission pursuant to this order;
- C. Contradict, qualify, or call into question respondents' compliance with this order; and
- D. All acknowledgments of receipt of this order obtained pursuant to Parts IV.B and VII.

VII.

IT IS FURTHER ORDERED that respondent Legacy, its successors and assigns, and respondent Smith shall deliver a copy of this order to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each person a signed and dated statement acknowledging receipt of this order. For current personnel, delivery shall be within ten (10) days of the date of service of this order. For new personnel, delivery shall occur prior to their first assuming their responsibilities.

VIII.

IT IS FURTHER ORDERED that respondent Legacy, its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including, but not limited to, 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 related entity that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, the respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission, all notices required by this Part shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, with the subject line Legacy Learning Systems, Inc., *et al.*, File No. 102-3055. Provided, however, that, in lieu of overnight courier, notices may be sent by first-class mail, but only if an electronic version of such notices is contemporaneously sent to the Commission at DEbrief@ftc.gov.

IX.

IT IS FURTHER ORDERED that respondent Smith, for a period of five (5) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment. The notice shall include Smith's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. Unless otherwise directed by a representative of the Commission, all notices required by this Part shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, with the subject line Legacy Learning Systems, Inc., *et al.*, File No. 102-3055. Provided, however, that, in lieu of overnight courier, notices may be sent by first-class mail, but only if an electronic version of such notices is contemporaneously sent to the Commission at DEbrief@ftc.gov.

X.

IT IS FURTHER ORDERED that respondent Legacy, its successors and assigns, and respondent Smith shall, within sixty (60) days after the date of service of this order, file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form in which they have complied with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, they shall submit additional true and accurate written reports.

XI.

This order will terminate on June 1, 2031, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that respondents did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: June 1, 2011