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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,

Plaintiff,

–v.–

TERRY SOMENZI, individually and as
an officer of International Advisory
Services, Inc., and also doing business as
Paulson Independent Distributors,
International Procurement Center, Phelps
Ingram Distributors, and Keller Sloan &
Associates, *et al.*,

Defendants.

No. 2:16-cv-07101 SJO (GJsx)

**DEFAULT JUDGMENT AND
ORDER FOR PERMANENT
INJUNCTION AND EQUITABLE
MONETARY RELIEF AS TO
DEFENDANTS MILLENIUM
DIRECT INCORPORATED AND
DAVID RAFF**

Judge: Hon. S. James Otero

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”),
commenced this civil action on September 21, 2016, pursuant to Section 13(b) of
the Federal Trade Commission Act (“FTC Act”), 15 U.S. C. § 45(a), to obtain
preliminary and permanent injunctive relief and other equitable relief for
Defendants’ violations of the FTC Act in connection with the mailing of deceptive
cash prize notifications to consumers. On November 4, 2016, the Court entered
an order dismissing defendant Terry Somenzi because he is deceased and on

1 February 13, 2017, the Court entered a Stipulated Permanent Injunction resolving
2 the litigation against defendant Ian Gamberg.

3 The FTC has now applied for entry of a default judgment on all counts of
4 the Complaint against Defendants Millenium Direct Incorporated and David Raff
5 (“Defendants”) pursuant to Rule 54(b) and 55(b)(2) of the Federal Rules of Civil
6 Procedure. Upon Consideration of the FTC’s Application for Entry of Default
7 Judgment Against Defendants Millenium Direct Incorporated and David Raff, the
8 Court hereby **GRANTS** the FTC’s application. **IT IS FURTHER ORDERED** as
9 follows:

10 **FINDINGS**

11 This Court finds:

12 1. This is an action by the FTC instituted under Section 13(b) of the
13 FTC Act, 15 U.S.C. § 45(a). The Complaint seeks both permanent injunctive
14 relief and equitable monetary relief for the Defendants’ deceptive acts or practices
15 as alleged therein. The Court has jurisdiction over this matter.

16 2. The FTC has authority to seek the relief it has requested, pursuant to
17 Section 13(b) of the FTC Act.

18 3. The Complaint states a claim upon which relief can be granted
19 against Defendants.

20 4. This Court has jurisdiction over the subject matter of this case and
21 has jurisdiction over the Defendants. Venue in the Central District of California is
22 proper.

23 5. The activities of Defendants, as alleged in the Complaint, are taken as
24 true against Defendants. Those allegations and evidence supporting them
25 establish that Defendants have violated Section 5(a) of the FTC Act, 15 U.S.C. §
26 45(a), which prohibits unfair and deceptive acts or practices in or affecting
27

28 [Proposed] DEFAULT JUDGMENT AND ORDER AGAINST
DEFENDANTS MDI AND DAVID RAFF - 2

Federal Trade Commission
915 2nd Ave., Ste. 2896
Seattle, Washington 98174
(206) 220-6350

1 commerce.

2 6. Defendants, in connection with causing personalized cash prize
3 notifications to be printed and mailed to consumers in the United States and other
4 countries, violated Section 5 of the FTC Act by misrepresenting that named
5 consumers who receive the cash prize notifications and who pay a specified fee
6 will receive a substantial cash prize when, in fact, consumers who pay the
7 specified fee do not receive that prize.

8 7. At all times material to the Complaint, Defendants, acting alone or in
9 concert with others, directly participated in and had knowledge of the deceptive
10 acts and practices alleged in the Complaint, and thus are jointly and severally
11 liable for these acts and practices.

12 8. This action and the relief awarded herein, are in addition to, and not
13 in lieu of, other remedies as may be provided by law, including both civil and
14 criminal remedies.

15 9. Entry of this Order is in the public interest.

16 10. Entry of this Order is final and resolves Plaintiff's claims against
17 Defendants.
18

19 DEFINITIONS

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

21 A. **"Clear(ly) and Conspicuous(ly)"** means that a required disclosure
22 is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary
23 consumers, including in all of the following ways:

- 24 1. In any communication that is solely visual or solely audible, the
25 disclosure must be made through the same means through which the
26 communication is presented. In any communication made through
27 both visual and audible means, such as a television advertisement, the
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1 disclosure must be presented simultaneously in both the visual and
2 audible portions of the communication even if the representation
3 requiring the disclosure is made in only one means.

- 4 2. A visual disclosure, by its size, contrast, location, the length of time it
5 appears, and other characteristics, must stand out from any
6 accompanying text or other visual elements so that it is easily noticed,
7 read, and understood.
- 8 3. An audible disclosure, including by telephone or streaming video,
9 must be delivered in a volume, speed, and cadence sufficient for
10 ordinary consumers to easily hear and understand it.
- 11 4. In any communication using an interactive electronic medium, such as
12 the Internet or software, the disclosure must be unavoidable.
- 13 5. The disclosure must use diction and syntax understandable to
14 ordinary consumers and must appear in each language in which the
15 representation that requires the disclosure appears.
- 16 6. The disclosure must comply with these requirements in each medium
17 through which it is received, including all electronic devices and face-
18 to-face communications.
- 19 7. The disclosure must not be contradicted or mitigated by, or
20 inconsistent with, anything else in the communication.
- 21 8. When the representation or sales practice targets a specific audience,
22 such as children, the elderly, or the terminally ill, “ordinary
23 consumers” includes reasonable members of that group.

24
25 B. **“Corporate Defendant”** means Millenium Direct Incorporated and
26 its successors and assigns.

27 C. **“Individual Defendant”** means David Raff.

1 D. **“Defendants”** means Corporate Defendant and Individual
2 Defendant.

3 E. **“Prize Promotion”** means (1) a sweepstakes or other game of
4 chance, or (2) an oral or written express or implied representation that a person
5 has been selected to receive, or may be eligible to receive, or enter a contest to
6 receive, a prize or purported prize, whether in the form of money, merchandise, or
7 anything of value.

8 F. The terms **“and”** and **“or”** in this Order shall be construed
9 conjunctively or disjunctively, as necessary, to make the applicable phrase or
10 sentence inclusive rather than exclusive.

11 **ORDER**

12 **I. BAN ON PARTICIPATING OR ASSISTING IN PRIZE**
13 **PROMOTIONS**

14 **IT IS ORDERED** that Defendants MDI and Raff are permanently
15 restrained and enjoined from participating or assisting others in the marketing,
16 promoting, offering for sale, selling, or distributing of any Prize Promotion.

17 **II. PROHIBITION AGAINST MISREPRESENTATIONS**

18 **IT IS ORDERED** that, in connection with the marketing, advertising,
19 promotion, labeling, distribution, dissemination, offer for sale or sale of any good
20 or service, Defendants MDI and Raff, his officers, agents, employees, and
21 attorneys, and all other persons in active concert or participation with him, who
22 receive actual notice of this Order, whether acting directly or indirectly, is
23 permanently restrained and enjoined from:
24

25 A. Making or assisting others in making, expressly or by implication,
26 any false or misleading statement or representation of material fact concerning
27 any good or service or the offer of any good or service, including, but not limited
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1 to:

- 2 1. Misrepresenting or assisting others in misrepresenting that a
- 3 consumer has won a prize or will receive anything of value, or that
- 4 anything of value will be given to a consumer, or the conditions
- 5 under which anything of value will or may be given; or that a
- 6 consumer who pays a specified fee will receive a substantial prize;
- 7 and
- 8 2. Misrepresenting or assisting others in misrepresenting any other fact
- 9 material to a consumer’s decision to participate in a Prize Promotion;
- 10 and

11 B. Failing to disclose Clearly and Conspicuously:

- 12 1. That the advertisement, promotion, or offer for sale of any good or
- 13 service is being distributed for the purpose of soliciting a purchase, if
- 14 such is the case, along with a complete description of the goods or
- 15 services being sold and the total purchase price thereof;
- 16 2. That the consumer who receives the advertisement, promotion, or
- 17 offer for sale has not won anything of value, if such is the case; and
- 18 3. If the consumer has won anything in connection with the
- 19 advertisement, promotion, or offer for sale, the exact monetary value
- 20 of the item won;
- 21

22 **Provided, however,** that nothing contrary to, inconsistent with, or in
23 mitigation of any required disclosure shall be included with any advertisement,
24 promotion, or offer for sale.

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III. MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

A. Judgment in the amount of Five Hundred and One Thousand, Eight Hundred Ninety-Five Dollars (\$501,895.00) is entered in favor of the Commission against Defendants, jointly and severally, as equitable monetary relief.

B. Defendants are ordered to pay to the Commission Five Hundred and One Thousand, Eight Hundred Ninety-Five Dollars (\$501,895.00). Such payment must be made within seven (7) days of entry of this Order by electronic fund transfer in accordance with instructions provided by a representative of the Commission.

IV. ADDITIONAL MONETARY PROVISIONS

IT IS FURTHER ORDERED that:

A. Defendants acknowledge that their Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which Defendants must submit 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.

B. 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

1 U.S. Treasury as disgorgement. Defendants have no right to challenge any actions
2 the Commission or its representatives may take pursuant to this Subsection.

3 **V. CUSTOMER INFORMATION**

4 **IT IS FURTHER ORDERED** that Defendants, their officers, agents,
5 employees, and attorneys, and all other persons in active concert or participation
6 with any of them, who receive actual notice of this Order, whether acting directly
7 or indirectly, are hereby permanently restrained and enjoined from:

8 A. Failing to provide sufficient customer information to enable the
9 Commission to efficiently administer consumer redress. If a representative of the
10 Commission requests in writing any information related to redress, Defendants
11 must provide it, in the form prescribed by the Commission, within 14 days;

12 B. Disclosing, using, or benefitting from customer information,
13 including the name, address, telephone number, email address, social security
14 number, other identifying information or any data that enables access to a
15 customer's account (including a credit card, bank account, or other financial
16 account), that any Defendant obtained prior to entry of this Order in connection
17 with any Prize Promotion or direct marketing campaign; and

18 C. Failing to destroy such customer information in all forms in their
19 possession, custody, or control within thirty (30) days after receipt of written
20 direction to do so from a representative of the Commission.
21

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

25 **VI. ORDER ACKNOWLEDGMENTS**

26 **IT IS FURTHER ORDERED** that Defendants obtain acknowledgments of
27 receipt of this Order:
28

1 their names, telephone numbers, and physical, postal, email, and
2 Internet addresses; (c) describe the activities of each business,
3 including the goods and services offered, the means of advertising,
4 marketing, and sales, and the involvement of any other Defendant
5 (which Individual Defendant must describe if he knows or should
6 know due to his own involvement); (d) describe in detail whether and
7 how that Defendant is in compliance with each Section of this Order;
8 and (e) provide a list of all domain names held or registered by any
9 Defendant; and (f) provide a copy of each Order Acknowledgment
10 obtained pursuant to this Order, unless previously submitted to the
11 Commission.

- 12 2. Additionally, Individual Defendant must: (a) identify all telephone
13 numbers and all physical, postal, email and Internet addresses,
14 including all residences; (b) identify all business activities, including
15 any business for which he performs services whether as an employee
16 or otherwise and any entity in which he has any ownership interest;
17 and (c) describe in detail his involvement in each such business,
18 including title, role, responsibilities, participation, authority, control,
19 and any ownership.
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21 B. For twenty (20) years after entry of this Order, each Defendant must
22 submit a compliance notice, sworn under penalty of perjury, within fourteen (14)
23 days of any change in the following:

- 24 1. Each Defendant must report any change in: (a) any designated point
25 of contact; or (b) the structure of the Corporate Defendant or any
26 entity that Defendant has any ownership interest in or controls directly
27 or indirectly that may affect compliance obligations arising under this
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1 Order, including: creation, merger, sale, or dissolution of the entity or
2 any subsidiary, parent, or affiliate that engages in any acts or practices
3 subject to this Order.

- 4 2. Additionally, Individual Defendant must report any change in: (a)
5 name, including aliases or fictitious name, or residence address; or (b)
6 title or role in any business activity, including any business for which
7 he performs services, whether as an employee or otherwise, and any
8 entity in which he has any ownership interest, and identify the name,
9 physical address, and any Internet address of the business or entity.

10 C. Each Defendant must submit to the Commission notice of the filing of
11 any bankruptcy petition, insolvency proceeding, or similar proceeding by or
12 against such Defendant within fourteen (14) days of its filing.

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

19 E. Unless otherwise directed by a Commission representative in writing,
20 all submissions to the Commission pursuant to this Order must be emailed to
21 DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to:
22 Associate Director for Enforcement, Bureau of Consumer Protection, Federal
23 Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The
24 subject line must begin: *FTC v. Terry Somenzi, et al.*, Matter No. X160053.
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VIII. RECORDKEEPING

IT IS FURTHER ORDERED that Defendants must create certain records for twenty (20) years after entry of the Order, and retain each such record for five (5) years. Specifically, Corporate Defendant and Individual Defendant for any business that such Defendant individually or collectively with any other Defendant, 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; and

E. A copy of each unique advertisement or other marketing material.

IX. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that for the purpose of monitoring Defendants' compliance with this Order, including any failure to transfer any assets as required by this Order:

A. Within fourteen (14) days of receipt of a written request from a representative of the Commission, each Defendant 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

1 and copying. The Commission is also authorized to obtain discovery, without
2 further leave of court, using any of the procedures prescribed by Federal Rules of
3 Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and
4 69.

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

10 C. The Commission may use all other lawful means, including posing,
11 through its representatives as consumers, suppliers, or other individuals or entities,
12 to Defendants or any individual or entity affiliated with Defendants, without the
13 necessity of identification or prior notice. Nothing in this Order limits the
14 Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of
15 the FTC Act, 15 U.S.C. §§ 49, 57b-1.

16 D. Upon written request from a representative of the Commission, any
17 consumer reporting agency must furnish consumer reports concerning Individual
18 Defendant, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C.
19 §1681b(a)(1).
20

21 X. ENTRY OF JUDGMENT

22 **IT IS FURTHER ORDERED** that there is no just reason for delay of entry
23 of this judgment, and that, pursuant to Federal Rule of Civil Procedure 54(b), the
24 Clerk immediately shall enter this Order as a final judgment as to all Defendants.
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XI. 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 7th day of August, 2017.



THE HONORABLE S. JAMES OTERO
UNITED STATES DISTRICT JUDGE

Respectfully submitted by:

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**ATTORNEYS FOR PLAINTIFF
FEDERAL TRADE COMMISSION**

[Proposed] DEFAULT JUDGMENT AND ORDER AGAINST
DEFENDANTS MDI AND DAVID RAFF - 14

Federal Trade Commission
915 2nd Ave., Ste. 2896
Seattle, Washington 98174
(206) 220-6350

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of May, 2017, I caused the forgoing
**[Proposed] DEFAULT JUDGMENT AND ORDER FOR PERMANENT
INJUNCTION AND EQUITABLE MONETARY RELIEF AS TO
DEFENDANTS MILLENIUM DIRECT INCORPORATED AND DAVID
RAFF** to be delivered to the following parties, in the manner indicated:

David Raff and Millenium Direct Incorporated
2798 Center Court Drive, Apt. 3-30
Weston, FL 33332
*via Overnight Delivery and Electronic Mail by agreement at
davidraff527@yahoo.com*

Defendant (*Pro Se*)
Agent for Millenium Direct Incorporated

/s/Nadine Samter
NADINE SAMTER

[Proposed] DEFAULT JUDGMENT AND ORDER AGAINST
DEFENDANTS MDI AND DAVID RAFF - 15

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