

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

**HOLIDAY VACATIONS MARKETING
CORP., et al.,**

Defendants.

Case No. 8:11-CV-01319-JFM

12
**(PROPOSED) FINAL JUDGMENT AND
ORDER FOR PERMANENT INJUNCTION
AGAINST DEFENDANTS DARIO A.
JIMENEZ LOPEZ AND VICTOR M.
RAMIREZ**

On May 16, 2011, Plaintiff Federal Trade Commission ("FTC" or "Commission") commenced this action by filing a Complaint pursuant to Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. § 53(b). The Complaint alleges that Defendants Holiday Vacations Marketing Corp.; Happy Life Caribbean Corp.; Happy Life Corporation of America, Inc.; Dario A. Jimenez Lopez; and Victor M. Ramirez engaged in unfair and deceptive acts or practices in connection with the sale and offering for sale of vacation packages. On September 27, 2011, this Court entered a default judgment and order for permanent injunction against the three corporations named in the Complaint. On January 13, 2012, FTC filed a motion for summary judgment against Defendants Jimenez and Ramirez, including supporting declarations, exhibits, and deposition excerpts.

On March 29, 2012, 2012, this Court issued ^{an order} ~~a decision~~ granting the FTC's motion for summary judgment in full. This Court now ORDERS as follows:

DEFINITIONS

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

1. "Assisting others" includes, but is not limited to, providing any of the following services to any person or entity: (1) performing customer service functions, including, but not limited to, receiving or responding to consumer complaints; (2) formulating or providing, or arranging for the formulation or provision of, any sales script, other marketing material, or marketing services of any kind; (3) providing names of, or assisting in the generation of, potential customers; (4) providing credit card merchant processing accounts, or otherwise providing access to a billing and collection system (such as a credit card, checking, savings, share or similar account, utility bill, telephone bill, mortgage loan account, or debit card), or causing any charges to be made to such an account or utilizing such a system; or (5) acting as an officer or director of a business entity.

2. "Individual Defendants" means Dario A. Jimenez Lopez and Victor M. Ramirez.

3. "Prize Promotion" means an oral or written representation, whether express or implied, that a person has won, has been selected to receive, or may be eligible to receive or enter a contest to receive, a prize or purported prize, whether in the form of money, merchandise, or anything of value.

4. "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.

5. "Vacation Package" means any goods or services offered in relation to a vacation, including but not limited to transportation; accommodations; amenities; travel planning services; booking and reservation services; and certificates, vouchers, coupons, reservation forms, or other

documents that purport to be full or partial payment for, or redeemable for, transportation, accommodations, car rentals, tours, sports or other activities, meals, drinks, or entrance to special events or locations.

ORDER

I. BAN ON MARKETING OF VACATION PACKAGES

IT IS HEREBY ORDERED that Individual Defendants, whether acting directly or indirectly, are permanently restrained and enjoined from:

- A. Advertising, marketing, promoting, offering for sale, or selling any Vacation Package; and
- B. Assisting others engaged in advertising, marketing, promoting, offering for sale, or selling any Vacation Package.

II. BAN ON USE OF PRIZE PROMOTIONS

IT IS FURTHER ORDERED that Individual Defendants, whether acting directly or indirectly, are permanently restrained and enjoined from:

- A. Advertising, marketing, promoting, offering for sale, or selling any good or service, in whole or in part, through the use of a Prize Promotion; and
- B. Assisting others engaged in advertising, marketing, promoting, offering for sale, or selling any good or service, in whole or in part, through the use of a Prize Promotion.

III. BAN ON TELEMARKETING

IT IS FURTHER ORDERED that Defendant Jimenez is permanently restrained and enjoined from participating in telemarketing, whether directly or through an intermediary, including by consulting, brokering, planning, investing, or advising.

IV. PROHIBITED BILLING PRACTICES

IT IS FURTHER ORDERED that Individual Defendants, and their officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, or sale of any product or service, are permanently restrained and enjoined from billing or receiving money from any purchaser without that purchaser's express informed consent.

V. PROHIBITED REPRESENTATIONS RELATING TO ANY GOODS OR SERVICES

IT IS FURTHER ORDERED that Individual Defendants, and their officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, or sale of any product or service, are permanently restrained and enjoined from misrepresenting, or assisting others in misrepresenting, expressly or by implication, any material fact, including, but not limited to:

- A. The total costs to purchase, receive, or use, and the quantity of, the good or service;
- B. Any material restriction, limitation, or condition to purchase, receive, or use the good or service;
- C. Any material aspect of the nature or terms of any refund, cancellation, exchange, or repurchase policy, including, but not limited to, the likelihood of a consumer obtaining a full or partial refund, or the circumstances in which a full or partial refund will be granted to the customer; and
- D. Any material aspect of the performance, efficacy, nature, or other characteristic of the good or service.

VI. MONETARY JUDGMENT

IT IS FURTHER ORDERED that judgment for equitable monetary relief is entered jointly and severally in the amount of \$2,129,244.

VII. CONSUMER INFORMATION

IT IS FURTHER ORDERED that Individual Defendants, and their officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or indirectly, are permanently restrained and enjoined from:

- A. 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), of any person which any Defendant obtained prior to entry of this Order in connection with the advertising, marketing, promoting, offering for sale, or sale of Vacation Packages; and
- B. Failing to dispose of such customer information in all forms in their possession, custody, or control within thirty (30) days after entry of this Order. Disposal shall be by means that protect against unauthorized access to the customer information, such as by burning, pulverizing, or shredding any papers, and by erasing or destroying any electronic media, to ensure that the customer information cannot practicably be read or reconstructed.

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 a law, regulation, or court order, including any

court order issued during this litigation.

VIII. ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Individual Defendants obtain acknowledgments of receipt of this Order:

- A. Each Individual Defendant, within 7 days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For 3 years after entry of this Order, each Individual Defendant, for any business in which he, individually or collectively with any other Defendant, is the majority owner or directly or indirectly controls, must deliver a copy of this Order to: (1) all principals, officers, directors, and managers; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of the Order; (3) all third-party payment processors, independent service organizations, and payment networks; and (4) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. To all others, delivery must occur before they assume their responsibilities.
- C. From each individual or entity to which Individual Defendants delivered a copy of this Order, that Individual Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

IX. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Individual Defendants make timely submissions to the Commission:

- A. One year after entry of this Order, each Individual Defendants must submit a compliance report, sworn under penalty of perjury. Individual Defendants must: (a) identify all telephone numbers

and all email, Internet, physical, and postal addresses, including all residences; (b) identify all titles and roles in all business activities, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest; (c) describe in detail such Defendant's involvement in each such business, including responsibilities, participation, authority, control, and any ownership; (d) designate at least one telephone number and an email, physical, and postal address as points of contact, which representatives of the Commission may use to communicate with Defendant; (e) identify all of such Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (f) describe the activities of each business, including the products and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Individual Defendants must describe if they know or should know due to their own involvement); (g) describe in detail whether and how such Defendant is in compliance with each Section of this Order; and (h) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission;

- B. For 20 years following entry of this Order, each Individual Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following: (a) name, including aliases or fictitious name, or residence address; (b) title or role in any business activity, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest, and identify its name, physical address, and Internet address, if any; (c) any designated point of contact; or (d) the structure of any entity that such Defendant has any ownership interest in or directly or indirectly controls 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. Each Individual Defendants must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or any similar proceeding by or against such Defendant within 14 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. Holiday Vacations Marketing Corp., et al., X110032.

X. RECORDKEEPING

IT IS FURTHER ORDERED that Individual Defendants must create certain records for 20 years after entry of the Order, and retain each such record for 5 years. Specifically, each Individual Defendant, for any business in which such Individual Defendant, individually or collectively with any other Defendant, is a majority owner or directly or indirectly controls, must maintain the following records:

- A. Accounting records showing the revenues from all goods or services sold, all costs incurred in

- generating those revenues, and the resulting net profit or loss;
- B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name, addresses, and telephone numbers; job title or position; dates of service; and, if applicable, the reason for termination;
 - C. 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 advertisement or other marketing material.

XI. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Individual Defendants' compliance with this Order:

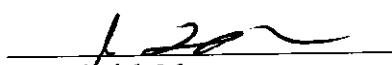
- A. Within 14 days of receipt of a written request from a representative of the Commission, each Individual Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection 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 each Individual Defendant. Individual Defendants must permit representatives of the Commission to interview any employee or other person affiliated with Individual Defendants 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 Individual Defendants or any individual or entity affiliated with Individual Defendants, 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.

XII. 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.

IT IS SO ORDERED, this 20th day of June 2012.



J. Frederick Motz
United States District Judge
District of Maryland