

Claim No.

HC10CO4473

IN THE HIGH COURT

CHANCERY DIVISION



Before the Honourable Mr Justice Arnold on 8th April 2011.

IN THE MATTER OF THE ENTERPRISE ACT 2002, THE CONSUMER PROTECTION FROM  
UNFAIR TRADING REGULATIONS 2008, UNFAIR TERMS IN CONSUMER CONTRACTS  
REGULATIONS 1999 AND THE CANCELLATION OF CONTRACTS MADE IN A CONSUMER'S  
HOME OR PLACE OF WORK ETC. REGULATIONS 2008

BETWEEN

OFFICE OF FAIR TRADING

Claimant

And

- (1) INCENTIVE LEISURE GROUP LIMITED
- (2) PERSONAL TRAVEL GROUP LIMITED
- (3) GEO DEMOGRAPHIC MARKET RESEARCH LIMITED  
(PREVIOUSLY KNOWN AS THE DIRECT MARKETING  
PARTNERSHIP GROUP LTD)
- (4) KEITH STUART BARKER
- (5) MARTIN WHITE
- (6) KIMBERLEY BAMBROFFE
- (7) JONATHAN DANIELS
- (8) MARK GALES
- (9) ROBERT KNIGHT
- (10) LILY ALDERSON

Defendants



\_\_\_\_\_  
ENFORCEMENT ORDER AGAINST THE FIFTH  
AND SEVENTH TO TENTH DEFENDANTS  
\_\_\_\_\_

**UPON A CLAIM UNDER** the Enterprise Act 2002 ("EA"), the Consumer Protection from Unfair Trading Regulations 2008 2008/1277 ("CPRs"); the Unfair Terms in Consumer Contract Regulations 1999 2083/1999 ("UTCCRs") and the Cancellation of Contracts made in a Consumer's Home or Place of Work etc Regulations 2008 1816/2008 ("the CCRs") filed on 16 December 2010 in the High Court of Justice, Chancery Division, Royal Courts of Justice, Claim No HC10 CO4473 ("the Proceeding")

**AND UPON AN APPLICATION** by the Claimant dated 17 December 2010 for an interim enforcement order under section 218 EA

**WHEREAS:**

1. The Claimant's application for an interim enforcement order against the Fifth and Seventh to Tenth Defendants ("Interim Order") is withdrawn and the Claimant's claim for an enforcement order against the Fifth and Seventh to Tenth Defendants ("Order") be granted in the terms set out herein.
2. The PTG product is the 'composite agreement', 'marketing agency agreement' and the 'managing agency agreement' annexed to this Order at Annex 1.
3. The ILG product is the contract for membership of the Designer Way Vacation Club ("DWVC").
4. The 'reclaim scheme' means the redemption promotion operated by Reclaim Limited or any other similar scheme pursuant to which, as a promotion and/or incentive to contract with the first, second or third Defendants a person is offered the possibility upon meeting certain conditions of receiving a variable and unspecified sum of money.
5. In this Order, 'the Defendants' means the Fifth, Seventh, Eighth, Ninth and Tenth Defendants only.
6. The First Defendant, Incentive Leisure Group Limited, was placed into creditors' voluntary liquidation on 25 January 2011 and for the purpose of this Order is not included within the definition of Defendants going forward but is referred to where necessary as the First Defendant.

And the Claimant (2) Susan Wilcox of its General Counsel's office) and the  
Fifth, Seventh, Eighth, Ninth and Tenth Defendants (by their sanctions) having  
consented in writing to this order save for paragraph 10 thereof

**IT IS ORDERED THAT:**

**Against the Fifth, Seventh, Eighth, Ninth and Tenth Defendants ('the Defendants')**

7. The Defendants shall not (whether by themselves, their agents, associates or otherwise) continue or repeat the conduct described in paragraphs 10 to 15 below;
8. The Defendants shall not (whether by themselves, their, agents, associates or otherwise) engage in such conduct the course of their business or another business;
9. The Defendants shall not (whether by themselves, their officers, employees, agents, associates or otherwise) consent to or connive in the carrying out of such conduct by another body corporate with which they have a special relationship (within the meaning of section 222(3) of the EA).

**CPRs**

**Advertising/marketing**

10. Within the European Economic Area, make, publish, broadcast or disseminate, or cause or procure or permit or be otherwise concerned with, whether directly or indirectly, the publication, broadcast or dissemination, whether orally, in writing or in any manner whatsoever, of the following types of communications, which constitute unfair commercial practices within the meaning of Regulation 3 of the CPRs:
  - I. The advertisements annexed hereto at Annex 2 [JF1/36 and JF1/37].
  - II. Any statement which, whether expressly or by implication gives the impression or is likely to give the impression that as a consequence of contacting and/or meeting any of the Defendants:
    - i. The consumer would deal with a person (including a legal person) who was interested in buying his or her timeshare;
    - ii. the Second or Third Defendants or any person (including a legal person) would purchase or otherwise take over ownership of the consumer's timeshare;

- iii. the consumer would be offered the opportunity to dispose of an existing timeshare or interest therein in return for cash or other financial return and would benefit financially;
  - iv. the consumer would be given a financial reward for attending the presentation in circumstances where the consumer will pay for that reward if he/she purchases the Second Defendant's product or a product the same as or analogous to the First Defendant's products;
  - v. the consumer would not have to part with any money in order to dispose of his timeshare;
  - vi. the consumer would no longer be liable for maintenance fees.
- III. Any statement which whether expressly or by implication gives the impression or is likely to give the impression that:
- i. the Second Defendant or any other person (including a legal person) are members of the Association of British Travel Agents (ABTA) and other regulatory bodies or trade associations of which they are not members;
  - ii. the Defendants have helped consumers reclaim significant sums in respect of the disposal of their timeshares.
- IV. Any statement which fails, clearly and prominently:
- i. to set out the true commercial intent behind the advertising or communication, which in the case of the Second Defendant's business is to sell the Second Defendant's products to the consumer and require the consumer to make a payment to the First and/or Second Defendants;
  - ii. to provide the consumer with information regarding the main characteristics of the Second Defendant's products, or any products the same as or analogous to the First Defendant's products namely that they involve access to a holiday booking system, which is also accessible to them as members of the general public and which provides no particular financial benefit;
  - iii. to explain the true nature of the marketing agency element of the Second Defendant's product and in particular, that it requires the consumer to incur significant costs;

- iv. to provide the consumer with clear details of the identity and geographical address of the person (including a legal person) that the consumer would be meeting, contracting or otherwise dealing with;
- v. to advise consumers that ownership of the consumer's timeshare cannot necessarily be transferred.

#### ***Product***

- 11. The sale in any circumstances of any product, in particular the 'managing agency agreement' or any analogous scheme, whether sold at the same time or after sale of the 'marketing agency agreement', which constitutes an unlawful pyramid scheme under paragraph 14 of Schedule 1 to the CPRs and section 120(3) of the Fair Trading Act 1973 (as amended by the Trading Schemes Act 1996).

#### ***Sales practices***

- 12. Within the European Economic Area, using any of the following sales practices in relation to the Second Defendant's products or any other equivalent or similar products, which are aggressive and/or contrary to the requirements of professional diligence and/or are otherwise unfair commercial practices within the meaning of Regulation 3 of the CPRs, including:
  - I. Giving sales presentations and/or keeping consumers on the premises for the purposes of a sales presentation or appointment, the objective of which is for the consumer to sign a contract for the purchase of the First and/or Second Defendants' products, for a period of more than two hours;
  - II. Advising a consumer that his/her children will be liable for maintenance fees on that consumer's timeshare after his/her death and/or unless the consumer signs a contract to purchase the Second Defendant's product or any products the same as or analogous to the First Defendant's product.
  - III. Advising consumers that they are already the subject of legal proceedings in relation to their timeshare, when that is not in fact the case.
  - IV. Advising consumers that they will lose the opportunity to take advantage of the reclaim scheme, or any similar or equivalent reward or incentive marketing scheme, if they do not enter into contractual relations with the Second Defendant or any person (including a legal person) on that day, where the

reclaim scheme, or any similar or equivalent reward or incentive marketing scheme is available to another consumer on a subsequent day.

13. Within the European Economic Area, make, publish, broadcast or disseminate, or cause or procure or permit or being otherwise concerned with, whether directly or indirectly, the publication, broadcast or dissemination, whether orally, in writing or in any manner whatsoever, the following types of communications, which constitute unfair commercial practices within the meaning of Regulation 3 of the CPRs:

I. Any statement which, whether expressly or by implication gives the impression or is likely to give the impression that:

- i. it is impossible to sell or otherwise dispose of timeshares;
- ii. there is no facility to relinquish ownership of a timeshare;
- iii. signing up to the Second Defendant's products or any products the same as or analogous to the First Defendant's products or any other analogous product is the only way for the consumer to get rid of or get money back for his/her timeshare;
- iv. the Second or Third Defendant will take over legal ownership of the consumer's timeshare and associated liabilities provided the consumer purchases the Second Defendant's product or any products the same as or analogous to the First Defendant's products or any other analogous product.
- v. the purchase price for the Second Defendant's product or any products the same as or analogous to the First Defendant's products or any other analogous product has been or will be reduced to take into account the value of the consumer's timeshare.
- vi. a reclaim certificate or any similar or equivalent reward or incentive marketing scheme is either free and/or provided as part payment for the consumer's timeshare.
- vii. the reclaim certificate or any similar or equivalent reward or incentive marketing scheme is a means by which consumers are paid by the Second or Third Defendants for their timeshare;
- viii. the only lawful way for the consumer to rid themselves of their timeshare is the way proposed by the Second or Third Defendants.

- ix. if the consumer purchases the Second Defendant's products or any products the same as or analogous to the First Defendant's products or any other analogous products he/she will have access to cheaper holidays than would otherwise be the case;
  - x. if a consumer purchases the Second Defendant's product, and in particular the 'marketing agency agreement' element of the product he/she will benefit financially, including in circumstances where the consumer does not do any work to ensure sales.
  - xi. the consumer will be able to recover a significant amount and/or up to 95% of the sum stated on the reclaim certificate (or other equivalent scheme).
- II. Any exaggerated statement or misleading explanation as to the likely future level of maintenance charges that the consumer will have to pay on the timeshare if he/she does not succeed in disposing of it.
- III. Any false or misleading claim or reinforcement of the consumers' belief that their children will be liable for these ever increasing maintenance charges after the consumer dies.
- IV. Any statement which, whether expressly or by implication gives the impression or is likely to give the impression that:
- xii. the Second Defendant (or any other company not registered in the UK) are 'British' and/or 'UK based companies';
  - xiii. the Second Defendant or any person (including a legal person) with trading practices the same as or similar to the First Defendant are members of ABTA and other regulatory bodies or trade associations.
- V. Any statement which fails:
- xiv. to explain the nature and level of any returns that the consumer can realistically be expected to make as a consequence of purchasing the marketing agency agreement element of the Second Defendant's product (the results to be expected from the product) and the risks associated with the product, in particular having regard to the purchase price paid for it and the annual charge;
  - xv. to explain the nature of the First Defendant's product, including but not confined to the lack of any specific price advantage, the results likely

to be expected from the product, the fitness for purposes of the product;

- xvi. to explain how the reclaim certificate or any similar or equivalent reward or incentive marketing scheme works and the results to be expected from it, in particular, but not confined to the fact that only 10% of the certificate value is paid into the fund, that the strict conditions for claiming must be adhered to and the likely level of recovery.

#### UTCCRs

14. Within the European Economic Area, in accordance with the requirements of the UTCCRs use, recommend for use, enforce or otherwise rely on a term which is the same as or similar to any of the terms set out in Annex 3 to this Order [JF1/13/1616] and the contract attached.

#### CCRs

15. Within the European Economic Area fail to notify consumers of their cancellation rights in relation to any product the same as or analogous to the First or Second Defendant's products or any equivalent or analogous products which they sell or market in accordance with regulation 7 of the CCRs.

#### Costs

16. There be no order as to costs between the Claimant and the Fifth and Seventh to Tenth Defendants.

#### Stay

17. All further proceedings under Claim Number HC10C04473 against the Defendants are hereby stayed.

AND IT IS ORDERED



9 IS THAT THE CLAIMANT DO SERVE THIS ORDER



HC10 CO 4473

IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION

Mr JUSTICE ARNOLD

8th APRIL 2011

OFFICE OF FAIR TRADING

INCINNIA KESKIE GROUP LIMITED

ORDER

THE COURT SENT THIS ORDER + SENT COPIES FOR SERVICE TO:-

OFFICE OF FAIR TRADING  
GENERAL COUNCIL'S OFFICE  
LITIGATION UNIT

FLEETBANK HOUSE

2-6 SALISBURY SQUARE

LONDON EC4Y 8JX

THE CLAIMANT

ENTERED: AJ Pooker - CHANCERY CLERK

0207-977-6258