

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

CLAIM NO: HC16C04473

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

Before the Honourable Mr Justice Tewson on 25/4 2012

BETWEEN:



OFFICE OF FAIR TRADING

Claimant

-and-

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

Defendants

CONSENT ORDER
(PENAL NOTICE AND ENFORCEMENT ORDER AGAINST
THE THIRD, FOURTH AND SIXTH DEFENDANTS)

IF YOU, GEO DEMOGRAPHIC MARKET RESEARCH LTD (PREVIOUSLY KNOWN AS THE DIRECT MARKETING PARTNERSHIP GROUP LTD) DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND LIABLE TO BE FINED OR YOU MAY HAVE YOUR ASSETS SEIZED AND ANY OF YOUR DIRECTORS MAY ALSO BE LIABLE TO IMPRISONMENT OR BE FINED OR TO HAVE THEIR ASSETS SEIZED.

IF YOU KEITH STUART BAKER, DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND LIABLE TO IMPRISONMENT OR TO BE FINED OR TO HAVE YOUR ASSETS SEIZED.

IF YOU KIMBERLY BAMBROFFE, DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND LIABLE TO IMPRISONMENT OR TO BE FINED OR TO HAVE YOUR ASSETS SEIZED.

ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS THE DEFENDANTS TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED.

UPON A CLAIM UNDER the Enterprise Act 2002 ("EA"), the Consumer Protection from Unfair Trading Regulations 2008 200811277 ("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 ("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

AND UPON A FURTHER APPLICATION by the Claimant dated 26 January 2012 for a summary judgment under CPR 24 against the Second, Third, Fourth and Sixth Defendants and/or strike-out of the Second, Third, Fourth and Sixth Defendants' amended Defence

AND UPON reading those documents on the court file recorded as having been read and heard

WHEREAS:

1. The Claimant's claim for a final enforcement order against the Third, Fourth and Sixth Defendants be granted in the terms set out herein.
2. The PTG product is the '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 an 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 Third, Fourth and Sixth Defendants. The First Defendant Incentive Leisure Group Limited was placed into liquidation on 25 January 2011. The Second Defendant Personal Travel Group Limited was placed into liquidation on 22 November 2011. For the purposes of this Order, neither the First Defendant nor the Second Defendant are included within the definition of Defendants going forward but are referred to where necessary as the First Defendant and Second Defendant.

IT IS ORDERED THAT:

Against the Defendants

6. The Defendants shall not (whether by their officers, employees, agents, associates or otherwise) continue or repeat the conduct described in paragraphs 9 to 14 below.
7. The Defendants shall not (whether by their officers, employees, agents, associates or otherwise) engage in such conduct in the course of their business or another business.
8. The Defendants shall not (whether by 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

9. Within the European Economic Area, make, publish or disseminate, or cause or procure or permit or be otherwise concerned with, whether directly or indirectly the publication 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. The advertisements annexed hereto as Annex 2 [JFI/36 and JFI/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) that was interested in buying his or her timeshare;
 - ii. the 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 a product or products the same as or analogous to the First Defendant's product or the Second Defendant's product;
 - 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 Defendants or any other person (including a legal person) are members of the Association of British Travel Agents (ABTA) and/or any other regulatory bodies or trade associations, where they are not members of those bodies or associations;

- 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 any advertising or communication, where the intent is to sell any product the same as or analogous to the First Defendant's product or the Second Defendant's product to the consumer and require the consumer to make a payment to the Defendants or any person (including a legal person);
- ii. to provide the consumer with information regarding the main characteristics of any product sold that is the same as or analogous to the First Defendant's product or the Second Defendant's product, 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 any product sold that is the same as or analogous to 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

- 10. The sale in any circumstances of any product or products, 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 I to the CPRs and section 120(3) of the Fair Trading Act 1973 (as amended by the Trading Schemes Act 1996).

Sales practices

- 11. Within the European Economic Area, using any of the following sales practices in relation to any product or products the same as or analogous to the First Defendant's product or the Second Defendant's product, 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 a product or products from the Defendants or any person (including a legal person) 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 any product or products the same as or analogous to the First Defendant's product or the Second 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 Defendants 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.
12. Within the European Economic Area, make, publish or disseminate, or cause or procure or permit or be otherwise concerned with, whether directly or indirectly, the publication 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 any product the same as or analogous to the First Defendant's product or the Second Defendant's product is the only way for the consumer to get rid of or get money back for his/her timeshare;
 - iv. the Defendants or any person (including a legal person) will take over legal ownership of the consumer's timeshare and associated liabilities provided the consumer purchases a product or products the same as or analogous to the First Defendant's product and/or the Second Defendant's product or any other analogous product;
 - v. the purchase price for a product the same as or analogous to the First Defendant's product or the Second Defendant's 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 Defendants or any person (including a legal person) for their timeshare;
 - viii. the only lawful way for the consumer to rid themselves of their timeshare is the way proposed by the Defendants;
 - ix. if the consumer purchases a product the same as or analogous to the First Defendant's product or the Second Defendant's product, he/she will have access to cheaper holidays that would otherwise be the case;
 - x. if a consumer purchases a product the same as or analogous to the Second Defendant's product and in particular the marketing agency 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:
 - i. any company not registered in the UK is British and/or UK based;
 - ii. any person (including a legal person) with trading practices the same as or similar to the First Defendant or Second Defendant is a member of ABTA and/or any other regulatory bodies or trade associations.
- V. Any statement which fails:
 - i. 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 a product the same as or analogous to 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;
 - ii. to explain the nature of a product the same as or analogous to 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;
 - iii. 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

- 13. 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 [JFI/13/1616] and the contract attached.

CCRs

- 14. Within the European Economic Area fall to:
 - I. Provide consumers with written notice of cancellation rights in relation to any product or products the same as or analogous to the First Defendant's product or the Second Defendant's product in accordance with regulation 7 of the CCRs;
 - II. Accept written cancellation by the consumer of a contract entered into for any product or products the same as or analogous to the First Defendant's product or the Second

Defendant's product within seven days of the consumer receiving notice of their cancellation rights.

Costs

15. The Defendants pay the Claimant's costs to be subject to detailed assessment if not agreed, save that each party shall bear their own costs of and occasioned by the Claimant pursuing the relief set out at paragraph 11 of the draft Order appended to the Particulars of Claim.

Stay

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

We consent to an Order
in the above terms:

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in the above terms:



For the General Counsel
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Dated this 22nd day of March, 2012