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01-CV-00047-ANS

Hon. Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

627867 B.C. LTD., D.B.A. NEWPORT GROUP, *et al.*

Defendants.

Civil No. C03-3166Z

**STIPULATED FINAL
JUDGMENT AND ORDER
FOR PERMANENT
INJUNCTION AS TO
STEPHEN ALBERT
IRONSIDE**

Plaintiff Federal Trade Commission ("Commission" or "FTC"), pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), filed its Complaint for Injunctive and Other Equitable Relief, including consumer redress, alleging that defendants 627867 B.C. Ltd., d.b.a. Newport Group; 633142 B.C. Ltd., d.b.a. Newport Group; 638541 B.C. Ltd., d.b.a. Newport Group; 654679 B.C. Ltd., d.b.a. Newport Group (hereinafter collectively referred to as "the Newport Group companies"), 651482 B.C. Ltd., d.b.a. West Star ("West Star"), and Stephen Albert Ironside and Bruce George Alexander Ironside, individually and as Directors of the Newport Group companies and West Star, engaged in deceptive acts and practices in connection with telemarketing foreign lottery tickets to U.S. consumers in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a) and the Telemarketing Sales Rule, 16 C.F.R. Part 310. On February 2, 2005, this Court entered a Default Judgment as to the Newport Group companies and West Star.

1 The Commission, by and through its counsel, and Stephen Albert Ironside have consented
2 to the entry of this Stipulated Final Judgment and Order for Permanent Injunction ("Order"),
3 which resolves all matters and claims in dispute between them arising from the Complaint up to
4 the date of entry of this Order, on the following terms and conditions, without a trial or
5 adjudication of any issue of law or fact.

6 NOW, THEREFORE, the Commission and defendant Stephen Albert Ironside
7 (hereinafter "defendant"), having requested the Court to enter this Order, it is **ORDERED,**
8 **ADJUDGED, AND DECREED** as follows:

9 FINDINGS

10 1. This is an action by the Commission instituted under Section 13(b) of the FTC
11 Act, 15 U.S.C. § 53(b). Pursuant to this section, the Commission has the authority to seek the
12 relief contained herein.

13 2. The Commission's complaint states a claim upon which relief may be granted
14 against defendant under Sections 5(a), 13(b) and 19 of the Federal Trade Commission Act ("FTC
15 Act"), 15 U.S.C. §§ 45(a), 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse
16 Prevention Act ("Telemarketing Act"), 15 U.S.C. § 6101 *et seq.*

17 3. This Court has jurisdiction over the subject matter of this case and all parties
18 hereto. Venue in the Western District of Washington is proper.

19 4. The alleged activities of defendant are in or affecting commerce, as defined in
20 Section 4 of the FTC Act, 15 U.S.C. § 44.

21 5. The parties shall each bear their own costs and attorney's fees incurred in this
22 action and have waived all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, and
23 all rights to seek judicial review, or otherwise to challenge the validity of this Stipulated Order.

24 6. Entry of this Stipulated Order is in the public interest.

25 DEFINITIONS

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

27 A. "Asset" means any legal or equitable interest in, right to, or claim to, any real and
28 personal property including, but not limited to, chattels, goods, instruments, equipment, fixtures,

1 general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes,
2 accounts, credits, receivables, funds, monies, and all cash, wherever located.

3 B. "Assisting" means providing substantial assistance or support to any
4 person. For purposes of this Order, providing substantial assistance or support includes, but is
5 not limited to: (a) preparing, printing or transmitting invoices; (b) recording or verifying sales
6 solicitations; (c) performing customer service functions including, but not limited to, receiving or
7 responding to consumer complaints, obtaining or receiving identifying and financial information
8 from consumers, and communicating with consumers on behalf of the seller or telemarketer;
9 (d) developing, providing or arranging for the development or provision of sales scripts or any
10 other marketing material; (e) verifying, processing, fulfilling or arranging for the fulfillment of
11 orders; (f) developing, providing or arranging for the provision of names of potential customers;
12 (g) collecting or arranging for the collection of accounts receivable or other amounts owed;
13 (h) providing or arranging for the provision of post office boxes or the services of commercial
14 mail receiving agencies; or (i) performing or providing marketing services of any kind.

15 C. "Customer" or "Consumer" means any person who is or may be required to pay
16 for goods or services offered for sale or sold by the corporate defendants.

17 D. "Defendant" means Stephen Albert Ironside.

18 E. "Document" is synonymous in meaning and equal in scope to the usage of the
19 term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts,
20 photographs, audio and video recordings, computer records, and other data compilations from
21 which information can be obtained and translated, if necessary, through detection devices into
22 reasonably usable form. A draft or non-identical copy is a separate document within the meaning
23 of the term.

24 F. "Material" means likely to affect a person's choice of, or conduct regarding,
25 goods or services.

26 G. "Person" means any natural person and any organization or other legal entity,
27 including a corporation, partnership, sole proprietorship, limited liability company, association,
28 cooperative, government agency, or any other group or combination acting as an entity.

ORDER

I.

PROHIBITED PRACTICES

IT IS THEREFORE ORDERED that defendant is hereby permanently restrained and enjoined from:

A. Promoting, offering for sale, or selling, directly or indirectly, tickets, chances, interests, shares, or registrations in any lottery to any U.S. resident;

B. Purchasing or registering any ticket, chance, interest, or share in any lottery for any U. S. resident;

C. In connection with the advertising, marketing, proposed sale, or sale of any product or service to any U.S. resident, misrepresenting or omitting any fact material to a consumer's decision to purchase defendants' products or services;

D. In connection with telemarketing, as defined in the Telemarketing Sales Rule, 16 C.F.R. Part 310 ("the Rule"), to any U.S. resident, violating or assisting others to violate any provision of the Rule, including, but not limited to:

1. Making a false or misleading statement to induce any person to pay for any good or service in violation of Section 310.3(a)(4) of the Rule, 16 C.F.R. § 310.3(a)(4); and
2. Failing to disclose, in a clear and conspicuous manner, before a customer pays for any goods or services, all material restrictions, limitations, or conditions to receive those goods or services, in violation of Section 310.3(a)(1)(ii) of the Rule, 16 C.F.R. § 310.3(a)(1)(ii).

II.

DISCLOSURE OF CONSUMER LISTS

IT IS FURTHER ORDERED that defendant, and his officers, agents, servants, employees, and attorneys, and all other persons or entities in active concert or participation with him who receive actual notice of this Stipulated Order by personal service or otherwise, are permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise

1 disclosing the name, address, telephone number, credit card number, bank account number, e-
2 mail address, or other identifying information of any person who paid any money to any
3 defendant in this matter, at any time prior to entry of this order, in connection with promoting,
4 offering for sale, selling, or participating in the sale of, directly or indirectly, any interests,
5 holdings, or registrations in any foreign lottery or in any bond program with a lottery feature.
6 Provided, however, that defendant may disclose such identifying information to a law
7 enforcement agency or as required by any law, regulation, or court order.

8 **III.**

9 **CONSUMER REDRESS**

10 **IT IS FURTHER ORDERED** that Judgment is entered against defendant in the amount
11 of \$1,815,814.00 (USD).

12 A. Judgment shall be suspended upon release to the President and Chief Executive
13 Officer ("CEO") of the British Columbia Business Practices and Consumer Protection Authority
14 ("BPCPA") of the following assets:

- 15 1. \$21,500 (Cdn);
- 16 2. \$45,758.87 (USD) and \$101,652.34 (Cdn) in bank accounts; and
- 17 3. a 1987 Rolls Royce motor vehicle, B.C. License Plate 058 FCJ,
18 VIN: SCAZN02AXHCX20678.

19 B. This release, if it has not already occurred, shall be made within ten (10) days of
20 the entry of this Order. The CEO may deduct from these funds and any liquidated assets the
21 administrative and investigation costs of any action taken by the BPCPA against the defendants.
22 This Order is premised on payment by the CEO to the Federal Trade Commission of the
23 remaining funds and liquidated assets;

24 C. Defendant's agreement that all funds transferred to the Commission pursuant to
25 this Paragraph shall be deposited into a fund administered by the Commission or its agent to be
26 used for equitable relief, including but not limited to consumer redress and any attendant
27 expenses for the administration of any redress fund. If the Commission determines in its sole
28

1 discretion that redress to consumers is wholly or partially impracticable or funds remain after
2 redress is completed, the Commission may apply any remaining funds for such other equitable
3 relief, including consumer information remedies, as it determines to be reasonably related to the
4 defendant's practices alleged in the complaint. Any funds not used for such equitable relief shall
5 be deposited in the United States Treasury as disgorgement. Defendant shall have no right to
6 challenge the Commission's choice of remedies under this Paragraph.
7

8 **IV.**

9 **RIGHT TO REOPEN**

10 **IT IS FURTHER ORDERED** that, by agreeing to this Order, defendant reaffirms and
11 attests to the truthfulness, accuracy, and completeness of the Financial Disclosure Form executed
12 on March 20, 2006. Plaintiff's agreement to this Order is expressly premised upon the
13 truthfulness, accuracy, and completeness of defendant's financial condition as represented in the
14 Financial Disclosure Form referenced above, which contains material information upon which
15 plaintiff relied in negotiating and agreeing to the terms of this Order. If, upon motion by the
16 Commission, this Court finds that defendant failed to disclose any material asset, or materially
17 misrepresented the value of any asset, or made any other material misrepresentation in or
18 omission from the Financial Disclosure Form, the Court shall enter judgment against the
19 defendant in favor of the Commission, in the amount of \$1,815,814.00 (USD);
20 *Provided, however,* that in all other respects this Stipulated Order shall remain in full force and
21 effect unless otherwise ordered by the Court; and provided further, that proceedings instituted
22 under this Paragraph are in addition to and not in lieu of any other civil or criminal remedies as
23 may be provided by law, including any other proceedings the Commission may initiate to enforce
24 this Stipulated Order. Solely for purposes of this Paragraph, the defendant waives any right to
25 contest any of the allegations in the Commission's complaint.
26
27
28

V.

MONITORING COMPLIANCE OF SALES PERSONNEL

IT IS FURTHER ORDERED that defendant, in connection with any business where (1) defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where (2) the business is engaged in telemarketing to U.S. residents, or in assisting others engaged in said business, is hereby permanently restrained and enjoined from:

A. Failing to take reasonable steps sufficient to monitor and ensure that all employees and independent contractors engaged in sales or other customer service functions comply with Paragraph I of this Stipulated Order. Such steps shall include adequate monitoring of sales presentations or other calls with customers, and shall also include, at a minimum, the following: (1) listening to the oral representations made by persons engaged in sales or other customer service functions; (2) establishing a procedure for receiving and responding to consumer complaints; and (3) ascertaining the number and nature of consumer complaints regarding transactions in which each employee or independent contractor is involved; *provided* that this Paragraph does not authorize or require the defendant to take any steps that violate any federal, state, or local laws;

B. Failing promptly to investigate fully any consumer complaint received by any business to which this Paragraph applies; and

C. Failing to take corrective action with respect to any sales person whom defendant determines is not complying with this Stipulated Order, which may include training, disciplining, and/or terminating such sales person.

1 VI.

2 COMPLIANCE MONITORING

3 IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating
4 compliance with any provision of this Order,

5 A. Within ten (10) days of receipt of written notice from a representative of the
6 Commission, defendant shall submit additional written reports, sworn to under penalty of
7 perjury; produce documents for inspection and copying; appear for deposition; and/or provide
8 entry during normal business hours to any business location in such defendant's possession or
9 direct or indirect control to inspect the business operation;

10 B. In addition, the Commission is authorized to monitor compliance with this Order
11 by all other lawful means, including but not limited to the following:

- 12 1. obtaining discovery from any person, without further leave of court, using
13 the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
- 14 2. posing as consumers and suppliers to defendant or his employees, or any
15 other entity managed or controlled in whole or in part by defendant,
16 without the necessity of identification or prior notice;

17 C. Defendant shall permit representatives of the Commission to interview any
18 employer, consultant, independent contractor, representative, agent, or employee who has agreed
19 to such an interview, relating in any way to any conduct subject to this Stipulated Order. The
20 person interviewed may have counsel present.

21 *Provided, however,* that nothing in this Order shall limit the Commission's lawful use of
22 compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to
23 obtain any documentary material, tangible things, testimony, or information relevant to unfair or
24

1 deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. §
2 45(a)(1)).

3
4 **VII.**

5 **DISTRIBUTION OF ORDER BY DEFENDANT**

6 **IT IS FURTHER ORDERED** that eight (8) years from the date of entry of this Order,
7 defendant shall deliver copies of the Order as directed below:

8 A. Defendant as control person: For any business that defendant controls, directly or
9 indirectly, or in which defendant has a majority ownership interest, defendant must deliver a
10 copy of this Order to all principals, officers, directors, and managers of that business. Defendant
11 must also deliver copies of this Order to all employees, agents, and representatives of that
12 business who engage in conduct related to the subject matter of the Order. For current personnel,
13 delivery shall be within (5) days of service of this Order upon defendant. For new personnel,
14 delivery shall occur prior to them assuming their responsibilities.

15
16 B. Defendant as employee or non-control person: For any business where defendant
17 is not a controlling person of a business but otherwise engages in conduct related to the subject
18 matter of this Order, defendant must deliver a copy of this Order to all principals and managers
19 of such business before engaging in such conduct.

20
21 C. Defendant must secure a signed and dated statement acknowledging receipt of the
22 Order, within thirty days of delivery, from all persons receiving a copy of the Order pursuant to
23 this Paragraph.

24
25 **VIII.**

26 **COMPLIANCE REPORTING BY DEFENDANT**

27 **IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this
28 Stipulated Order may be monitored:

1 A. For a period of five (5) years from the date of entry of this Order,

2 1. Defendant shall notify the Commission of the following:

- 3 a. Any changes in defendant's residence, mailing addresses, and
4 telephone numbers, within ten (10) days of the date of such
5 change;
- 6 b. Any changes in defendant's employment status (including self-
7 employment) within ten (10) days of the date of such change. Such
8 notice shall include the name and address of each business that
9 defendant is affiliated with, employed by, or performs services for;
10 a statement of the nature of the business; and a statement of
11 defendant's duties and responsibilities in connection with the
12 business; and
- 13 c. Any changes in defendant's name or use of any aliases or fictitious
14 names.

15 B. One hundred eighty (180) days after the date of entry of this Stipulated Order,
16 defendant shall provide a written report to the FTC, sworn to under penalty of perjury, setting
17 forth in detail the manner and form in which he has complied and is complying with this Order.

18 This report shall include, but not be limited to:

- 19 1. Any changes required to be reported pursuant to subparagraph A. above;
- 20 2. A copy of each acknowledgment of receipt of this Order obtained by
21 defendant pursuant to Paragraph VII

22 C. For the purposes of this Order, defendant shall, unless otherwise directed by the
23 Commission's authorized representatives, mail all written notifications to the Commission to:
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25
26
27
28

Associate Director for Enforcement
Federal Trade Commission
601 New Jersey Ave., NW
Washington, DC 20580

Re: *FTC v. 627867 B.C. Ltd, D.B.A. Newport Group, et al.*, Civil Action No. C03-3166Z

D. For purposes of the compliance reporting required by this Paragraph, the Commission is authorized to communicate directly with defendant.

IX.

RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Stipulated Order, defendant, and defendant's agents, employees, officers, servants, corporations, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Stipulated Order by personal service or otherwise, in connection with any business where: (1) defendant is the majority owner of the business, or directly or indirectly manages or controls the business, and (2) the business is engaged in telemarketing to U.S. residents, or in assisting others engaged in said business, are hereby permanently restrained and enjoined from failing to create and retain, unless otherwise specified:

A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;

B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;

1 C. Customer files containing the names, addresses, phone numbers, dollar amounts
2 paid, quantity of items or services purchased, and description of items or services purchased, to
3 the extent such information is obtained in the ordinary course of business;

4 D. Complaints and refund requests (whether received directly, indirectly or through
5 any third party) and any responses to those complaints or requests; and
6

7 E. Copies of all sales scripts, training materials, advertisements, or other marketing
8 materials.

9 F. All records and documents necessary to demonstrate full compliance with each
10 provision of this Order, including but not limited to copies of acknowledgments of receipt of this
11 Order, required by Paragraph VII, and all reports submitted to the FTC pursuant to
12 Paragraph VIII.
13

14 X.

15 **ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT**

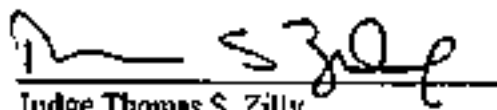
16 IT IS FURTHER ORDERED that defendant, within five (5) business days of receipt of
17 this Stipulated Order as entered by the Court, must submit to the Commission a truthful sworn
18 statement acknowledging receipt of this Order.
19

20 XI.

21 **RETENTION OF JURISDICTION**


22 IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for
23 purposes of construction, modification and enforcement of this Order.
24

25 SO ORDERED, this 4th day of August, 2006.

26
27 
28 Judge Thomas S. Zilly
United States District Judge

1 The parties hereby consent to the terms and conditions of the Stipulated Order as set forth
2 above and consent to the entry thereof. Defendant waives any rights that may arise under the
3 Equal Access to Justice Act, 28 U.S.C. § 2412, amended by Pub. L. 104-121, 110 Stat. 847, 863-
4 64 (1996).
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7 **FOR PLAINTIFF FEDERAL**
8 **TRADE COMMISSION:**

9 
10 Mary T. Benfield, WSPA #18835
11 Eleanor Durham
12 Attorneys for Plaintiff
13 Federal Trade Commission

14 **FOR DEFENDANT:**

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16 
17 Stephen Albert Ironside
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20 Dated: Aug. 30, 2006
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