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CENTRAL DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

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U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.

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FEDERAL TRADE COMMISSION,
Plaintiff,
v.
TREK ALLIANCE, INC., et al.,
Defendants.

Case No. **02-9270** (AJWx)
[Proposed]
TEMPORARY RESTRAINING ORDER
WITH ASSET FREEZE, APPOINTMENT OF
TEMPORARY RECEIVER, AND OTHER
EQUITABLE RELIEF, AND ORDER TO
SHOW CAUSE WHY A PRELIMINARY
INJUNCTION SHOULD NOT ISSUE AND A
PERMANENT RECEIVER SHOULD NOT BE
APPOINTED

Plaintiff Federal Trade Commission having filed its Complaint for a permanent injunction and other equitable relief in this matter pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), and having applied ex parte for a Temporary Restraining Order pursuant to Rule 65 of the Federal Rules of Civil Procedure, and the Court having considered the Complaint, Plaintiff's application, and the memorandum of points and authorities and other materials filed in support thereof, and now being advised in the premises, finds as follows:

1. This Court has jurisdiction of the subject matter of this case and there is good cause to believe it will have jurisdiction of all parties hereto, and that venue in this district is proper.

1 B. All computers and data in whatever form, used by
2 defendants, in whole or in part, relating to defendants' business
3 and assets.

4 XII.

5 APPOINTMENT OF TEMPORARY RECEIVER

6 IT IS FURTHER ORDERED that Robb Evans^{SL} is

7 appointed Temporary Receiver for Corporate Defendants Trek
8 Alliance, Inc., Trek Education Corporation, and VonFlagg
9 Corporation, and their affiliates and subsidiaries (hereinafter
10 referred to as the "Receivership Defendants"), with the full power
11 of an equity receiver. The Temporary Receiver shall be the agent
12 of this Court and solely the agent of this Court in acting as
13 Receiver under this Order. The Temporary Receiver shall be
14 accountable directly to this Court. The Temporary Receiver shall
15 comply with all Local Rules of this Court governing receivers.

16 XIII.

17 RECEIVERSHIP DUTIES

18 IT IS FURTHER ORDERED that the Temporary Receiver is directed
19 and authorized to perform and accomplish the following:

20 A. Assume full control of the Receivership Defendants by
21 removing, as the Receiver deems necessary or advisable, any
22 manager, independent contractor, employee, or agent of the
23 Receivership Defendants, including any and all of the Individual
24 Defendants, from control of, management of, or participation in,
25 the affairs of the Receivership Defendants;

26 B. Take exclusive custody, control and possession of all
27 assets and documents of, or in the possession, custody, or under
28 the control of, the Receivership Defendants, wherever situated.

5c

XII.

APPOINTMENT OF TEMPORARY RECEIVER

(cont'd from previous page)

5c Provided, however, that the Temporary Receiver shall, within 24 hours of taking control of all of the Receivership Defendants and their business premises, file and serve a declaration or report in which the Temporary Receiver or his duly appointed agent states whether he is persuaded, by clear and convincing evidence, (a) that the business of the Receivership Defendants is permeated by fraud, 5c and (b) ^{that} whether a substantial portion of the Receivership Defendants' assets are readily susceptible to dissipation or secretion, ^{including} ~~or~~ whether the Receivership Defendants have attempted to conceal or protect assets, by, e.g., movement to offshore accounts.

Provided further, that the appointment of the Temporary Receiver, and/or the Temporary Receiver's duties and responsibilities, shall be subject to rescission or modification based upon the Court's evaluation of the Temporary Receiver's report. 5c

1 shall in all instances first attempt to secure such information by
2 submitting a formal written request to the Temporary Receiver,
3 and, if such request has not been responded to within thirty (30)
4 days of receipt by the Temporary Receiver, any such person or
5 entity may thereafter seek an Order of this Court with regard to
6 the relief requested.

7 **XIX.**

8 **COMPENSATION OF TEMPORARY RECEIVER**

9 **IT IS FURTHER ORDERED** that the Temporary Receiver and all
10 personnel hired by the Temporary Receiver as herein authorized,
11 including counsel to the Temporary Receiver and accountants, are
12 entitled to reasonable compensation for the performance of duties
13 pursuant to this Order and for the cost of actual out-of-pocket
14 expenses incurred by them, from the assets now held by or in the
15 possession or control of or which may be received by the
16 Receivership Defendants. The Temporary Receiver shall file with
17 the Court and serve on the parties periodic requests for the
18 payment of such reasonable compensation, with the first such
19 request filed no more than sixty days after the date of this
20 Order. The Temporary Receiver shall not increase the hourly rates
21 used as the bases for such fee applications without prior approval
22 of the Court.

23 **XX.**

24 **RECEIVER'S BOND**

25 **IT IS FURTHER ORDERED** that the Temporary Receiver shall file
26 with the Clerk of this Court a bond in the sum of 10,000
27 with sureties to be approved by the Court, conditioned that the
28

1 John D. Jacobs
2 Jennifer M. Brennan
3 Federal Trade Commission
4 10877 Wilshire Blvd., #700
5 Los Angeles, CA 90024
6 Fax: (310).824-4380

7 **XXIV.**

8 **PRELIMINARY INJUNCTION HEARING**

9 **IT IS FURTHER ORDERED** that Defendants Trek Alliance, Inc.,
10 Trek Education Corporation, VonFlagg Corporation, Jeffrey Kale
11 Flagg, a/k/a Kale Flagg, Richard Von Alvensleben, a/k/a Rich Von,
12 Tiffani Von Alvensleben, a/k/a Tiffani Von, and Harry M. Flagg,
13 shall appear before this Court at 312³ N Spring St.
14 on the 23rd day of Dec^{5c}, 2002^{SL}, at 9:30^{5c} o'clock
15 a.m./p.m., to show cause, if any there be, why this Court should
16 not enter a preliminary injunction, pending final ruling on the
17 Complaint, against said Defendants enjoining them from violations
18 of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), imposing such
19 additional relief as may be appropriate, and appointing a
20 permanent receiver over Defendants Trek Alliance, Inc., Trek
21 Education Corporation, VonFlagg Corporation.

22 **IT IS FURTHER ORDERED** that, in support of its application for
23 a preliminary injunction, Plaintiff may submit supplemental
24 evidence discovered subsequent to the filing of its application
25 for a TRO, as well as a supplemental memorandum. Plaintiff shall
26 file and serve any supplemental evidence by no later than 4:30
27 p.m. on the sixth court day prior to the preliminary injunction
28 hearing as scheduled above. Such documents may be served on each
named Defendant by faxing or delivering the document(s) to the
attorney for the Defendant, or, if the Defendant is not

1 XXV.

2 EXPIRATION

3 IT IS FURTHER ORDERED that this Order shall expire as to each
4 named Defendant ten (10) court days after entry unless, within
5 such time, for good cause shown, it is extended for a like period,
6 or unless the named Defendant consents that it may be extended for
7 a longer period and the reasons therefor are entered of record.

8 XXVI.

9 SERVICE OF THIS ORDER

10 IT IS FURTHER ORDERED that copies of this Order may be served
11 by any means, including facsimile transmission, upon any financial
12 institution or other entity or person that may have possession,
13 custody, or control of any documents or assets of either
14 defendant, or that may be subject to any provision of this Order.

15
16 IT IS SO ORDERED, this ^{SC} 9th day of ^{SC} Dec, 200^{SC} 2, at
17 ^{SC} 2:00 o'clock a.m. ^{SC} p.m.

18 J SPENCER LETTS

19 Judge of the District Court

20 Presented by:

21 JOHN D. JACOBS
22 JENNIFER M. BRENNAN
23 Attorneys for Plaintiff
24 Federal Trade Commission
10877 Wilshire Blvd., Ste. #700
Los Angeles, CA 90024