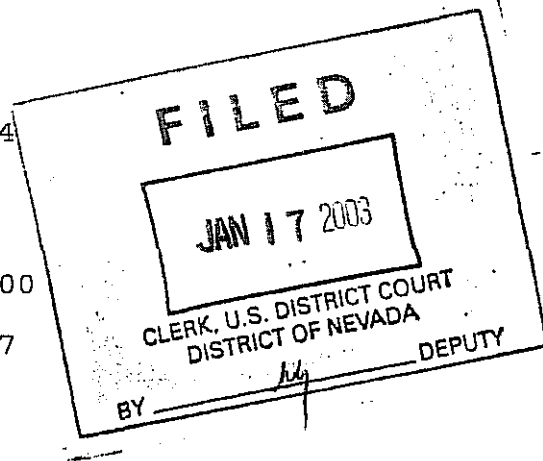


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11
12 UNITED STATES DISTRICT COURT
13 DISTRICT OF NEVADA

14 FEDERAL TRADE COMMISSION,

15 Plaintiff,

16 v.

17 NATIONAL AUDIT DEFENSE
18 NETWORK, INC., a Nevada
Corporation; TAX COACH, INC.,
19 a Nevada Corporation doing
business as TAX READY; ORYAN
20 MANAGEMENT, INC., a Nevada
Corporation;

21 ROBERT BENNINGTON,
22 individually and as an officer
of National Audit Defense
23 Network, Inc., and Tax Coach,
Inc.; CORT CHRISTIE,
24 individually and as an officer
of National Audit Defense
25 Network, Inc.; WESTON J.
26 COOLIDGE, individually and as
an officer of National Audit
27 Defense Network, Inc.; and AL
RODRIGUES, individually,

28 Defendants.

CV-S-02-0131-LRH-PAL

AMENDED COMPLAINT FOR
INJUNCTION AND OTHER
EQUITABLE RELIEF

52

1 Plaintiff, the Federal Trade Commission ("the FTC" or "the
2 Commission"), for its complaint alleges:

3 1. The FTC brings this action under Sections 5(a) and
4 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C.
5 §§ 45(a) and 53(b), and the Truth in Lending Act ("TILA"), 15
6 U.S.C. § 1601 et seq., to obtain permanent injunctive relief,
7 rescission or reformation of contracts, restitution,
8 disgorgement, and other equitable relief for defendants'
9 deceptive acts or practices in violation of Section 5(a) of the
10 FTC Act, 15 U.S.C. § 45(a), and Section 226.12(e) of Regulation
11 Z, 12 C.F.R. § 226.12(e), which implements the TILA.

12 JURISDICTION AND VENUE

13 2. Subject matter jurisdiction is conferred upon this
14 Court by 15 U.S.C. §§ 45(a) and 53(b), and 28 U.S.C. §§ 1331,
15 1337(a), and 1345.

16 3. Venue in the District of Nevada is proper under 15
17 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b) and (c).

18 PLAINTIFF

19 4. Plaintiff Federal Trade Commission is an independent
20 agency of the United States Government created by statute. 15
21 U.S.C. §§ 41 et seq. The Commission enforces Section 5(a) of the
22 FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive
23 acts or practices in or affecting commerce. The Commission may
24 initiate federal district court proceedings by its own attorneys
25 to enjoin violations of the FTC Act and to secure such equitable
26 relief as may be appropriate in each case, including restitution
27 for injured consumers. 15 U.S.C. § 53(b).

1 "any liability relating to or arising out of the business of"
2 NADN, including business prior to consummation of the agreement.
3 Oryan is a successor corporation to NADN and is liable for the
4 illegal practices alleged in this Complaint.

5 8. Defendant Robert Bennington ("Bennington") is or has
6 been an officer or director of NADN and Tax Ready. At times
7 material to this complaint, acting alone or in concert with
8 others, he has formulated, directed, controlled, or participated
9 in the acts and practices of the corporate defendants, including
10 the acts and practices set forth in this complaint. Bennington
11 resides and transacts business in the District of Nevada.

12 9. Defendant Cort Christie ("Christie") is or has been an
13 officer or director of NADN. At times material to this
14 complaint, acting alone or in concert with others, he has
15 formulated, directed, controlled, or participated in the acts and
16 practices of corporate defendant NADN, including the acts and
17 practices set forth in this complaint. Christie resides and
18 transacts business in the District of Nevada.

19 10. Defendant Al Rodrigues ("Rodrigues") is the general
20 manager of NADN and Tax Ready. At all times material to this
21 complaint, acting alone or in concert with others, he has
22 formulated, directed, controlled, or participated in the acts and
23 practices of the corporate defendants, including the acts and
24 practices set forth in this complaint. Rodrigues resides and
25 transacts business in the District of Nevada.

26 11. Defendant Weston J. Coolidge ("Coolidge") is an officer
27 or director of NADN. At times material to this complaint, acting
28 alone or in concert with others, he has formulated, directed,

1 controlled, or participated in the acts and practices of
2 corporate defendant NADN, including the acts and practices set
3 forth in this complaint. Coolidge resides and transacts business
4 in the District of Nevada.

5 COMMERCE

6 12. At times relevant to this complaint, defendants have
7 maintained a substantial course of business in the advertising,
8 promoting, offering for sale, and sale of various tax-related
9 programs and services, in or affecting commerce, as "commerce" is
10 defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

11 DEFENDANTS' BUSINESS PRACTICES

12 13. Since at least 1998, defendants have advertised,
13 promoted, offered for sale, and sold programs and services that
14 purport to assist consumers in reducing their tax liabilities,
15 and have provided tax audit services and tax preparation services
16 to consumers throughout the United States. Defendants have
17 promoted their tax-related services and programs to prospective
18 purchasers through a variety of media, including advertisements
19 on national radio talk shows.

20 14. In their advertisements, defendants have offered a free
21 tape or book of information that allegedly will assist consumers
22 in filling out and saving money on their tax returns. Defendants
23 have invited consumers to call defendants' toll-free telephone
24 number to obtain their book or tape.

25 15. Consumers who call defendants' toll-free telephone
26 number are ultimately connected to defendants' salespeople.
27 These salespeople represent to consumers that defendants provide
28 programs and services that will save consumers on their income

1 taxes. Defendants' programs cost from around \$400 to more than
2 \$1,400.

3 16. In connection with the advertising, promotion, offering
4 for sale, or sale of these programs and services, defendants have
5 offerd consumers an unconditional 30-day money-back guarantee. .
6 Defendants have represented that if consumers want to cancel the
7 purchase for any reason, they may do so within 30 days and
8 receive a full refund. Defendants have also told consumers that
9 if they are unable to achieve tax savings of \$3,000 after
10 implementing or using defendants' tax-saving strategies, they
11 will receive a full refund.

12 17. When describing these guarantees, defendants have
13 failed to disclose certain conditions. Before consumers are
14 eligible for a refund under the 30-day guarantee, they must
15 obtain a "return authorization" number from defendants. Before
16 consumers are eligible for a refund under the \$3,000 guarantee,
17 they must have attempted for one full year to implement
18 defendants' recommended tax-saving strategies, most of which
19 require the operation of a home business.

20 18. When consumers who meet the requirements of the
21 guarantees contact defendants to attempt to obtain a refund,
22 defendants have failed or refused to make such refunds, or
23 otherwise frustrated consumers in a variety of ways from
24 receiving refunds in a timely manner. If issued, many refunds
25 take an inordinate amount of time to be received. Some consumers
26 never receive a refund. Other consumers receive refunds only
27 through the intercession of law enforcement agencies or consumer
28 protection organizations such as the Better Business Bureau.

1 THE FEDERAL TRADE COMMISSION ACT

2 19. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a),
3 prohibits unfair or deceptive acts and practices in or affecting
4 commerce.

5 VIOLATIONS OF SECTION 5 OF THE FTC ACT

6 COUNT I

7 20. In the course of the advertising, promotion, offering
8 for sale, or sale of their tax-saving programs and services,
9 defendants have represented, expressly or by implication, that
10 they will provide refunds to consumers who request refunds
11 pursuant to defendants' money-back guarantees.

12 21. In truth and in fact, in many instances, defendants
13 have failed or refused to provide refunds to consumers who
14 request refunds pursuant to defendants' money-back guarantees.

15 22. Therefore, defendants' representations as set forth in
16 Paragraph 18 are false and misleading and constitute deceptive
17 acts or practices in violation of Section 5(a) of the FTC Act, 15
18 U.S.C. § 45(a).

19 COUNT II

20 23. In the course of the advertising, promotion, offering
21 for sale, or sale of their tax-saving programs and services,
22 defendants have represented, expressly or by implication, that
23 they will provide refunds in a timely manner to consumers who
24 request refunds pursuant to defendants' money-back guarantees.

25 24. In truth and in fact, in many instances, defendants
26 have failed or refused to provide refunds in a timely manner to
27 consumers who request refunds pursuant to defendants' money-back
28 guarantees.

1 25. Therefore, defendants' representations as set forth in
2 Paragraph 21 are false and misleading and constitute deceptive
3 acts or practices in violation of Section 5(a) of the FTC Act, 15
4 U.S.C. § 45(a).

5 THE TRUTH IN LENDING ACT

6 26. Section 166 of the TILA, 15 U.S.C. § 1666e, requires
7 creditors to promptly credit a consumer's credit card account
8 upon acceptance of the return of goods or forgiveness of the debt
9 for services. Section 226.12(e) of Regulation Z, which
10 implements Section 166 of the TILA, requires creditors to credit
11 a consumer's credit card account within seven business days from
12 accepting the return of property or forgiving a debt for
13 services. 12 C.F.R. § 226.12(e).

14 VIOLATION OF THE TRUTH IN LENDING ACT

15 COUNT III

16 27. National Audit Defense Network, Inc., and Tax Coach,
17 Inc. d/b/a Tax Ready, are creditors as that term is defined in
18 Section 103(f) of the TILA, 15 U.S.C. § 1602(f), and Section
19 226.2(a)(17)(ii) of Regulation Z, 12 C.F.R. § 226.2(a)(17)(ii).

20 28. In numerous instances, defendants NADN and Tax Ready
21 have failed to credit promptly consumers' credit card accounts
22 within seven business days from accepting the return of property
23 or forgiving a debt for services, and, therefore, violate Section
24 166 of the TILA, 15 U.S.C. § 1666(e), and Section 226.12(e) of
25 Regulation Z, 12 C.F.R. § 226.12(e).

26 CONSUMER INJURY

27 29. Consumers in many areas of the United States have
28 suffered substantial monetary loss as a result of defendants'

1 unlawful acts or practices. Absent injunctive relief by this
2 Court, defendants are likely to continue to injure consumers and
3 harm the public interest.

4 THIS COURT'S POWER TO GRANT RELIEF

5 30. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b),
6 empowers this Court to grant injunctive and other ancillary
7 relief, including consumer redress, disgorgement, and
8 restitution, to prevent and remedy any violations of any
9 provision of law enforced by the Commission.

10 31. This Court, in the exercise of its equitable
11 jurisdiction, may award other ancillary relief to remedy injury
12 caused by defendants' law violations.

13 PRAYER FOR RELIEF


14 WHEREFORE, plaintiff the Federal Trade Commission, pursuant
15 to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the
16 Court's own equitable powers, requests that the Court:

- 17 1. Award plaintiff such preliminary injunctive and
18 ancillary relief as may be necessary to avert the likelihood of
19 consumer injury during the pendency of this action and to
20 preserve the possibility of effective final relief;
- 21 2. Permanently enjoin defendants from violating the FTC
22 Act, the TILA, and Regulation Z as alleged herein;
- 23 3. Award such relief as the Court finds necessary to
24 redress injury to consumers resulting from defendants' violations
25 of the FTC Act, the TILA, and Regulation Z, including, but not
26 limited to, rescission or reformation of contracts, restitution,
27 the refund of monies paid, and the disgorgement of ill-gotten
28 monies; and

1 4. Award plaintiff the costs of bringing this action, as
2 well as such other and additional relief as the Court may
3 determine to be just and proper.

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5 Dated: December 27, 2002

Respectfully Submitted,
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