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11 ATTORNEYS FOR PLAINTIFF

12
13 UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

14
15 FEDERAL TRADE COMMISSION,

16 Plaintiff,

17 v.

18 CERKVENIK-ANDERSON TRAVEL, INC.,
doing business as College Tours, Student Tours,
and Mexico Tours; and

19 ANDY ANDERSON, individually and as an
20 officer of Cerkvenik-Anderson Travel, Inc.,

21 Defendants.

Civ. No.

COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER EQUITABLE
RELIEF

22 Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), for its Complaint alleges:

23 1. The Commission brings this action under Section 13(b) of the Federal Trade Commission
24 Act (“FTC Act”), 15 U.S.C. § 53(b), to obtain preliminary and permanent injunctive relief, restitution,
25 rescission or reformation of contracts, disgorgement, and other equitable relief for defendants’ deceptive
26 acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

1 **JURISDICTION AND VENUE**

2 2. This Court has subject matter jurisdiction pursuant to 15 U.S.C. §§ 45(a) and 53(b) and
3 28 U.S.C. §§ 1331, 1337(a), and 1345.

4 3. Venue in the United States District Court for the District of Arizona is proper under 15
5 U.S.C. § 53(b) and 28 U.S.C. § 1391(b) and (c).

6 **THE PARTIES**

7 4. Plaintiff, the Federal Trade Commission, is an independent agency of the United States
8 Government created by statute. 15 U.S.C. § 41 *et seq.* The Commission enforces Section 5(a) of the
9 FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting
10 commerce. The Commission may initiate federal district court proceedings to enjoin violations of the
11 FTC Act and to secure such equitable relief as is appropriate in each case, including redress and
12 disgorgement. 15 U.S.C. § 53(b).

13 5. Cerkvenik-Anderson Travel, Inc. (“CATI”), doing business as College Tours, Student
14 Tours, and Mexico Tours, is an Arizona for-profit corporation with its principal place of business as
15 2544 North 7th Street, Phoenix, Arizona 85006. CATI is a tour operator and travel agent that primarily
16 advertises, markets, promotes, arranges, offers to sell, and sells student spring break and graduation
17 vacation tours to Mexico to college and high school students. CATI transacts business in the District of
18 Arizona.

19 6. Andy Anderson (“Anderson”) is president of CATI. Individually or in concert with
20 others, at all times material to this Complaint, Anderson has formulated, directed, and controlled the
21 policies, acts, and practices of CATI, including the acts and practices set forth in this complaint. He
22 resides and transacts business in the District of Arizona.

23 **COMMERCE**

24 7. At all times relevant to this Complaint, defendants have maintained a substantial course
25 of conduct in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C.
26 § 44.

DEFENDANTS' COURSE OF CONDUCT

1
2 8. Since 1967, CATI, doing business as College Tours and Student Tours, has operated a
3 vacation tour company specializing in advertising, marketing, promoting, arranging, offering for sale, and
4 selling vacation tours to Mexico to high school and college students for graduation and spring break.
5 CATI advertises its student vacation tours nationwide through brochures, regional representatives,
6 student representatives on high school and college campuses, and through its Internet sites on the World
7 Wide Web (<http://www.studenttours.com> and <http://www.collegetours.com>).

8 9. Since at least 1997, in CATI's brochures and promotional and informational materials,
9 through its student and regional representatives, and on its Internet sites, defendants represent that
10 students who travel on CATI's student vacation tours to Mexico will receive the accommodation of their
11 choice from a selection of beachfront or beach view hotels from budget to deluxe, or will be provided
12 with accommodations at hotels of equal or better value and quality. CATI's brochures, solicitation
13 materials, and Internet sites include pictures and descriptions of the hotels available for students to
14 select and CATI bases the price of its student vacation tours to Mexico, in part, on the category of hotel
15 students choose and on the number of persons with whom the students choose to share a room. In most
16 instances, unless a student requests and pays to share a room with fewer than four roommates, the room
17 prices are based on four occupants.

18 10. Typical statements defendants' make regarding accommodations offered include, but are
19 not limited to, the following:

- 20 A. All Student Tours hotels are among the finest quality offered in each class of
21 service, and all hotels are beachfront or beachview properties.
22 B. Your hotel choice should be confirmed on your billing statement. In the unlikely
23 event that your hotel property is not available, you will be placed in a hotel of
24 equal or better quality at no additional charge.

25 11. Contrary to defendants' representations, in numerous instances, students who travel on
26 CATI's student vacation tours to Mexico do not receive the accommodation of their choice or
27 accommodation at hotels of equal or better value and quality. In fact, students frequently arrive at their
28 destination in Mexico, find that hotel rooms have not been reserved for them or have been overbooked,
and are placed in accommodations of inferior, and in some cases, substandard quality, sometimes far

1 from activities, shopping, or the beach, infested with insects or rodents, and without running water,
2 linens, or towels. In numerous instances, the number of occupants exceeds the number of available beds.

3 12. Since at least 1997, in CATI's brochures, promotional and informational materials,
4 through its student and regional representatives, and on its Internet sites, defendants represent that
5 students who travel on CATI's student vacation tours to Mexico will receive certain special benefits and
6 entertainment that CATI arranges or sponsors, including free meals and drinks, and free admission to
7 exclusive parties, clubs, restaurants, games, contests, fiestas, tours, and other social events. Defendants
8 also represent in numerous instances that students who purchase CATI wristbands or "VIP Passes" at an
9 additional cost of \$100 to \$160 will be given "VIP" treatment and will be entitled to substantial savings
10 and benefits upon presenting the wristbands or passes.

11 13. Typical statements defendants make regarding the special benefits and entertainment that
12 CATI arranges or sponsors include, but are not limited to, the following:

13
14 A. **By Day:** Contests, tournaments, discounted excursions and activities both on and
15 off the beach - all special for Student Tours' passengers only.

16 **Dinner Specials:** Student Tours' early evening fiestas! Discounted food, free
17 beverages, music and fun - at a different location every night. A great place to
18 meet someone new or get together with your friends after a long day on the beach.
19 Hosted by the best restaurants in town, only for our students - no one else receives
20 these discounts.

21 **By Night:** Private and exclusive dance parties! You'll be missing out if you are
22 not at these - at the hottest locations in town (and some of the best dance clubs in
23 the world). Hours of pure excitement every night. Student Tours can give you
24 these exclusive parties because we have special arrangements with all of the hot
25 spots at each of our destinations! These are not ordinary "nightly specials"
26 offered by the clubs - these weekly special events are offered only to our students.

27 B. **Over \$150 in savings included in your package!**

- 28 • Private Graduation Fiestas at Cancun's most popular restaurants and clubs
- Famous "Grad-Night" Celebration! Your special night includes three hours of free dining and dancing at Cancun's hottest beach clubs!
- Nightly club dancing at some of the best nightclubs in the world! Dady'O, Pat O'Brien's, Tequila Rock, and more!
- Exclusive discounted prices for Cancun's most popular weekly events
- Special Student Tours discounts and coupons at many of the best restaurants and shops in Cancun including Splash, Subway, McDonald's, ACA Joe's, Kodak, and much more!
- Discounted prices on snorkeling, parasailing, windsurfing, sailing, jet skiing, Jungle Tour, and more! . . .

1
2 C. **Your total Spring Break package includes:**

- 3 • Round-trip airfare to Cancun
4 • Round-trip airport-to-hotel transfers
5 • 7 nights hotel accommodations

6 **PLUS these exclusive College Tours “VIP Pass” benefits: . . .**

- 7 • FREE no cover passes at Fat Tuesdays, Senor Frog’s, Tequila Boom, and Top
8 Dady
9 • Private Spring Break fiestas at Cancun’s most popular night spots!
10 • College Tours EXCLUSIVE dance parties at some of the best clubs in the
11 world!
12 • College Tours/Dos Equis Spring Break Volleyball Challenge! Over \$10,000 in
13 cash plus other great weekly prizes. Beach events: Tan Contest, Sali Bali, and
14 more.

15
16 14. Contrary to defendants’ representations, in numerous instances, the special benefits and
17 entertainment that CATI arranges or sponsors as part of the vacation tour do not include the free meals,
18 drinks, and admission to exclusive parties and other social events defendants described, nor do the CATI
19 wristbands and “VIP Passes” enable students to gain free admission to exclusive parties, clubs,
20 restaurants, games, contests, fiestas, tours, and other social events as defendants described. In fact, in
21 numerous instances, persons at restaurants, clubs, and other establishments to whom students presented
22 their wristbands or “VIP Passes,” did not honor them.

23 15. Since at least 1997, in CATI’s brochures, promotional and informational materials,
24 through its student and regional representatives, and on its Internet sites, defendants represent that CATI
25 provides support, assistance, and a safe and secure environment for students who travel on CATI’s
26 student vacation tours to Mexico. Defendants further represent that they provide students who travel on
27 CATI’s student vacation tours with professional staff to assist students from the point of departure at the
28 airport until arrival back in the United States, a customer service office centrally located to the tour
groups in Mexico that is professionally staffed 24-hours a day to assist students, professional staff in
hotel lobbies to assist students in checking in and out of their hotel rooms and to assist with any
problems regarding hotel accommodations, and an English speaking, U.S.-trained doctor on call to assist
with medical emergencies.

1 16. Typical statements defendants make regarding the assistance and support CATI provides
2 to students who travel on CATI's student vacation tours to Mexico include, but are not limited to, the
3 following:

4 A.. TO PARENTS. . . Dear Mom & Dad, Our twenty-nine years of operating student
5 trips have taught us a lot about the first vacation in life after high school. We
6 know that students and parents have different concerns and expectations about our
7 trips and we feel a need to address both issues. Students want a trip that provides
8 as much fun and activity as possible. Parents want to feel safe about their student
9 traveling alone to Mexico. We have developed our trips with this in mind and
10 strive to accomplish both on our trips.

11 We include a lot of extras on our trips that you just don't find anywhere
12 else in the industry. For example, we have the best staff to student ratio in the
13 business: one staff to every 40 travelers. Our professional staff will assist the
14 Tour group from the point of departure until arrival back in the United States. Our
15 24-hour customer service office is centrally located and always available to help
16 with problems. We also have a doctor on call to handle medical troubles. We
17 provide this extra assistance because your student deserves a trouble-free
18 graduation trip while in Mexico! . . .

19 B. **Adult Professional Staff and Private Security** - We provide trained American
20 staff and private hotel security at each destination to assist you throughout your
21 trip. Our experienced staff will be present at all Student Tours functions and in
22 each hotel to provide assistance and answer questions. . . .

23 **24-hour Staff Office** at each destination maintained by our professional
24 American staff in one of the Student Tours hotels. The office is fully equipped to
25 serve our on-site program and is available to provide assistance day or night . . .
26 there will always be someone to talk to!

27 **U.S.-Trained Doctor On Call** - Student Tours provides a professional, qualified
28 doctor at each destination who is available to students, on call 24 hours a day.

29 C. **Your Grad Vacation Trip Includes:** . . .
30 • Welcome Orientation & Activity Briefing
31 • Professional Adult Staff on site
32 • Student Tours 24-Hour Customer Service Room in Cancun and
33 Mazatlan

34 D. You must go to the hotel that is assigned to you. Our staff will be in the hotel
35 lobby to check you in, so please do not go to the front desk.

36 17. Contrary to defendants' representations, in numerous instances, CATI does not provide
37 support, assistance, and a safe and secure environment for students who travel on CATI's student
38 vacation tours to Mexico. For example, students traveling on CATI's vacation tours routinely either

1 cannot find defendants' staff or defendants' staff refuses or ignores students' requests for assistance. On
2 numerous occasions, students were left stranded and uninformed for days at United States and Mexican
3 airports in situations where a flight was delayed; students often arrived in Mexico only to be herded onto
4 buses and left waiting for hours while defendants' staff searches for hotel availability because
5 defendants failed to reserve enough rooms or overbooked reservations. Students' requests for assistance
6 with hotel problems and medical assistance have been refused or ignored. Indeed, in numerous
7 instances, CATI's staff, if present at all, have been untrained, intoxicated, and unresponsive, and have
8 encouraged students, some of whom are minors, to participate in alcoholic drinking games and lewd
9 contests.

10 **DEFENDANTS' VIOLATIONS OF THE FTC ACT**

11 18. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), provides that "unfair or deceptive acts or
12 practices in or affecting commerce are hereby declared unlawful."

13 **COUNT I**

14 19. In numerous instances, since at least 1997, through the use of the statements referred to in
15 Paragraph 10, and others not specifically set forth herein, defendants have represented, expressly or by
16 implication, that consumers who travel on CATI's student vacation tours to Mexico will stay at the hotel
17 of their choice or will be placed in a hotel of equal or better value and quality, and will be placed in a
18 room with no more than four occupants.

19 20. In truth and in fact, in numerous instances, consumers who travel on CATI's student
20 vacation tours to Mexico do not stay at the hotel of their choice, are not placed in a hotel of equal or
21 better value and quality, and are not placed in a room with no more than four occupants.

22 21. Therefore, the representation set forth in Paragraph 19 is false and misleading and
23 constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

24 **COUNT II**

25
26
27 22. In numerous instances, since at least 1997, through the use of the statements referred to in
28 Paragraph 13, and others not specifically set forth herein, defendants have represented, expressly or by

1 implication, that consumers who travel on CATI's student vacation tours to Mexico will receive certain
2 special benefits and entertainment.

3 23. In truth and in fact, in numerous instances, consumers who travel on CATI's student
4 vacation tours to Mexico do not receive certain special benefits and entertainment arranged by
5 defendants.

6 24. Therefore, the representation set forth in Paragraph 22 is false and misleading and
7 constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

8 **COUNT III**

9 25. In numerous instances, since at least 1997, through the use of the statements referred to in
10 Paragraph 16, and others not specifically set forth herein, defendants have represented, expressly or by
11 implication, that CATI provides support, assistance, and a safe and secure environment for students who
12 travel on CATI's student vacation tours to Mexico.

13 26. In truth and in fact, in numerous instances, CATI does not provide support, assistance,
14 and a safe and secure environment for students who travel on CATI's student vacation tours to Mexico.

15 27. Therefore, the representation set forth in Paragraph 25 is false and misleading and
16 constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

17 **CONSUMER INJURY**

18 28. Consumers throughout the United States have suffered, and continue to suffer, substantial
19 monetary loss as a result of defendants' unlawful acts and practices. In addition, defendants have been
20 unjustly enriched as a result of their unlawful acts and practices. Absent injunctive relief, defendants are
21 likely to continue to injure consumers, reap unjust enrichment, and harm the public.

22 **THIS COURT'S POWER TO GRANT RELIEF**

23 29. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to issue a
24 permanent injunction against defendants' violations of the FTC Act and, in the exercise of its equitable
25 jurisdiction, to order such ancillary relief as a preliminary injunction, consumer redress, rescission,
26 restitution, and disgorgement of profits resulting from defendants' unlawful acts or practices, and other
27 remedial measures.

28 **PRAYER FOR RELIEF**

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

- 3 (1) Award plaintiff such preliminary injunctive and ancillary relief as may be necessary to
4 avert the likelihood of consumer injury during the pendency of this action and to preserve
5 the possibility of effective final relief, including but not limited to preliminary injunction;
- 6 (2) Permanently enjoin defendants from violating the FTC Act as alleged herein;
- 7 (3) Award all such relief as the Court finds necessary to remedy the defendants' violations of
8 the FTC Act, including, but not limited to, rescission or reformation of contracts, refund
9 of monies paid, and disgorgement of ill-gotten gains; and
- 10 (4) Award plaintiff the costs of bringing this action, as well as such other and additional
11 equitable relief as the Court may determine to be proper and just.

12 DATED: _____, 1999.

13 Respectfully submitted,

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15 DEBRA A. VALENTINE
16 General Counsel

17 CHARLES A. HARWOOD
18 Regional Director

19 _____
Nadine S. Samter

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21 _____
Mary T. Benfield

22 ATTORNEYS FOR PLAINTIFF
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