

Hon. Thomas S. Zilly

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON**

FEDERAL TRADE COMMISSION, STATE
OF ARIZONA, and STATE OF
WASHINGTON,

Plaintiffs,

v.

WIN USA SERVICES LTD.,
IRAL SERVICES INC.,
IRAL ENTERPRISES INC.,
MICHAEL GHIRRA, and
BOBBY GHIRRA,

Defendants,

and
HARI BANS GHIRRA,

Relief Defendant.

Civ. No. C98-1614Z

**FINAL JUDGMENT AND ORDER
FOR PERMANENT INJUNCTION**

Plaintiffs, the Federal Trade Commission ("FTC" or "Commission"), the State of Arizona, and the State of Washington have filed a motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. This Court, after considering the pleadings, testimony, declarations, exhibits, and memoranda of the parties, and now being advised in the premises, makes the following findings and enters the following Permanent Injunction:

1 **FINDINGS**

2 1. This Court has jurisdiction over the subject matter of this action and the parties
3 hereto;

4 2. The complaint states a claim upon which relief may be granted against all
5 defendants under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b);

6 3. There is no genuine issue as to any material fact concerning the liability of
7 defendants for the illegal practices charged in the Complaint;

8 4. Defendants, directly or through their telemarketers, have made false or misleading
9 statements to induce the purchase of lottery tickets or payment of money that include but are not
10 limited to the following:

- 11 a. the consumer has been specially selected as one of a small group to play for
12 a large cash award;
- 13 b. the consumer's odds of winning a large cash award are 1 in 6, or otherwise
14 very good, or guaranteed;
- 15 c. the consumer's chances of winning are enhanced by purchasing through
16 Win USA and IRAL;
- 17 d. the consumer has won and will receive a large cash award;
- 18 e. in order to receive the award, the consumer must pay hundreds or
19 thousands of dollars of "processing" or other fees.

20 5. Defendants, directly or through their telemarketers, have failed to disclose that the
21 sale and trafficking in foreign lotteries is a crime in the United States, with intent that others rely
22 on such concealment, suppression or omission;

23 6. Uncontroverted evidence establishes that defendants violated Section 5 of the
24 Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45, the Telemarketing Sales Rule, 16
25 C.F.R. Part 310 ("the Rule" or "TSR"), the Washington Unfair Business Practices-Consumer
26 Protection Act, RCW 19.86 *et seq.* ("Washington CPA"), the Washington Commercial Telephone
27 Solicitation Act, RCW 19.158 *et seq.* ("Washington CTSA") and the Arizona Consumer Fraud
28 Act, A.R.S. § 44-1521 *et seq.* ("Arizona CFA");

1 7. Defendants are likely to continue to engage in the activities alleged in the
2 Complaint unless they are permanently enjoined from such acts and practices;

3 8. Plaintiffs are entitled to judgment as a matter of law pursuant to Rule 56(c) of the
4 Federal Rules of Civil Procedure;

5 9. Plaintiffs are entitled to judgment against defendants in the amount of
6 \$3,189,373.69 (CAN), for which defendants are jointly and severally liable;

7 10. Plaintiffs are entitled to judgment against relief defendant Hari Bans Ghirra in the
8 amount of \$515,379.84 (CAN);

9 11. Entry of this Order is in the public interest.

10 **DEFINITIONS**

11 For the purpose of this Order, the following definitions shall apply:

12 1. "Person" means a natural person, organization or other legal entity, including a
13 corporation, partnership, proprietorship, association, cooperative, government or governmental
14 subdivision or agency, or any other group or combination acting as an entity;

15 2. "Defendants" means Win USA Services Ltd., IRAL Services Inc., IRAL
16 Enterprises Inc., Michael Ghirra, and Bobby Ghirra, as well as their successors and assigns,
17 directors, officers, agents, servants, employees, salespersons, independent contractors,
18 corporations, subsidiaries, affiliates and other persons directly or indirectly under their control or
19 in active concert or participation with them who receive actual notice of this Order by personal
20 service, facsimile or otherwise, whether acting directly or through any corporation, subsidiary,
21 division or other device; and

22 3. "Telemarketing" means a plan, program, or campaign that is conducted to induce
23 the purchase of goods or services by use of one or more telephones.

24 **I. CONDUCT PROHIBITIONS**

25 **IT IS THEREFORE ORDERED** that Defendants are hereby permanently restrained and
26 enjoined from:

27 A. Promoting, offering for sale, selling, or participating in the sale of, directly or
28 through any agent, tickets, chances, interests, or registrations in any lottery to U.S. residents;

1 B. Purchasing or registering any ticket, chance, interest, or share in any lottery for any
2 U.S. resident person, group of persons, or entity.

3 C. Promoting, offering for sale, selling, or participating in the sale of, directly or
4 through an agent, any product or service to U.S. residents in a manner that violates Section 5(a)
5 of the FTC Act, 15 U.S.C. § 45(a); Section 310.3(a) of the Telemarketing Sales Rule (TSR), 16
6 C.F.R. § 310.3(a); Section 44-1522(A) of the Arizona Consumer Fraud Act (Arizona CFA),
7 A.R.S. § 44-1522(A); Section 19.86.020 of the Washington Unfair Business Practices-Consumer
8 Protection Act (Washington CPS), RCW 19.86.020; and Sections 19.158.040 and 19.158.050 of
9 the Washington Commercial Telephone Solicitation Act (Washington CTSA), RCW
10 §§ 19.158.040 and 19.158.050, including but not limited to:

- 11 1. Making a false or misleading statement to induce any person to pay for any
12 good or service;
- 13 2. Failing to disclose, in a clear and conspicuous manner, before a customer
14 pays for any goods or services, all material restrictions, limitations, or
15 conditions to receive those goods or services; and
- 16 3. In connection with commercial telephone solicitations, as defined in RCW
17 19.158.020, to any Washington State resident, group of persons, or entity
18 by any defendant, failing to register as a commercial telephone solicitor
19 with the Washington State Department of Licensing as required by RCW
20 19.158.050.

21 **II. MONETARY RELIEF**

22 IT IS FURTHER ORDERED that:

23 A. Defendants, their successors and assigns, jointly and severally, shall pay consumer
24 redress in the amount of \$3,189,373.69 (CAN) pursuant to Sections 13(b) and 19 of the FTC
25 Act, 15 U.S.C. §§ 53(b) and 57b, and Sections 4(a) and 6(b) of the Telemarketing Act, 15 U.S.C.
26 § 6103(a) and 6105(b);

27 B. Relief defendant Hari Bans Ghirra shall pay consumer redress in the amount of
28 \$515,379 (CAN); these funds shall offset the amount set forth in Paragraph II.A. of this Order.

1 C. These payments shall be made in equivalent U.S. funds based on the effective
2 currency exchange rate on the date of entry of this Order, by certified or cashier's check, made
3 payable to the Federal Trade Commission, and delivered to the Regional Director, Federal Trade
4 Commission, 915 Second Avenue, Suite 2896, Seattle, Washington 98174. These funds will be
5 used to provide redress to consumers injured by Defendants' violations of the TSR, the FTC Act,
6 the Washington CPA, the Washington CTSA, and the Arizona CFA. If Plaintiffs determine, in
7 their sole discretion, that redress is wholly or partially impracticable, any funds not so used shall
8 first be applied toward attendant expenses of administration and costs of bringing this action as to
9 Plaintiff State of Arizona, in the amount of \$5,000 (U.S.), and as to Plaintiff State of Washington,
10 in the amount of \$18,000 (U.S.), and then shall be paid into the United States Treasury as
11 disgorgement. Defendants may be notified as to how funds are disbursed, but shall have no right
12 to contest the manner of distribution chosen by Plaintiffs.

13 III. RECORD KEEPING PROVISIONS

14 IT IS FURTHER ORDERED that:

15 A. For a period of three (3) years from the date of entry of this Order, Defendants, in
16 connection with any business in which any Defendant is the majority owner of the business or
17 directly or indirectly manages or controls the business, and where the business is engaged in
18 telemarketing, are hereby restrained and enjoined from failing to create and retain records
19 sufficient to demonstrate Defendants' compliance with this Order, including but not limited to,
20 records of every consumer complaint and refund request, whether received directly or indirectly
21 through any third party, and copies of all sales scripts, training materials, advertisements, and
22 other marketing materials used;

23 B. For purposes of determining or securing compliance with this Order, Defendants
24 shall permit, for a period of three (3) years from the date of entry of this Order, and upon
25 reasonable written notice to Defendants, representatives of the Federal Trade Commission, the
26 State of Arizona, and the State of Washington to access, inspect and/or copy all such records.

1 **IV. DISCLOSURE OF CUSTOMER LISTS**

2 IT IS FURTHER ORDERED that Defendants are hereby permanently restrained and
3 enjoined from using or providing to any person, the name, address, telephone number, Social
4 Security number, or credit card or bank account number of, or any other financial or personal
5 information disclosed by, any consumer who made a payment to defendants prior to the date of
6 entry of this Order, unless such disclosure is required by law or court order.

7 **V. COMPLIANCE REPORTING BY DEFENDANTS**

8 IT IS FURTHER ORDERED that for a period of three (3) years from the date of entry of
9 this Order:

10 A. Each Defendant shall notify Plaintiffs in writing of any employment or affiliation
11 with any new business involving the telemarketing of any product or service to U.S. residents,
12 including the new business' name and address, a statement of the nature of the business, and a
13 statement of Defendant's duties and responsibilities in connection with the business;

14 B. The individual Defendants shall notify Plaintiffs in writing of any proposed change
15 in the structure of the corporate Defendants' that may affect compliance obligations arising out of
16 this Order;

17 C. Within one hundred-eighty (180) days after the date of entry of this Order,
18 Defendants shall file a report, in writing, setting forth in detail the manner and form in which each
19 of them has complied with this Order; and

20 D. For purposes of this Order all notices and reports required of Defendants shall be
21 made to the following address:

22 Regional Director
23 Federal Trade Commission
24 915 Second Avenue, Suite 2896
Seattle, Washington 98174

25 **VI. ACKNOWLEDGMENT OF RECEIPT OF ORDER**

26 IT IS FURTHER ORDERED that, within five (5) business days after receipt by
27 Defendants of this Order as entered by the Court, Defendants shall each submit to Plaintiffs a
28 truthful sworn statement, in the form shown on Appendix A, that acknowledges receipt of this

1 Permanent Injunction and Final Judgment.

2 **VII. RETENTION OF JURISDICTION**

3 IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for the
4 purpose of enabling either of the parties to this Order to apply to the Court at any time for such
5 further orders or directives as may be necessary or appropriate for the interpretation or
6 modification of this Order, for the enforcement of compliance therewith, or for the punishment of
7 violations thereof.

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9 SO ORDERED, this _____ day of _____, 2000.

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HON. THOMAS S. ZILLY
13 United States District Judge

14 Presented by:

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MARY T. BENFIELD
17 ELEANOR DURHAM
18 Attorneys for Plaintiff
19 Federal Trade Commission

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SYDNEY K. DAVIS
21 Attorney for Plaintiff
22 State of Arizona

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PAULA SELIS
24 Attorney for Plaintiff
25 State of Washington
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