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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 2. There is good cause to believe that Defendants Trek
2 Alliance, Inc., Trek Education Corporation, VonFlagg Corporation,
3 Jeffrey Kale Flagg, a/k/a Kale Flagg, Richard Von Alvensleben,
4 a/k/a Rich Von, Tiffani Von Alvensleben, a/k/a Tiffani Von, and
5 Harry M. Flagg have engaged in and are likely to engage in acts
6 that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and
7 that the Commission is likely to prevail on the merits of this
8 action.

9 3. There is good cause to believe that immediate and
10 irreparable harm will result from Defendants' ongoing violations
11 of the FTC Act unless Defendants are restrained and enjoined by
12 Order of this Court.

13 4. There is good cause to believe that immediate and
14 irreparable damage to the Court's ability to grant effective final
15 relief for consumers in the form of monetary restitution will
16 occur from the sale, transfer, or other disposition or concealment
17 by defendants of assets or records unless defendants are
18 immediately restrained and enjoined by order of this Court, and
19 that in accordance with Fed. R. Civ. P. 65(b), the interests of
20 justice therefore require that this order be granted without prior
21 notice to defendants. There is thus good cause for relieving the
22 Commission of the duty to provide defendants with prior notice of
23 the Commission's application.

24 5. Good cause exists for the appointment of a Temporary
25 Receiver for corporate defendants Trek Alliance, Inc., Trek
26 Education Corporation, and VonFlagg Corporation.

27 6. Considering Plaintiff's likelihood of ultimate success
28 and weighing the equities, a Temporary Restraining Order ("Order")

1 with asset freeze, appointment of a Temporary Receiver and other
2 equitable relief is in the public interest.

3 7. No security is required of any agency of the United
4 States for issuance of a restraining order. Fed. R. Civ. P.
5 65(c).

6 **ORDER**

7 **DEFINITIONS**

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

10 1. "Plaintiff" means the Federal Trade Commission.

11 2. "Defendants" means Trek Alliance, Inc., Trek Education
12 Corporation, VonFlagg Corporation, Jeffrey Kale Flagg, a/k/a Kale
13 Flagg, Richard Von Alvensleben, a/k/a Rich Von, Tiffani Von
14 Alvensleben, a/k/a Tiffani Von, and Harry M. Flagg, and each of
15 them, by whatever names each might be known by, as well as their
16 successors, assigns, officers, agents, directors, servants,
17 employees, salespersons, independent contractors, attorneys,
18 corporations, subsidiaries, all other persons or entities directly
19 or indirectly under their control or under common control with any
20 of them, and all other persons or entities in active concert or
21 participation with any of them who receive actual notice of this
22 Order by personal service or otherwise, whether acting directly or
23 through any corporation, subsidiary, division, or other device,
24 including, but not limited to, fictitious business names;

25 3. "Corporate Defendants" refers to Trek Alliance, Inc.,
26 Trek Education Corporation, and VonFlagg Corporation.

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1 4. "Individual Defendants" refers to Richard Von
2 Alvensleben, a/k/a Rich Von, Tiffani Von Alvensleben, a/k/a
3 Tiffani Von, and Harry M. Flagg.

4 5. "Receivership Defendants" means corporate defendants Trek
5 Alliance, Inc., Trek Education Corporation, and VonFlagg
6 Corporation, their affiliates and subsidiaries, and any other
7 corporations or businesses under the control of any of the
8 corporate defendants.

9 6. "Marketing Program" includes, but is not limited to, any
10 multi-level marketing program, business investment opportunity,
11 pyramid marketing scheme, Ponzi scheme, or chain marketing scheme
12 that is marketed by any of the Defendants.

13 7. "Marketing Program Participant" means anyone who, under
14 a condition that he or she make a payment, is granted the right to
15 receive rewards in return for recruiting other people who are also
16 granted a license or right to receive rewards in return for
17 recruiting others, upon condition of making a payment, and may
18 further perpetuate the chain of person who are granted a right
19 upon such conditions.

20 8. "Material" means likely to affect a person's choice of,
21 or conduct regarding, goods or services.

22 9. "Assets" means any legal or equitable interest in, right
23 to, or claim to, any real or personal property, including, without
24 limitation, chattels, goods, instruments, equipment, fixtures,
25 general intangibles, leaseholds, mail or other deliveries,
26 inventory, checks, notes, accounts, credits, contracts,
27 receivables, shares of stock, and all cash, wherever located.

28

1 A. Representing, or assisting others in representing,
2 expressly or by implication, that persons who participate in such
3 programs will or are likely to receive substantial income from the
4 purchase of products or services by their "downline" --i.e, the
5 participant's recruits and the recruit's successive generation of
6 recruits--or the recruitment of additional participants;

7 B. Representing, or assisting others in representing,
8 expressly or by implication, that persons who participate in such
9 a program will or are likely to receive compensation related to
10 recruitment;

11 C. Representing, or assisting others in representing,
12 expressly or by implication, that persons who participate in such
13 a program will or are likely to receive compensation related to
14 the purchase or sale of goods or services, unless the payment of
15 such compensation is not prohibited by Section III of this Order;

16 D. Falsely representing, or assisting others in falsely
17 representing, expressly or by implication, that persons who
18 participate in such a program are likely to realize substantial
19 financial gain;

20 E. Falsely representing, or assisting others in falsely
21 representing, expressly or by implication, that salaried or
22 permanent employment opportunities are available; and

23 F. Falsely representing, or assisting others in falsely
24 representing, expressly or by implication, any other material
25 fact.

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1 II.

2 PROHIBITION AGAINST MATERIAL OMISSIONS

3 IT IS FURTHER ORDERED that Defendants and their successors,
4 assigns, officers, agents, servants, employees, and attorneys, and
5 those persons or entities in active concert or participation with
6 any of them who receive actual notice of this Order by personal
7 service or otherwise, whether acting directly or through any
8 corporation, subsidiary, division, or other device, in connection
9 with the offering for sale or sale of the right to participate in
10 any Marketing Program, are hereby temporarily restrained and
11 enjoined from failing to disclose, clearly and conspicuously,
12 before any consumer pays to become a Marketing Program
13 Participant, all information material to a consumer's decision to
14 participate in the Marketing Program, including but not limited to
15 the following:

16 A. The average amount of commissions, bonuses and overrides
17 received by all participants in the Marketing Program;

18 B. The number and percentage of current Marketing Program
19 Participants who have not received any commissions, bonuses or
20 overrides;

21 C. For each level or rank within the pay plan or
22 compensation structure of the Marketing Program, the number and
23 percentage of current Marketing Program Participants who have
24 reached that level or rank, and the average length of time it took
25 to reach that level; and

26 D. That the structure of the Marketing Program prevents the
27 vast majority of the Marketing Program Participants from receiving
28 substantial income from bonuses, commissions or overrides.

1 named Defendants; (3) held by an agent of any of the named
2 Defendants, as a retainer for the agent's provision of services to
3 a named Defendant; or (4) owned, controlled by, or in the actual
4 or constructive possession of, or otherwise held for the benefit
5 of, any corporation, partnership, or other entity directly or
6 indirectly owned or controlled by any of the named Defendants.

7 B. Opening or causing to be opened any safe deposit boxes
8 titled in the name of any of the named Defendants, or subject to
9 access by any of the named Defendants;

10 C. Incurring charges or cash advances on any credit or
11 debit card issued in the name, singly or jointly, any of the named
12 Defendants, or any corporation, partnership, or other entity
13 directly or indirectly owned or controlled by any of the named
14 Defendants; and

15 D. Failing to disclose to Plaintiff, immediately upon
16 service of this Order, information that fully identifies each
17 asset of the named Defendants, and each entity holding such asset,
18 including, without limitation, the entity's name, address, and
19 telephone number, the number of the account, and the name under
20 which the account is held.

21 E. Provided, that the freeze imposed in this Section shall
22 be construed to apply to assets that the Individual Defendants
23 acquire following service of this Order only if such assets are
24 derived from activity prohibited by this Order.

25 **V.**

26 **FINANCIAL REPORTS**

27 **IT IS FURTHER ORDERED** that within forty-eight hours after
28 service of this Order:

1 restrained and enjoined from destroying, erasing, mutilating,
2 concealing, altering, transferring or otherwise disposing of, in
3 any manner, directly or indirectly, any documents that relate to
4 the business practices or business or personal finances of any of
5 the Individual Defendants or the business practices or business
6 finances of any of the Corporate Defendants, including, but not
7 limited to, such documents as any contracts, accounting data,
8 correspondence, advertisements, computer tapes, discs or other
9 computerized records, books, written or printed records,
10 handwritten notes, telephone logs, telephone scripts, receipt
11 books, ledgers, personal and business canceled checks and check
12 registers, bank statements, appointment books, copies of federal,
13 state, or local business or personal income or property tax
14 returns.

15 **VII.**

16 **RECORD KEEPING**

17 **IT IS FURTHER ORDERED** that each of the Individual Defendants
18 is hereby temporarily restrained and enjoined from failing to make
19 and keep, and to provide to Plaintiffs' counsel promptly upon
20 request, an accurate accounting that, in reasonable detail,
21 accurately, fairly, and completely reflects his incomes,
22 disbursements, transactions, and use of money, beginning
23 immediately upon service or actual notice of this Order.

24 **VIII.**

25 **NOTIFICATION OF BUSINESS ACTIVITIES**

26 **IT IS FURTHER ORDERED** that each of the Individual Defendants
27 is hereby temporarily restrained and enjoined from creating,
28 operating, or exercising any control over any business entity,

1 including any partnership, limited partnership, joint venture,
2 sole proprietorship or corporation, without first serving on
3 counsel for the Commission a written statement disclosing the
4 following: (1) the name of the business entity; (2) the address
5 and telephone number of the business entity; (3) the names of the
6 business entity's officers, directors, principals, managers and
7 employees; and (4) a detailed description of the business entity's
8 intended activities.

9 **IT IS FURTHER ORDERED** that each of the Individual Defendants
10 shall notify the Commission at least seven (7) days prior to any
11 affiliation with any new or previously inactive business or
12 employment. Each notice shall include the defendant's new
13 business address and a statement of the nature of the new business
14 or employment and of his or her duties and responsibilities in
15 connection with that business or employment.

16 **IX.**

17 **FINANCIAL INSTITUTIONS**

18 **IT IS FURTHER ORDERED** that any financial or brokerage
19 institution, business entity, or person having possession,
20 custody, or control of any records of any of the named Defendants
21 or Receivership Defendants, or of any account, safe deposit box,
22 or other asset titled in the name of any of the named Defendants,
23 either individually or jointly or held for the benefit of any of
24 the named Defendants, or that has maintained any such account,
25 safe deposit box, or other asset at any time since January 1,
26 1999, shall:

27 A. Hold and retain within its control and prohibit the
28 transfer, encumbrance, pledge, assignment, removal, withdrawal,

1 dissipation, sale, or other disposal of any such account or other
2 asset, except for transfers or withdrawals authorized in writing
3 by counsel for Plaintiff, by the Temporary Receiver (with respect
4 to assets of any of the Receivership Defendants, or by further
5 order of this Court;

6 B. Deny access to any safe deposit box titled individually
7 or jointly in the name of any of the named Defendants or otherwise
8 subject to access by either defendant;

9 C. Provide to Plaintiff and to the Temporary Receiver,
10 within three (3) business days of notice of this Order, a sworn
11 statement setting forth:

12 1. The identification of each account or asset;

13 2. The balance of each account or a description of the
14 nature and value of each asset as of the close of business on the
15 day notification of this Order is received, and, if the account or
16 asset has been closed or moved, the balance or value removed and
17 the person or entity to whom it was transferred; and

18 3. the identification of any safe deposit box titled
19 in the name of or subject to access by any of the named
20 Defendants.

21 D. Upon request by counsel for Plaintiff or the Temporary
22 Receiver (with respect to assets held for any of the Receivership
23 Defendants), promptly provide Plaintiff or the Temporary Receiver
24 with copies of all records or other documentation pertaining to
25 such account or asset, including but not limited to originals or
26 copies of account applications, account statements, signature
27 cards, checks, drafts, deposit tickets, transfers to and from the
28 accounts, all other debit and credit instruments or slips,

1 currency transaction reports, 1099 forms, and safe deposit box
2 logs; and

3 E. At the direction of Plaintiff or the Temporary Receiver
4 appointed herein, and without further order of this Court, convert
5 any stocks, bonds, options, mutual funds, or other securities to
6 their cash equivalents.

7 **X.**

8 **REPATRIATION OF ASSETS**

9 **IT IS FURTHER ORDERED** that within five business days
10 following service of this Order, each of the named Defendants
11 shall,

12 A. Repatriate to the United States all funds, documents, or
13 assets in foreign countries held either: (1) by them; (2) for
14 their benefit; or (3) under their direct or indirect control,
15 jointly or singly;

16 B. The same business day as any repatriation under
17 paragraph A above,

18 1. notify plaintiffs and the Temporary Receiver of the
19 name and location of the financial institution or other entity
20 that is the recipient of such funds, documents, or assets; and

21 2. serve this Order on any such financial institution
22 or other entity;

23 C. Provide Plaintiff and the Temporary Receiver with a full
24 accounting of all funds, documents, and assets outside of the
25 territory of the United States held either: (1) by them; (2) for
26 their benefit; or (3) under their direct or indirect control,
27 jointly or singly; and

1 D. Hold and retain all repatriated funds, documents, and
2 assets and prevent any transfer, disposition, or dissipation
3 whatsoever of any such assets or funds.

4 **XI.**

5 **IMMEDIATE ACCESS TO DEFENDANTS' RECORDS**

6 **IT IS FURTHER ORDERED** that Defendants and their successors,
7 assigns, officers, agents, servants, employees, and attorneys, and
8 those persons in active concert or participation with any of them
9 who receive actual notice of this Order by personal service or
10 otherwise, whether acting directly or through any corporation,
11 subsidiary, division, or other device, and the Temporary Receiver,
12 shall allow Plaintiff's representatives immediate access to the
13 business premises, mail drops, storage facilities, and all other
14 business locations owned, controlled, or used by defendants,
15 including, but not limited to, 917 Tahoe Blvd., Suites #103 and
16 #208, Incline Village, Nevada, and 875 E. Patriot Blvd., Suite
17 205, Reno, Nevada. The purpose of the access shall be to effect
18 service and to inspect and copy materials relevant to this action.
19 Plaintiff shall have the right to remove documents from
20 Defendants' premises in order that they may be inspected,
21 inventoried, and copied. Plaintiff shall return any such removed
22 documents within three (3) business days, or such time-period that
23 is agreed upon by Plaintiff and Defendants. Defendants, to the
24 extent they are in possession of documents relevant to this
25 action, shall provide Plaintiff with any necessary means of access
26 to these documents, including without limitation keys and
27 combinations to locks, computer access codes, and storage area
28 access information;

1 **IT IS FURTHER ORDERED** that the Temporary Receiver shall
2 subsequently allow the Commission's representatives, the
3 representatives of the named Defendants, and the named Defendants
4 themselves, reasonable access to the business premises of the
5 Receivership Defendants. The purpose of this access shall be to
6 inspect and copy any and all books, records, accounts, and other
7 property owned by or in the possession of the Receivership
8 Defendant. The Temporary Receiver shall have the discretion to
9 determine the time and manner of this access.

10 **IT IS FURTHER ORDERED** that if, at the time of service of this
11 Order, any records or property relating to Defendants' business or
12 assets are located in the personal residence of any of the named
13 Defendants, then such Defendant shall, within forty-eight (48)
14 hours of service of this Order, produce to Plaintiff, at a
15 location designated by Plaintiff:

16 A. All contracts, accounting data, written or electronic
17 correspondence, advertisements, computer tapes, discs, or other
18 computerized or electronic records, books, written or printed
19 records, handwritten notes, telephone logs, telephone scripts,
20 telephone bills, receipt books, ledgers, membership records and
21 lists, refund records, receipts, ledgers, bank records (including
22 personal and business monthly statements, canceled checks, records
23 of wire transfers, and check registers), appointment books, copies
24 of federal, state, and local business or personal income or
25 property tax returns, 1099 forms, title records, and other
26 documents or records of any kind that relate to defendants'
27 business and assets; and
28

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 The Temporary Receiver shall have full power to divert mail and to
2 sue for, collect, receive, take in possession, hold, and manage
3 all assets and documents of the Receivership Defendants and other
4 persons or entities whose interests are now held by or under the
5 direction, possession, custody, or control of the Receivership
6 Defendants. Provided, however, the Temporary Receiver shall not
7 attempt to collect any amount from any sales representative of the
8 Receivership Defendants.

9 C. Take all steps necessary to secure all premises owned,
10 rented, leased, or otherwise controlled by the Receivership
11 Defendants, including but not limited to all such premises located
12 at 917 Tahoe Blvd., Suites #103 and #208, Incline Village, Nevada,
13 and 875 E. Patriot Blvd., Suite 205, Reno, Nevada. Such steps may
14 include, but are not limited to, the following as the Temporary
15 Receiver deems necessary or advisable: (1) serving and filing this
16 Order; (2) completing a written inventory of all receivership
17 assets; (3) obtaining pertinent information from all employees and
18 other agents of the Receivership Defendants, including, but not
19 limited to, the name, home address, social security number, job
20 description, method of compensation, and all accrued and unpaid
21 commissions and compensation of each such employee or agent;
22 (4) video taping all portions of the location; (5) securing the
23 location by changing the locks and disconnecting any computer
24 modems or other means of access to the computer or other records
25 maintained at that location; or (6) requiring any persons present
26 on the premises at the time this Order is served to leave the
27 premises, to provide the Temporary Receiver with proof of
28 identification, or to demonstrate to the satisfaction of the

1 Temporary Receiver that such persons are not removing from the
2 premises documents or assets of the Receivership Defendants;

3 D. Conserve, hold, and manage all receivership assets, and
4 perform all acts necessary or advisable to preserve the value of
5 those assets, in order to prevent any irreparable loss, damage, or
6 injury to consumers or to creditors of the Receivership
7 Defendants, including, but not limited to, obtaining an accounting
8 of the assets and preventing transfer, withdrawal, or
9 misapplication of assets;

10 E. Enter into contracts and purchase insurance as advisable
11 or necessary;

12 F. Prevent the inequitable distribution of assets and to
13 determine, adjust, and protect the interests of consumers and
14 creditors who have transacted business with the Receivership
15 Defendants;

16 G. Manage and administer the business of the Receivership
17 Defendants until further order of this Court by performing all
18 incidental acts that the Temporary Receiver deems to be advisable
19 or necessary, which includes retaining, hiring, or dismissing any
20 employees, independent contractors, or agents;

21 H. Choose, engage, and employ attorneys, accountants,
22 appraisers, and other independent contractors and technical
23 specialists, as the Temporary Receiver deems advisable or
24 necessary in the performance of duties and responsibilities under
25 the authority granted by this Order;

26 I. Make payments and disbursements from the receivership
27 estate that are necessary or advisable for carrying out the
28 directions of, or exercising the authority granted by, this Order.

1 The Temporary Receiver shall apply to the Court for prior approval
2 of any payment of any debt or obligation incurred by the
3 Receivership Defendants prior to the date of entry of this Order,
4 except payments that the Temporary Receiver deems necessary or
5 advisable to secure assets of the Receivership Defendants, such as
6 rental payments;

7 J. Determine and implement the manner in which the
8 Receivership Defendants will comply with, and prevent violations
9 of, this Order and all other applicable laws;

10 K. Institute, compromise, adjust, appear in, intervene in,
11 or become party to such actions or proceedings in state, federal
12 or foreign courts that the Temporary Receiver deems necessary and
13 advisable to preserve or recover the assets of the Receivership
14 Defendants or that the Temporary Receiver deems necessary and
15 advisable to carry out the Temporary Receiver's mandate under this
16 Order;

17 L. Defend, compromise, adjust, or otherwise dispose of any
18 or all actions or proceedings instituted in the past or in the
19 future against the Temporary Receiver in his role as Temporary
20 Receiver, or against the Receivership Defendants that the
21 Temporary Receiver deems necessary and advisable to preserve the
22 assets of the Receivership Defendants or that the Temporary
23 Receiver deems necessary and advisable to carry out the Temporary
24 Receiver's mandate under this Order;

25 M. Issue subpoenas to obtain documents and records
26 pertaining to the receivership, and conduct discovery in this
27 action on behalf of the receivership estate;

1 N. Open one or more bank accounts as designated
2 depositories for funds of the Receivership Defendants. The
3 Temporary Receiver shall deposit all funds of the Receivership
4 Defendants in such a designated account and shall make all
5 payments and disbursements from the receivership estate from such
6 an account; and

7 O. Maintain accurate records of all receipts and
8 expenditures that s/he makes as Temporary Receiver.

9 **XIV.**

10 **COOPERATION WITH THE TEMPORARY RECEIVER**

11 **IT IS FURTHER ORDERED** that Defendants, and their agents,
12 servants, employees, and attorneys, and all persons or entities
13 directly or indirectly under the control of either of them, and
14 all other persons or entities in active concert or participation
15 with either of them who receive actual notice of this Order by
16 personal service or otherwise, and each such person, shall fully
17 cooperate with and assist the Temporary Receiver. Such
18 cooperation and assistance shall include, but not be limited to,
19 providing any information to the Temporary Receiver that the
20 Temporary Receiver deems necessary to exercising the authority and
21 discharging the responsibilities of the Temporary Receiver under
22 this Order; providing any password required to access any computer
23 or electronic files in any medium; or advising all persons who owe
24 money to the Receivership Defendants (other than sales
25 representatives) that all debts should be paid directly to the
26 Temporary Receiver. Defendants are hereby temporarily restrained
27 and enjoined from directly or indirectly:
28

1 A. Transacting any of the business of the Receivership
2 Defendants, or transacting business under the name Trek, Trek
3 Alliance, Inc., Trek Education Corporation, TEC, VonFlagg
4 Corporation, or any substantially similar name;

5 B. Destroying, secreting, defacing, transferring, or
6 otherwise altering or disposing of any documents of the
7 Receivership Defendants, including, but not limited to, books,
8 records, accounts, or any other papers of any kind or nature;

9 C. Transferring, receiving, altering, selling, encumbering,
10 pledging, assigning, liquidating, or otherwise disposing of any
11 assets owned, controlled, or in the possession or custody of, or
12 in which an interest is held or claimed by, the Receivership
13 Defendants, or the Temporary Receiver;

14 D. Excusing debts owed to the Receivership Defendants;

15 E. Failing to notify the Temporary Receiver of any asset,
16 including accounts, of a Receivership Defendants held in any name
17 other than the name of the Receivership Defendants, or by any
18 person or entity other than the Receivership Defendants, or
19 failing to provide any assistance or information requested by the
20 Temporary Receiver in connection with obtaining possession,
21 custody, or control of such assets; or

22 F. Doing any act or refraining from any act whatsoever to
23 interfere with the Temporary Receiver's taking custody, control,
24 possession, or managing of the assets or documents subject to this
25 receivership; or to harass or interfere with the Temporary
26 Receiver in any way; or to interfere in any manner with the
27 exclusive jurisdiction of this Court over the assets or documents
28 of the Receivership Defendants; or to refuse to cooperate with the

1 Temporary Receiver or the Temporary Receiver's duly authorized
2 agents in the exercise of their duties or authority under any
3 Order of this Court.

4 **XV.**

5 **DELIVERY OF RECEIVERSHIP PROPERTY**

6 **IT IS FURTHER ORDERED** that:

7 A. Immediately upon service of this Order upon them, or
8 within a period permitted by the Temporary Receiver, the
9 Individual Defendants and all other persons in possession,
10 custody, and control of assets or documents of the Receivership
11 Defendants shall transfer or deliver possession, custody, and
12 control of the following to the Temporary Receiver:

13 1. All assets of the Receivership Defendants;

14 2. All documents of the Receivership Defendants,
15 including, but not limited to, books and records of accounts, all
16 financial and accounting records, balance sheets, income
17 statements, bank records (including monthly statements, canceled
18 checks, records of wire transfers, and check registers), client
19 lists, title documents and other papers;

20 3. All assets belonging to members of the public now
21 held by the Receivership Defendants; and

22 4. All keys and codes necessary to gain or to secure
23 access to any assets or documents of the Receivership Defendants,
24 including, but not limited to, access to their business premises,
25 means of communication, accounts, computer systems, or other
26 property.

27 B. In the event any person or entity fails to deliver or
28 transfer any asset or otherwise fails to comply with any provision

1 of this Paragraph, the Temporary Receiver may file, on an ex parte
2 basis, an Affidavit of Non-Compliance regarding the failure. Upon
3 filing of the affidavit, the Court may authorize, without
4 additional process or demand, Writs of Possession or Sequestration
5 or other equitable writs requested by the Temporary Receiver. The
6 writs shall authorize and direct the United States Marshal or any
7 sheriff or deputy sheriff of any county (pursuant to Fed. R. Civ.
8 P. 4(c)(1)) to seize the asset, document, or other thing and to
9 deliver it to the Temporary Receiver.

10 **XVI.**

11 **BANKRUPTCY PETITIONS**

12 **IT IS FURTHER ORDERED** that, in light of the asset freeze and
13 appointment of the Temporary Receiver, each of the Individual
14 Defendants is hereby prohibited from filing, or causing to be
15 filed, on behalf of either him- or herself or of any of the
16 Corporate or Receivership Defendants, a petition for relief under
17 the United States Bankruptcy Code, 11 U.S.C. § 101 et seq.,
18 without prior permission from this Court.

19 **XVII.**

20 **TRANSFER OF FUNDS TO THE TEMPORARY RECEIVER**

21 **IT IS FURTHER ORDERED** that, upon service of a copy of this
22 Order, all banks, broker-dealers, savings and loans, escrow
23 agents, title companies, commodity trading companies, or other
24 financial institutions shall cooperate with all reasonable
25 requests of the Temporary Receiver relating to implementation of
26 this Order, including transferring funds at his direction and
27 producing records related to the assets of the Receivership
28 Defendants.

1 **XVIII.**

2 **STAY OF ACTIONS**

3 **IT IS FURTHER ORDERED** that:

4 A. Except by leave of this Court, during pendency of the
5 receivership ordered herein, Defendants and all other persons and
6 entities (except for Plaintiff) be and hereby are stayed from
7 taking any action to establish or enforce any claim, right, or
8 interest for, against, on behalf of, in, or in the name of, any of
9 the Corporate Defendants, or any of its assets, or the Temporary
10 Receiver or the Temporary Receiver's duly authorized agents acting
11 in their capacities as such, including, but not limited to, the
12 following actions:

13 1. Commencing, prosecuting, continuing, entering, or
14 enforcing any suit or proceeding, except that such actions
15 may be filed to toll any applicable statute of limitations;

16 2. Accelerating the due date of any obligation or
17 claimed obligation; filing or enforcing any lien; taking or
18 attempting to take possession, custody, or control of any
19 asset; attempting to foreclose, forfeit, alter, or terminate
20 any interest in any asset, whether such acts are part of a
21 judicial proceeding, are acts of self-help, or otherwise;

22 3. Executing, issuing, serving, or causing the
23 execution, issuance or service of, any legal process,
24 including, but not limited to, attachments, garnishments,
25 subpoenas, writs of replevin, writs of execution, or any
26 other form of process whether specified in this Order or not;
27 or
28

1 4. Doing any act or thing whatsoever to interfere with
2 the Temporary Receiver taking custody, control, possession,
3 or management of the assets or documents subject to this
4 receivership, or to harass or interfere with the Temporary
5 Receiver in any way, or to interfere in any manner with the
6 exclusive jurisdiction of this Court over the assets or
7 documents of the Receivership Defendants.

8 B. This paragraph does not stay:

9 1. The commencement or continuation of a criminal
10 action or proceeding;

11 2. The commencement or continuation of an action or
12 proceeding by a governmental unit to enforce such
13 governmental unit's police or regulatory power;

14 3. The enforcement of a judgment, other than a money
15 judgment, obtained in an action or proceeding by a
16 governmental unit to enforce such governmental unit's police
17 or regulatory power;

18 4. The commencement of any action by the Secretary of
19 the United States Department of Housing and Urban Development
20 to foreclose a mortgage or deed of trust in any case in which
21 the mortgage or deed of trust held by the Secretary is
22 insured or was formerly insured under the National Housing
23 Act and covers property, or combinations of property,
24 consisting of five or more living units; or

25 5. The issuance to a Receivership Defendants of a
26 notice of tax deficiency.

27 C. Except as otherwise provided in this Order, all persons
28 and entities in need of documentation from the Temporary Receiver

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 Temporary Receiver will well and truly perform the duties of the
2 office and abide by and perform all acts the Court directs.

3 **XXI.**

4 **DISTRIBUTION OF ORDER**

5 **IT IS FURTHER ORDERED** that named Defendants shall immediately
6 provide a copy of this Order to each of the Corporate Defendants'
7 affiliates, franchises, subsidiaries, divisions, successors,
8 assigns, directors, officers, managing agents, employees,
9 representatives, and independent contractors and shall, within
10 three (3) business days from the date of service of this Order,
11 serve on plaintiff affidavits identifying the names, titles,
12 addresses, and telephone numbers of the persons and entities whom
13 they have served pursuant to this provision. The Temporary
14 Receiver has no obligation under this provision.

15 **XXII.**

16 **CREDIT REPORTS**

17 **IT IS FURTHER ORDERED** that Plaintiff may obtain credit
18 reports concerning any of the named Defendants pursuant to Section
19 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. §
20 1681b(a)(1), and that, upon written request, any credit reporting
21 agency from which such reports are requested shall provide them to
22 Plaintiff.

23 **XXIII.**

24 **CORRESPONDENCE**

25 **IT IS FURTHER ORDERED** that, for the purposes of this Order,
26 all correspondence and service of pleadings on Plaintiff shall be
27 addressed to:

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, 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 represented by counsel, to a fax number previously designated by
2 the defendant in writing to counsel for Plaintiff; if the
3 defendant has not so designated a fax number, service may be
4 effected by mailing the documents to an address designated in
5 writing by the Defendant to counsel for Plaintiff; if no address
6 has been so designated, service shall be complete upon filing of
7 the documents with this Court.

8 **IT IS FURTHER ORDERED** that named Defendants shall file and
9 serve any opposition to the issuance of a preliminary injunction
10 and the appointment of a permanent receiver over Defendants Trek
11 Alliance, Inc., Trek Education Corporation, VonFlagg Corporation,
12 including any declarations, exhibits, memoranda or other evidence
13 on which they intend to rely, and objections to any evidence
14 submitted by Plaintiff, by no later than 4:30 p.m. of the fourth
15 court day prior to the hearing on the preliminary injunction.
16 Such documents may be served by fax upon Plaintiff's counsel.

17 **IT IS FURTHER ORDERED** that Plaintiff shall file and serve any
18 reply to Defendants' opposition by no later than the second court
19 day prior to the preliminary injunction hearing.

20 **IT IS FURTHER ORDERED** that there will be no direct
21 examination of witnesses at the preliminary injunction hearing in
22 this matter. Direct testimony shall be presented in the form of
23 declarations or affidavits.

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