

No. _____

IN THE MATTER OF:

STATE OF TEXAS	§	IN THE DISTRICT COURT OF
	§	
AND	§	TRAVIS COUNTY, T E X A S
	§	
WORLD AVENUE U.S.A., LLC,	§	
Respondent	§	
	§	_____ JUDICIAL DISTRICT

ASSURANCE OF VOLUNTARY COMPLIANCE

THE STATE OF TEXAS (“State”) acting by and through Attorney General Greg Abbott, and Respondent World Avenue USA, LLC (“World Avenue”), hereby agree to and respectfully submit for the Court’s approval and filing in accordance with, TEX. BUS. & COM. CODE ANN. § 17.58 (Vernon Supp. 2007), this Assurance of Voluntary Compliance (“Assurance”).

STIPULATIONS

The parties, through their respective attorneys, make the following stipulations:

1. The Office of the Attorney General (“OAG”) has investigated certain potential claims and causes of action under the Texas Deceptive Trade Practices – Consumer Protection Act, TEX. BUS. & COM. CODE. ANN. §§ 17.41 *et seq.* (Vernon 1987 and Supp. 2007) (“DTPA”) related to World Avenue potentially having failed to Clearly and Conspicuously disclose material information associated with the receipt and retention of goods or services World Avenue represented as “FREE.”
2. World Avenue denies having done or participated in any of the activities set forth in paragraph 1 above, denies that it has violated any law, and, by agreeing to this Assurance, wishes to help develop and implement industry-wide best practices standards.

3. The OAG and World Avenue agree to and do not contest the entry of the Assurance by this Court;
4. The signatory hereto is counsel for World Avenue; he is authorized to sign this Assurance on behalf of World Avenue; and, he has read the Assurance and agrees to entry of same on behalf of World Avenue;
5. The OAG has jurisdiction in this matter under section 17.47 of the DTPA;
6. The venue of this cause is proper in Travis County; and
7. Except for the parties expressly named in this Assurance, this Assurance in no way affects any individual's right of action under the DTPA.

DEFINITIONS

It is further stipulated for purposes of this Assurance, the following definitions will apply:

8. "Advertising" or "Advertisement(s)" means any message created, published and/or distributed under the direction or control of World Avenue to the general public or any segment thereof, including but not limited to communications made through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online services, and software), and communications made in print, which includes but is not limited to letters, pamphlets, flyers, newspapers, magazines, periodicals, and books.
9. "Assisting Others" means knowingly formulating or providing, or arranging for the formulation or provision of, any marketing materials.
10. "Clear and Conspicuous" or "Clearly and Conspicuously" means that a statement, representation, claim or term is
 - A. of sufficient prominence in terms of size, placement, color, contrast, duration of

appearance, sound and speed, as to be readily noticeable and reasonably understandable by a person to whom it is directed;

- B. presented to the person(s) to whom it is directed in a coherent and meaningful sequence with respect to other representations, statements, claims, or terms conveyed;
 - C. not contradictory to any representations, statements, claims, or terms it purports to clarify, modify, or explain, or otherwise contradictory or confusing in relation to any other representations, statement, claim, or term being conveyed;
 - D. commonly understood by Consumers;
 - E. free of technical or legal jargon; and
 - F. presented in such a way as to be free of distractions, including but not limited to sound, graphics, or text, that compete for the attention of the Consumer.
11. "Close Proximity" shall mean, in the case of Advertisements disseminated by means of an interactive electronic medium such as software, the Internet, or online services, on the same webpage, online service page, or other electronic page, and proximate to the triggering representation and shall not include disclosures accessed or displayed through hyperlinks, pop-ups, interstitials, or other means.
12. "Consumer" as used herein means a consumer who is a resident of the State of Texas.
13. "Consumer Incentive" means a gift or reward in any form, including but not limited to money, goods or services.
14. "Incentive Promotion Offer" is an offer created and controlled by World Avenue or an authorized agent on behalf of World Avenue directed to a Consumer, offering the

Consumer a Consumer Incentive for “Free,” as a “Gift” or in another manner meant to convey the impression that a product or service is without cost, in exchange for completing one or more Sponsor Offer(s). For the avoidance of doubt, a traditional rewards or loyalty program (e.g., American Airlines Miles) is not an Incentive Promotion Offer.

15. “Landing Page” means the first Web page that a visitor reaches after clicking an Advertisement, a search engine listing, or hyperlink.
16. “Marketing Partner” means any third party with which World Avenue has an agreement under which World Avenue compensates that third party, directly or indirectly, in exchange for that third party’s advertising, promoting, offering or selling any of World Avenue’s Incentive Promotion Offers.
17. “Person” means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.
18. “World Avenue” means World Avenue U.S.A., LLC and includes its parents, subsidiaries, officers, agents, servants, employees, successors and assigns as well as any other persons acting on its behalf who receive actual notice of this Assurance by personal service or otherwise.
19. “Sponsor Offers” are offers that World Avenue advertises on behalf of either third-party advertisers or World Avenue, one or more of which a Consumer must complete as part of the requirements of an Incentive Promotion Offer.

RELIEF

20. In consideration of the releases described below and the other agreements contained herein, the Parties agree as follows:

A. World Avenue or any of its agents, acting on behalf of World Avenue, will not misrepresent or assist others in misrepresenting, expressly or by implication, that a Consumer can obtain a Consumer Incentive at no cost or obligation if in fact a purchase or other obligation is required;

B. For Incentive Promotion Offers, in any Advertisement or any Landing page associated with such Advertisement that contains any direct or implied representation made by World Avenue or a Marketing Partner that a Consumer Incentive is free, and if a purchase by a Consumer is required to obtain such Consumer Incentive, World Avenue will Clearly and Conspicuously and within Close Proximity to such representation disclose that a “purchase is required,” “purchases are required,” or words substantially similar to the same.

For purposes of this Assurance, a purchase is considered required unless, during the term of the Incentive Promotion Offer, a Consumer acting reasonably can complete the requisite number of Sponsor Offers without any obligation to make a purchase to complete the Sponsor Offers. By way of example but not of limitation, a purchase is not considered required if a Consumer can obtain the Consumer Incentive by completing three Sponsor Offers, and the Consumer has the option to enroll in two continuity club free trial offers, both of which can be canceled (and still be counted as a completed Sponsor Offer) before the Consumer becomes obligated to pay any amount related to ongoing participation in the

continuity club, and the ability to sign up for a credit card for which a reasonable Consumer would qualify.¹

C. World Avenue will Clearly and Conspicuously and accurately disclose on each of its Landing Pages associated with Incentive Promotion Offers, all material terms and conditions including the following:

- i. The number of Sponsor Offers a Consumer is required to complete as part of the requirements of an Incentive Promotion Offer;
- ii. That a Consumer may view available Sponsor Offers and the material terms and conditions of such offers without first completing any Sponsor Offers;
- iii. That “Sponsor Offers that are cancelled within 60 days of signup will not be credited if you’ve previously cancelled 2 or more other offers,” or such modification to the above phrase as matches the then-current program for that Incentive Promotion Offer; and
- iv. That a Consumer Incentive does not have a warranty when a Consumer would normally receive a warranty with the same product from a distributor, if true;

D. During the process through which a Consumer satisfies an Incentive Promotion Offer, World Avenue will not directly or indirectly indicate that the Consumer is on the “Last Step,” “Final Step” or make any other indication that the Consumer is

¹A Sponsor Offer will not be considered to include an obligation to make a purchase merely because it includes reasonable shipping charges that are imposed by a third party as part of a Sponsor Offer so long as, to the extent that World Avenue controls the language describing the Sponsor Offer, World Avenue Clearly and Conspicuously discloses the existence and amount of such shipping charges, if known to World Avenue.

at the end of the process if in fact the Consumer must satisfy additional Sponsor Offers, make additional Purchases, answer additional survey questions or proceed through any additional Advertisements or Advertisement-related Web sites;

- E. World Avenue or any of its agents, acting on behalf of World Avenue, will not misrepresent or assist others in misrepresenting, expressly or by implication, any Sponsor Offer terms;
- F. When referring to Consumer Incentives on the Landing Page within an Incentive Promotion Offer, World Avenue shall Clearly and Conspicuously describe the material characteristics, uses, benefits, or quantities of such Consumer Incentives, including at least the type and brand name when allowed to by the owner of the brand name, of any Consumer Incentive, and in any event all descriptions of the Consumer Incentive shall be truthful and accurate. For purposes of complying with this paragraph only, World Avenue shall be permitted to consider space limitations in its advertising;

ATTORNEY'S FEES

- 21. World Avenue agrees to reimburse the State for its attorneys' fees, investigative costs and other costs relating to its investigation of World Avenue and the entry of this Assurance, in the amount of EIGHT HUNDRED THOUSAND DOLLARS (\$800,000.00).
- 22. World Avenue agrees to deliver the above monetary payment in the form of a company check, certified check, or wire transfer, bearing or referencing the OAG's case number (#062268214), no later than thirty (30) days after the Effective Date, to the Office of the

Attorney General, Consumer Protection & Public Health Division, William P. Clements Building, 300 West 15th Street, Ninth Floor, Austin, Texas 78701.

RELEASE

23. The OAG shall not institute any further civil proceedings nor take any further civil action against World Avenue under the DTPA with respect to the subject matter of this Assurance as described in Paragraph 1 up to and including the Effective Date of this Assurance. Nothing herein shall waive the States' rights to enforce this Assurance or to assert claims against World Avenue for any other violation of law not related to the subject matter of this Assurance.

MISCELLANEOUS PROVISIONS

24. This Assurance contains the entire agreement between World Avenue and the State as to all matters addressed herein.
25. This Assurance shall be deemed effective on the day it is approved and filed by the Court. World Avenue shall have ninety (90) days after it is approved and filed by the Court to implement the terms of this Assurance. To the extent that the provisions of this Assurance "conflict" with any Texas, local, or federal law or regulation that now exists, or is later enacted or amended, such law or regulation, and not this Assurance, shall apply. For the purpose of this Assurance, such "conflict" exists if conduct prohibited by this Assurance is required or expressly permitted by such Texas, local, or federal law or regulation, or if conduct required by this Assurance is prohibited by such Texas, local, or federal law or regulation.

26. This Assurance is governed by section 17.58 of the DTPA. The parties agree that, should any clause, provision, or section of this Assurance, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause, provision, or section of this Assurance, and this Assurance shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or provision had not been contained herein.
27. The parties agree that this Assurance shall not be modified or terminated except by written agreement signed by the parties and filed with the Court. In the event that World Avenue concludes, based on changed circumstances, that the terms of this Assurance are unfairly restrictive on its business practices, then World Avenue may request in writing that the OAG modify the terms of this Assurance. The OAG shall make a good faith evaluation of the then existing circumstances, and after collecting information the OAG deems necessary, make a prompt decision, but in no event more than sixty (60) days from World Avenue's request for same (or thirty (30) days after receiving all material information requested from World Avenue, whichever is later), as to whether to modify this Assurance. The decision whether to modify this Assurance shall rest solely within the discretion of the OAG, but the OAG shall not unreasonably deny World Avenue's request for modification. In the event the OAG denies the requested modification or termination, World Avenue reserves all rights to pursue any legal or equitable remedies that may be available to it.
28. Before seeking to enforce the terms of this Assurance or punish World Avenue for breach of this Assurance, the State shall provide World Avenue with thirty (30) days written

notice of the conduct the State believes is or may be in violation of this Assurance.

World Avenue may provide the State with written documentation that no such breach took place. Provided, however, that, in the event that the State determines in its sole discretion that such an emergency exists that immediate and irreparable injury, loss, or damage would occur, the OAG may file to enforce this Assurance without prior notice or with a shorter notice. Provided, however, the OAG will make a good faith effort to notify World Avenue of an enforcement action seeking a temporary restraining order. Provided further, the cessation of unlawful conduct after such notice shall not prevent the State from enforcing the terms of the Assurance or punishing World Avenue for breach of the Assurance.

29. World Avenue agrees that it will not participate directly or indirectly in any activity to form a separate entity or corporation which engages in acts prohibited in this Assurance or for any other purpose which would otherwise circumvent any part of this Assurance or the spirit or purpose of this Assurance.
30. This Assurance shall not be construed against either party as the "drafter," because both World Avenue and the State participated in the drafting of this Assurance.
31. The State and World Avenue each acknowledges and agrees that nothing in this Assurance is intended to constitute, nor shall it be used to constitute, evidence of the truth of any alleged violation that may have been or may ever be asserted by any individual against World Avenue.

AGREED AS TO SUBSTANCE AND FORM AND ENTRY REQUESTED:

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Attorney General of Texas

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First Assistant Attorney General

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WORLD AVENUE USA, LLC.



By: Dale S. Baker

Title: President