

Cause No. 09-09880

STATE OF TEXAS,
Plaintiff

v.

INFINITI VACATIONS LLC; BRAD
A. CORMACK, Individually; CRAIG
NAREZ, Individually; and JERALD
FRANKLIN JOHNSON, Individually,
Defendants

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IN THE DISTRICT COURT

193rd-1

JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

FILED
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DUFF FITZSIMMONS
DISTRICT CLERK
DALLAS CO., TEXAS
DEPUTY

**PLAINTIFF'S ORIGINAL PETITION
FOR CIVIL PENALTIES AND FOR INJUNCTIVE RELIEF**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, the State of Texas, Plaintiff, acting by and through Attorney General Greg Abbott, and files this Plaintiff's Original Petition for Civil Penalties and for Injunctive Relief against INFINITI VACATIONS LLC; BRAD A. CORMACK, Individually, CRAIG NAREZ, Individually; and JERALD FRANKLIN JOHNSON, Individually.

I. PARTY PLAINTIFF

1. This suit is brought by the ATTORNEY GENERAL through the Consumer Protection Division in the name of the STATE OF TEXAS and in the public interest under the authority granted to him by Section 17.47 of the Deceptive Trade Practices-Consumer Protection Act ("TDTPA"). The TDTPA permits the Attorney General's office to bring an action to restrain, by temporary restraining order, temporary injunction, or permanent injunction, the use of any method, act or practice declared to be unlawful by Section 17.46 of the TDTPA.

II. PARTY DEFENDANTS

- 2.1 Defendant INFINITI VACATIONS LLC is a domestic limited liability company organized and existing under the laws of the State of Texas that engages in business in the State of Texas. The registered agent for INFINITI VACATIONS LLC is Brad A. Cormack. Defendant INFINITI VACATIONS LLC may be served with process by serving its Registered Agent, Brad A. Cormack at 12720 Campolina Way, Keller, TX 76248 or at his place of business, 1600 Corporate Court, Suite 140, Irving, Texas 75038 or wherever he may be found.
- 2.2 Defendant BRAD A. CORMACK is an individual residing in Texas and may be served with citation and process at his home at 12720 Campolina Way, Keller, TX 76248 or at his place of business 1600 Corporate Court, Suite 140, Irving, Texas 75038 or wherever he may be found.
- 2.3 Defendant CRAIG NAREZ is an individual residing in Texas and may be served with citation and process at his home at 529 Timber Way Dr., Lewisville, TX 75067 or at his place of business 1600 Corporate Court, Suite 140, Irving, Texas 75038 or wherever he may be found.
- 2.4 Defendant JERALD FRANKLIN JACKSON is an individual residing in Texas and may be served with citation and process at his home at 4933 Dougal Ave., Fort Worth, TX 76137-6369, or at his place of business 1600 Corporate Court, Suite 140, Irving, Texas 75038 or wherever he may be found.

III. AUTHORITY

3. This action is brought by the Attorney General through his Consumer Protection Division under the authority granted by section 17.47 of the Texas Deceptive Practices-Consumer Protection Act (TDTPA).

IV. VENUE

- 4.1 Venue of this action lies in Dallas County on the basis of section 15.002(a)(1) and (3) of the Texas Civil Practice and Remedies Code because all or a substantial part of the events or omissions giving rise to this cause of action occurred in Dallas county.
- 4.2 Venue of this action also lies in Dallas County pursuant to section 17.47(b) of the TDTPA because transactions and events giving rise to this action occurred in Dallas County and/or because Defendants have done or are doing business in Dallas County.

V. PUBLIC INTEREST

5. By reason of the institution and operation of the unlawful practices set forth herein, Defendants have and will cause immediate and irreparable injury, loss and damage to the STATE OF TEXAS and its citizens, and will also cause adverse effects to legitimate business enterprise which conducts its trade and commerce in a lawful manner in this State. Therefore, the Attorney General of the State of Texas believes and is of the opinion that these proceedings are in the public interest.

VI. ACTS OF AGENTS

6. Whenever in this petition it is alleged that Defendants did any act or thing, it is meant that Defendants performed or participated in such act or thing and that such act was performed by the officers, agents, or employees of Defendants, and in each instance, the officers, agents,

or employees of Defendants that were then authorized to and did in fact act on behalf of Defendants or otherwise acted under the guidance and direction of the Defendants.

VII. TRADE AND COMMERCE

7. Defendants are engaged in "trade" and "commerce" as defined by section 17.45(6) of the TDTPA as that Defendants are engaged in the sale of dietary supplements.

VIII. NOTICE BEFORE SUIT

8. Plaintiff provided notice to Defendants regarding this action of the alleged unlawful conduct which complaint is now made, pursuant to Section 17.47(a) of the TDTPA on or about July 17, 2009.

IX. SPECIFIC FACTUAL ALLEGATIONS

- 9.1 INFINITI VACATIONS LLC, BRAD A. CORMACK, CRAIG NAREZ, and JERALD FRANKLIN JACKSON (hereinafter Defendants) sell and/or have sold travel club memberships to Vacation Travel Club using high pressure sales tactics. JERALD FRANKLIN JACKSON made sales presentations and was a managing member of INFINITI VACATIONS LLC up until April 24, 2009. CRAIG NAREZ was a managing member of INFINITI VACATIONS LLC until very recently. Defendant BRAD A. CORMACK has been and continues to be a managing member of INFINITI VACATIONS LLC since its inception in March 2008. Defendants entice consumers to attend sales presentations by offering free trips, free airline tickets, and/or free gasoline. Once consumers arrive at the offices of INFINITI VACATIONS LLC, they learn that they will have to pay a deposit, port charges and/or taxes to obtain the promised free airline tickets and trips or that they will have

to take numerous surveys to earn “free” gas. When consumers attempt to schedule the “free” trips or utilize the “free” airline tickets, consumers complain that the restrictions are so severe that they are unable to schedule the promised trips.

- 9.2 Consumers who attend the sales presentations are promised that if they buy a membership to Vacation Travel Club, they will be able to travel for “pennies on the dollar.” Moreover, consumers are promised the “lowest prices for travel.” The presentation room is decorated with a sign that states Vacation Travel Club is a member of the Better Business Bureau. While Vacation Travel Club may be a member of the Better Business Bureau, INFINITI TRAVEL LLC is not a member of the Better Business Bureau. Consumers pay anywhere from \$1,900 to \$7,000 for a membership to Vacation Travel Club. When consumers attempt to make travel reservations using their Vacation Travel Club membership, they are unable to schedule the trips they desire and/or the prices offered by Vacation Travel Club are similar to those that consumers can obtain for themselves using the internet.

X. VIOLATIONS OF THE DECEPTIVE TRADE PRACTICES

10. Defendants, as set out in Paragraphs 1 through 9, in the course and conduct of trade and commerce, have directly and indirectly engaged in and will continue to engage in false, misleading, deceptive or unconscionable acts and practices declared unlawful by Sections 17.46(a) and (b) of the Texas Deceptive Trade Practices Act, including but not limited to:
- A. Representing that the travel club membership offered has sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which it does not have in violation of Section 17.46(b)(5) of the TDTPA;

- B. Representing that any gift offered has the sponsorship, approval, characteristics, ingredients, uses, benefits, qualities, or quantities which it does not have in violation of Section 17.46(b)(5) of the TDTPA;
- C. Falsely representing that Vacation Travel Club members will receive substantial travel discounts on cruises, air travel, hotels and condominiums when discounts, if any, are not better than what consumers can purchase themselves using the internet in violation of Section 17.46(a) of the TDTPA;
- D. Failing to supply sufficient numbers of available dates for the redemption of travel vouchers in violation of Section 17.46(b)(10) of the TDTPA;
- E. Making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions regarding vacation travel packages in violation of Section 17.47(b)(11) of the TDTPA;
- F. Misrepresenting that trips, gas, and plane tickets were “free” or “completely free,” when in fact the trips were not free as consumers were required to pay, taxes, port charges, deposits, or answer surveys to obtain the gifts in violation of Section 17.46(b)(9) of the TDTPA;
- G. Failing to disclose the retail value of a gift used to entice consumers to attend INFINITI VACATIONS’ sales presentations in violation of Section 17.46(b)(24) of the TDTPA; and
- H. Engaging in conduct which violates the Contest and Gift Giveaway Act as outlined below.

XI. VIOLATIONS OF THE CONTEST AND GIFT GIVEAWAY ACT

11. Defendants, as set out in Paragraphs 1 through 9, have engaged in and continue to engage in practices that constitute false, misleading or deceptive trade practices declared unlawful by the Contest and Gift Giveaway Act, including but not limited to the following:
- A. Failing to clearly and conspicuously disclose that a refundable deposit is required in a gift or prize involving lodging, airfare, a trip, or a recreational activity in violation of Texas Business and Commerce Code Section 40.007;
 - B. Notifying a person that the person will receive a gift, a condition of receipt of which requires the person to pay consideration of any kind or a charge or expense to a person for the gift, unless the consideration, charge, or expense is fully, clearly, and conspicuously disclosed in violation of Texas Business and Commerce Code Section 40.033;
 - C. Using the term “gift” or similar term in a false, misleading, or deceptive manner in violation of Texas business and Commerce Code Section 40.036(1).
 - D. Failing to disclose the retail of a gift in violation of Texas Business and Commerce Code Section 40.036(4).

XII. LIABILITY OF BRAD A. CORMACK, CRAIG NAREZ, and JERALD

FRANKLIN JOHNSON, INDIVIDUALLY

12. The Texas Business Corporation Act provides that a holder of shares, an owner of any beneficial interest in shares is under no obligation to the corporation or to the obligees ... unless the obligee demonstrates that the owner, subscriber, or affiliate caused the corporation

bo be sued for the purpose of perpetrating and did perpetrate an actual fraud on the obligee primarily for the direct personal benefit of the holder, owner, subscriber, or affiliate. Tex. Bus. Corp. Act Art. 2.21(A)(2). Moreover, "Courts will not disregard the corporation fiction and hold individual officers, directors, or stockholders liable on the obligation of a corporation except where it appears the individuals are using the corporate entity as a sham to perpetrate a fraud, to avoid personal liability, avoid the effect of a statute, or in a few other exceptional situations." *Bell Oil & Gas Co. v. Allied Chemical Corp.*, 41 S.W. 2d 336 at 340 (Tex. 1968). Consequently, BRAD A CORMACK, CRAIG NAREZ, and JERALD FRANKLIN JACKSON are individually liable for the following:

- A. BRAD A CORMACK, CRAIG NAREZ, and JERALD FRANKLIN JACKSON used their entity INFINITI VACATIONS LLC as a sham to perpetuate a fraud and to avoid personal liability in their deceptive sale of travel club memberships to consumers.

XIII. INJURY TO CONSUMERS

13. By means of the foregoing unlawful acts and practices, Defendants have acquired money or other property from identifiable persons to whom such money should be restored, or who in the alternative are entitled to an award of damages.

XIV. DISGORGEMENT

14. All of the Defendants' assets are subject to the equitable remedy of disgorgement, which is the forced relinquishment of all benefits that would be unjust for Defendants to retain, including all ill-gotten gains and benefits or profits that result from Defendants putting

fraudulently converted property to a profitable use. Defendants should be ordered to disgorge all monies fraudulently taken from individuals and businesses together with all of the proceeds, profits, income, interest and accessions thereto. Such disgorgement should be for the benefit of victimized consumers and the State of Texas.

XV. NECESSITY OF IMMEDIATE HALT TO DECEPTIVE TRADE PRACTICES

15. Plaintiff requests immediate relief by way of a Temporary Injunction to prevent Defendants INFINITI VACATIONS LLC, BRAD A. CORMACK, CRAIG NAREZ, and JERALD FRANKLIN JACKSON from harming additional consumers resulting in the consumers' loss of money.

XVI. PRAYER

- 16.1 Wherefore, premises considered, Plaintiff prays that after due notice and hearing a TEMPORARY INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be issued restraining and enjoining BRAD A. CORMACK, CRAIG NAREZ, and JERALD FRANKLIN JACKSON, their entity INFINITI VACATIONS LLC, their successors, assigns, officers, agents, servants, employees, and attorneys and any other person in active concert or participation with these Defendants from engaging in the following acts or practices:

- A. Failing to clearly and conspicuously disclose that a refundable deposit is required for a gift or prize involving lodging, airfare, trip, or a recreational activity;
- B. Failing to clearly and conspicuously disclose that a consumer must participate in numerous surveys in order to receive "free gas";

- C. Notifying a person that the person will receive a gift, a condition of receipt of which requires the person to pay consideration of any kind or a charge or expense to a person for the gift, unless the consideration, charge or expense is fully, clearly, and conspicuously disclosed;
- D. Using the term “gift” or similar term in a false, misleading, or deceptive manner;
- E. Failing to disclose the retail value of a gift in violation of Texas Business and Commerce Code Section 40.036(4);
- F. Notifying a consumer that the person will receive a gift, a condition of receipt of which requires the consumer to pay consideration of any kind or a charge or expense to a person for the gift, unless the consideration, charge, or expense is fully, clearly, and conspicuously disclosed;
- G. Falsely representing that a travel club member will receive substantial travel discounts on cruises, air travel, hotels and condominiums, when discounts, if any are minimal at best;
- H. Failing to supply sufficient numbers of available dates for the redemption of travel vouchers;
- I. Misrepresenting that trips used to entice consumers to attend travel club sales presentations are “free” or completely free”, when in fact the trips are not free as consumers are required to pay taxes, port charges, and/or a deposit for the “free” trip.
- J. Causing confusion or misunderstanding as to the membership of any entity to the Better Business Bureau.

- 16.2. Plaintiff further prays that upon final hearing, this Court grant a judgment against Defendants jointly and severally for payment of civil penalties of \$20,000.00 per violation of the TDTPA to the State of Texas. *See Texas Deceptive Trade Practices Act § 17.47(c)(1).*
- 16.3. Plaintiff further prays that upon final hearing this Court grant a judgment against Defendants jointly and severally for payment of civil penalties of \$250,000.00 per violation of the TDTPA if the consumer was 65 years of age or older. *See Texas Deceptive Trade Practices Act § 17.47(c)(2).*
- 16.4. Plaintiff further prays that, upon final hearing, this Court order Defendants to jointly and severally restore all money or other property taken from identifiable persons by means of unlawful acts or practices, or in the alternative, award judgment for damages to compensate for such losses. *See Texas Deceptive Trade Practices Act § 17.47(d).*
- 16.5. Plaintiff further prays that, upon final hearing, this Court order each and every Defendant to disgorge all monies taken from consumers through deceptive practices, including gains and benefits or profits resulting from violations of the TDTPA.
- 16.6. Plaintiff further prays for costs of Court, reasonable attorneys' fees as provided in Texas Government Code Ann. Section 402.006(c), that any and all relief be denied Defendants and for such other and further relief to which Plaintiff may be justly entitled.

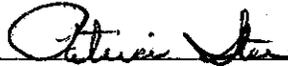
Respectfully submitted,

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