

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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US DISTRICT COURT E.D.N.Y.

★ OCT 05 2017 ★

Per 10/5/17
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UNITED STATES OF AMERICA,

Plaintiff,

v.

ERCAN BARKA, a/k/a JOHN BARKA,
d/b/a DGF MANAGEMENT, CLIFFMONT
GROUP LIMITED, CORE DIRECT LTD.,
BROWN STONE, PHOENIX MARKETING
SOLUTIONS CORPORATION, RED CREEK
LTD., PITMAN SERVICES LTD, XETTI
LTD. and HORIZON SRL LIMITED; RYAN
YOUNG, d/b/a DGF MANAGEMENT,
CLIFFMONT GROUP LIMITED, CORE
DIRECT LTD., BROWN STONE, PHOENIX
MARKETING SOLUTIONS
CORPORATION, RED CREEK LTD.,
PITMAN SERVICES LTD, XETTI LTD. and
HORIZON SRL LIMITED; and TRUE
VISION LLC,

Defendants.

BROOKLYN OFFICE

Civil Action No.
CV-16-5266 (ENV)(VMS)

~~PROPOSED~~ **CONSENT
DECREE AND FINAL
JUDGMENT**

WHEREAS, the UNITED STATES OF AMERICA commenced this action against defendants ERCAN BARKA and TRUE VISION LLC by filing a Complaint in this Court, and added additional defendant RYAN YOUNG (the "Settling Defendant") by filing an Amended Complaint in this Court; and

WHEREAS, the Amended Complaint alleges a claim for relief under the Fraud Injunction Statute, 18 U.S.C. § 1345; and

WHEREAS on September 22, 2016, having considered the *ex parte* application of the United States and upon a finding that (1) there was probable cause to believe that defendants Ercan Barka and True Vision LLC were violating and were about to violate 18 U.S.C. § 1341,

and that (2) the statutory conditions for granting a temporary restraining order under 18 U.S.C. § 1345 had been met, the Court issued an *ex parte* Temporary Restraining Order and Order To Show Cause without notice to defendants Ercan Barka and True Vision LLC (the “TRO”); and

WHEREAS, on October 4, 2016, on the consent of the United States and defendants Ercan Barka and True Vision LLC, the Court entered a Stipulated Preliminary Injunction as to the defendants Ercan Barka and True Vision LLC; and

WHEREAS, the Settling Defendant consents to entry of this Consent Decree and Final Judgment without any admission of liability or wrongdoing; and

WHEREAS, the United States and the Settling Defendant wish to settle this action upon the following terms without further litigation and the Settling Defendant agrees that this Court may enter and enforce this Consent Decree and Final Judgment against him in the United States;

THEREFORE, pursuant to 18 U.S.C. § 1345 and the inherent power of this Court, IT IS HEREBY ORDERED, ADJUDGED and DECREED that:

- I. The Settling Defendant, his agents, officers, employees, and successors and all other persons and entities in active concert or participation with him, are permanently enjoined from:
 - A. violating 18 U.S.C. § 1341;
 - B. using the United States mail, or causing others to use the United States mail, to distribute any Covered Materials, as defined in Subparagraph V(A), *infra*;
 - C. receiving, handling, opening, or forwarding any correspondence transmitted through the United States mail that responds, by sending payment or otherwise, to any Covered Materials;

- D. selling, offering for sale, leasing, renting, brokering or licensing any mailing lists of any type compiled in whole or in part from recipients who have responded to any Covered Materials ("Customer Lists");
- E. selling, offering for sale, leasing, renting, brokering or licensing any mailing lists where such lists will be used to address any Covered Materials;
- F. performing, or causing others to perform, "caging services" on correspondence transmitted through the United States mail in response to any Covered Materials. "Caging services" including opening mail; entering or inputting data about the senders of such mail into a database or forwarding such data; handling, forwarding, or depositing payments received in such mail, including currency, bank checks, certified checks, money orders, or credit card charge authorizations; or handling or forwarding any such mail; or
- G. acting as a consultant, whether paid or unpaid, for any person engaged in any of the conduct described in Subparagraph I(A)-(F), above.

II. Within seven (7) days of entry of this Consent Decree and Final Judgment, the Settling Defendant is ordered to provide to Settling Defendant's counsel of record in this action and to the United States' counsel of record in this action all copies of (1) any Customer Lists and (2) any Covered Materials that are currently in his possession, custody or control. Settling Defendant shall not retain in his possession, custody or control any copies of such Customer Lists or Covered Materials. Within fourteen (14) days of entry of this Consent Decree and Final Judgment, Settling Defendant shall provide the United States' counsel of record in this action a certification in the form attached here as Exhibit A, sworn under penalty of perjury, detailing what materials, if any, were provided to

Settling Defendant's legal counsel and to counsel of record for the United States in this matter, and certifying that Settling Defendant no longer has in his possession any such materials.

III. Within seven (7) days of entry of this Consent Decree and Final Judgment, Settling Defendant shall also, individually or through his counsel of record in this action, direct any third parties that he reasonably believes have Settling Defendant's Customer Lists and Covered Materials in their custody, excluding Settling Defendants' legal counsel, to provide all copies of such materials to counsel of record for the United States in this action, and not to retain any copies of such materials in the third party's possession, custody or control, provided however that these third parties may also provide a copy of such Customer Lists and Covered Materials to their own retained counsel. Within fourteen (14) days of entry of this Consent Decree and Final Judgment, Settling Defendants shall provide the United States' counsel of record in this action a certification in the form attached here as Exhibit A, sworn under penalty of perjury, detailing their communications with third parties pursuant to this Paragraph.

IV. The United States Postal Service is authorized to open any and all United States Mail that was detained by the United States Postal Inspection Service pursuant to the Temporary Restraining Order or Preliminary Injunction in this matter. The United States Postal Inspection Service shall return any currency, bearer instruments (including but not limited to money orders and travelers checks), and any personal effects that can be positively identified with its sender contained in any mail opened pursuant to this Paragraph. This return shall include a letter notifying the sender of the disposition of this matter, attached here as Exhibit B. The United States Postal Inspection Service is

authorized to destroy any and all remaining detained mail (including but not limited to envelopes, order forms, correspondence, personal checks, and payment card information (PCI)).

V. For purposes of this Consent Decree and Final Judgment:

- A. "Covered Materials" refers to any materials that contain advertisements, solicitations, promotions, and/or any other materials on behalf of any actual or fictional individual or entity purporting to offer for a fee the following items or services: Prize Transfers, Sweepstakes, Sweepstakes Reports, or Wealth-Building Programs.
- B. "Fee" refers to a payment of any kind, including but not limited to: processing fees, service fees, expediting fees, purchase fees, nominal fees, symbolic payments, gifts and gratuities.
- C. "Prize Transfers" refers to claims, direct or indirect, express or implied, that the recipient has won a lottery, sweepstakes, drawing, prize promotion, or contest or is otherwise entitled to receive a financial windfall or prize that will be delivered after the recipient makes a payment. This definition includes materials that claim that the recipient will receive delivery of a specific item in return for payment of a fee, and state in fine print or in disclaimers that the recipient will or may receive delivery of a different item.
- D. "Sweepstakes" refers to sweepstakes, lotteries, drawings, prize promotions, contests, and all other means by which an entrant could win a prize in a random drawing.

- E. "Sweepstakes Reports" refers to reports, journals, or other summaries or compilations of opportunities to enter sweepstakes or lotteries.
 - F. "Wealth-Building Programs" refers to instructions, reports, or programs which provide purportedly guaranteed results or methods for making money or an item purportedly guaranteed to provide the user with luck or wealth.
- VI. Within (5) days after the entry of this Consent Decree and Final Judgment, the Settling Defendant is ordered to submit to the United States' counsel of record in this action a written acknowledgment of receipt of this Consent Decree and Final Judgment sworn under penalty of perjury.
- VII. Within seven (7) days after the entry of this Consent Decree and Final Judgment, the Settling Defendant, individually or through his counsel of record in this action, shall provide copies of this Consent Decree and Final Judgment to all direct mailers, list brokers, printer/distributors, mailing houses, and/or caging services with which he has done business at any time with respect to any Covered Materials. Within fourteen (14) days after entry of the Consent Decree and Final Judgment, the Settling Defendant shall provide proof of such notice to the Court and the United States, including the name and addresses of the entities and/or individuals to whom the notice was sent, how the notice was sent, when the notice was sent, and a copy of the notice.
- VIII. The Consent Decree and Final Judgment shall not be modified except in writing by Plaintiff and the Settling Defendant and approved by the Court.
- IX. Plaintiff and the Settling Defendant agree to bear their own costs and attorneys' fees in this action.

- X. The Stipulated Preliminary Injunction entered on October 4, 2016, is superseded by this Consent Decree and Final Judgment and is hereby vacated and dissolved.
- XI. The undersigned parties and counsel each represent that he, she or it is fully authorized to enter into the terms and conditions of this Consent Decree and Final Judgment and to execute and legally bind to this document the Party which he, she or it represents.
- XII. The Settling Defendant hereby agrees to waive, release, and remit any and all claims, either directly or indirectly against the United States and its agencies, employees, representatives and agents, including but not limited to the Department of Justice, the United States Postal Inspection Service, and their employees, with respect to this action.
- XIII. This Consent Decree and Final Judgment may be signed by the parties and counsel in counterparts, each of which constitutes an original and all of which constitute one of the same Consent Decree and Final Judgment. Signatures delivered by facsimile transmission, or as .pdf attachments to emails, shall constitute acceptable, binding signatures for purposes of this Consent Decree and Final Judgment.
- XIV. This Consent Decree and Final Judgment shall constitute a final judgment and order in this action as to the Settling Defendant.
- XV. This Court retains jurisdiction of this action for the purpose of enforcing or modifying this Consent Decree and Final Judgment and for the purpose of granting such additional relief as may be necessary or appropriate.

SO ORDERED this 2nd day of October, 2017

/S/ USDJ ERIC N. VITALIANO

HONORABLE ERIC N. VITALIANO
UNITED STATES DISTRICT JUDGE

IT IS HEREBY AGREED:

THE UNITED STATES OF AMERICA

Sep. 20, 2017

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Eastern District of New York


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Sept. 20, 2017

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DEFENDANT

Sept. 9, 2017



RYAN YOUNG

Sept. 9, 2017



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Attorney for Defendant RYAN YOUNG

EXHIBIT A

United States v. Barka, Young, and True Vision LLC, 16-CV-5266 (ENV)(VMS)
Exhibit A to Consent Decree and Final Judgment

Certification

I, _____, hereby declare as follows:

Pursuant to Paragraph II of the Stipulated Consent Decree and Final Judgment entered on _____, 2017 (the "Consent Decree") in *United States v. Barka, et al.*, Civ. No. 16-5266 (ENV)(VMS) (E.D.N.Y.),

I certify as follows (check all that apply):

_____ **No Lists or Covered Materials in Possession or Control.** As of the date of the Consent Decree, I did not have in my possession or control any Covered Materials, as defined in the Consent Decree, or any mailing lists of any type compiled from recipients who have responded to any Covered Materials.

_____ **Lists Provided to Legal Counsel.** Pursuant to the Consent Decree, I have provided to my legal counsel all Covered Materials and all lists of any type compiled from recipients who have responded to any Covered Materials. The materials provided to legal counsel are as follows:

| Materials Provided to Counsel (describe) | Date Provided to Counsel | Counsel Name, Address and Point of Contact |
|---|-----------------------------|---|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

(Attach additional sheets if necessary)

United States v. Barka, Young, and True Vision LLC, 16-CV-5266 (ENV)(VMS)
Exhibit A to Consent Decree and Final Judgment

[Continued on next page]

Requests to Third Parties. On the dates and in the manner listed below, I instructed the individuals identified below to provide to counsel for the United States all Covered Materials and all lists of any type compiled from recipients who have responded to any Covered Materials, to the extent such individual has or had any such lists in his or her possession, and not to retain copies of any such materials or lists. I indicate below whether the individual, as of the date of this certification, has confirmed that he or she has complied with this directive and the date of such confirmation.

| Name of Third Party (name of corporate entity, if applicable, and address) | Communication of Instruction | Response |
|---|---|---|
| Name of entity/individual contacted: Address: | Date: Manner (e.g., phone, mail, email): | <input type="checkbox"/> Confirmed lists and Covered Materials provided to Counsel for United States Name of individual responding: Date of confirmation: Manner communicated (e.g., phone, mail, email): or <input type="checkbox"/> No response received within five business days |
| Name of entity/individual contacted: Address: | Date: Manner (e.g., phone, mail, email): | <input type="checkbox"/> Confirmed lists and Covered Materials provided to Counsel for United States Name of individual responding: Date of confirmation: Manner communicated (e.g., phone email): or <input type="checkbox"/> No response received within five business days |

(Attach additional sheets if necessary)

United States v. Barka, Young, and True Vision LLC, 16-CV-5266 (ENV)(VMS)
Exhibit A to Consent Decree and Final Judgment

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated _____, and executed at _____.

Signature

Typed or Printed Name and Title

State of New York)
) ss.:
County of New York)

On the _____ day of July in the year 2017, before me, the undersigned notary public, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public/State of New York

EXHIBIT B

United States v. Barka, Young, and True Vision LLC, 16-CV-5266 (ENV)(VMS)
Exhibit B to Consent Decree and Final Judgment



UNITED STATES POSTAL INSPECTION SERVICE

DOJ MAIL FRAUD TEAM

[Date]

First Name, Last Name
Address 1
Address 2
City, State Zip

Re: United States of America v. Ercan Barka, et al.
Civil Action Number 16-CV-5266 (ENV)(VMS)

Dear Sir/Madam:

We are writing you because you previously mailed **[merge field—money/bearer instrument/personal item and specific amount of remission]** in response to a letter claiming you were entitled to receive a cash prize or a car. We are returning your **[merge field—money/bearer instrument/personal item and specific amount of remission]**.

The United States Department of Justice (DOJ) has filed civil charges against Ercan Barka, Ryan Young, and True Vision LLC. The case, filed in the Eastern District of New York, alleged that the defendants conducted a scheme to defraud consumers through the mail. Specifically, DOJ alleged that the defendants solicited payments from consumers by sending letters representing that the recipient was entitled to receive a large cash prize or a car in return for a payment in the range of \$20 to \$25. DOJ alleged that these representations were fraudulent and that consumers who sent in payments did not receive the promised cash or prizes. The letters were sent in the names of multiple different companies and individuals.

On September 22, 2016, the United States District Court made a probable cause determination that the defendants were conducting the mail fraud scheme described above. Among other things, the Court ordered the U.S. Postal Service to detain mail sent to Post Office boxes controlled by the defendants.

On 2017, the District Court entered a permanent injunction against the defendants, prohibiting them from mailing advertisements representing that a consumer is entitled to receive a prize in return for a payment. This injunction also requires the U.S. Postal Inspection Service to return to consumers any currency, bearer instruments (such as money orders or travelers checks), or personal items that can be identified with a specific sender. Enclosed, please find the **[merge field—money/bearer instrument and specific amount of remission]** that was able to be identified as belonging specifically to you.

Should you have any questions about this notice, please contact Sabrina Holmes with the U.S. Postal Inspection Service at (202) 616-5634. For more information, visit **[insert URL for press release website.]**