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11
12 **IN THE UNITED STATES DISTRICT COURT**
FOR THE DISTRICT OF NEVADA

13
14 _____)
15 FEDERAL TRADE COMMISSION,)

16 Plaintiff,)

17 v.)

18 ASQ, INC., a Nevada Corporation,)
sometimes doing business as Resort World;)

19 FRANK A. ABATANGELO, JR., individually)
and as an officer of Resort World; and)

20 ALLEN H. ABOLAFIA, individually and as an)
21 officer of Resort World,)

22 Defendants.)
23 _____)

No. CV-S-99-0915-JBR-RLH

STIPULATED FINAL ORDER FOR
PERMANENT INJUNCTION AND
SETTLEMENT OF CLAIMS FOR
CONSUMER REDRESS

24
25 Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), commenced this action by
26 filing its complaint for permanent injunction and other relief pursuant to Section 13(b) of the Federal

1 Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), charging Defendants ASQ, Inc., sometimes dba
2 Resort World (“Resort World”), and Frank A. Abatangelo, Jr., individually and as an officer of ASQ,
3 Inc. The Commission later amended its complaint to name as a defendant Allen H. Abolafia, individually
4 and as an officer of Resort World. The amended complaint alleges that Defendants engaged in unfair or
5 deceptive acts or practices in violation of Section 5 of the FTC Act (“FTC Act”), 15 U.S.C. § 45, and
6 seeks a permanent injunction and monetary relief pursuant to Section 13(b) of the FTC Act. The
7 Commission and these Defendants, as hereinafter defined, hereby stipulate to the entry of this Final Order
8 for Permanent Injunction and Settlement of Claims for Consumer Redress (“Order”) to resolve all matters
9 of dispute between them in this action.

10 NOW, THEREFORE, Plaintiff Federal Trade Commission and Defendants ASQ, Inc., dba Resort
11 World, Frank A. Abatangelo, Jr., and Allen H. Abolafia, having requested the Court to enter this Order,

12 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

13 **FINDINGS**

14 A. This Court has jurisdiction over the subject matter and the parties.

15 B. Venue is proper as to all parties in the District of Nevada.

16 C. The activities of Defendants are in or affecting commerce, as defined in the FTC Act,
17 15 U.S.C. § 44.

18 D. The Complaint states a claim upon which relief may be granted against Defendants under
19 §§ 5(a)(1) and (13)(b) of the FTC Act, 15 U.S.C. §§ 45(a)(1) and 53(b).

20 E. Defendants have waived any and all rights that may arise under the Equal Access to
21 Justice Act, 28 U.S.C. § 2412, amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996).

22 F. Plaintiff and Defendants, by and through their counsel, have agreed that the entry of this
23 Order resolves all matters of dispute between them arising from the Complaint in this action, up to
24 the date of entry of this Order.

1 G. Plaintiff and Defendants waive all rights to seek appellate review or otherwise challenge or
2 contest the validity of this Order. Defendants further waive and release any claim they may have
3 against the Commission, its employees, agents, and representatives.

4 H. This Order is for settlement purposes only and does not constitute and shall not be
5 interpreted to constitute an admission by Defendants that they have engaged in violations of any
6 law or regulation, including but not limited to the FTC Act, or that the facts alleged in the
7 Complaint, other than the jurisdictional facts, are true.

8 I. Entry of this Order is in the public interest.

9 **ORDER**

10 **DEFINITIONS**

11 **I.**

12 A. “Material” means likely to affect a person’s choice of, or conduct regarding, goods or
13 services;

14 B. Unless otherwise indicated, the term “Defendants” refers to and includes ASQ, Inc.,
15 Resort World, The Travel Factory, Frank A. Abatangelo, Jr., and Allen H. Abolafia (sometimes
16 known as Allan H. Abolafia)..

17 C. “ASQ, Inc.” means that business entity doing business as ASQ, Inc., which sometimes has
18 done or is doing business as Resort World or The Travel Factory.

19 D. “Travel Services” means any product(s) or service(s) that purport(s) to provide
20 transportation, accommodations, or amenities usable during travel. This definition specifically
21 includes, but is not limited to: travel planning services; booking and reservation services;
22 transportation or accommodation tickets; certificates, vouchers, coupons, reservation forms or
23 other documents that purport to be full or partial payment, or redeemable, for transportation or
24 accommodations, car rental, tours, sports or other activities, meals, drinks, or entrance to special
25 events or locations.

1 **PROHIBITED BUSINESS ACTIVITIES**

2 **II.**

3 **IT IS THEREFORE ORDERED** that, in connection with the advertising, promotion, offering
4 for sale, sale or provision of any travel service(s), the Defendants and each of their successors, assigns,
5 officers, agents, servants, employees, subsidiaries and affiliates, and those persons in active concert or
6 participation with them who receive actual notice of this Order by personal service or otherwise, whether
7 acting directly or through any entity, corporation, subsidiary, division, or other device, are hereby
8 restrained and enjoined from, directly or indirectly:

9 A. Making or assisting in the making of, expressly or by implication, orally or in writing, any
10 false or misleading statement or representation of material fact, including but not limited to
11 representations that:

12 1. Defendants will provide vacation travel packages that will include lodging at or
13 around specific or "competitive" prices or for the dates and destinations consumers
14 request, if such is not the case; or

15 2. Defendants will fill consumers' vacation travel needs in a timely manner., if such is
16 not the case; and

17 B. Failing to disclose, in a clear and conspicuous manner, before a consumer pays for any of
18 the goods or services that are the subject of the sales offer, all material restrictions, limitations, or
19 conditions to receive the goods or services that are the subject of the sales offer, including but not
20 limited to additional costs and conditions.

21 C. Advertising, offering for sale or selling any travel services, including but not limited to
22 prepaid airfares or lodging, at a stated price, unless the Defendants have the present capability of
23 providing such package or component thereof at the stated price.

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1 **BOND PROVISION**

2 **III.**

3 **IT IS FURTHER ORDERED THAT:**

4 A. Each Defendant is enjoined from engaging, whether directly, in concert with others, or
5 through any business entity, in the advertising, marketing, promotion, offering for sale, sale or
6 provision of any travel service(s), unless said Defendant first obtains a performance bond in the
7 principal sum of ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$175,000).

8 B. The terms and conditions of the bond requirement in Paragraph A, above, shall be as
9 follows:

10 1. The bond is conditioned upon compliance by said Defendant with Section 5(a) of
11 the FTC Act, 15 U.S.C. §§ 45;

12 2. The bond shall remain in full force and effect as long as said Defendant continues
13 to engage in the advertising, promotion, offering for sale, sale or provision of any travel
14 service(s), and for at least three (3) years thereafter;

15 3. The bond shall be an insurance agreement providing surety for financial loss that is
16 issued by a surety company (1) admitted to do business in each state in which said
17 Defendant does business and (2) that holds a Federal Certificate of Authority As
18 Acceptable Surety On Federal Bond and Reinsuring;

19 4. The bond shall be in favor of the Federal Trade Commission for the benefit of any
20 party injured as a result of any deceptive misrepresentation or violation of this Order;

21 5. Said Defendant shall provide written notice and proof of the bond to the Federal
22 Trade Commission at least ten (10) days before the commencement of the activity for
23 which the bond is required; and

24 6. The bond required by this Order shall be in addition to, and not in lieu of, any bond
25 required by federal, state, or local law, or the order of another court.

1 **MONETARY RELIEF**

2 **IV.**

3 **IT IS FURTHER ORDERED:**

4 A. That judgment is hereby entered against each of the Defendants, jointly and severally, in
5 the amount of SEVENTY-FIVE (\$75,000) for equitable monetary relief, including but not limited
6 to consumer redress, and for paying any attendant expenses of administering any redress fund.
7 This \$75,000 judgment shall be separate and in addition to any assets turned over to the
8 Commission pursuant to Paragraph V of this Order. Such payment shall be made by cashier's
9 check or certified check payable to the Federal Trade Commission and shall be delivered to the
10 Federal Trade Commission, 901 Market Street, Suite 570, San Francisco, CA 94103 no later
11 than five (5) business days after entry of this Order.

12 B. That any funds paid by Defendants pursuant to Paragraphs III or VI of this Order shall be
13 paid into a redress fund administered by the Commission. If the Commission, in its sole
14 discretion, determines that redress is wholly or partially impractical, any funds not so used shall be
15 deposited into the United States Treasury as an equitable disgorgement remedy. Defendants shall
16 have no right to contest the manner of distribution chosen by the Commission or its designated
17 agent.

18 C. The Commission's agreement to this Order, requiring that Defendants be liable for less
19 than the full amount of consumer injury, is expressly premised upon the truthfulness, accuracy and
20 completeness of the financial statements and related documents submitted by Defendant
21 Abatangelo on September 13, 1999, and by Defendant Abolafia on 10/15/99, and on the
22 deposition testimony provided by them on October 26, 1999. Such financial statements,
23 supporting documents, and deposition testimony contain material information upon which the
24 Commission relied in negotiating and agreeing to this Consent Decree. If, upon motion by the
25 Commission, this Court finds that Defendants Frank A. Abatangelo, Jr. or Allen H. Abolafia have
26 failed disclose any material asset or materially misstated the value of any asset in the financial
27

1 statements and related documents described above, or has made any other material misstatement
2 or omission in the financial statements and related documents described above, the Court shall
3 enter judgment in the amount of Two Million Two Hundred Thousand Dollars (\$2,200,000),
4 against such defendant. For the purposes of this Part, Defendants Frank A. Abatangelo, Jr. and
5 Allen H. Abolafia waive any right to contest any of the allegations in the Amended Complaint
6 filed in this matter;

7 D. In the event that Defendants default on the \$75,000 payment set forth in Part A of this
8 Paragraph: 1) the amount of Two Million Two Hundred Thousand Dollars (\$2,200,000), less the
9 sum of payments made pursuant to Part A of this Paragraph, becomes immediately due and
10 payable by Defendants, and interest computed at the rate prescribed under 28 U.S.C. § 1961, as
11 amended, shall immediately begin to accrue on the unpaid balance; and 2) The Commission shall
12 provide notice of such default to Mr. Babero, Defendants' current attorney; and.

13 E. That any funds paid by Defendants pursuant to Parts C and D above shall be paid into the
14 redress fund described in Part B of this Paragraph.

15 16 **CUSTOMER LISTS**

17 **V.**

18 **IT IS FURTHER ORDERED** that Defendants, and each of their successors, assigns,
19 officers, agents, servants, employees, subsidiaries and affiliates, and those persons in active concert or
20 participation with them who receive actual notice of this Order by personal service or otherwise, are
21 permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing
22 the name, address, telephone number, credit card number, bank account number, e-mail address, or
23 other identifying information of any person who paid any money to any Defendant, at any time prior to
24 entry of this Order, in connection with travel services; *Provided*, however, that Defendants may
25 disclose such identifying information with the express written consent of the person whose information is
26 disclosed, to a law enforcement agency, or as required by any law, regulation, or court order.

1 **VI.**

2 **TURNOVER OF FROZEN ASSETS**

3 **IT IS FURTHER ORDERED** THAT all funds in the following previously frozen accounts shall
4 be transferred to the Commission:

5 Pioneer Citizens Bank:

6 account number 68176893, (approx, balance = \$31,366.57)

7 Colonial Bank:

8 account number #0112013465 (app. balance = \$12,875.04)

9 account number #0112014089 (app. balance = \$ 942.93)

10 account number #0111008980 (app. balance = \$ 127.97)

11 account number #0112013465 (app. balance unknown)

12 Imperial Bank:

13 account number 61-604-820 (app. balance unknown)

14 **ORDER DISTRIBUTION**

15 **VII.**

16 **IT IS FURTHER ORDERED** that, for a period of three (3) years from the date of entry of this
17 Order, each individual Defendant shall:

18 A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt
19 of same from, each officer or director, each individual serving in a management capacity, all
20 personnel involved in responding to consumer complaints or inquiries, and all sales personnel,
21 whether designated as employees, consultants, independent contractors or otherwise, immediately
22 upon employing or retaining any such persons, for any business where

23 1. that individual Defendant is the majority owner of the business or otherwise
24 directly or indirectly manages or controls the business, and where

25 2. the business engages in, or assists others engaged in, the sale of travel services; and

1 B. Maintain for a period of three (3) years after creation, and upon reasonable notice,
2 make available to representatives of the Commission, the original signed and dated
3 acknowledgments of the receipt of copies of this Order, as required in Subpart A of this
4 Paragraph.

5 **RECORD KEEPING PROVISIONS**

6 **VIII.**

7 **IT IS FURTHER ORDERED** that, for a period of three (3) years from the date of entry of
8 this Order, each individual Defendant and his officers, agents, servants, and employees, and all other
9 persons or entities in active concert or participation with him who receive actual notice of this Order by
10 personal service or otherwise, in connection with any business where

11 (1) said individual Defendant is the majority owner of the business or directly or indirectly
12 manages or controls the business, and where

13 (2) the business engages, or assists others engaged in, the sale of travel services,
14 is hereby restrained and enjoined from:

15 A. Failing to create, and from failing to retain for a period of three (3) years following the
16 date of such creation, unless otherwise specified:

17 1. Books, records, and accounts that, in reasonable detail, accurately and fairly reflect
18 the cost of goods or services sold, revenues generated, and the disbursement of such
19 revenues;

20 2. Records accurately reflecting: the name, address, and telephone number of each
21 person employed in any capacity by such business, including as an independent contractor;
22 that person's job title or position; the date upon which the person commenced work; and
23 the date and reason for the person's termination, if applicable. The business subject to this
24 paragraph shall retain such records for any terminated employee for a period of two (2)
25 years following the date of termination;

1 3. Records containing the names, addresses, phone numbers, dollar amounts paid,
2 quantity of items, services or investments purchased, and description of items, services, or
3 investments purchased for all consumers to whom such business has sold, invoiced or
4 shipped any good, service, or investment;

5 4. Records that reflect, for every consumer complaint or refund request, whether
6 received directly or indirectly or through any third party:

7 a. the consumer's name, address, telephone number and the dollar amount
8 paid by the consumer;

9 b. the written complaint or refund request, if any, and the date of the
10 complaint or refund request;

11 c. the basis of the complaint, including the name of any salesperson
12 complained against, and the nature and result of any investigation conducted
13 concerning any complaint;

14 d. each response and the date of the response;

15 e. any final resolution and the date of the resolution; and

16 f. in the event of a denial of a refund request, the reason for the denial;
17 and

18 5. Copies of all sales scripts, training materials, advertisements, or other marketing
19 materials utilized; *provided* that copies of all sales scripts, training materials,
20 advertisements, or other marketing materials utilized shall be retained for three (3) years
21 after the last date of dissemination of any such materials.

22 B. Destroying, throwing away, mutilating, changing, concealing, altering, transferring, or
23 otherwise disposing of, in any manner, directly or indirectly, any books, records, tapes, discs,
24 accounting data, checks (fronts and backs), correspondence, forms, advertisements, brochures,
25 manuals, electronically stored data, banking records, consumer lists, files, invoices, telephone
26 records, ledgers, payroll records, or other business or financial documents of any kind,
27

1 including information stored in computer-maintained form, in the possession, custody, or control of
2 Defendant or any other person or entity in active concert or participation with Defendant.

3 **COMPLIANCE REPORTING BY DEFENDANTS**

4 **IX.**

5 **IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this Order
6 may be monitored:

7 A. For a period of five (5) years from the date of entry of this Order, Defendants shall notify
8 the Commission of the following:

9 1. Any changes in any individual Defendant's residence, mailing addresses, and
10 telephone numbers, within ten (10) days of the date of such change;

11 2. Any changes in any individual Defendant's employment status (including
12 self-employment) within ten (10) days of such change. Such notice shall include the name
13 and address of each business that any such Defendant is affiliated with or employed by, a
14 statement of the nature of the business, and a statement of such Defendant's duties and
15 responsibilities in connection with the business or employment; and

16 3. Any proposed change in the corporate structure of any corporate Defendant, or
17 any proposed change in the structure of any business entity owned or controlled by any
18 individual Defendant, such as creation, incorporation, dissolution, assignment, sale,
19 merger, creation, dissolution of subsidiaries, proposed filing of a bankruptcy petition, or
20 change in the corporate name or address, or any other change that may affect compliance
21 obligations arising out of this Order, thirty (30) days prior to the effective date of any
22 proposed change; *provided, however*, that, with respect to any proposed change in the
23 corporation about which any Defendant learns less than thirty (30) days prior to the date
24 such action is to take place, such Defendant shall notify the Commission as soon as is
25 practicable after learning of such proposed change;

1 B. One hundred eighty (180) days after the date of entry of this Order, Defendants shall
2 provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the
3 manner and form in which Defendants have complied and are complying with this Order. This
4 report shall include but not be limited to:

5 1. The individual Defendant's then current residence address and telephone number;

6 2. The individual Defendant's then current employment, business addresses and
7 telephone numbers, a description of the business activities of each such employer, and
8 Defendant's title and responsibilities for each employer;

9 3. A copy of each acknowledgment of receipt of this Order obtained by Defendant
10 pursuant to Part XII;

11 4. A statement describing the manner in which each such Defendant has complied and
12 is complying with the (a) the injunctive provisions of this Order, and (b) the consumer
13 redress provisions of this Order;

14 C. Upon written request by a representative of the Commission, each Defendant shall submit
15 additional written reports (under oath, if requested) and produce documents on fifteen (15) days'
16 notice with respect to any conduct subject to this Order;

17 D. For the purposes of this Order, Defendants shall, unless otherwise directed by the

18 E. Commission's authorized representatives, mail all written notifications to the Commission
19 to:

20 Federal Trade Commission
21 901 Market Street, Room 570
San Francisco, CA 94103

22 F. For the purposes of this Part, "employment" includes the performance of services as an
23 employee, consultant, or independent contractor; and "employers" include any individual or entity
24 for whom any Defendant performs services as an employee, consultant, or independent
25 contractor; and

1 G. For purposes of the compliance reporting required by this Part, the Commission is
2 authorized to communicate directly with Defendants.

3
4 **COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE**

5 **X.**

6 **IT IS FURTHER ORDERED** that the Commission is authorized to monitor Defendants'
7 compliance with this Order by all lawful means, including but not limited to the following means:

8 A. The Commission is authorized, without further leave of court, to obtain discovery from
9 any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R.
10 Civ. P. 26 - 37, including the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the
11 purpose of monitoring and investigating Defendants' compliance with any provision of this Order;

12
13 B. The Commission is authorized to use representatives posing as consumers or suppliers to:
14 Defendants, Defendants' employees, or any other entity managed or controlled in whole or in part
15 by any Defendant, without the necessity of identification or prior notice; and

16 C. Nothing in this Order shall limit the Commission's lawful use of compulsory process,
17 pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to investigate whether
18 Defendants have violated any provision of this Order, or Section 5 of the FTC Act, 15 U.S.C. §
19 45.

20 **XI.**

21 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this
22 Order, for the purpose of further determining compliance with this Order, Defendants shall permit
23 representatives of the Commission, within five (5) business days of receipt of written notice from the
24 Commission:

25 A. Access during normal business hours to any office, or facility storing documents, of any
26 business where (1) any Defendant is the majority owner of the business or directly or indirectly
27

1 manages or controls the business, and where (2) the business is engaged in the advertising,
2 promotion, offering for sale, sale or provision of any travel service, or in assisting others engaged
3 in such business. In providing such access, Defendants shall permit representatives of the
4 Commission to inspect and copy all documents relevant to any matter contained in this Order; and
5 shall permit Commission representatives to remove documents relevant to any matter contained in
6 this Order for a period not to exceed five (5) business days so that the documents may be
7 inspected, inventoried, and copied; and

8 B. To interview the officers, directors, and employees, including all personnel involved in
9 responding to consumer complaints or inquiries, and all sales personnel, whether designated as
10 employees, consultants, independent contractors or otherwise, of any business to which Paragraph
11 (A) of this Part applies, concerning matters relating to compliance with the terms of this Order.
12 The person interviewed may have counsel present.

13 *Provided that*, upon application of the Commission and for good cause shown, the Court may
14 enter an *ex parte* order granting immediate access to Defendants' business premises for the purposes of
15 inspecting and copying all documents relevant to any matter contained in this Order.

16 XII.

17 RECEIPT OF ORDER

18 **IT IS FURTHER ORDERED** that within five (5) business days after receipt by Defendants of
19 this Order as entered by the Court, Defendants shall submit to the Commission a truthful sworn
20 statement, in the form shown on Attachment A, that shall acknowledge receipt of this Order.

21 XIII.

22 LIFTING OF ASSET FREEZE

23 **IT IS FURTHER ORDERED** that the freeze of defendant ASQ, Inc.'s assets and defendant
24 Abatangelo's assets imposed in (a) the Temporary Restraining Order issued July 23, 1999, and (b) the
25 Stipulated Preliminary Injunction issued August 17, 1999, shall be lifted upon entry of this Stipulated
26 Final Order For Permanent Injunction And Settlement of Claims for Consumer Redress.

1 **XIV.**

2 **RETENTION OF JURISDICTION**

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

7
8 The parties, by their respective counsel, hereby consent to the terms and conditions of the
9 Stipulated Final Order for Permanent Injunction and Settlement of Claims for Consumer Redress as set
10 forth above and consent to the entry thereof.

11 **FOR THE DEFENDANTS**

FOR PLAINTIFF

12
13 _____
14 Frank A. Abatangelo, individually
and as an officer of ASQ, Inc.

Jerome M. Steiner, Jr.
Gerald E. Wright
David M. Newman
Federal Trade Commission

15 _____
16 Allen F. Abolafia, individually and as an officer
of ASQ, Inc,

Blaine T. Welsh
Assistant U.S. Attorney

17
18 _____
19 Andras F. Babero, Esq.
Attorney for Defendants ASQ, Inc., Frank A.
20 Abatangelo, Jr., individually and as an officer of
ASQ, Inc., and Allen H. Abolafia, individually
and as an officer of ASQ, Inc.

Attorneys for Plaintiff
Federal Trade Commission

21 There being no just reason for delay, the Clerk of Court is hereby directed to enter this
22 Order.

23 **IT IS SO ORDERED**

24
25 Dated: _____

JOHNNIE B. RAWLINSON
UNITED STATES DISTRICT JUDGE