

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

MAY - 7 2003

DAVID J. MALAND, CLERK
BY
DEPUTY _____

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

Civil Action No. 4:03 CV 179

THE COLLEGE ADVANTAGE, INC.,
also doing business as College Funding
Center,

ALAN E. BARON,

C FUNDING GROUP, LLC, also doing
business as College Funding Group, and

EDWARD F. JACOBS,

Defendants.

**[PROPOSED] *EX PARTE* TEMPORARY RESTRAINING ORDER
WITH ASSET FREEZE**

Plaintiff, the Federal Trade Commission ("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 moved *ex parte* for a temporary restraining order and for an order to show cause why a preliminary injunction should not be granted pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 65,

and the Court having considered the complaint, declarations, exhibits, and memorandum of law filed in support thereof, finds that:

1. This Court has jurisdiction over the subject matter of this case, and there is good cause to believe it will have jurisdiction of all parties hereto;

2. There is good cause to believe that defendants The College Advantage, Inc., doing business as College Funding Center; Alan E. Baron; C Funding Group, LLC; and Edward F. Jacobs, doing business as College Funding Group, have engaged and are likely to engage in acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and that the plaintiff is therefore likely to prevail on the merits of this action;

3. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for consumers in the form of monetary restitution will occur from the sale, transfer, or other disposition or concealment by defendants of their assets or company records, or those assets and company records under their control, unless defendants are immediately restrained and enjoined by Order of this Court. There is thus good cause for issuing this Order without notice pursuant to Federal Rule of Civil Procedure 65(b);

4. Weighing the equities and considering plaintiff's likelihood of ultimate success, a temporary restraining order with asset freeze and other equitable relief is in the public interest; and

5. Fed. R. Civ. P. 65(c) does not require security of the United States or an officer or agency thereof.

DEFINITIONS

For the purpose of this temporary restraining order, the following definitions shall apply:

1. ***“Defendants”*** means The College Advantage, Inc., Alan E. Baron, C Funding Group, LLC, and Edward F. Jacobs, and each of their successors, assigns, officers, directors, agents, servants, employees, subsidiaries and affiliates, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, unless specified otherwise.

2. ***“Assets”*** means any legal or equitable interest in, right to, or claim to, any real and personal property, including but not limited to “goods,” “instruments,” “equipment,” “fixtures,” “general intangibles,” “inventory,” “checks,” “notes” (as these terms are defined in the Uniform Commercial Code), and all chattel, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and cash, wherever located.

3. ***“Document”*** is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a) and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which the information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

ORDER

CONDUCT PROHIBITIONS

I. INJUNCTION AGAINST MISREPRESENTATIONS

A. **IT IS THEREFORE ORDERED** that, in connection with the advertising,

promotion, offering for sale, or sale of college financial aid assistance programs, defendants The College Advantage, Inc., Alan E. Baron, C Funding Group, LLC, and Edward F. Jacobs, and each of their successors, assigns, officers, directors, agents, servants, employees, subsidiaries, and affiliates, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, are hereby temporarily restrained and enjoined from:

1. Misrepresenting, expressly or by implication, that defendants will secure 100% of the funding necessary for consumers or consumers' children to attend college;
2. Misrepresenting, expressly or by implication, that defendants will secure funding for consumers or consumers' children to attend college which will reduce the consumers' out-of-pocket expenses; and
3. Misrepresenting, expressly or by implication, that consumers will receive a 100% refund if defendants do not secure 100% of the funding necessary for consumers or consumers' children to attend college.

B. IT IS FURTHER ORDERED that, in connection with the advertising, promotion, offering for sale, or sale of college financial aid assistance programs, defendants The College Advantage, Inc., Alan E. Baron, C Funding Group, LLC, and Edward F. Jacobs, and each of their successors, assigns, officers, directors, agents, servants, employees, subsidiaries, and affiliates, and those persons in

active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, are hereby temporarily restrained and enjoined from misrepresenting, expressly or by implication, any fact material to a consumer's decision to purchase a college financial aid assistance program.

ASSET & RECORD RETENTION

II. ASSET FREEZE

IT IS FURTHER ORDERED that defendants The College Advantage, Inc., Alan E. Baron, C Funding Group, LLC, and Edward F. Jacobs, and each of their successors, assigns, officers, directors, agents, servants, employees, subsidiaries, and affiliates, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, are hereby temporarily restrained and enjoined from:

- A. Transferring, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, perfecting a security interest in, or otherwise disposing of any funds, property, accounts, contracts, shares of stock, lists of consumer names, or other assets, wherever located, including outside the United States, that are (1) owned or controlled, directly or indirectly, by defendants, in whole or in part; (2) in the actual or constructive possession of defendants; or (3) owned, controlled by, or in the actual or constructive possession

of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by, or under common control with defendants, including, but not limited to, any assets held by, for, or under the name of defendants at any bank or savings and loan institution, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, or other financial institution or depository of any kind;

- B. Opening or causing to be opened any safe deposit boxes titled in the name of defendants, or subject to access by defendants; and
- C. Incurring charges or cash advances on any credit card issued in the name, singly or jointly, of any defendant.

IT IS FURTHER ORDERED that the assets affected by this Paragraph shall include both existing assets and assets acquired after the effective date of this Order.

III. REPATRIATION OF ASSETS AND DOCUMENTS LOCATED IN FOREIGN COUNTRIES

IT IS FURTHER ORDERED that defendants The College Advantage, Inc., Alan E. Baron, C Funding Group, LLC, and Edward F. Jacobs, and each of their successors, officers, directors, assigns, agents, servants, employees, subsidiaries, and affiliates, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, shall:

- A. Within three (3) business days following the service of this Order, take such steps as are necessary to transfer to the territory of the United States of America all

documents and assets that are located outside of such territory and that are held by or for defendants or are under defendants' direct or indirect control, jointly, severally, or individually;

- B. Within three (3) business days following service of this Order, provide the plaintiff with a full accounting of all documents and assets that are located outside of the territory of the United States of America and that are held by or for defendants or are under defendants' direct or indirect control, jointly, severally, or individually;
- C. Hold and retain all transferred documents and assets, and prevent any transfer, disposition, or dissipation whatsoever of any such assets or funds; and
- D. Provide plaintiff access to defendants' records and documents held by financial institutions outside the territorial United States, by signing the Consent to Release of Financial Records attached hereto as Attachment A.

IV. INTERFERENCE WITH REPATRIATION

IT IS FURTHER ORDERED that defendants The College Advantage, Inc., Alan E. Baron, C Funding Group, LLC, and Edward F. Jacobs, and each of their successors, assigns, officers, directors, agents, servants, employees, subsidiaries, and affiliates, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, are hereby temporarily restrained and enjoined from taking any action, directly or indirectly, which may result in the encumbrance or dissipation of foreign assets

or in the hindrance of the repatriation required by Paragraph III of this Order, including but not limited to:

- A. Sending any statement, letter, fax, e-mail or wire transmission, telephoning or engaging in any other act, directly or indirectly, that results in a determination by a foreign trustee or other entity that a “duress” event has occurred under the terms of a foreign trust agreement until such time as all assets have been fully repatriated pursuant to Paragraph III of this Order; or
- B. Notifying any trustee, protector or other agent of defendants of the existence of this Order, or of the fact that repatriation is required pursuant to a Court Order, until such time as all assets have been fully repatriated pursuant to Paragraph III of this Order.

V. FINANCIAL STATEMENTS

IT IS FURTHER ORDERED that no later than three (3) days prior to the scheduled date and time for the hearing on a preliminary injunction, but in no event later than ten (10) days after entry of this Order, defendants The College Advantage, Inc., Alan E. Baron, C Funding Group, LLC, and Edward F. Jacobs shall provide the Commission with completed financial statements, on the forms attached to this Order as Attachments B and C, for each defendant individually and for each corporation of which any defendant is an officer, as of the date of service of this Order.

VI. CONSUMER CREDIT REPORTS

IT IS FURTHER ORDERED that pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(1), any consumer reporting agency may furnish a consumer report concerning the defendants to the Commission.

VII. PRESERVATION OF RECORDS

IT IS FURTHER ORDERED that defendants The College Advantage, Inc., Alan E. Baron, C Funding Group, LLC, and Edward F. Jacobs, and each of their successors, assigns, officers, directors, agents, servants, employees, subsidiaries, and affiliates, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, are hereby temporarily restrained and enjoined from destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any contracts, accounting data, correspondence, advertisements, computer tapes, discs, or other computerized records, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, copies of federal, state or local business or personal income or property tax returns, and other documents or records of any kind that relate to the business practices or business or personal finances of the defendants, individually and jointly.

VIII. MAINTENANCE OF CURRENT BUSINESS RECORDS

IT IS FURTHER ORDERED that defendants The College Advantage, Inc., Alan E. Baron, C Funding Group, LLC, and Edward F. Jacobs, and each of their successors, assigns,

officers, directors, agents, servants, employees, subsidiaries, and affiliates, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, are hereby temporarily restrained and enjoined from:

- A. Failing to create and maintain documents that, in reasonable detail, accurately, fairly, and completely reflect defendants' income, disbursements, transactions, and use of money; and
- B. Creating, operating, or exercising any control over any business entity, including any partnership, limited partnership, joint venture, sole proprietorship or corporation, without first providing the Commission with a written statement disclosing: (1) the name of the business entity; (2) the address and telephone number of the business entity; (3) the names of the business entity's officers, directors, principals, managers and employees; and (4) a detailed description of the business entity's intended activities.

IX. RETENTION OF ASSETS AND RECORDS

IT IS FURTHER ORDERED that any financial or brokerage institution, business entity, or person served with a copy of this Order that holds, controls or maintains custody of any account or asset of any defendant or has held, controlled or maintained custody of any such account or asset at any time since the date of entry of this Order shall:

- A. Hold and retain within its control and prohibit the withdrawal, removal, assignment, transfer, pledge, encumbrance, disbursement, dissipation, conversion, sale, or other disposal of any such asset except by further order of the Court;

- B. Deny defendants access to any safe deposit box that is:**
- 1. titled in the name of defendants, either individually or jointly; or**
 - 2. otherwise subject to access by defendants;**
- C. Provide the Commission's counsel, within five (5) business days of receiving a copy of this Order, a sworn statement setting forth:**
- 1. the identification number of each such account or asset titled in the name, individually or jointly, of defendants, or held on behalf of, or for the benefit of, defendants;**
 - 2. the balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and**
 - 3. the identification of any safe deposit box that is either titled in the name, individually or jointly, of defendants, or is otherwise subject to access by defendants; and**
- D. Upon request of the Commission, promptly provide the Commission with copies of all records or other documentation pertaining to such account or asset, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction**

reports, 1099 forms, and safe deposit box logs. Any such financial institution, account custodian, or other aforementioned entity may arrange for the Commission to obtain copies of any such records which the Commission seeks.

X. PLAINTIFF'S ACCESS TO BUSINESS RECORDS

IT IS FURTHER ORDERED that defendants shall allow plaintiff's representatives, agents, and assistants immediate access to the defendants' business premises, mail drops, storage facilities, and all other business locations used by defendants, including 2828 West Parker, Plano, Texas 75026; 1222 Wellshire Drive, Katy, Texas 77494; and 565 South Mason Road, Katy, Texas 77450. The purpose of the access shall be to inspect and copy materials relevant to this action. The Commission may be accompanied by other law enforcement agents for the purpose of securing the premises. The Commission may exclude defendants and their employees and agents from the premises during this time. The Commission may, through photographs and drivers' licenses, identify and obtain information from individuals at the premises. The Commission may remove materials from the business premises so they may be inspected, inventoried, and copied. The Commission shall return materials so removed within five (5) business days of completing said inventorying and copying. In no event shall the Commission retain the materials longer than ten (10) business days.

NOTIFICATION PROVISIONS

XI. DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that defendants The College Advantage, Inc., Alan E. Baron, C Funding Group, LLC, and Edward F. Jacobs shall immediately provide a copy of this Order to each affiliate, subsidiary, division, sales entity, successor, assign, officer, director,

employee, agent, servant, attorney, and representative of any defendant, and shall, within ten (10) days from the date of entry of this Order, provide the Commission with a sworn statement that defendants have complied with this provision of the Order, which statement shall include the names and addresses of each such person or entity who received a copy of the Order.

XII. SERVICE OF ORDER

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission and overnight delivery service, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of any defendant, or that may be subject to any provision of this Order. Pursuant to Fed. R. Civ. P. 4(c)(2), this Order may be served upon the defendants, upon the business premises of the defendants, and upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of any defendant, or that may be subject to any provision of this Order, by employees of the Commission, by employees of any other law enforcement agency, by any agent of plaintiff or by any agent of any process service retained by plaintiff.

XIII. MONITORING

IT IS FURTHER ORDERED that agents or representatives of the Commission may contact the defendants or defendants' agents or representatives directly and anonymously for the purpose of monitoring compliance with Paragraph I of this Order, and may tape-record any oral communications that occur in the course of such contacts.

PRELIMINARY INJUNCTION PROCEEDINGS

XIV. SERVICE OF PLEADINGS

IT IS FURTHER ORDERED that the parties shall serve all memoranda, affidavits and other evidence upon which they intend to rely at the preliminary injunction hearing set in this matter not later than 4:00 p.m. local time of the second day prior to the hearing date. Service on the Commission shall be performed by delivery to the attention of Gary D. Kennedy at the Federal Trade Commission, Southwest Region, Suite 2150, 1999 Bryan Street, Dallas, Texas 75201-6803, or by facsimile transmission to (214) 953-3079.

~~XV. NO DIRECT EXAMINATION OF WITNESSES~~

~~**IT IS FURTHER ORDERED** that there will be no direct examination of witnesses at the preliminary injunction hearing.~~

XVI. EXPEDITED ASSET DISCOVERY

IT IS FURTHER ORDERED that in anticipation of the preliminary injunction hearing in this matter, the Commission is granted leave to conduct expedited discovery regarding defendants' assets. The Commission may depose witnesses regarding defendants' assets at any time after the date of this Order upon three (3) days' notice. The defendants shall respond to any asset-related interrogatories, requests for admissions or requests for the production of documents within four (4) business days after service of the discovery request. Any discovery taken or propounded by the Commission pursuant to this Paragraph is in addition to, and not subject to, any limits on the quantity of permissible discovery provided for in the Federal Rules of Civil Procedure or the Rules of this Court. Any limitations and conditions set forth in the Federal

Rules of Civil Procedure or the Rules of this Court regarding subsequent depositions of an individual shall not apply to depositions taken pursuant to this Paragraph.

XVII. PRELIMINARY INJUNCTION HEARING

IT IS FURTHER ORDERED, pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, that defendants shall appear before this Court on the 16th day of May, 2003, at 1:30 o'clock P.m., at the United States Courthouse, Sherman, Texas, to show cause, if there is any, why this Court should not enter a preliminary injunction, pending final ruling on the Complaint against defendants, enjoining defendants from further violations of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a), continuing the freeze of the assets, and imposing such additional relief as may be appropriate.

XVIII. DURATION OF TEMPORARY RESTRAINING ORDER

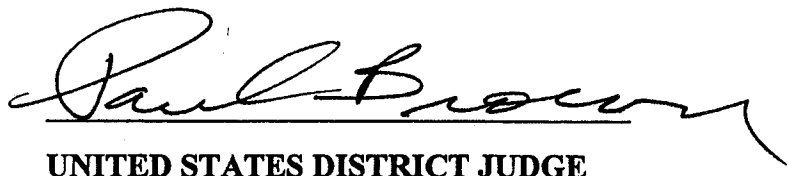
IT IS FURTHER ORDERED that this temporary restraining order shall expire on May 17, 2003, ~~xxxx~~, 2003, at 5:00 p.m. local time unless before such time, the Order is extended for good cause shown, or by consent of the parties.

XIX. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

IT IS SO ORDERED.

Dated this 7th day of May, 2003.


UNITED STATES DISTRICT JUDGE

Submitted by:

Gary Kennedy 5/6/03
Gary D. Kennedy
Attorney-In-Charge
Plaintiff Federal Trade Commission