

**1524948 ALBERTA LTD.
OPERATING AS
TERRA MARKETING GROUP
AND
JESSE WILLMS, DIRECTOR
AND ANY EMPLOYEE, REPRESENTATIVE, OR AGENT OF
1524948 ALBERTA LTD., OPERATING AS TERRA MARKETING GROUP
AND JESSE WILLMS**

This Director's Order was issued under s. 157(1) of the *Fair Trading Act* in response to, in the opinion of the Director, contraventions of the Act. As mandated by s. 157.1 of the *Fair Trading Act*, the Director must maintain a public record of Director's Orders.

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Consumer Programs

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DIRECTOR'S ORDER UNDER SECTION 157 OF THE FAIR TRADING ACT

TO

1524948 ALBERTA LTD. operating as TERRA MARKETING GROUP

and JESSE WILLMS, Director,

and ANY EMPLOYEE, REPRESENTATIVE, OR AGENT OF 1524948 ALBERTA LTD. OR JESSE WILLMS

ISSUE

1524948 Alberta Ltd., o/a Terra Marketing Group, (the supplier) is an Alberta company based in Sherwood Park, Alberta. In 2010, the supplier operated the "penny auction" websites www.swipebids.com and www.swipeauctions.com. Under the "penny auction" model, consumers bid on items put up for auction by the supplier. Consumers had to register for the website and purchase the bids before they could use them. Bids appear to have cost between 2¢ and 80¢, depending on the method of purchase. Each time a consumer bid, the price increased by 1¢ and, if the auction was in its final seconds, the time remaining was reset to 10-12 seconds. The successful bidder at the end of the auction won the right to purchase the item for the final price. The membership included a certain number of "free" bids, and has changed in price, ranging from US \$49.95 to US \$159.00.

Service Alberta has received numerous complaints from consumers who requested a refund of their membership fees from the supplier but were refused. Documents provided by these consumers show the supplier did not send them a proper copy of the Internet sales contract, as required by the Internet Sales Contract Regulation ("Regulation"). Those consumers attempted to cancel within the 30 day period allowed when a proper copy of the contract is not sent to the consumer. Even where these rights were exercised properly, the consumers did not get a refund within 15 days of cancellation, as required.

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Alberta ■

Upon being contacted by Service Alberta, legal counsel for 1524948 Alberta Ltd. responded by stating the fees, terms and conditions were clearly listed on the websites. The company did issue refunds to specific complainants at that point. When questioned about what the company will do to comply with the Regulation, the legal counsel advised steps will be put in place, but did not expressly indicate what steps would be taken beyond record keeping and ensuring adequate staffing levels.

The Director is aware the websites involved in this matter are no longer active and that the consumers named in the specific complaints leading to this order have received their money back. Nevertheless, it is believed there is a significant likelihood this company and its director continue to be involved in Internet commerce and are therefore responsible to comply with the Regulation on an ongoing basis. In addition, the consumers were only refunded after Service Alberta contacted the company's legal counsel about the complaints. As such, the Director believes these consumers were only refunded because a government body was involved, and not out of an intent to comply with the Regulation.

LEGISLATION

The following sections are excerpts from the Internet Sales Contract Regulation:

Cancellation of Internet sales contract

6(1) A consumer may cancel an Internet sales contract in the following circumstances:

- (a) at any time from the date the contract is entered into until 7 days after the consumer receives a copy of the contract if
 - (i) the supplier does not disclose to the consumer the information described in section 4(1)(a), or
 - (ii) the supplier does not provide to the consumer an express opportunity to accept or decline the contract or to correct errors immediately before entering into it;
- (b) within 30 days from the date the contract is entered into if the supplier does not provide the consumer with a copy of the contract pursuant to section 5.

Notice of cancellation

8(1) An Internet sales contract is cancelled under section 6 on the giving of a notice of cancellation in accordance with this section.

- (2) A notice of cancellation may be expressed in any way as long as it indicates the intention of the consumer to cancel the Internet sales contract.
- (3) The notice of cancellation may be given to the supplier by any means, including, but not limited to, personal service, registered mail, telephone, courier, facsimile and e-mail.

Effect of cancellation

- 9(1) A cancellation of an Internet sales contract under section 6 operates to cancel the contract as if the contract had never existed.
- (2) A cancellation of an Internet sales contract under section 6 also operates to cancel
 - (a) any related consumer transaction,
 - (b) any guarantee given in respect of consideration payable under the contract, and
 - (c) any security given by the consumer or a guarantor in respect of consideration payable under the contract,as if the contract had never existed.

Responsibilities on cancellation

- 10(1) If an Internet sales contract is cancelled under section 6, the supplier must, within 15 days from the date of cancellation, refund to the consumer all consideration paid by the consumer under the contract and any related consumer transaction, whether paid to the supplier or another person.

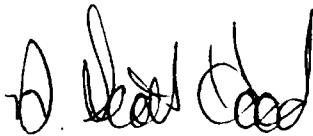
ORDER

- 1524948 Alberta Ltd. o/a Terra Marketing Group must comply with the Internet Sales Contract Regulation by ensuring all consumers who cancel contracts where cancellation rights exist under the Regulation are refunded in full within 15 days of cancellation.
- Jesse Willms, either in his own capacity or when acting on behalf of a corporation in which he has an interest or by which he is employed, must comply with the Internet Sales Contract Regulation by ensuring all consumers cancelling contracts where cancellation rights exist *under the Regulation* are refunded in full within 15 days of cancellation.

- Any employee, representative, agent or associate of Jesse Willms, 1524948 Alberta Ltd. o/a Terra Marketing Group, or both must comply with the Internet Sales Contract Regulation by ensuring all consumers cancelling contracts where cancellation rights exist under the Regulation are refunded in full within 15 days of cancellation.

NON COMPLIANCE WITH ORDER

- **ANY PERSON WHO FAILS TO COMPLY WITH AN ORDER OF THE DIRECTOR UNDER SECTION 157 OF THE *FAIR TRADING ACT* CONTRAVENES THIS ACT AND IS GUILTY OF AN OFFENCE AND MAY BE PROSECUTED PURSUANT TO SECTION 163 OF THE *FAIR TRADING ACT*.**

A handwritten signature in black ink, appearing to read "S. Hood". The signature is stylized and cursive.

Scott Hood
Director of Fair Trading (as delegated)
July 29, 2011