

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Joseph J. Simons, Chairman**
 Noah Joshua Phillips
 Rohit Chopra
 Rebecca Kelly Slaughter
 Christine S. Wilson

In the Matter of

**LVTR LLC, a limited liability company, d/b/a LAS
VEGAS TRAIL RIDING, and**

**TOMI A. TRUAX, individually and as manager of
LVTR LLC.**

DECISION AND ORDER

DOCKET NO. C-4679

DECISION

The Federal Trade Commission (“Commission”) initiated an investigation of certain acts and practices of the Respondents named in the caption. The Commission’s Bureau of Consumer Protection (“BCP”) prepared and furnished to Respondents a draft Complaint. BCP proposed to present the draft Complaint to the Commission for its consideration. If issued by the Commission, the draft Complaint would charge the Respondents with violations of the Consumer Review Fairness Act of 2016.

Respondents and BCP thereafter executed an Agreement Containing Consent Order (“Consent Agreement”). The Consent Agreement includes: 1) statements by Respondents that they neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Decision and Order, and that only for purposes of this action, they admit the facts necessary to establish jurisdiction; and 2) waivers and other provisions as required by the Commission’s Rules.

The Commission considered the matter and determined that it had reason to believe that Respondents have violated the Consumer Review Fairness Act, and that a Complaint should issue stating its charges in that respect. The Commission accepted the executed Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments. Now, in further conformity with the procedure prescribed in Rule 2.34, the Commission issues its Complaint, makes the following Findings, and issues the following Order:

FINDINGS

1. The Respondents are:
 - a. LVTR LLC, also d/b/a Las Vegas Trail Riding and Las Vegas Trail Ride, a Nevada limited liability company with its principal office or place of business in Henderson, Nevada.
 - b. Tomi A. Truax, owner and manager of LVTR LLC. Individually or in concert with others, she formulates, directs, or controls the policies, acts, or practices of LVTR LLC. Her principal office or place of business is the same as that of LVTR LLC.
2. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondents, and the proceeding is in the public interest.

ORDER

Definitions

For purposes of this Order, the following definitions apply:

- A. “Covered Communication” means a written, oral, or Pictorial review, performance assessment, or other similar analysis of goods or services, including conduct related to the goods or services.
- B. “Review-Limiting Contract Term” means a standardized contract term that:
 1. prohibits or restricts the ability of a person who is a party to the contract to engage in a Covered Communication;
 2. imposes a penalty or fee against a person who is a party to the contract for engaging in a Covered Communication; or
 3. transfers, or requires a person who is a party to the contract to transfer, to any other person any intellectual property rights in a Covered Communication, with the exception of a non-exclusive license to lawfully use a Covered Communication about a Respondent’s goods or services.
- C. “Pictorial” includes pictures, photographs, video, illustrations, and symbols.

- D. "Respondents" means LVTR LLC and Tomi A. Truax, individually or collectively.
1. "Corporate Respondent" means LVTR LLC (d/b/a Las Vegas Trail Riding and Las Vegas Trail Ride), a limited liability company, and its successors and assigns.
 2. "Individual Respondent" means Tomi A. Truax.

Provisions

I. Prohibited Use of Review-Limiting Contract Terms

IT IS ORDERED that Respondents, and Respondents' members, managers, officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the sale or leasing of any good or service, must not:

- A. offer to any prospective customer a contract, or offer to any customer a renewal contract, that includes a Review-Limiting Contract Term;
- B. require that a customer accept a Review-Limiting Contract Term as a condition of any Respondent's fulfillment of its obligations under a customer contract that a Respondent entered into before the effective date of this Order; or
- C. attempt to enforce or assert the validity of any Review-Limiting Contract Term in any customer contract that a Respondent entered into before the effective date of this Order.

Nothing in this Provision shall require a Respondent to publish or host the content of any person, affect any other legal duty of a party to a contract, or affect any cause of action arising from the breach of such duty.

II. Notice to Consumers

IT IS FURTHER ORDERED that Respondents must notify consumers online, as follows:

- A. Respondents must post a web page notice as shown in Attachment A, except with the heading "Your Right to Post Honest Reviews," on a page with the lasvegastrailriding.com domain name.
- B. For as long as the web page notice is posted, Respondents must maintain a link to the web page notice and embed the link in the words "Your Right to Post Honest Reviews" on the lasvegastrailriding.com home page and adjacent to the heading of any web page that any Respondent owns or operates that posts or links to consumer reviews or testimonials.
- C. The web page notice and any link to it must, by its size, contrast, location, and other characteristics, stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.

- D. The web page notice must be posted not later than 3 days after the effective date of this Order and for at least 1 year after the effective date of this Order.

III. Acknowledgments of the Order

IT IS FURTHER ORDERED that Respondents obtain acknowledgments of receipt of this Order:

- A. Each Respondent, within 10 days after the effective date of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For 3 years after the issuance date of this Order, Individual Respondent for any business that she, individually or collectively with Corporate Respondent, owns a majority of or controls directly or indirectly, and Corporate Respondent, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees having managerial responsibilities for drafting, approving, or enforcing customer contracts, or for responding to Covered Communications and all agents and representatives who participate in drafting, approving, or enforcing customer contracts, or responding to Covered Communications; and (3) any business entity resulting from any change in structure as set forth in the Provision titled Compliance Reports and Notices. Delivery must occur within 10 days after the effective date of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.
- C. From each individual or entity to which a Respondent delivered a copy of this Order, Respondent must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

IV. Compliance Reports and Notices

IT IS FURTHER ORDERED that Respondents make timely submissions to the Commission:

- A. One year after the issuance date of this Order, each Respondent must submit a compliance report, sworn under penalty of perjury, in which:
1. Each Respondent must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Respondent; (b) identify all of that Respondent's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered and the means of advertising, marketing, and sales, any conduct toward consumers who have engaged in Covered Communications, and the involvement of any other Respondent (which Individual Respondent must describe if she knows or should know due to her own involvement); (d) describe in detail whether and how Respondent is in compliance with each Provision of this Order, including a discussion of all of the changes Respondent made to comply with this Order; and (e) provide a copy of each Acknowledgment of this

Order obtained pursuant to this Order, unless previously submitted to the Commission.

2. Additionally, Individual Respondent must: (a) identify all her telephone numbers and all her physical, postal, email and Internet addresses, including all residences; (b) identify all her business activities, including any business for which she performs services whether as an employee or otherwise and any entity in which she has any ownership interest; and (c) describe in detail her involvement in each such business activity, including title, role, responsibilities, participation, authority, control, and any ownership.
- B. For 3 years after the issuance date of this Order, each Respondent must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:
1. Each Respondent must submit notice of any change in: (a) any designated point of contact; or (b) the structure of any Corporate Respondent or any entity that Respondent has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.
 2. Additionally, Individual Respondent must submit notice of any change in: (a) name, including alias or fictitious name, or residence address; or (b) title or role in any business activity, including (i) any business for which she performs services whether as an employee or otherwise and (ii) any entity in which she has any ownership interest and over which she has direct or indirect control. For each such business activity, also identify its name, physical address, and any Internet address.
- C. Each Respondent must submit notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Respondent within 14 days of its filing.
- D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.
- E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *In re LVTR LLC, C-4679*.

V. Recordkeeping

IT IS FURTHER ORDERED that Respondents must create certain records for 3 years after the issuance date of this Order, and retain each such records for 5 years, unless otherwise specified below. Specifically, Corporate Respondent and Individual Respondent, for any business that such Respondent, individually or collectively with any other Respondents, owns a majority of or controls directly or indirectly, must create and retain the following records:

- A. Personnel records showing, for each person providing services in relation to any aspect of this Order, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- B. A copy of: each unique contract relating to a Covered Communication; each unique contract used in connection with the sale or leasing of Respondent's goods or services; all communications with consumers threatening any legal action relating to any Covered Communication; and all parties' court filings and Respondents' discovery responses in any legal action relating to any Covered Communication; and
- C. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission.

VI. Compliance Monitoring

IT IS FURTHER ORDERED that, for the purpose of monitoring Respondents' compliance with this Order:

- A. Within 10 days of receipt of a written request from a representative of the Commission, each Respondent must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury, and produce records for inspection and copying.
- B. For matters concerning this Order, representatives of the Commission are authorized to communicate directly with each Respondent. Respondents must permit representatives of the Commission to interview anyone affiliated with any Respondent who has agreed to such an interview. The interviewee may have counsel present.
- C. The Commission may use all other lawful means, including posing through its representatives as consumers, suppliers, or other individuals or entities, to Respondents or any individual or entity affiliated with Respondents, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

VII. Order Effective Dates

IT IS FURTHER ORDERED that this Order is final and effective upon the date of its publication on the Commission's website (ftc.gov) as a final order. This Order will terminate on June 19, 2039, or 20 years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying settlement) in federal court alleging any violation of this Order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Provision in this Order that terminates in less than 20 years;
- B. This Order's application to any Respondent that is not named as a defendant in such complaint; and
- C. This Order if such complaint is filed after this Order has terminated pursuant to this Provision.

Provided, further, that if such complaint is dismissed or a federal court rules that the Respondent did not violate any provision of this Order, and the dismissal or ruling is either not appealed or upheld on appeal, then this Order will terminate according to this Provision as though the complaint had never been filed, except that this Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

April J. Tabor
Acting Secretary

SEAL:

ISSUED: June 19, 2019

ATTACHMENT A to the Order –Web Page Notice Template:

The notice must be in the following form, appearing on Respondents' websites with the underlined text completed as directed:

Your Right to Post Honest Reviews

Dear Customers:

I am writing to tell you that the Federal Trade Commission (FTC), the nation's consumer protection agency, has alleged that we used contract provisions that violated the Consumer Review Fairness Act (CRFA). The CRFA protects your ability to share your honest opinions about a business's products, services, or conduct in any forum, including social media. According to the FTC, we used provisions in our booking form contracts that unlawfully restricted our customers (including you) from sharing truthful information and opinions about their experiences with us.

To settle the case, we are contacting our customers to tell you that these contract provisions are void and that we cannot enforce them against you. You can publish your honest review even if you say something negative about us or our services.

If you have questions about the FTC's case, visit [add case page alias URL provided by FTC staff with embedded hyperlink].

Sincerely,

Tomi A. Truax