

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

In the Matter of)	
)	
LEGACY LEARNING SYSTEMS, INC.,)	File No. 1023055
a corporation, and)	
)	
LESTER GABRIEL SMITH,)	AGREEMENT CONTAINING
individually and as an officer)	CONSENT ORDER
and director of the corporation.)	
)	
)	
)	

The Federal Trade Commission (“Commission”) has conducted an investigation of certain acts and practices of Legacy Learning Systems, Inc., a corporation, and Lester Gabriel Smith, an officer and director of the corporation (“proposed respondents”). Proposed respondents, having been represented by counsel, are willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

IT IS HEREBY AGREED by and between Legacy Learning Systems, Inc., by its duly authorized officer, and Lester Gabriel Smith, individually and as an officer and director of the company; and counsel for the Federal Trade Commission that:

1. Proposed respondent Legacy Learning Systems, Inc. (“Legacy”) is a Tennessee corporation with its principal office or place of business at 624 Grassmere Park, Suite 16, Nashville, TN 37211.
2. Proposed respondent Lester Gabriel Smith is an officer and director of the corporate respondent, with his principal office or place of business at 624 Grassmere Park, Suite 16, Nashville, TN 37211.

- c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of thirty (30) days and information about it will be publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time frame provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondents' address as stated in this agreement by any means specified in Section 4.4(a) of the Commission's Rules shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Proposed respondents have read the draft complaint and consent order. Proposed respondents understand that they may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. Unless otherwise specified, "respondents" shall mean Legacy Learning Systems, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees; and Lester Gabriel Smith, individually, and as an officer and director of Legacy.
2. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act,

15 U.S.C. § 44.

3. “Affiliate Program” shall mean any arrangement whereby any person, through hyperlinks on the World Wide Web, hyperlinks in commercial email messages, or any other Internet-based mechanism, provides respondents with, or refers to respondents, potential or actual customers.

4. “Affiliate” shall mean any person or entity who participates in an Affiliate Program.

5. “Material connection” shall mean any relationship that materially affects the weight or credibility of any endorsement and that would not be reasonably expected by consumers.

6. “Endorsement” shall mean as defined in the Commission’s Guides Concerning the Use of Endorsements and Testimonials in Advertising, 16 C.F.R. § 255.0.

7. “Clearly and prominently” shall mean:

- A. In textual communications (*e.g.*, printed publications or words displayed on the screen of a computer), the required disclosures are of a type, size, and location sufficiently noticeable for an ordinary consumer to read and comprehend them, in print that contrasts with the background on which they appear;
- B. In communications disseminated orally or through audible means (*e.g.*, radio or streaming audio), the required disclosures are delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend them;
- C. In communications disseminated through video means (*e.g.*, television or streaming video), the required disclosures are in writing in a form consistent with subparagraph (A) of this definition and shall appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend them;
- D. In communications made through interactive media, such as the Internet, online

I.

IT IS ORDERED that respondents, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, advertising, labeling, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the status of any user or endorser of a product or service, including, but not limited to, misrepresenting that the user or endorser is an independent user or ordinary consumer of the product or service.

II.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, advertising, labeling, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about any user or endorser of such product or service unless they disclose, clearly and prominently, a material connection, when one exists, between such user and endorser and the respondents or any other individual or entity manufacturing, advertising, labeling, promoting, offering for sale, selling, or distributing such product or service.

III.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, advertising, labeling, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, shall take steps sufficient to ensure compliance with Parts I and II of this order. Such steps shall include, at a minimum:

- A. Establishing, implementing, and thereafter maintaining a system to monitor and review their Affiliates' representations and disclosures to ensure compliance with Parts I and II of this order. The system shall be implemented as follows:

1. ~~Notwithstanding to the extent that the respondent is a member of the National Advertising Division (NAD) or the National Advertising Review Board (NARB), the respondent shall~~

2. For the remainder of respondents' Affiliates, respondents shall monitor and review the web sites of a random sample of fifty (50) on at least a monthly basis at times not disclosed in advance to their Affiliates and in a manner reasonably calculated not to disclose the source of the monitoring activity at the time it is being conducted;
- B. Immediately terminating from any Affiliate Program and ceasing payment to any Affiliate who respondents reasonably conclude:

Commission the sum of Two Hundred and Fifty Thousand Dollars (\$250,000). This payment shall be made in the following manner:

- A. The payment shall be made by wire transfer made payable to the Federal Trade Commission, the payment to be made no later than fifteen (15) days after the date

the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment. The notice shall include Smith's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. Unless otherwise directed by a representative of the Commission, all notices required by this Part shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, with the subject line Legacy Learning Systems, Inc., *et al.*, File No. 102-3055. Provided, however, that, in lieu of overnight courier, notices may be sent by first-class mail, but only if an electronic version of such notices is contemporaneously sent to the Commission at DEbrief@ftc.gov.

X.

IT IS FURTHER ORDERED that respondent Legacy, its successors and assigns, and respondent Smith shall, within sixty (60) days after the date of service of this order, file with the Commission a true and accurate report

Provided, further, that if such complaint is dismissed or a federal court rules that respondents did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the 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.

LEGACY LEARNING SYSTEMS, INC.

By: _____

Name:

Title:

LESTER GABRIEL SMITH

Individually and as an Officer or Director
of Legacy Learning Systems, Inc.

VICTOR F. DeFRANCIS

Counsel for the Federal Trade Commission

STACEY P. FERGUSON

Counsel for the Federal Trade Commission

APPROVED:

MARY K. ENGLE

Associate Director

Division of Advertising Practices

DAVID C. VLADECK

Director

Bureau of Consumer Protection