

05-CV-00265-ORD

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION,
Plaintiff,
v.
9125-8954 QUEBEC INC., D.B.A. GLOBAL MANAGEMENT SOLUTIONS, a Canadian corporation;
9125-8947 QUEBEC INC., D.B.A. COMMUTEL MARKETING, and D.B.A. MARKETING USA, a Canadian corporation;
6050808 CANADA INC., D.B.A. AMERICAN BUSINESS SOLUTIONS, a Canadian corporation;
TY NGUYEN, individually and as a director or officer of Global Management Solutions and Commutel Marketing/Marketing USA;
CORY KORNELSON, individually and as a director or officer of Global Management Solutions;
BYRON STECZKO, individually and as a director or officer of Commutel Marketing/Marketing USA;
PHONG ANH VO, individually and as a director or officer of Commutel Marketing/Marketing USA;
KELLY NGUYEN, individually and as a director or officer of American Business Solutions; and
MINH TAM VO, individually and as a director or officer of American Business Solutions,
Defendants.

Case No. C05-0265 TSZ

(Proposed)
**FINAL JUDGMENT AND ORDER
FOR PERMANENT INJUNCTION AS
TO DEFENDANTS 9125-8954
QUEBEC INC., D.B.A. GLOBAL
MANAGEMENT SOLUTIONS; 9125-
8947 QUEBEC INC., D.B.A.
COMMUTEL MARKETING and
MARKETING USA; TY NGUYEN;
~~CORY KORNELSON; and BYRON
STECZKO~~**

1 Plaintiff, the Federal Trade Commission ("FTC" or "Commission") has filed a motion for
2 summary judgment as to defendants 9125-8954 Quebec Inc., d.b.a. Global Management
3 Solutions ("Global"); 9125-8947 Quebec Inc., d.b.a. Commutel Marketing and d.b.a. Marketing
4 USA ("Commutel"); ^{and} Ty Nguyen; ~~Cory Kornelson; and Byron Steczko~~ pursuant to Rule 56 of the
5 Federal Rules of Civil Procedure. This Court, after considering the pleadings, declarations,
6 exhibits, and memoranda of the parties, and now being advised in the premises, it is hereby
7 ordered and adjudged that the FTC's Motion for Summary Judgment is GRANTED. The Court
8 makes the following findings and enters the following Order for Permanent Injunction:

9 **FINDINGS**

10 1. This Court has jurisdiction of the subject matter of this action and of the parties
11 hereto. Venue in the Western District of Washington is proper.

12 2. The Commission has the authority to seek the relief it has requested.

13 3. The acts and practices of defendants Global, Commutel, ^{and} Ty Nguyen, ~~Cory~~
14 ~~Kornelson, and Byron Steczko~~ were in or affecting commerce, as defined in Section 4 of the FTC
15 Act, 15 U.S.C. § 44.

16 4. The complaint states a claim upon which relief may be granted against defendants
17 Global, Commutel, ^{and} Ty Nguyen, ~~Cory Kornelson, and Byron Steczko~~ under Sections 5(a) and
18 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b).

19 5. There is no genuine issue as to any material fact concerning the liability of
20 defendants Global, Commutel, ^{and} Ty Nguyen, ~~Cory Kornelson, and Byron Steczko~~ for the illegal
21 practices charged in the complaint.

22 6. Defendants Commutel, ^{and} Ty Nguyen, ~~and Byron Steczko~~ falsely represented,
23 directly or by implication, that consumers:

- 24 a. had previously authorized the purchase of defendants' business directory
25 and/or listing in the directory;
- 26 b. had agreed to purchase defendants' business directory and/or listing in the
27 directory; and

c. could review defendants' business directory on a trial basis without incurring financial obligation.

7. Defendants Global, ^{and} Ty Nguyen, ~~and Cory Kornelson~~ falsely represented, directly or by implication, that consumers owed money for the business directory and/or listing in the directory.

8. Uncontroverted evidence establishes that defendants Global, Commutel, ^{and} Ty Nguyen, ~~Cory Kornelson, and Byron Steezke~~ violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

9. There is a reasonable likelihood that defendants would continue to engage in the activities alleged in the complaint unless permanently enjoined from such acts and practices.

10. The FTC is entitled to judgment as a matter of law pursuant to Rule 56(c) of the Federal Rules of Civil Procedure.

11. Plaintiff is entitled to judgment against defendants Global, Commutel, and Ty Nguyen, in the amount of \$7,578,186 (US), for which these defendants are jointly and severally liable.

12. ~~Plaintiff is entitled to judgment against defendant Cory Kornelson in the amount of \$2,086,482 (US), for which he is jointly and severally liable with Global and Ty Nguyen.~~

13. ~~Plaintiff is entitled to judgment against defendant Byron Steezke in the amount of \$3,819,481 (US), for which he is jointly and severally liable with Commutel and Ty Nguyen.~~

12. Entry of this Order is in the public interest.

DEFINITIONS

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

A. "Asset" means any legal or equitable interest in, right to, or claim to, any real and personal property including, but not limited to, chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, receivables, funds, monies and all cash, wherever located, and shall include both existing assets and assets acquired after the date of entry of this Order.

1 B. “Assisting” means providing substantial assistance or support to any person while
 2 knowing or consciously avoiding knowing that the person or entity is engaged in any act or
 3 practice that violates this Order, Section 5 of the FTC Act or the Telemarketing Sales Rule, 16
 4 C.F.R. 310. For purposes of this Order, providing substantial assistance or support includes, but
 5 is not limited to: (a) preparing, printing or transmitting invoices; (b) recording or verifying sales
 6 solicitations;
 7 (c) performing customer service functions including, but not limited to, receiving or responding
 8 to consumer complaints, obtaining or receiving identifying and financial information from
 9 consumers, and communicating with consumers on behalf of the seller or telemarketer;
 10 (d) developing, providing or arranging for the development or provision of sales scripts or any
 11 other marketing material; (e) verifying, processing, fulfilling or arranging for the fulfillment of
 12 orders; (f) developing, providing or arranging for the provision of names of potential customers;
 13 (g) collecting or arranging for the collection of accounts receivable or other amounts owed;
 14 (h) providing or arranging for the provision of post office boxes or the services of commercial
 15 mail receiving agencies; or (i) performing or providing marketing services of any kind.

16 C. “Customer” or “Consumer” means any person who is or may be required to pay
 17 for goods or services offered for sale or sold by the defendants.

18 D. “Defendants” means 9125-8954 Quebec Inc., d.b.a. Global Management
 19 Solutions; 9125-8947 Quebec Inc., d.b.a. Commutel Marketing and d.b.a. Marketing USA; Ty
 20 Nguyen, a.k.a. Hiep Manh Nguyen; ~~Gary Kornelson; and Byron Steczko.~~

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

27 F. “Financial institution” means any bank, savings and loan institution, credit union
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1 or any other financial depository of any kind including, but not limited to, any brokerage house,
2 trustee, broker-dealer, escrow agent, title company, commodity trading company or precious
3 metal dealer.

4 G. "Material" means likely to affect a person's choice of, or conduct regarding,
5 goods or services.

6 H. "Person" means any natural person and any organization or other legal entity,
7 including a corporation, partnership, sole proprietorship, limited liability company, association,
8 cooperative, government agency, or any other group or combination acting as an entity.

9 I. "Telemarketing" means a plan, program, or campaign which is conducted to
10 induce the purchase of goods or services or a charitable contribution, by use of one or more
11 telephones and which involves more than one interstate telephone call.

12 **ORDER**

13 **I. PERMANENT BAN**

14 **IT IS THEREFORE ORDERED** that defendants are hereby permanently restrained and
15 enjoined from engaging, participating or assisting others in the advertising, promoting,
16 telemarketing, offering for sale, selling, or distributing business directories and/or listings in
17 business directories to U.S. residents, or collecting or attempting to collect payment for business
18 directories and/or listings in business directories from U.S. residents.

19 **II. PROHIBITED CONDUCT**

20 **IT IS FURTHER ORDERED** that defendants, their successors and assigns, and their
21 officers, agents, servants, employees, and attorneys, and those persons in active concert or
22 participation with them who receive actual notice of this Order by personal service or otherwise,
23 whether acting directly or through any person, trust, corporation, subsidiary, division or other
24 device, in connection with the advertising, promoting, telemarketing, offering for sale, selling or
25 distributing of any good or service to U.S. residents, are hereby permanently restrained and
26 enjoined from:

27 A. Misrepresenting, expressly or by implication:
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1 transferring, or otherwise disclosing the name, address, telephone number, Social Security
2 number, credit card number, bank account number, e-mail address or other identifying
3 information of any person who paid any money to any defendant named in this matter prior to
4 entry of this Order for any business directory and/or any listing in a business directory. *Provided,*
5 *however,* that defendants may disclose such identifying information to a law enforcement agency
6 or as required by any law, regulation or court order.

7 **IV. CEASING COLLECTION ON ACCOUNTS**

8 **IT IS FURTHER ORDERED** that defendants, their successors and assigns, and their
9 officers, agents, servants, employees, and attorneys, and those persons in active concert or
10 participation with them who receive actual notice of this Order by personal service or otherwise,
11 whether acting directly or through any person, trust, corporation, subsidiary, division or other
12 device, are hereby permanently restrained and enjoined from collecting or attempting to collect
13 payment for any business directory and/or any listing in any business directory sold by any
14 defendant named in this matter, directly or through any third party, on any account established
15 prior to entry of this Order.

16 **V. RETURN OF UNCASHED CHECKS**

17 **IT IS FURTHER ORDERED** that the defendants' rights and interests in all uncashed
18 checks and other negotiable instruments sent to defendants in response to defendants'
19 telemarketing of the business directory and/or listing in the business directory to U.S. residents
20 prior to entry of this Order are hereby forfeited. Said uncashed checks and negotiable
21 instruments shall be returned to their makers by the FTC or its agent. In the event the makers of
22 the uncashed checks and negotiable instruments cannot be located, the FTC or its agent shall
23 destroy the uncashed checks and negotiable instruments.

24 **VI. MONETARY JUDGMENT**

25 **IT IS FURTHER ORDERED** that:

26 A. Judgment is hereby entered against defendants Global, Commutel, and Ty
27 Nguyen, in the amount of \$7,578,186 (US), for which these defendants are jointly and severally
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1 liable, as restitution for consumer injury;

2 ~~B. Judgment is hereby entered against defendant Cory Kornelson in the amount of~~
3 ~~\$2,086,482 (US), for which he is jointly and severally liable with Global and Ty Nguyen, as~~
4 ~~restitution for consumer injury;~~

5 ~~C. Judgment is hereby entered against defendant Byron Steczko in the amount of~~
6 ~~\$3,819,481 (US), for which he is jointly and severally liable with Commutel and Ty Nguyen as~~
7 ~~restitution for consumer injury;~~

8 D. Payment shall be made by certified check or other guaranteed funds payable and
9 delivered to the Commission, or by wire transfer, in accordance with instructions provided by the
10 Commission; and

11 E. All funds paid pursuant to this Order shall be deposited into a fund administered
12 by the Commission or its agent to be used for equitable relief, including, but not limited to
13 consumer redress, and any attendant expenses for the administration of such equitable relief. In
14 the event that direct redress to consumers is wholly or partially impracticable or funds remain
15 after redress is completed, the Commission may apply any remaining funds for such other
16 equitable relief (including consumer information remedies) as it determines to be reasonably
17 related to the defendants' practices alleged in the complaint. Any funds not used for such
18 equitable relief shall be deposited to the U.S. Treasury as disgorgement. Defendants shall have
19 no right to challenge the Commission's choice of remedies under this Section or the manner of
20 distribution chosen by the Commission.

21 **VII. DISSOLUTION OF ASSET FREEZE**

22 **IT IS FURTHER ORDERED** that the freeze against defendants' assets pursuant to
23 Section II of the Preliminary Injunction entered by this Court on March 22, 2005, shall be lifted
24 upon entry of this Order.

25 **VIII. NOTICE OF ORDER TO THIRD PARTY ASSET HOLDERS**

26 **IT IS FURTHER ORDERED** that within five (5) business days of receipt of this Order
27 as entered by the Court, the defendants shall serve a copy of this Order on all entities, including
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1 financial institutions, that hold or have held assets derived from defendants' marketing of
2 business directories and/or listings in the directories.

3 **IX. TURNOVER OF ASSETS**

4 **IT IS FURTHER ORDERED** that, in order to satisfy partially the monetary judgment
5 set forth in Section VI of this Order:

6 A. Defendants shall forfeit all rights and interests in all funds held in their name or
7 on their behalf in any account previously frozen pursuant to Section II of the Preliminary
8 Injunction entered by this Court on March 22, 2005, including, but not limited to Royal Bank of
9 Canada, Harris Trust and Savings Bank, and Moneris Solutions;

10 B. Any law firm, financial or brokerage institution, escrow agent, title company,
11 commodity trading company, business entity or person, whether located within or outside of the
12 United States, that holds, controls or maintains any asset or any account of, or on behalf of, or for
13 the benefit of defendants, shall turn over such account or asset to the Commission within ten (10)
14 business days after receiving notice of this Order by any means including, but not limited to,
15 facsimile transmission; and

16 C. Within ten (10) business days after receiving notice of this Order by any means
17 including, but not limited to, facsimile transmission, Moneris Solutions shall return all funds held
18 in the name of or on behalf of defendants to the consumer accounts from which said funds were
19 transferred.

20 **X. COMPLIANCE REPORTING BY DEFENDANTS**

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

23 A. Defendants Ty Nguyen, ~~Cory Komelson, and Byron Steczko~~, within ten (10) days
24 of service of this Order, ~~each~~ shall notify the Commission in writing of (1) their residence and
25 mailing address; (2) their home telephone number; (3) the name, address, and telephone number
26 of their employer; (4) a description of their employer's activities; and (5) a description of their
27 duties and responsibilities;

1 B. For a period of five (5) years from the date of entry of this Order:

2 1. Defendants Ty Nguyen, ~~Cory Kornelson, and Byron Stoczko~~ shall notify
3 the Commission of the following:

- 4 a. Any changes in residence, mailing addresses, and telephone
5 numbers, within ten (10) days of the date of such change;
- 6 b. Any changes in employment status (including self-employment)
7 and any change in ownership in any business entity, within ten (10)
8 days of the date of such change. Such notice shall include the
9 name and address of each business that the defendant is affiliated
10 with, employed by, creates or forms, or performs services for; a
11 statement of the nature of the business; and a statement of the
12 defendant's duties and responsibilities in connection with the
13 business or employment; and
- 14 c. Any changes in name or use of any aliases or fictitious names; and

15 2. Defendants shall notify the Commission of any changes in the corporate
16 structure of defendants Global or Commutel, or any business entity that any individual
17 defendant directly or indirectly controls or has an ownership interest in, that may affect
18 compliance obligations arising under this Order including, but not limited to, a
19 dissolution, assignment, sale, merger or other action that would result in the emergence of
20 a successor entity; the creation or dissolution of a subsidiary, parent or affiliate that
21 engages in any acts or practices subject to this Order; the filing of a bankruptcy petition;
22 or a change in the corporate name and address, at least thirty (30) days prior to such
23 change, *provided that*, with respect to any proposed change in the corporation about
24 which the defendants learn less than thirty (30) days prior to the date such action is to
25 take place, the defendants shall notify the Commission as soon as practicable after
26 obtaining such knowledge;

27 C. One hundred eighty (180) days after the date of entry of this Order, each defendant
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