

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; PHIONG 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"); <sup>and</sup> 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, <sup>and</sup> 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, <sup>and</sup> 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, <sup>and</sup> Ty Nguyen, ~~Cory Kornelson, and Byron Steczko~~ for the illegal  
21 practices charged in the complaint.

22 6. Defendants Commutel, <sup>and</sup> 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  
28

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

7. Defendants Global, <sup>and</sup> 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, <sup>and</sup> 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  
28

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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1 shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail  
2 the manner and form in which each has complied and is complying with this Order. This report  
3 shall include, but not be limited to:

- 4 1. For defendants Ty Nguyen, ~~Cory Kornelson~~, and Byron Steczko:
- 5 a. His then-current residence address, mailing addresses, and  
6 telephone numbers;
- 7 b. His then-current employment and business addresses and telephone  
8 numbers, a description of the business activities of each such  
9 employer or business, and his title and responsibilities for each  
10 such employer or business;
- 11 c. Any changes required to be reported under Section X.B of this  
12 Order;
- 13 2. For all defendants:
- 14 a. A copy of each acknowledgment of receipt of this Order obtained  
15 pursuant to Section XIII.D of this Order; and
- 16 b. Any other changes required to be reported under Section X.B of  
17 this Order;

18 D. For the purposes of this Order, defendants shall, unless otherwise directed by the  
19 Commission's authorized representatives, mail all written notifications to the Commission to:

20 Associate Director for Enforcement  
21 Federal Trade Commission  
22 601 New Jersey Avenue, N.W.  
23 Washington, DC 20001

24 *Re: FTC v. Global Management Solutions, et al., C05-0265 TSZ*

25 E. For purposes of the compliance reporting and monitoring required by this Order,  
26 the Commission is authorized to communicate directly with defendants.

## 27 XI. COMPLIANCE MONITORING

28 **IT IS FURTHER ORDERED** that, for the purpose of monitoring and investigating  
compliance with any provision of this Order:



1 or participation with them who receive actual notice of this Order by personal service or  
2 otherwise, are hereby restrained and enjoined from failing to create and retain the following  
3 records:

4 A. Accounting records that reflect the cost of goods or services sold, revenues  
5 generated, and the disbursement of such revenues;

6 B. Personnel records accurately reflecting: the name, address, and telephone number  
7 of each person employed in any capacity by such business, including as an independent  
8 contractor; that person's job title or position; the date upon which the person commenced work;  
9 and the date and reason for the person's termination, if applicable;

10 C. Customer files containing the names, addresses, telephone numbers, dollar  
11 amounts paid, quantity of items or services purchased, and description of items or services  
12 purchased, to the extent such information is obtained in the ordinary course of business;

13 D. Complaints and refund requests (whether received directly, indirectly or through  
14 any third party) and any responses to those complaints or requests;

15 E. Copies of all sales scripts, training materials, advertisements or other marketing  
16 materials; and

17 F. All records and documents necessary to demonstrate full compliance with each  
18 provision of this Order including, but not limited to, copies of acknowledgments of receipt of this  
19 Order required by Section XIII.D of this Order, and all reports submitted to the FTC pursuant to  
20 Section X of this Order.

21 **XIII. DISTRIBUTION OF ORDER BY DEFENDANTS**

22 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry  
23 of this Order, defendants shall deliver copies of this Order as directed below:

24 A. Defendants Global and Commutel must deliver a copy of this Order to all of their  
25 principals, officers, directors, and managers. Defendants Global and Commutel also must deliver  
26 copies of this Order to all of their employees, agents, and representatives who engage in conduct  
27 related to the subject matter of this Order. For current personnel, delivery shall be made within  
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1 five (5) days of service of this Order upon defendants. For new personnel, delivery shall occur  
2 prior to their assuming their responsibilities;

3 B. For any business that defendant Ty Nguyen, ~~Cory Kermelson or Byron Steezke~~  
4 controls, directly or indirectly, or has a majority ownership interest in, such defendant must  
5 deliver a copy of this Order to all principals, officers, directors, and managers of that business.  
6 Such defendant must also deliver copies of this Order to all employees, agents, and  
7 representatives of that business who engage in conduct related to the subject matter of this Order.  
8 For current personnel, delivery shall be within five (5) days of service of this Order upon  
9 defendants. For new personnel, delivery shall occur prior to their assuming their responsibilities;

10 C. For any business where defendant Ty Nguyen, ~~Cory Kermelson or Byron Steezke~~  
11 is not a controlling person, but otherwise engages in conduct related to the subject matter of this  
12 Order, such defendant must deliver a copy of this Order to all principals and managers of such  
13 business before engaging in such conduct; and

14 D. Defendants must secure a signed and dated statement acknowledging receipt of  
15 this Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order  
16 pursuant to this Section.

17 **XIV. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS**

18 **IT IS FURTHER ORDERED** that each defendant, within five (5) business days of  
19 receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn  
20 statement acknowledging receipt of this Order.

21 **XV. RETENTION OF JURISDICTION**

22 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for  
23 purposes of construction, modification, and enforcement of this Order.  
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1 SO ORDERED, this 1<sup>st</sup> day of August, 2006.

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5 THE HONORABLE THOMAS SUZILLY  
6 UNITED STATES DISTRICT JUDGE

7 Presented by:

8 s/Kathryn C. Decker

9 KATHRYN C. DECKER, WSBA #12389

10 JULIE K. MAYER, WSBA #34638

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18 Attorneys for Plaintiff

19 Federal Trade Commission