

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

6555381 CANADA INC. and
3189651 CANADA INC.,

Defendants.

Case No. 09 CV 3158

**TEMPORARY RESTRAINING
ORDER**

Plaintiff, Federal Trade Commission ("FTC" or "Commission"), having filed its Complaint for a permanent injunction and other relief in this matter, pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), and having moved *ex parte* for a temporary restraining order with asset freeze and other equitable relief ("TRO"), and for an order to show cause why a preliminary injunction should not issue pursuant to Rule 65 of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 65, and the Court having considered the Complaint, declarations, exhibits, and memorandum of law filed in support of said motion, and now, being advised in the premises, finds that:

FINDINGS

1. This Court has jurisdiction of the subject matter of this case and there is good cause to believe it will have jurisdiction of all parties hereto;
2. Venue properly lies with this Court;

3. There is good cause to believe that Defendants 6555381 Canada Inc. and 3189651 Canada Inc., have engaged in, and are likely to engage in, acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and that the Commission is therefore likely to prevail on the merits of this action;

4. There is good cause to believe that immediate and irreparable harm will result from Defendants' ongoing violations of Section 5(a) of the FTC Act unless Defendants are restrained and enjoined by order of this Court;

5. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for consumers in the form of monetary restitution will occur from the sale, transfer, assignment, or other disposition or concealment by Defendants of their assets or records unless Defendants are immediately restrained and enjoined by order of this Court. Therefore, there is good cause for the entry of the ancillary relief contained in this Order, including freezing the Defendants' assets and prohibiting the Defendants from destroying records, and for relieving the Commission of the duty to provide Defendants with prior notice of the Commission's motion;

6. There is good cause for issuing this Order pursuant to Federal Rule of Civil Procedure 65(b), Fed. R. Civ. P. 65(b);

7. Weighing the equities and considering the Commission's likelihood of ultimate success, a TRO with asset freeze, expedited discovery and other equitable relief is in the public interest; and

8. No security is required of any agency of the United States for issuance of a restraining order. Fed. R. Civ. P. 65(c).

DEFINITIONS

1. "Plaintiff," "Commission," or "FTC" means the Federal Trade Commission.

2. "Defendant" or "Defendants" means 6555381 Canada Inc. and 3189651 Canada Inc.

3. "Account number" means any credit or debit card number, bank account number, deposit account number, personal identification number ("PIN"), access code, or security code, needed to charge or debit a consumer's account.

4. "Asset" or "assets" means any legal or equitable interest in, right to, or claim to, any real and personal property, including, but not limited to, goods, instruments, equipment, fixtures, general intangibles, inventory, checks, notes, chattels, leaseholds, contracts, mails or other deliveries, shares of stock, lists of consumer names, 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.

5. "Assisting others" means providing any of the following goods or services to any person or entity engaged in telemarketing: (a) performing customer service functions, including, but not limited to, receiving or responding to consumer complaints; (b) providing for or arranging for the provision of mail or telephone lists that contain, incorporate, or utilize consumers' account numbers; (c) preparing or providing, or causing to be prepared or provided, telephone sales scripts or other

materials for use in connection with the promotion of products or services to consumers; (d) providing, mailing or shipping, or arranging for the provision, mailing or shipping, of fulfillment products or services; (e) providing or arranging for the provision of telemarketing or computer processing services; (f) providing or facilitating the means of obtaining payment from consumers, by providing or facilitating access to the credit card or bank account payment and collection system; and (g) providing marketing services of any kind.

6. "Commercial Mail Receiving Agency" ("CMRA") means any commercial mail receiving and/or forwarding agencies, commercial freight holding and/or forwarding agencies, customs brokers, or other parties holding, receiving, or forwarding mail and/or freight on behalf of the Defendants.

7. "Consumer" means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

8. "Customer" means any person who has paid, or may be required to pay, for goods or services offered for sale or sold by the Defendants.

9. "Document" or "record" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a) and means:

- a. The original or a true copy of any written, typed, printed, electronically stored, transcribed, taped, recorded, filmed, punched, or graphic matter or other data compilations of any kind, including, but not limited to, letters, e-mail or other correspondence, messages, memoranda, interoffice communications, notes, reports,

summaries, manuals, magnetic tapes or discs, tabulations, books, records, checks, invoices, work papers, journals, ledgers, statements, returns, reports, schedules, or files; and

- b. Any information stored on any desktop personal computer ("PC") and workstations, laptops, notebooks, and other portable computers, whether assigned to individuals or in pools of computers available for shared use; and home computers used for work-related purposes; backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether stored onsite with the computer used to generate them, stored offsite in another company facility or stored offsite by a third-party, such as in a disaster recovery center; and computers and related offline storage used by Defendants' participating associates, which may include persons who are not employees of the company or who do not work on company premises.

10. "Financial Institution" means any bank, savings and loan institution, credit union, or any financial depository of any kind, including, but not limited to, any brokerage house, trustee, broker-dealer, escrow agent, title company, commodity trading company, or precious metal dealer.

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

12. "Person" or "persons" means a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.

ORDER

I.

PROHIBITED BUSINESS ACTIVITIES

IT IS THEREFORE ORDERED that Defendants, and their officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, successors, and assigns, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary division, or other device, or any of them, in connection with the advertising, promotion, offering for sale, sale, or provision of any good or service, including, but not limited to, business directory listings and business directories, are temporarily restrained and enjoined from:

A. Making, or assisting others in making, expressly or by implication, any material false or misleading oral or written statement or representation, including, but not limited to:

1. That consumers have a preexisting business relationship with Defendants;

2. That consumers have agreed to purchase business directories and/or listings in those directories;
 3. That consumers owe money to Defendants for Defendants' business directories and/or listings in those business directories;
 4. That Defendants are telephoning consumers to renew a previous directory listing;
 5. That consumers purchased listings in Defendants' business directories;
 6. Defendants' relationship with consumers and the purpose of Defendants' communication with consumers;
 7. Any other fact material to a consumer's decision to purchase any good or service; and
- B. Failing to disclose in outbound telephone calls to consumers, promptly and in a clear and conspicuous manner: (1) the identity of the seller; (2) that the purpose of the call is to sell goods or services; and (3) the nature of the goods or services.

II.

ASSET FREEZE

IT IS FURTHER ORDERED that Defendants, and their officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, successors, and assigns, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal

service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, except as stipulated by the parties, or as directed by further order of the Court, are hereby temporarily restrained and enjoined from:

A. Selling, liquidating, assigning, transferring, converting, loaning, encumbering, pledging, concealing, dissipating, spending, withdrawing, or otherwise disposing of any funds, real or personal property, or other assets or any interest therein, wherever located, including any assets outside the territorial United States, which are:

1. In the actual or constructive possession of any Defendant;
2. Owned or controlled by, or held, in whole or in part, for the benefit of, or subject to access by, or belonging to, any Defendant; or
3. In the actual or constructive possession of, or owned or controlled by, or subject to access by, or belonging to, any corporation, partnership, trust or any other entity directly or indirectly owned, managed, or controlled by, or under common control with, any Defendant, including, but not limited to, any assets held by or for any Defendant at any bank or savings and loan institution, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, payment

service provider, or other financial institution or depository institution of any kind either within or outside the United States;

B. Opening or causing to be opened any safe deposit boxes titled in the name of any Defendant, or subject to access by any Defendant or under any Defendant's control, without providing Plaintiff prior notice and a reasonable opportunity to first inspect the contents in order to determine that they contain no assets covered by this Section; and

C. Cashing any checks or depositing any payments received from customers of Defendants;

D. Incurring charges or cash advances on any credit card issued in the name, singly or jointly, of any Defendant.

III.

FINANCIAL STATEMENTS

IT IS FURTHER ORDERED that at least three (3) days prior to the preliminary injunction hearing in this matter, and in no event later than ten (10) days after entry of this Order, each Defendant shall provide to the FTC a completed financial statement, accurate as of the date of service of this Order, on the form served on Defendants with this Order, and a completed Consent to Release Financial Records, Attachment A of this Order, providing Plaintiff with access to Defendants' records and documents held by financial institutions outside the territorial United States, for each corporation or business entity under which such Defendant conducts business, accurate as of the date of service of this Order upon such Defendant. Said financial statement shall include

assets held outside of the territory of the United States. Defendants shall attach to these completed financial statements copies of all local, state, provincial, and federal income and property tax returns, with attachments and schedules as called for by the instructions to the financial statements.

IV.

DUTIES OF THIRD PARTIES HOLDING DEFENDANTS' ASSETS

IT IS FURTHER ORDERED that pending determination of the FTC's request for a preliminary injunction, any financial institution, or any person or other entity served with a copy of this Order shall:

- A. Hold and retain within such entity's or person's control and prohibit the withdrawal, removal, assignment, transfer, pledge, hypothecation, encumbrance, disbursement, dissipation, conversion, sale, liquidation, or other disposal of any of the assets, funds, documents, or other property held by, or under such entity's or person's control;
 1. On behalf of, or for the benefit of, any Defendant subject to Section II above;
 2. In any account maintained in the name of, or subject to withdrawal by, any Defendant or other party subject to Section II above; and
 3. That are subject to access or use by, or under the signatory power of, any Defendant or other party subject to Section II above;

- B. Deny Defendants access to any safe deposit boxes or storage facilities that are either titled in the name, individually or jointly, of any Defendant, or otherwise subject to access by any Defendant;
- C. Within five (5) days of the date of service of this Order, provide to the FTC a certified statement setting forth
1. The identification of each account or asset titled in the name, individually or jointly, of any Defendant, or held on behalf of, or for the benefit of, any Defendant, including all trust accounts managed on behalf of any Defendant or subject to any Defendant's control;
 2. The balance of each such account, or a description and appraisal of the value of such asset, as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and
 3. The identification and location of any safe deposit box or storage facility that is either titled in the name individually or jointly, of any Defendant, or is otherwise subject to access or control by any Defendant; and;

D. Within five (5) days of a request from the FTC, provide to the FTC copies of all records or other documents pertaining to such account or asset, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs;

Provided that the FTC is granted leave, pursuant to Fed. R. Civ. P. 45, to subpoena documents immediately from any such financial institution, account custodian, or other entity concerning Defendants' compliance with this Order and the nature, location, status, and extent of Defendants' assets, and such financial institution, account custodian, or other entity shall respond to such subpoena within five (5) days of service; and *Provided further* that the assets and funds affected by this Section shall include both existing assets and assets acquired after the issuance date of this Order.

V.

DUTIES OF THIRD PARTIES TO WITHHOLD DEFENDANTS' MAIL

IT IS FURTHER ORDERED that:

A. Any CMRA where Defendants maintain an account, including, but not limited to, any CMRA operating from 121 Distribution Way, Plattsburgh, New York, and any CMRA operating from 131 McCormick Drive, Port Barre, Louisiana, or any branches thereof, and which are served with a copy of this Order, or otherwise have actual or constructive

knowledge of this Order, shall for the duration of this Order, retain and forward to Plaintiff, at the address designated in Section XIV below, all mail received that is addressed to any Defendant and/or addressed to any other name under which the Defendants are doing business. Plaintiff will retain this mail for the duration of this Order, until further order of court, or upon stipulation of the parties; and

B. Defendants, within three (3) business days of entry of this Order, shall provide to counsel for the Commission a complete list of all CMRA accounts used by any Defendant from January 1, 2006, to the date of entry of this Order. Defendants shall notify counsel for the Commission of any CMRA account created by any Defendant after the date of entry of this Order, within three (3) business days of its creation; such notice shall include the name of the CMRA, a copy of the CMRA agreement/application, the account number, the address of the CMRA, the name and telephone number of a contact person at the CMRA, and all business names used by said Defendant receiving mail at that account.

VI.

DUTIES OF THIRD PARTIES PROCESSING PAYMENTS FOR DEFENDANTS

IT IS FURTHER ORDERED that any automated clearing house, network transaction processor, business entity or person providing any services or assistance in processing Defendants' customer payments, including, but not limited to, payments made by bank account debits or checks, for any of the Defendants, that receives actual

notice of this Order by personal service or otherwise, is hereby temporarily restrained and enjoined from providing any assistance in the processing of any payments made by consumers to any of the Defendants and from collecting any fees or charges in connection with providing such assistance.

VII.

SUSPENSION OF COLLECTION ON ACCOUNTS

IT IS FURTHER ORDERED that Defendants are hereby temporarily restrained and enjoined from attempting to collect payment for the Defendants' business directory and/or listing in the directory, directly or through any collection agent, on any account.

VIII.

PRESERVATION OF RECORDS

IT IS FURTHER ORDERED that Defendants, and their officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, successors, and assigns, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby temporarily restrained and enjoined from:

- A. Failing to make and keep books, records, accounts, bank statements, current accountants' reports, general ledgers, general journals, cash receipts ledgers, cash disbursements ledgers and source documents,

documents indicating title to real or personal property, and any other data which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of Defendants; and

B. Destroying, erasing, mutilating, concealing, altering, transferring or otherwise disposing of, in any manner, directly or indirectly, contracts, agreements, customer files, customer lists, customer addresses and telephone numbers, correspondence, advertisements, brochures, sales material, training material, sales presentations, documents evidencing or referring to Defendants' products or services, data, computer tapes, disks, or other computerized records, books, written or printed records, handwritten notes, telephone logs, "verification" or "compliance" tapes or other audio or video tape recordings, receipt books, invoices, postal receipts, ledgers, personal and business canceled checks (fronts and backs) and check registers, bank statements, appointment books, copies of federal, state or local business or personal income or property tax returns, and other documents or records of any kind, including electronically stored materials, that relate to the business practices or business or personal finances of Defendants or other entities directly or indirectly under the control of Defendants.

IX.

CREATION OF OTHER BUSINESSES

IT IS FURTHER ORDERED that Defendants are hereby temporarily restrained and enjoined from creating, operating, or controlling any business entity, whether newly-formed or previously inactive, including any partnership, limited partnership, joint venture, sole proprietorship, or corporation, without first providing the FTC with a written statement disclosing: (1) the name of the business entity; (2) the address and telephone number of the business entity; (3) the names of the business entity's officers, directors, principals, managers, and employees; and (4) a detailed description of the business entity's intended activities.

X.

PROHIBITION ON DISCLOSING CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendants, and their officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, successors, and assigns, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary division, or other device, or any of them, are hereby temporarily restrained and enjoined from:

- A. Selling, renting, leasing, transferring, or otherwise disclosing the name, address, birth date, telephone number, e-mail address, Social Security number, credit card number, bank account number, or other

financial or identifying personal information of any person from whom or about whom any Defendant obtained such information in connection with activities alleged in the FTC's Complaint; and

B. Benefiting from or using the name, address, birth date, telephone number, e-mail address, Social Security number, credit card number, bank account number, or other financial or identifying personal information of any person from whom or about whom any Defendant obtained such information in connection with activities alleged in the FTC's Complaint;

Provided, however, that Defendants may disclose such financial or identifying personal information to a law enforcement agency or as required by any law, regulation, or court order.

XI.

EXPEDITED DISCOVERY

IT IS FURTHER ORDERED that, in anticipation of the preliminary injunction hearing in this matter, the Commission is authorized to conduct expedited discovery concerning Defendants' assets and the location of business records in accordance with the following provisions:

- A. The Commission may take the depositions of parties and non-parties. Forty-eight hours (48) notice shall be sufficient notice for such depositions;
- B. The Commission may serve upon parties requests for production of documents or inspection that require production or inspection within five (5) calendar days of service, and may serve subpoenas upon non-parties

that direct production or inspection within five (5) calendar days of service;

- C. The Commission may serve deposition notices and other discovery requests upon the parties to this action by facsimile or overnight courier, and depositions may be taken by telephone or other remote electronic means; and

Any discovery taken pursuant to this Order is in addition to, and is not subject to, the presumptive limits on discovery set forth in the Federal Rules of Civil Procedure and Local Rules of this Court. If a Defendant fails to appear for a properly noticed deposition or fails to comply with a request for production or inspection, that Defendant may be prohibited from introducing evidence at the hearing on the Commission's request for a preliminary injunction.

XII.

DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that Defendants shall immediately provide a copy of this Order to each affiliate, partner, division, sales entity, successor, assign, officer, director, employee, independent contractor, agent, attorney, and/or representative of any Defendant.

Within five (5) calendar days following service of this Order by Plaintiff, Defendants shall serve on Plaintiff an affidavit identifying the name, title, address, telephone number, date of service, and manner of service of each person or entity Defendants served with a copy of this Order in compliance with this provision.

XIII.

SERVICE OF ORDER

IT IS FURTHER ORDERED that copies of this Order may be served by facsimile transmission, personal or overnight delivery, or by first class mail, by agents and employees of the FTC or any state, federal or international law enforcement agency, or by private process server, on: (1) Defendants; (2) any financial institution, entity, or person that holds, controls, or maintains custody of any documents or assets of any Defendant, or that held, controlled, or maintained custody of any documents or assets of any Defendant; or (3) any other person or entity that may be subject to any provision of this Order. Service upon any branch or office of any financial institution or entity shall effect service upon the entire financial institution or entity.

XIV.

SERVICE UPON PLAINTIFF

IT IS FURTHER ORDERED that any correspondence, papers, and pleadings related to this Order shall be served on Plaintiff by overnight mail or courier delivery, facsimile, or e-mail to:

Gary Ivens
Federal Trade Commission
600 Pennsylvania Ave., NW,
Washington, DC 20580
202-326-3395 [Facsimile]
E-mail: givens@ftc.gov

XV.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

SO ORDERED, this 1st day of JUNE, 2009, at 9:10 A.M.

Robert W. Gettleman
Robert W. Gettleman
United States District Judge