

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

**AMENDED DEFAULT JUDGMENT
AND ORDER FOR PERMANENT
INJUNCTION AND MONETARY
RELIEF AS TO DEFENDANT 6050808
CANADA INC., D.B.A. AMERICAN
BUSINESS SOLUTIONS**

Plaintiff, the Federal Trade Commission ("Commission"), having filed a complaint under
Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to obtain

1 permanent injunctive relief, rescission of contracts, restitution, disgorgement, and other equitable
2 relief for defendant's deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15
3 U.S.C. § 45(a), and the Clerk of the Court having entered a default against defendant 6050808
4 Canada Inc., d.b.a. American Business Solutions (hereinafter "defendant"), and the Court having
5 considered the pleadings, declarations, exhibits, and memoranda filed by plaintiff, and now being
6 advised in the premises, pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure and
7 Local Rule CR 55(b)(2), makes the following findings and enters the following Permanent
8 Injunction:

9 **FINDINGS**

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

12 B. The Commission is charged, *inter alia*, with responsibility for administering and
13 enforcing Section 5 of the FTC Act, 15 U.S.C. § 45, which prohibits unfair or deceptive acts or
14 practices in or affecting commerce.

15 C. The activities of the defendant are in or affecting commerce, as "commerce" is
16 defined in 15 U.S.C. § 44.

17 D. This action was instituted by the Commission under Sections 5 and 13(b) of the
18 FTC Act, 15 U.S.C. §§ 45 and 53(b). The Commission seeks permanent injunctive relief and
19 monetary and other redress for alleged unfair and deceptive acts or practices by the defendant in
20 connection with telemarketing business directories and listings in business directories to U.S.
21 businesses. Pursuant to Section 13(b) of the FTC Act, the Commission has the authority to seek
22 the relief it has requested.

23 E. The Complaint states a claim upon which relief may be granted against defendant
24 under Sections 5 and 13(b) of the FTC Act, 15 U.S.C. §§ 45 and 53(b).

25 F. Defendant was served with the Complaint and Summons as required by Rule 4 of
26 the Federal Rules of Civil Procedure.

27 G. Defendant failed to file an answer with the Clerk of Court within the time set forth
28 by Rule 12(a) of the Federal Rules of Civil Procedure.

1 H. The Clerk of this Court, pursuant to Rule 55(a) of the Federal Rules of Civil
2 Procedure and Local Rule CR 55(a), entered a default against defendant on August 19, 2005.
3 The FTC is therefore entitled to a default judgment pursuant to Rule 55(b)(2) of the Federal Rules
4 of Civil Procedure and Local Rule CR 55(b)(2).

5 I. The Court now finds that, in connection with telemarketing business directories
6 and listings in business directories to U.S. businesses, defendant violated Section 5(a) of the FTC
7 Act, 15 U.S.C. § 45(a), by falsely representing, directly or by implication, that:

- 8 1. consumers have previously authorized the purchase of the business
9 directory and/or listing in the directory;
- 10 2. consumers have agreed to purchase the business directory and/or listing in
11 the directory;
- 12 3. consumers can review the business directory on a trial basis without
13 incurring financial obligation; and
- 14 4. consumers owe money to defendant for the business directory and/or
15 listing in the directory.

16 J. Defendant has caused consumer injury in the amount of \$908,710 (US).

17 K. Defendant is likely to continue to engage in the activities alleged in the Complaint
18 unless it is prohibited from making or assisting in making false or misleading statements or
19 representations in connection with the advertising, offering for sale, or sale of any good or
20 service.

21 L. Plaintiff is entitled to permanent injunctive relief, consumer redress, and
22 disgorgement from defendant in the forms and amounts set forth below.

23 M. Entry of this Order is in the public interest.

24 **DEFINITIONS**

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

26 A. "Assisting" means providing substantial assistance or support to any person. For
27 purposes of this Order, providing substantial assistance or support includes, but is not limited to:
28 (a) preparing, printing, or transmitting invoices; (b) recording or verifying sales solicitations; (c)

1 performing customer service functions including, but not limited to, receiving or responding to
2 consumer complaints, obtaining or receiving identifying and financial information from consumers,
3 and communicating with consumers on behalf of the seller or telemarketer; (d) developing,
4 providing, or arranging for the development or provision of sales scripts or any other marketing
5 material; (e) verifying, processing, fulfilling, or arranging for the fulfillment of orders; (f)
6 developing, providing, or arranging for the provision of names of potential customers; (g)
7 collecting or arranging for the collection of accounts receivable or other amounts owed; (h)
8 providing or arranging for the provision of post office boxes or the services of commercial mail
9 receiving agencies; or (i) performing or providing marketing services of any kind.

10 B. “Customer” means any person who has paid, or may be required to pay, for goods
11 or services offered for sale or sold by the defendant.

12 C. “Defendant” means 6050808 Canada Inc., d.b.a. American Business Solutions.

13 D. “Material” means likely to affect a person’s choice of, or conduct regarding, goods
14 or services.

15 E. “Person” means any natural person and any organization or other legal entity,
16 including a corporation, partnership, sole proprietorship, limited liability company, association,
17 cooperative, government agency, or any other group or combination acting as an entity.

18 F. “Telemarketing” means any business activity (including, but not limited to,
19 initiating or receiving telephone calls, managing others who initiate or receive telephone calls,
20 operating an enterprise that initiates or receives telephone calls, owning an enterprise that initiates
21 or receives telephone calls, or otherwise participating as an officer, director, employee or
22 independent contractor in an enterprise that initiates or receives telephone calls) that involves
23 attempts to induce consumers to purchase any item, good, service, membership, partnership
24 interest, trust interest or other beneficial interest, or to enter a contest for a prize, by means of
25 telephone sales presentations, either exclusively or in conjunction with the use of other forms of
26 marketing. *Provided, however,* that the term “telemarketing” shall not include transactions that
27 are not completed until after a face-to-face contact between the seller or solicitor and the
28 consumer solicited.

1 **ORDER**

2 **I. BAN ON CERTAIN ACTIVITIES**

3 **IT IS THEREFORE ORDERED** that defendant is hereby permanently restrained and
4 enjoined from engaging, participating or assisting others in the advertising, promoting,
5 telemarketing, offering for sale, selling or distributing of business directories and/or listings in
6 business directories to U.S. residents.

7 **II. PROHIBITED BUSINESS PRACTICES**

8 **IT IS FURTHER ORDERED** that defendant, its successors and assigns, and its officers,
9 agents, directors, 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, or any of them, in connection with the advertising, promoting, telemarketing, offering for
13 sale, selling or distributing of any good or service to U.S. residents, are hereby permanently
14 restrained and enjoined from:

15 A. Misrepresenting, expressly or by implication:

- 16 1. That consumers have previously authorized the purchase of a good or
17 service;
- 18 2. That consumers have agreed to purchase a good or service;
- 19 3. That consumers have a trial period during which they can review a good or
20 service without incurring financial obligation;
- 21 4. That consumers owe money for a good or service;
- 22 5. Any material fact regarding a good or service; and
- 23 6. Any material fact regarding the terms, conditions, and limitations of any
24 refund or guarantee policy;

25 B. Failing to disclose in outbound telemarketing calls to consumers, promptly and in a
26 clear and conspicuous manner: (1) the identity of the seller; (2) that the purpose of the call is to
27 sell goods or services; and (3) the nature of the goods or services;

28 C. Failing to disclose in outbound telemarketing calls to consumers, in a clear and

1 conspicuous manner, all material terms, conditions, and limitations of any refund or guarantee
2 policy or any policy of non-refundability;

3 D. Violating the Telemarketing Sales Rule, 16 C.F.R. Part 310, including any
4 amendments thereto; and

5 E. Assisting others who violate any provision of Section II of this Order.

6 **III. PROHIBITED DISCLOSURE OF CUSTOMER INFORMATION**

7 **IT IS FURTHER ORDERED** that defendant, its successors and assigns, and its officers,
8 agents, directors, servants, employees, and attorneys, and those persons in active concert or
9 participation with them who receive actual notice of this Order by personal service or otherwise,
10 whether acting directly or through any person, trust, corporation, subsidiary, division or other
11 device, or any of them, are hereby permanently restrained and enjoined from selling, renting,
12 leasing, transferring, or otherwise disclosing the name, address, telephone number, Social Security
13 number, credit card number, bank account number, e-mail address or other identifying information
14 of any person who paid any money to defendant at any time prior to entry of this Order for any
15 business directory and/or any listing in a business directory. *Provided, however,* that defendant
16 may disclose such identifying information to a law enforcement agency or as required by any law,
17 regulation or court order.

18 **IV. CEASING COLLECTION ON ACCOUNTS**

19 **IT IS FURTHER ORDERED** that defendant, its successors and assigns, and its officers,
20 agents, directors, servants, employees, and attorneys, and those persons in active concert or
21 participation with them who receive actual notice of this Order by personal service or otherwise,
22 whether acting directly or through any person, trust, corporation, subsidiary, division or other
23 device, or any of them, are hereby permanently restrained and enjoined from collecting or
24 attempting to collect payment for the defendant's business directory and/or listing in the directory,
25 directly or through any third party, on any account established prior to entry of this Order.

V. RETURN OF MAIL

IT IS FURTHER ORDERED that:

A. The Commission shall return, or arrange to have returned, to consumers all uncashed checks and other negotiable instruments in the Commission's possession that were sent to defendant in response to defendant's telemarketing of its business directory and/or listing in the directory to U.S. residents, including all such mail delivered to a U.S. Post Office or private mail box address; and

B. The defendant shall forfeit all rights and interests in any uncashed check and other negotiable instrument sent to defendant in response to defendant's telemarketing of its business directory and/or listing in the directory to U.S. residents.

VI. MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

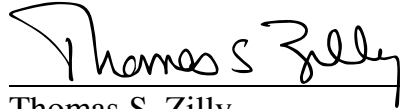
A. Judgment is entered in favor of the FTC and against defendant in the amount of nine hundred eight thousand seven hundred ten dollars (\$908,710) (US);

B. All funds received pursuant to this Order shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including but not limited to consumer redress, and any attendant expenses for the administration of such equitable relief. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the defendant's practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the U.S. Treasury as disgorgement. Defendant shall have no right to challenge the Commission's choice of remedies under this Section. Defendant shall have no right to contest the manner of distribution chosen by the Commission. No portion of funds received pursuant to this judgment shall be deemed a payment of any fine, penalty, or punitive assessment.

VII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO ORDERED, this 16th day of November, 2005.


Thomas S. Zilly
United States District Judge

Respectfully Submitted,

s/Kathryn C. Decker
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