

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"); ^{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:
28

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

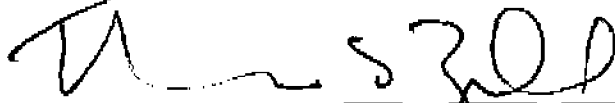
17 F. All records and documents necessary to demonstrate full compliance with each
18 provision of this Order including, but not limited to, copies of acknowledgments of receipt of this
19 Order required by Section XIII.D of this Order, and all reports submitted to the FTC pursuant to
20 Section X of 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 SO ORDERED, this 1st day of August, 2006.

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5 THE HONORABLE THOMAS SUZILLY
6 UNITED STATES DISTRICT JUDGE

7 Presented by:

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