

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

FEDERAL TRADE COMMISSION,
Plaintiff,

v.

HANSON PUBLICATIONS, INC.,
a corporation,

9069-5057 QUEBEC, INC.,
a corporation, also d/b/a Hanson Publications, Inc.,

**ASSOCIATED MERCHANT PAPER
SUPPLIES, INC.,**
**a corporation, also d/b/a AMPS and Fourniture
de Papier Associated Merchant, Inc.,**

ALBERT MOUYAL,
**individually and as an owner and/or officer or
director of the corporate defendants,**

ADRIAN P. TOWNING,
**individually and as an owner and/or officer or
director of the corporate defendants, and**

CHARLES HAMOUTH,
**individually and as an owner and/or officer or
director of the corporate defendants,**
Defendants.

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Case No.

Judge

Mag. Judge

**TEMPORARY RESTRAINING
ORDER WITH ASSET FREEZE,
EXPEDITED DISCOVERY AND
ORDER TO SHOW CAUSE
WHY A PRELIMINARY
INJUNCTION SHOULD NOT
ISSUE**

Plaintiff Federal Trade Commission (“Commission”) having filed its complaint for a permanent injunction and other relief in this matter pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101 *et seq.*, and having moved *ex parte* for a temporary restraining order pursuant to Rule 65 of the Federal Rules of Civil Procedure, and for an order to show cause why a preliminary injunction should not be granted, and the Court having considered the complaint, memorandum of points and authorities, declarations and other materials filed in support thereof, and now being advised in the premises, finds as follows:

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. Good cause exists to believe that the Commission ultimately will succeed in establishing that the above-named Defendants have engaged in, and are likely to engage in, acts and practices that violate FTC Act Section 5(a), 15 U.S.C. § 45(a), and the Commission’s Telemarketing Sales Rule, 16 C.F.R. Part 310, and that the Commission is likely to prevail on the merits.

3. Good cause exists to believe that immediate and irreparable harm will result from Defendants’ ongoing violations of the FTC Act and the Telemarketing Sales Rule, and that immediate and irreparable damage to Plaintiff’s ability to achieve effective final relief for consumers in the form of monetary redress will occur from the transfer, destruction, concealment or other disposition of Defendants’ assets or corporate records unless Defendants are immediately restrained and enjoined. Good cause thus exists to relieve the Commission of the duty to provide Defendants with prior notice of

the Commission's application. Good cause also exists to expedite discovery pursuant to Rule 26(d) of the Federal Rules of Civil Procedure.

4. Weighing the equities and considering the Commission's likelihood of ultimate success, a Temporary Restraining Order with asset freeze, expedited discovery and other equitable relief is in the public interest.

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

DEFINITIONS

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

1. **"Assets"** means any legal or equitable interest in, right to, or claim to, any real and personal property, including, but not limited to, chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, receivables (as those terms are defined in the Uniform Commercial Code), and all cash, wherever located.
2. **"Consumer"** means any person any Defendant has contacted, intended to contact, or intends to contact concerning Defendants's products or services, whether or not a sale or contract is actually consummated.
3. **"Defendants"** means Hanson Publications, Inc., (also doing business as Hanson), 9069-5057 Quebec, Inc. (also doing business as Hanson Publications, Inc.), Associated Merchant Paper Supplies (also doing business as AMPS and Fourniture de Papier Associated Merchant, Inc.), Albert Mouyal, Adrian P. Towing and Charles Hamouth (also known as Charles Hammouth), their successors,

assigns, officers, agents, servants, employees, attorneys and those persons 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 corporation, subsidiary, division or other device, and each of them, whether using these names or others.

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

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

5. **“Person”** means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

6. **“Record”** means any document, as document is defined in paragraph 3, above, relating to the business or business practices of any Defendant.

ORDER

I. PROHIBITED MISREPRESENTATIONS

IT IS THEREFORE ORDERED that, in connection with the marketing of any good or service, Defendants are hereby temporarily restrained and enjoined from making or assisting other persons in making, expressly or by implication, any false or misleading representation of material fact, including but not limited to,

- A. Misrepresenting, in connection with the sale, offering for sale, or distribution of business directories and nondurable office supplies, that consumers ordered the goods that were shipped and/or billed to them by Defendants; and
- B. Misrepresenting, in connection with the sale, offering for sale, or distribution of nondurable office supplies, that Defendants are connected with the consumer's automated credit card machine supplier or that they are the consumer's regular supplier.

II. CEASE VIOLATIONS OF THE TELEMARKETING SALES RULE

IT IS FURTHER ORDERED that Defendants are hereby temporarily restrained and enjoined from violating any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, including, but not limited to, the following violations:

- A. Making false or misleading statements to induce the consumer to pay for goods, including, but not limited to, misrepresenting, directly or by implication, that (a) Defendants are the consumer's regular supplier and (b) the consumer ordered the goods that were shipped and/or billed to the consumer by Defendants, thereby violating 16 C.F.R. § 310.3(a)(4).
- B. Failing to disclose, in "outbound telephone calls," promptly and in a clear and conspicuous manner their identity to the person receiving the call, thereby violating 16 C.F.R. § 310.4(d)(1).

- C. failing to disclose, in “outbound telephone calls,” promptly and in a clear and conspicuous manner to the person receiving the call, that the purpose of the call is to sell goods, thereby violating 16 C.F.R. § 310.4(d)(2).

III. ASSET FREEZE AND ACCOUNTING PROVISIONS

IT IS FURTHER ORDERED that Defendants and their independent contractors, and all other persons under Defendants’ control or under common control with them, are hereby restrained and enjoined, until further order of this Court from:

- A. Transferring, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, incurring charges or cash advances on any credit card, or otherwise disposing of any funds, property, artwork, coins, precious metals, jewelry, contracts, shares of stock, or other assets of any kind, wherever located, that are:

1. owned or controlled in whole or part by any Defendant;
2. in the actual or constructive possession of any Defendant;
3. held by an agent of any Defendant as a retainer for the agent’s provision of services to any Defendant; or
4. owned by, controlled by, in the actual or constructive possession of, or otherwise held for the benefit of, any entity directly or indirectly owned, managed or controlled by any Defendant; these assets also include but are not limited to any assets held by, for or under the name of any Defendant at any broker-dealership, escrow agent, title company,

commodity trading company, precious metal dealer, bank or other financial institution of any kind; and

- B. Opening or causing to be opened any safe deposit boxes or storage facilities titled in the name of any Defendant, or subject to access or control by any of them, without providing Plaintiff prior notice and opportunity to inspect the contents in order to determine that they contain no assets covered by this section.
- C. Obtaining personal or secured loans in a total amount greater than \$5000 without prior notice to the Commission;
- D. Incurring liens or other encumbrances on real property, personal property or other assets in the name, singly or jointly, of any Defendant; and
- E. Transferring any funds or other assets subject to this Order for attorney's fees, living expenses, business expenses or any other purpose, except by Court order upon a showing of good cause.

IV. FOREIGN ASSETS

IT IS FURTHER ORDERED that within three (3) business days following service of this Order, each Defendant shall:

- A. Take such steps as are necessary to repatriate to the United States all funds, documents and assets in foreign countries that were transferred outside of the territory of the United States from within the territory of the United States, which are held: (1) by any Defendant; (2) for the benefit of any Defendant; or (3) under any Defendant's direct or indirect control, jointly or singly;

- B. Thereafter hold and retain such assets within their control and otherwise prevent the transfer, disposition, or dissipation whatsoever of any such assets or funds; and
- C. Provide the Commission with access to all records of accounts or assets outside the territory of the United States held either: (1) by any Defendant; (2) for the benefit of any Defendant; or (3) under any Defendant's direct or indirect control, jointly or singly.

Access shall be provided by signing the Consent to Release Financial Records attached as Appendix A to this Order.

V. FINANCIAL STATEMENTS

IT IS FURTHER ORDERED that each Defendant shall provide this Court and counsel for the Commission a completed financial statement on the forms attached to this Order, verified under Oath and accurate as of the date of service of this Order upon such Defendant, for each such Defendant and for each corporation of which a Defendant is an officer or owner. Said financial statement shall include assets held outside the territory of the United States.

VI. DUTIES OF THIRD PARTIES HOLDING DEFENDANTS' ASSETS OR RECORDS

IT IS FURTHER ORDERED that any financial or brokerage institution, escrow agent, title company, storage facility, fulfillment house, commodity trading company, business entity or person maintaining or having custody or control of any records of any Defendant or of any account or other asset of any Defendant – whether titled in the name of any Defendant, or any Defendant's d/b/a, either individually or jointly, of record or beneficially, including accounts or other assets that any of the Defendants may control by virtue of being signatories on said accounts – or that has maintained any

such account, asset, or record of any time since January 1, 1997, after having been provided notice of this Order shall:

- A. Hold and retain within its control, and prohibit the Defendants from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling, gifting, or otherwise disposing of, any account, safe deposit box, funds, property or other asset:
 - 1. Titled in the name of, or subject to withdrawal or access by any Defendant, including any Defendant operating through a d/b/a, either individually or jointly;
 - 2. Held for, on behalf of, or for the benefit of any Defendant;
 - 3. Subject to access or use by any Defendant; or
 - 4. On which any Defendant is a signatory.

PROVIDED, HOWEVER, that this Order shall not prohibit transfers as directed by further order of the Court, or prohibit specified transfers authorized in writing by counsel for the Commission.

- B. Deny Defendants access to any safe deposit box that is:
 - 1. Titled in the name of any Defendant, either individually or jointly; or
 - 2. Otherwise subject to access by any Defendant, either individually or jointly.
- C. Provide counsel for the Commission within three (3) business days of receiving notice of this Order a sworn statement setting forth:
 - 1. The identification number of each such account or asset covered by this **Part VI**;
 - 2. The identity or identities and address(es) of the owner(s) of each such account;

3. The balance of each such account, or a description of the nature and value of each such assets as of the time 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
 4. The identification of any safe deposit box that is either titled in the name, individually or joint, of any Defendant, or otherwise subject to access by any such Defendant.
- D. Hold and retain within its control, and prohibit the destruction or alteration of, any and all records of any Defendant.
- E. Allow Commission representatives immediate access to inspect and copy all records of any Defendant, and all documents relating to any account, safe deposit box or other asset of any Defendant. Alternatively, any person or entity covered by this **Part VI** may arrange to deliver to the Commission copies of any records it seeks for a charge not to exceed fifteen (\$.15) cents per page copied.

The assets and funds affected by this **Part VI** include both existing assets and assets acquired after the effective date of this Order.

VII. EXPEDITED DISCOVERY

IT IS FURTHER ORDERED that in anticipation of a preliminary injunction hearing in this matter, and pursuant to Fed. R. Civ. P. 26(d) and 30(a), the parties are granted leave to conduct discovery at any time after service of this Order. The parties may depose witnesses upon three (3)

business days notice. The Commission may require that all responses to subpoenas *duces tecum* shall be served within five (5) business days of the service of such discovery. In addition, pursuant to Fed. R. Civ. P. 33, 34 and 36, the parties shall respond to any interrogatories, requests for production of documents, or requests for admissions within five (5) calendar days after service of the interrogatories or requests.

IT IS FURTHER ORDERED that the limitations and conditions set forth in Rules 30(a)(2)(B) and 31(a)(2)(B) of the Federal Rules of Civil Procedure regarding subsequent depositions of an individual shall not apply to depositions taken pursuant to this **Part VII**. Any such depositions shall not be counted toward any limit on the number of depositions under the Federal Rules of Civil Procedure or the Local Rules of Civil Procedure for the United States District Court for the Northern District of Ohio, including those set forth in Rules 30(a)(2)(A) and 31(a)(2)(A) of the Federal Rules of Civil Procedure. Any interrogatories served pursuant to this **Part VII** shall not be counted toward any limit on the number of interrogatories under the Federal Rules of Civil Procedure or the Local Rules of Civil Procedure for the United States District Court for the Northern District of Ohio, including that set forth in Rule 33(a) of the Federal Rules of Civil Procedure.

VIII. RECORD MAINTENANCE

IT IS FURTHER ORDERED that Defendants are hereby enjoined from:

- A. Failing to make and keep books, records, accounts, bank statements, current accountants' reports, general ledgers, general journals, cash receipt 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, any contracts, accounting data, correspondence, advertisements, computer tapes, discs or other computerized records, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, copies of federal, state or local business or personal income or property tax returns or other documents or records of any kind which relate to Defendants' business practices or business or personal finances from January 1997, forward.

IX. COPIES TO BE SERVED ON OFFICERS, EMPLOYEES, ET AL.

IT IS FURTHER ORDERED that each Defendant shall immediately provide a copy of this Order to each of the corporate Defendants' affiliates, franchises, subsidiaries, divisions, successors, assigns, directors, officers, managing agents, employees, representatives and independent contractors, and shall, within three (3) business days from the date of service of this Order, serve on the Commission affidavits identifying the names, titles, addresses and telephone numbers of the persons and entities whom they have served pursuant to this provision.

X. NOTICE

IT IS FURTHER ORDERED that Defendants Albert Mouyal, Adrian P. Towing and Charles Hamouth shall notify the Commission at least seven (7) days prior to any discontinuance of a

present business or employment and of any new or previously inactive affiliation, whether in an ownership, employment, or independent contractor capacity. Each notice shall include the name, business address and telephone number of Defendant's new business, employment or other affiliation, a statement of the nature of the business, employment, or affiliation, a statement of Defendant's duties and responsibilities, and the name, address and telephone number of each officer or owner of the corporation or business entity with which the Defendant is affiliated.

XI. MONITORING

IT IS FURTHER ORDERED that agents or representatives of the Commission may contact Defendants or their agents or representatives directly and anonymously for the purpose of monitoring compliance with **Parts I and II** of this Order, and may tape record any oral communications that occur in the course of such contacts.

XII. CORRESPONDENCE WITH PLAINTIFF

For the purposes of this Order, all correspondence and service of pleadings on Plaintiff shall be addressed to:

Jon Miller Steiger, Esq.
Federal Trade Commission
1111 Superior Avenue, Suite 200
Cleveland, OH 44114
Phone: (216) 263-3442/ Fax: (216) 263-3426
jmsteiger@ftc.gov

XIII. EXPIRATION OF TEMPORARY RESTRAINING ORDER

IT IS FURTHER ORDERED that the Temporary Restraining Order granted herein expires ten (10) days after entry unless, within such time, for good cause shown, it is extended for a like period,

or unless Defendants consent that it may be extended for a longer period and the reasons therefore are entered of record.

XIV. ORDER TO SHOW CAUSE SEEKING PRELIMINARY INJUNCTION

IT IS FURTHER ORDERED that Defendants shall appear before this Court at the United States courthouse located at 801 West Superior Avenue, Room ____, on the ____ day of November, at _____ o'clock a.m./p.m., to show cause, if any there be, why this Court should not enter a preliminary injunction, pending final ruling on the Complaint, against Defendants, enjoining them from further violations of FTC Act Section 5(a), 15 U.S.C. § 45(a), and the Commission's Telemarketing Sales Rule, 16 C.F.R. Part 310, continuing the freeze of their assets, and imposing such additional relief as may be appropriate.

IT IS FURTHER ORDERED that Defendants shall prepare and deliver to the Court and to the Commission, not later than 4:30 p.m. of the fourth (4th) day prior to the show-cause hearing, any opposition to issuance of a preliminary injunction, including any declarations, exhibits, memoranda or other evidence on which they intend to rely.

IT IS FURTHER ORDERED that the Commission shall file with the Court and serve on Defendants any supplemental declarations, exhibits, other evidence, and memoranda not later than 4:30 p.m. of the second (2^d) day prior to the show-cause hearing.

IT IS FURTHER ORDERED that the question of whether this Court should enter an order pursuant to Rule 65 of the Federal Rules of Civil Procedure enjoining the Defendants during the pendency of this action shall be resolved on the pleadings, declarations, exhibits, and memoranda filed by and oral argument of the parties. Any arguments concerning the admissibility of the evidence

presented shall go to the weight the Court shall give the evidence. Live testimony shall be heard only on further order of this Court, on motion filed with the Court and served on counsel for the other parties not later than 4:30 p.m. of the third (3rd) day prior to the show-cause hearing. Such motion shall set forth the name, address, and telephone number of each proposed witness, a detailed summary or affidavit revealing the substance of each proposed witness's expected testimony, and an explanation of why the taking of live testimony would be helpful to this Court. Any papers opposing a timely motion to present live testimony or to present live testimony in response to live testimony to be presented by another party shall be filed with this Court and served on the other parties not later than 4:30 p.m. of the second (2^d) day prior to the show-cause hearing.

IT IS FURTHER ORDERED that all documents served pursuant to this **Part XIV** shall be served on counsel for the Commission or on Defendants by hand, by facsimile transmission receipt of which has been verified by the party making service, or by overnight delivery service provided that delivery has been received by counsel within the time allotted in this **Part XIV**.

XV. SERVICE

IT IS FURTHER ORDERED that, pursuant to Fed. R. Civ. P. 4(c)(2), this Order and other initial pleadings and papers filed in this matter may be served by employees of the Commission, by employees of any other law enforcement agency, and by agents of any process servers retained by the Commission, upon any Defendant, upon the business premises of any Defendant, and upon any financial institution or any person or entity that may be in possession of any assets, records, property or property rights of any Defendant. Service may be accomplished by any means, including facsimile

transmission. Service upon any branch or office of any financial institution shall effect service upon the entire financial institution.

XVI. CREDIT REPORTS

IT IS FURTHER ORDERED, pursuant to Section 604 of the Fair Credit Reporting Act, 15 U.S.C. § 1681(b), that any consumer reporting agency may furnish a consumer or credit report to the Commission concerning any Defendant.

XVII. JURISDICTION

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

SO ORDERED, this _____ day of _____, 2002, at _____ a.m./p.m.

UNITED STATES DISTRICT JUDGE

APPENDIX A

Consent to Release of Financial Records

I, _____, of _____, Canada, do hereby direct any bank, savings and loan association, credit union, depository institution, finance company, commercial lending company, credit card processor, credit card processing entity, automated clearing house, network transaction processor, bank debit processing entity, brokerage house, escrow agent, money market or mutual fund, title company, commodity trading company, trustee, or person that holds, controls or maintains custody of assets, wherever located, that are owned or controlled by me or at which there is an account of any kind upon which I am authorized to draw, and its officers, employees and agents, to disclose all information and deliver copies of all documents of every nature in its possession or control which relate to the said accounts to any attorney of the Federal Trade Commission, and to give evidence relevant thereto, in the matter of the Federal Trade Commission v. Hanson Publications, Inc., et al., now pending in the United States District Court for the Northern District of Ohio, and this shall be irrevocable authority for so doing.

This direction is intended to apply to the laws of countries other than the United States of America which restrict or prohibit the disclosure of bank or other financial information without the consent of the holder of the account, and shall be construed as consent with respect thereto, and the same shall apply to any of the accounts for which I may be a relevant principal.

Date: _____, 2002 Signature: _____

Print Name: _____