

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

_____)
 FEDERAL TRADE COMMISSION,)
)
 Plaintiff,)
)
 v.)
)
 4049705 CANADA INC., a corporation, d/b/a)
 PINACLE,)
)
 3782484 CANADA INC., a corporation, d/b/a)
 M.D.S.C. PUBLISHING, and)
)
 TERRENCE CROTEAU, individually and as an)
 owner, officer, or director of the corporate)
 defendants,)
)
 Defendants.)
 _____)

Civil No. 04 C 4694
Judge Kennelly
Magistrate Judge Mason

~~PROPOSED~~ *Mc 5/19/05*
**FINAL JUDGMENT AND
ORDER FOR PERMANENT INJUNCTION**

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), filed its Complaint for Injunctive and Other Equitable Relief ("Complaint") pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b). The Complaint charges Defendants 4049705 Canada Inc., d/b/a Pinnacle, 3782484 Canada Inc., d/b/a M.D.S.C. Publishing, and Terrence Croteau with deceptive acts and practices in connection with the telemarketing to consumers in the United States of their business directories and listings in those directories. The Complaint alleges that Defendants' deceptive acts and practices violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

All Defendants were personally served with the Summons and Complaint in this matter on July 21, 2004. Defendants subsequently appeared before the Court through counsel. Although Defendants filed an answer to the Commission's Complaint on August 30, 2004, Defendants thereafter failed to participate in the discovery process. In the Temporary Restraining Order with Asset Freeze and Other Equitable Relief and Order to Show Cause Why a Preliminary Injunction Should Not Issue entered by the Court on July 27, 2004 ("TRO"), and the Preliminary Injunction with Asset Freeze and Other Equitable Relief entered by the Court on September 9, 2004 ("Preliminary Injunction"), the Court authorized the parties to conduct expedited discovery on designated subjects. On two occasions, the Commission propounded discovery to Defendants under the expedited discovery provisions of the TRO and Preliminary Injunction, and each time, Defendants did not respond to and otherwise ignored the Commission's discovery requests. During the same time period, the Court twice found Defendants to be in civil contempt of its orders, first on November 23, 2004, for violating the Court-imposed freeze on all their assets, and then on November 29, 2004, for failing to produce financial information that was required by the TRO and Preliminary Injunction. Once discovery on the merits of the case commenced, Defendants failed to make any response to the Commission's interrogatories and document requests. The Commission then requested that the Court enter an order of default against all Defendants as a discovery sanction under Fed. R. Civ. P. 37(d). The Court granted that request and entered an order of default against all Defendants on January 12, 2004.

The Commission now seeks the entry of a default judgment against all Defendants pursuant to Fed. R. Civ. P. 55(b)(2). Having considered the memorandum and exhibits filed in

support of the Commission's motion and the entire record in this matter, and now being fully advised in the premises, the Court hereby grants the Commission's motion for a default judgment.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

FINDINGS

1. This is an action by the Commission instituted under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b). The Commission's Complaint seeks permanent injunctive relief against Defendants in connection with the advertising, promotion, offering for sale, sale, and provision of business directories and listings in business directories, and seeks equitable monetary relief in the form of consumer restitution and/or disgorgement. Pursuant to these sections of the FTC Act, the Commission has the authority to seek the relief contained herein.
2. This Court has jurisdiction over the subject matter of this case and has jurisdiction over all parties hereto.
3. Venue is proper as to all parties in the Northern District of Illinois.
4. The Commission's Complaint states a claim upon which relief may be granted against Defendants under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b).
5. The activities of Defendants, as alleged in the Complaint, are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
6. Defendants were personally served with process in this matter on July 21, 2004, and they thereafter have appeared before the Court through their counsel of record.

7. On January 12, 2005, the Court entered an order of default against all Defendants as a discovery sanction under Fed. R. Civ. P. 37(d). The order of default was justified by Defendants' failure to make any response to the Commission's interrogatories and document requests, by Defendants' earlier failure to make any response to expedited discovery authorized by the TRO and Preliminary Injunction, and by Defendants' failure to comply with previous orders of the Court, resulting in two civil contempt findings against them.

8. Defendants' counsel of record has been served with written notice of the Commission's application for the entry of a default judgment in accordance with Fed. R. Civ. P. 55(b)(2).

9. The factual allegations in the Commission's Complaint are taken as true against Defendants. Those allegations and the evidence supporting them establish that Defendants violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

10. Defendants are likely to continue to engage in the acts and practices alleged in the Complaint unless they are permanently enjoined from such acts and practices.

11. The Commission is entitled to equitable monetary relief against Defendants in the amount of \$2,931,568.01 (USD), for which Defendants are jointly and severally liable.

12. This Order is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.

13. Entry of this Order is in the public interest.

14. Pursuant to Federal Rule of Civil Procedure 65(d), the provisions of this Order are binding upon Defendants, their officers, agents, servants, employees, attorneys, corporations,

successors and assigns, and upon those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise.

DEFINITIONS

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

1. **“Plaintiff”** means the Federal Trade Commission.
2. **“Defendant”** or **“Defendants”** means 4049705 Canada Inc., d/b/a Pinnacle, 3782484 Canada Inc., d/b/a M.D.S.C. Publishing, and Terrence Croteau, individually and as an officer and director of the corporate defendants, and each of them, by whatever names each may be known.
3. **“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 (as those terms are defined in the Uniform Commercial Code), and all cash, wherever located.
4. **“Material”** means likely to affect a person’s choice of, or conduct regarding, goods or services.
5. **“Person”** 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.
6. **“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.

7. **“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.

8. **“Assisting others”** means providing any of the following goods or services to any person or entity: (a) performing customer service functions, including but not limited to receiving or responding to consumer complaints; (b) formulating or providing, or arranging for the formulation or provision of, any telephone sales script or any other marketing material; (c) providing names of, or assisting in the generation of, potential customers; (d) performing

marketing services of any kind; (e) hiring, recruiting, or training personnel; (f) performing collection activity of any kind; or (g) acting as an officer or director of a business entity.

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

ORDER

I. BAN ON CERTAIN ACTIVITIES

IT IS THEREFORE ORDERED that Defendants, whether directly or indirectly, or through any corporation, business entity, or person under their control, are hereby permanently restrained and enjoined from: (A) advertising, promoting, telemarketing, offering for sale, selling, or distributing business directories and/or listings in business directories; and (B) assisting others engaged in advertising, promoting, telemarketing, offering for sale, selling, or distributing business directories and/or listings in business directories. Nothing in this Order shall be read as an exception to this Section.

II. PROHIBITED BUSINESS ACTIVITIES

IT IS FURTHER ORDERED that Defendants, their successors and assigns, and their officers, agents, servants, employees, and 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 entity, 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 hereby permanently restrained and enjoined from:

A. Making, or assisting others in making, any express or implied representation or omission of material fact that is false or misleading, in any manner, to any person or entity, including but not limited to, any false or misleading statement:

1. That consumers have a preexisting business relationship with Defendants;
2. That consumers have agreed to purchase a business directory or a listing in such a directory;
3. That Defendants have engaged legal counsel to collect on consumers' accounts;
4. That Defendants will not call or invoice consumers again if consumers will make full or partial payments of amounts allegedly due;
5. That Defendants are telephoning consumers to renew a previous directory listing;
6. That consumers purchased listings in Defendants' business directories that were shipped and/or billed to them by Defendants;

7. Concerning the nature of Defendants' relationship with consumers, and the purpose of their communication with consumers;

8. Of any fact material to a consumer's decision to purchase any good or service;

B. Violating the Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310, including any amendments thereto; and

C. Assisting others who violate any provision of Subsection A or B of this Section II.

III. SUSPENSION OF COLLECTION ON ACCOUNTS

IT IS FURTHER ORDERED that Defendants, their successors and assigns, and their officers, agents, servants, employees, and 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 entity, corporation, subsidiary, division, or other device, or any of them, are hereby permanently restrained and enjoined from attempting to collect, collecting, or assigning any right to collect payment for any business directory or listing in a business directory, from any customer of any Defendant.

IV. PROHIBITIONS REGARDING CONSUMER INFORMATION

IT IS FURTHER ORDERED that Defendants, their successors and assigns, and their officers, agents, servants, employees, and 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 entity, corporation, subsidiary, division, or other device, or any of them, are hereby permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, Social Security

number, credit card number, bank account number, e-mail address, or other identifying information of any person who paid any money to any Defendant, at any time prior to entry of this Order, for any business directory or listing in a business directory; *provided, however*, that Defendants may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order.

V. MONETARY RELIEF

IT IS FURTHER ORDERED that:

A. Judgment is hereby entered against Defendants, jointly and severally, in the amount of Two Million, Nine Hundred Thirty-One Thousand, Five Hundred Sixty-Eight Dollars and One Cent (\$2,931,568.01 (USD)). This amount shall become immediately due and payable by Defendants upon entry of this Order, and interest computed at the rate prescribed under 28 U.S.C. § 1961, as amended, shall immediately begin to accrue on the unpaid balance;

B. In partial satisfaction of the judgment entered pursuant to Subsection A of this Section, the Clerk of Court is directed to transfer to the Commission, in accordance with wire transfer instructions provided by the Commission, the \$55,083.76 that was deposited into the Registry of the United States District Court for the Northern District of Illinois, Eastern Division, on or about January 13, 2005, pursuant to the Contempt Order entered against Defendants on November 23, 2004. Defendants shall pay the remaining amount due to the Commission under the judgment entered pursuant to Subsection A of this Section in United States funds by certified check or cashier's check, made payable to the Federal Trade Commission, and delivered to the Regional Director, Federal Trade Commission, 55 East Monroe Street, Suite 1860, Chicago, Illinois 60603;

C. All funds paid pursuant to this Section shall be deposited into a redress 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 Defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the Treasury as disgorgement. Defendants shall have no right to challenge the Commission's choice of remedies or the manner of distribution under this Section. The Commission, in its sole discretion, may use a designated agent to administer consumer redress;

D. The judgment entered pursuant to Subsection A of this Section for equitable monetary relief is solely remedial in nature and is not a fine, penalty, punitive assessment, or forfeiture.

VI. DISSOLUTION OF ASSET FREEZE

IT IS FURTHER ORDERED that upon payment to the Commission of the total amount required by Section V of this Order, the freeze against the assets of Defendants pursuant to Section II of the Preliminary Injunction entered by the Court on September 9, 2004, shall be lifted permanently.

VII. COMPLIANCE MONITORING

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

A. Within ten (10) days of receipt of written notice from a representative of the Commission, Defendants shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in such Defendant's possession or direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to monitor compliance with this Order by all other lawful means, including but not limited to the following:

1. obtaining discovery from any person, without further leave of Court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
2. posing as consumers and suppliers to Defendants, Defendants' employees, or any other entity managed or controlled in whole or in part by any Defendant, without the necessity of identification or prior notice; and

C. Defendants shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

Provided, however, that nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49 & 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

VIII. COMPLIANCE REPORTING BY DEFENDANTS

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

A. For a period of five (5) years from the date of entry of this Order,

1. Defendant Terrence Croteau shall notify the Commission of the following:

a. Any changes in residence, mailing addresses, and telephone numbers of Defendant, within ten (10) days of the date of such change;

b. Any changes in employment status (including self-employment), and any change in the ownership of any business entity, within ten (10) days of the date of such change. Such notice shall include the name and address of each business that Defendant Terrence Croteau is affiliated with, employed by, creates or forms, or performs services for; a statement of the nature of the business; and a statement of Defendant Terrence Croteau's duties and responsibilities in connection with the business; and

c. Any changes in Defendant Terrence Croteau's name or use of any aliases or fictitious names; and

2. Defendants shall notify the Commission of any changes in corporate structure of Defendants or any business entity that any Defendant directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such

change, provided that, with respect to any proposed change in the corporation about which the Defendant learns less than thirty (30) days prior to the date such action is to take place, Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Order, Defendants shall provide a written report to the Commission, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Order.

This report shall include, but not be limited to:

1. The then-current residence address, mailing address, and telephone numbers of Defendant Terrence Croteau;
2. The then current employment and business addresses and telephone numbers of Defendant Terrence Croteau, a description of the business activities of each such employer or business, and the title and responsibilities of Defendant Terrence Croteau, for each such employer or business;
3. A copy of each acknowledgment of receipt of this Order obtained by Defendants pursuant to Section X of this Order; and
4. Any other changes required to be reported under subsection A of this Section.

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

Regional Director
Federal Trade Commission
55 East Monroe Street, Suite 1860

Chicago, Illinois 60603

Re: FTC v. 4049705 Canada Inc., et al., No. 04 C 4694

D. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with Defendants.

IX. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, in connection with any business where any Defendant is the majority owner of the business or directly or indirectly manages or controls the business, Defendants and their agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from failing to create and retain the following records:

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

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

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

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

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

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

X. DISTRIBUTION OF ORDER BY DEFENDANTS

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

- A. **Corporate Defendants:** Defendants 4049705 Canada Inc. and 3782484 Canada Inc. must deliver a copy of this Order to all of its principals, officers, directors, and managers. Such Defendants also must deliver copies of this Order to all of its employees, agents, and representatives who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within five (5) days of service of this Order upon Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities.
- B. **Individual Defendant Terrence Croteau as Control Person:** For any business that Defendant Terrence Croteau controls, directly or indirectly, or in which Defendant Terrence Croteau has a majority interest, Defendant Terrence Croteau must deliver a copy of this Order to all principals, officers, directors, and managers of that business. Defendant Terrence Croteau must also deliver copies of this Order to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order. For current

personnel, delivery shall be within five (5) days of service of this Order upon Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities.

C. Individual Defendant Terrence Croteau as Employee or Non-Control

Person: For any business where Defendant Terrence Croteau is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, Defendant Terrence Croteau must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.

D. Defendants must secure a signed and dated statement acknowledging receipt of the Order, within thirty days of delivery, from all persons receiving a copy of the Order pursuant to this Part.


XI. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that each Defendant, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement, in the form shown at **Appendix A**, acknowledging receipt of this Order.

XII. RETENTION OF JURISDICTION

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

IT IS SO ORDERED, this 19 day of May, 2005.



Honorable Matthew F. Kennelly
United States District Judge

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	Civil No. 04 C 4694
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v.)	
)	Judge Kennelly
4049705 CANADA INC., a corporation, d/b/a)	
PINACLE,)	Magistrate Judge Mason
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3782484 CANADA INC., a corporation, d/b/a)	
M.D.S.C. PUBLISHING, and)	
)	
TERRENCE CROTEAU, individually and as an)	
owner, officer, or director of the corporate)	
defendants,)	
)	
Defendants.)	
<hr/>)	

AFFIDAVIT ATTESTING TO RECEIPT OF ORDER

I, _____, being duly sworn, hereby state and affirm as follows:

- My name is _____. My current residence address is _____
_____. I am a citizen of _____ and am
over the age of eighteen. I have personal knowledge of the facts set forth in this
Affidavit.
- I am a Defendant in FTC v. 4049705 Canada Inc., et al., (United States District Court for
the Northern District of Illinois).

3. On _____, I received a copy of the Final Judgment and Order for Permanent Injunction ("Order"), which was signed by the Honorable Matthew F. Kennelly and entered by the Court on _____. A true and correct copy of the Order that I received is appended to this Affidavit.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on _____, at _____.

[City, State]

[Full Name of Defendant]

State of _____, City of _____

Subscribed and sworn to before me
this ___ day of _____.

Notary Public
My Commission Expires:

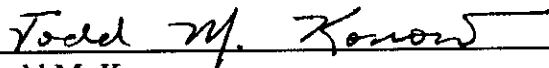
CERTIFICATE OF SERVICE

I, Todd M. Kossow, an attorney, hereby certify that on this day I caused to be served a true and correct copy of the **Federal Trade Commission's Motion for Entry of Default Judgment Against All Defendants and Declarations and Exhibits in Support of Federal Trade Commission's Motion for Entry of Default Judgment Against All Defendants (Volumes I & II)** on the following via Federal Express Delivery:

THOMAS E. PATTERSON
SCOTT W. BERENDS
The Patterson Law Firm, P.C.
33 North LaSalle Street, Suite 3350
Chicago, Illinois 60602

Attorneys for All Defendants

Dated: May 13, 2005



Todd M. Kossow
Attorney for Plaintiff
Federal Trade Commission