

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. 05-0265TSZ

**FIRST AMENDED COMPLAINT FOR
INJUNCTION AND OTHER
EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission (“FTC” or “the Commission”), for its Complaint
alleges as follows:

1 1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act
2 (“FTC Act”), 15 U.S.C. § 53(b), to secure temporary, preliminary and permanent injunctive relief,
3 rescission of contracts and restitution, disgorgement of ill-gotten gains, and other equitable relief for
4 defendants’ deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45 (a).

5 **JURISDICTION AND VENUE**

6 2. This Court has subject matter jurisdiction pursuant to 15 U.S.C. §§ 45(a) and 53(b), and
7 28 U.S.C. §§ 1331, 1337(a), and 1345.

8 3. Venue in the United States District Court for the Western District of Washington is
9 proper under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b), (c), and (d).

10 **PLAINTIFF**

11 4. Plaintiff FTC is an independent agency of the United States Government created by
12 statute. 15 U.S.C. §§ 41-58, as amended. The Commission is charged with, *inter alia*, enforcement of
13 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in
14 or affecting commerce. The Commission is authorized to initiate federal district court proceedings, by
15 its own attorneys, to enjoin violations of the FTC Act, and to secure such equitable relief, including
16 restitution for injured consumers, as may be appropriate in each case. 15 U.S.C. § 53(b).

17 **DEFENDANTS**

18 5. Defendant 9125-8954 Quebec Inc., d.b.a. Global Management Solutions (“Global”), is a
19 Canadian corporation with its business office located at 666 Sherbrooke Street West, #1401, Montreal,
20 Quebec H3A 1E7. Global also maintains or has maintained a mailbox drop at 816 Elm Street, #482,
21 Manchester, New Hampshire 03101. Global transacts or has transacted business in the Western
22 District of Washington.

23 6. Defendant 9125-8947 Quebec Inc., d.b.a. Commutel Marketing and d.b.a. Marketing
24 USA (“Commutel/Marketing USA”), is a Canadian corporation with its business office located at 666
25 Sherbrooke Street West, #500, Montreal, Quebec H3A 1E7. Commutel/Marketing USA also maintains
26 or has maintained mailbox drops at 40 East Main Street, #338, Newark, Delaware 19711; 2014 North
27 Saginaw Road, #159, Midland, Michigan 48640; and 3176 Richmond Road, Lexington, Kentucky,
28 40509. Commutel/Marketing USA transacts or has transacted business in the Western District of

1 Washington.

2 7. Defendant Ty Nguyen, a.k.a. Hiep Manh Nguyen, is or has been an owner, officer or
3 director of Global and Commutel/Marketing USA. At all times material to this Complaint, acting
4 alone or in concert with others, Ty Nguyen formulated, directed, controlled or participated in the acts
5 and practices of Global and Commutel/Marketing USA, including the acts and practices set forth in
6 this Complaint. Defendant Ty Nguyen transacts or has transacted business in the Western District of
7 Washington.

8 8. Defendant Cory Kornelson is or has been an owner, officer or director of Global. At all
9 times material to this Complaint, acting alone or in concert with others, Kornelson formulated,
10 directed, controlled or participated in the acts and practices of Global, including the acts and practices
11 set forth in this Complaint. Defendant Kornelson transacts or has transacted business in the Western
12 District of Washington.

13 9. Defendant Byron Steczko is or has been an owner, officer or director of
14 Commutel/Marketing USA. Since at least 2003 and continuing until at least the fall of 2004, acting
15 alone or in concert with others, Steczko formulated, directed, controlled or participated in the acts and
16 practices of Commutel/Marketing USA, including the acts and practices set forth in this Complaint.
17 Defendant Steczko transacts or has transacted business in the Western District of Washington.

18 10. Defendant Phong Anh Vo is or has been an owner, officer or director of
19 Commutel/Marketing USA. Since at least the fall of 2004, acting alone or in concert with others,
20 Phong Anh Vo formulated, directed, controlled or participated in the acts and practices of
21 Commutel/Marketing USA, including the acts and practices set forth in this Complaint. Defendant
22 Phong Anh Vo transacts or has transacted business in the Western District of Washington.

23 11. Defendant 6050808 Canada Inc., d.b.a. American Business Solutions (“ABS”), is a
24 Canadian corporation with its registered office located at 1260 Craigflower Road, Victoria, British
25 Columbia, Canada V9A 2Y6. ABS has a business office at 239 Menzies Street, Suite 201, Victoria,
26 British Columbia, Canada V8V 2G6. ABS also maintains or has maintained mailbox drops at 2034
27 East Lincoln Avenue, Suite 332, Anaheim, California 92806, and 59 Damonte Ranch Parkway, Suite
28 #B-324, Reno, Nevada 89521. ABS transacts or has transacted business in the Western District of

1 Washington.

2 12. Defendant Kelly Nguyen, a.k.a. Phu Minh Huy Nguyen, is or has been an owner, officer
3 or director of ABS. At all times material to this Complaint, acting alone or in concert with others,
4 Kelly Nguyen formulated, directed, controlled or participated in the acts and practices of ABS,
5 including the acts and practices set forth in this Complaint. Defendant Kelly Nguyen transacts or has
6 transacted business in the Western District of Washington.

7 13. Defendant Minh Tam Vo is or has been an owner, officer or director of ABS. At all
8 times material to this Complaint, acting alone or in concert with others, Minh Tam Vo formulated,
9 directed, controlled or participated in the acts and practices of ABS, including the acts and practices set
10 forth in this Complaint. Defendant Minh Tam Vo transacts or has transacted business in the Western
11 District of Washington.

12 **COMMERCE**

13 14. At all times relevant to this Complaint, defendants have maintained a substantial course
14 of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C.
15 § 44.

16 **DEFENDANTS’ BUSINESS PRACTICES**

17 15. Since at least 2003, and continuing thereafter, defendants have engaged in a plan,
18 program or campaign to sell business directories and listings in business directories via interstate
19 telephone calls to various businesses and other organizations (hereinafter referred to as “consumers”)
20 throughout the United States.

21 16. Defendants Commutel/Marketing USA, Ty Nguyen, Steczko, and Phong Anh Vo
22 market the “Commutel Business Directory” and the “Marketing USA Directory,” CD-ROM business
23 directories, and listings in the directories by making unsolicited outbound telephone calls to U.S.
24 consumers.

25 17. Defendants ABS, Kelly Nguyen, and Minh Tam Vo market the “American Business
26 Solutions Directory,” a CD-ROM business directory, and listings in the directory by making
27 unsolicited outbound telephone calls to U.S. consumers.

28 18. The Commutel/Marketing USA and ABS defendants (hereinafter collectively referred to

1 as “selling defendants”) use virtually identical deceptive tactics to sell or to induce consumers to pay
2 for similar business directories and listings in the directories. Typically, selling defendants’
3 telemarketers tell consumers that they are calling to verify the consumer’s name, address, and
4 telephone number for a listing in a business directory. Selling defendants’ telemarketers represent,
5 expressly or by implication, that the consumer previously was listed in the directory or that someone
6 else in the consumer’s organization previously authorized the current purchase.

7 19. When consumers are reluctant to verify the listing information or do not believe their
8 company has ordered the listing, selling defendants assure consumers that they have a 30-day trial
9 period during which they can review the directory with no obligation to pay.

10 20. In numerous instances, consumers believe selling defendants’ representations that the
11 consumers previously have been listed in the business directory, that someone else in their organization
12 previously authorized the purchase, or that consumers have a 30-day, no-obligation trial period. Thus,
13 consumers who receive selling defendants’ telemarketing calls proceed to verify the requested
14 information.

15 21. In numerous instances, once consumers have confirmed the requested information, a
16 verifier employed by a selling defendant calls the consumer and again asks for verification of their
17 name, address, and telephone number. Answers to these questions are recorded and selling defendants
18 later point to these recordings as evidence that consumers authorized the purchase of the business
19 directory and/or listing.

20 22. Selling defendants follow up their telephone calls by mailing invoices to consumers.
21 The invoices may or may not be accompanied by the directory itself. The invoices mailed by the
22 Commutel/Marketing USA defendants typically bill consumers between \$349-\$459 for the “Commutel
23 Business Directory, Vol. 2 CD and Listing,” and \$498 for the “Marketing USA Directory - National
24 Edition.” The invoices mailed by the ABS defendants typically bill consumers between \$249-\$399 for
25 the “American Business Solutions Directory, Volume One CD and Listing.” Selling defendants
26 typically mail their invoices to the attention of the individual who took selling defendants’
27 telemarketing call, and the invoices often list that individual as having authorized the order.

28 23. In some instances, selling defendants mail invoices and directories to consumers who

1 have expressly stated during a telemarketing call that they are not interested in the selling defendant's
2 business directory and/or listing. In other instances, selling defendants simply mail invoices and
3 sometimes a directory to consumers who selling defendants have not even contacted.

4 24. Upon receiving selling defendants' invoices, consumers often discover that no one
5 within their organization previously purchased or ordered a business directory and/or listing from the
6 selling defendant and that the selling defendant has billed the consumer for a "new" purchase. When
7 these consumers contact the selling defendant to complain that they never agreed to a purchase, they
8 are told that the individual who took the selling defendant's telemarketing call ordered the directory
9 and/or listing. The selling defendant purports to have a tape recording of that individual ordering the
10 directory and/or listing, and the selling defendant tells the consumer that the tape recording constitutes
11 a binding oral contract. Selling defendants refuse to permit consumers to cancel the order, citing the
12 alleged oral contract. In some instances, selling defendants tell these consumers that they can obtain a
13 refund only for the returned CD-ROM, but that there is no refund for the listing in the directory.

14 25. In numerous instances, consumers do not pay selling defendants' invoices. Selling
15 defendants refer these consumers to defendants Global, Ty Nguyen, and Kornelson (hereinafter
16 referred to collectively as "collecting defendants"), who purport to be an independent collection agency
17 that selling defendants have retained to collect on consumer accounts. Collecting defendants make
18 numerous collection calls to these consumers, send repeated dunning notices, and threaten to damage
19 consumers' credit ratings, initiate legal action, and pursue "other measures to recover the debt."

20 26. In numerous instances, consumers advise collecting defendants that they do not owe the
21 selling defendant anything because no one in the consumer's organization ordered the business
22 directory and/or listing, or because the selling defendant assured them that they had a 30-day trial
23 period during which they could review the directory without incurring financial obligation. Despite
24 repeatedly being put on notice that consumers did not authorize the purchase of the directory and/or
25 listing, or that they were reviewing the directory on a 30-day trial basis, collecting defendants continue
26 to engage in collection efforts on behalf of selling defendants. In some instances, consumers proceed
27 to pay selling defendants' invoices either because they are led to believe that someone within their
28 organization placed the order or because they want to put an end to the harassing telephone calls and

1 mailings.

2 **VIOLATIONS OF SECTION 5 OF THE FTC ACT**

3 27. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or
4 practices in or affecting commerce.

5 28. Misrepresentations of material fact constitute unfair or deceptive acts or practices
6 prohibited by Section 5(a) of the FTC Act.

7 **COUNT I**

8 29. In connection with the offering for sale, sale or distribution of their business directory
9 and/or listings in their business directory, defendants Commutel/Marketing USA, ABS, Ty Nguyen,
10 Steczko, Phong Anh Vo, Kelly Nguyen, and Minh Tam Vo have represented to consumers, expressly
11 or by implication, that consumers have previously authorized the purchase of the business directory
12 and/or listing in the directory.

13 30. In truth and in fact, in numerous instances, consumers have not authorized the purchase
14 of the business directory and/or listing in the directory.

15 31. Therefore, defendants' representations set forth in Paragraph 29 are false and
16 misleading, and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act,
17 15 U.S.C. § 45(a).

18 **COUNT II**

19 32. In connection with the offering for sale, sale or distribution of their business directory
20 and/or listings in their business directory, defendants Commutel/Marketing USA, ABS, Ty Nguyen,
21 Steczko, Phong Anh Vo, Kelly Nguyen, and Minh Tam Vo have represented to consumers, expressly
22 or by implication, that consumers have agreed to purchase the business directory and/or listing in the
23 directory.

24 33. In truth and in fact, in numerous instances, consumers have not agreed to purchase the
25 business directory and/or listing in the directory.

26 34. Therefore, defendants' representations set forth in Paragraph 32 are false and
27 misleading, and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act,
28 15 U.S.C. § 45(a).

COUNT III

1
2 35. In connection with the offering for sale, sale or distribution of their business directory
3 and/or listings in their business directory, defendants Commutel/Marketing USA, ABS, Ty Nguyen,
4 Steczko, Phong Anh Vo, Kelly Nguyen, and Minh Tam Vo have represented to consumers, expressly
5 or by implication, that consumers can review the business directory on a trial basis without incurring
6 financial obligation.

7 36. In truth and in fact, in numerous instances, consumers cannot review the business
8 directory on a trial basis without incurring financial obligation.

9 37. Therefore, defendants' representations set forth in Paragraph 35 are false and
10 misleading, and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act,
11 15 U.S.C. § 45(a).

COUNT IV

12
13 38. To induce consumers to pay for the business directory and/or listings in the business
14 directory, defendants Global, Ty Nguyen, and Kornelson have represented to consumers, expressly or
15 by implication, that consumers owe money to defendants Commutel/Marketing USA or ABS for the
16 business directory and/or listing in the directory.

17 39. In truth and in fact, in numerous instances, consumers do not owe money to defendants
18 Commutel/Marketing USA or ABS for the business directory and/or listing in the directory.

19 40. Therefore, defendants' representations set forth in Paragraph 38 are false and
20 misleading, and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act,
21 15 U.S.C. § 45(a).

CONSUMER INJURY

22
23 41. Consumers throughout the United States have suffered and continue to suffer substantial
24 monetary loss as a result of defendants' unlawful acts or practices. Absent injunctive relief from this
25 Court, defendants are likely to continue to injure consumers and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

26
27 42. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant
28 injunctive and such other relief as the Court may deem appropriate to halt and redress violations of the

1 FTC Act. The Court, in the exercise of its equitable jurisdiction, may award other ancillary relief
2 including, but not limited to, rescission of contracts and restitution, and the disgorgement of ill-gotten
3 gains, to prevent and remedy injury caused by defendants' law violations.

4 **PRAYER FOR RELIEF**

5 Wherefore, plaintiff, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the
6 Court's own equitable powers, request this Court to:

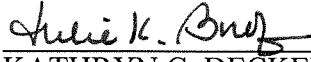
- 7 1. Award plaintiff such temporary and preliminary injunctive and ancillary relief as may be
- 8 necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve
- 9 the possibility of effective final relief;
- 10 2. Permanently enjoin defendants from violating the FTC Act, as alleged herein;
- 11 3. Award such equitable relief as the Court finds necessary to redress injury to consumers
- 12 resulting from defendants' violations of the FTC Act including, but not limited to, rescission of
- 13 contracts and restitution, and the disgorgement of ill-gotten gains by the defendants; and
- 14 4. Award plaintiff the costs of bringing this action, as well as such other and additional
- 15 equitable relief as the Court may determine to be just and proper.

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17 Dated: May 26, 2005

Respectfully Submitted,

18 WILLIAM BLUMENTHAL
19 General Counsel

20 CHARLES A. HARWOOD
21 Regional Director

22 
 23 KATHRYN C. DECKER, WSBA #12389
 24 JULIE K. BROF, WSBA #34638
 25 915 Second Avenue, Suite 2896
 26 Seattle, Washington 98174
 27 206-220-4486 (Decker)
 28 206-220-4475 (Brof)
 206-220-6366 (fax)
kdecker@ftc.gov
jbrof@ftc.gov

Attorneys for Plaintiff
Federal Trade Commission