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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

FEDERAL TRADE COMMISSION, Plaintiff, v. NORVERGENCE, INC., Defendant	**CIVIL ACTION NO. 04-5414 (DRD)** **Hearing date: July 18, 2005** **(PROPOSED)** **DEFAULT JUDGMENT AND ORDER FOR PERMANENT INJUNCTION AND MONETARY RELIEF**

Plaintiff, the Federal Trade Commission (hereinafter "Commission" or "FTC"), having filed a Complaint under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to obtain permanent injunctive relief, rescission of contracts, restitution, disgorgement, and other equitable relief for defendant NorVergence, Inc.'s ("NorVergence") deceptive acts and practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Clerk of the Court having entered a default against defendant NorVergence and this Court having considered the pleadings, declarations, exhibits, and memoranda filed by the Commission and now, being advised in the premises, makes the following findings and enters the following Default Judgment and Order for Permanent Injunction and Monetary Relief:

FINDINGS

1. This Court has jurisdiction of the subject matter of this action and of the parties hereto.

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

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

4. This action was instituted by the Commission under Sections 5 and 13(b) of

the FTC Act, 15 U.S.C. §§ 45 and 53(b). The Commission seeks permanent injunctive relief, monetary relief, rescission of contracts, and other equitable relief for the alleged deceptive acts or practices by defendant NorVergence in connection with the sale and financing of telecommunications services and related products. Pursuant to Section 13(b) of the FTC Act, the Commission has the authority to seek the relief it has requested.

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

6. NorVergence is a debtor in a liquidation case under Chapter 7 of the Bankruptcy Code pending in this district (Docket 04-32079-RG). Charles Forman is the duly appointed Chapter 7 trustee for NorVergence. The Commission's action against NorVergence, including the enforcement of a judgment obtained in this action other than a money judgment against NorVergence, is not stayed by 11 U.S.C. § 362(a)(1), (2), (3), or (6) because it is an exercise of the Commission's police or regulatory power as a governmental unit pursuant to 11 U.S.C. § 362(b)(4) and, thus, falls within an exemption from the automatic stay.

7. NorVergence's principal business since at least 2002, and continuing until shortly before its bankruptcy filing in July 2004, has been reselling telecommunications services, purchased from common carriers or others,

principally to consumers who were small businesses, non-profit organizations, churches, and municipalities. NorVergence marketed its services as integrated, long-term packages, including landline and cellular telephone service and Internet access.

8. NorVergence promised to provide to consumers heavily discounted telecommunications services for a long term, typically five years, in exchange for consumers' payments. Consumers signed a set of applications and agreements at the outset with a total price equal to the promised monthly payments over five years. Most of the total payments were allocated to a rental agreement for a "Matrix" or "Matrix Soho" (or similar product), which were standard routers or firewalls that cost between $200 and $1,550. The total cost to the customer was $7,000 to $340,000, with an average cost of $29,291. The price of the rental agreement had nothing to do with the cost of the Matrix, which itself was an incidental part of the promised services. The rental agreements on their face, however, purported to cover only the Matrix box.

9. The telecommunication services NorVergence promised to consumers have not been provided at least since August 2004, and, in some cases, have never been provided. At the same time, various finance companies who took assignments from NorVergence of the majority of the rental agreements have insisted that consumers continue to pay on those agreements.

10. Defendant NorVergence, through its Chapter 7 bankruptcy trustee, was served with the Complaint and Summons as required by Rule 4 of the Federal Rules of Civil Procedure.

11. Defendant NorVergence has failed to file an answer with the Clerk of the Court within the time set forth by Rule 12(a) of the Federal Rules of Civil Procedure or otherwise defend this action.

12. The Clerk of this Court, pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, entered a Certificate of Default against defendant NorVergence on May 20, 2005. The FTC is therefore entitled to a default judgment pursuant to Rule 55(b) of the Federal Rules of Civil Procedure.

13. The Court now finds that, in connection with the sale and financing of telecommunications services and related products, defendant NorVergence violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), by falsely representing, directly or by implication, that:

(A) consumers' payments on NorVergence's rental agreement and associated service agreements would result in consumers receiving promised discounted telecommunications services for a long term;

(B) NorVergence would treat the applications, forms, and rental agreement consumers signed as a unified agreement under which

NorVergence would provide telecommunications services in exchange for consumers' payments; and

(C) the equipment listed in NorVergence's rental agreement would create the promised substantial savings in consumers' total cost of telecommunications services.

14. The Court further finds that, in connection with the sale and financing of telecommunications services and related products, defendant NorVergence violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), by (1) representing, directly or by implication, that NorVergence would provide substantially discounted telecommunications services to consumers for a long term; and (2) failing to disclose the following facts that would have been material to consumers when they contracted with NorVergence:

(A) that NorVergence did not have a long-term commitment from any service provider for the services it was promising to provide to consumers;

(B) that the equipment covered by the rental agreement would be of little or no value to the consumer if NorVergence failed to provide the promised telecommunications services.

15. The Court further finds that, in connection with the sale and financing of telecommunications services and related products, defendant NorVergence's

practice of including in its rental agreements provisions authorizing it or its assignees to file lawsuits in specified or unspecified venues other than consumers' locations or the locations where consumers executed the contracts with NorVergence was likely to cause substantial injury to consumers that could not have been reasonably avoided and that was not outweighed by any countervailing benefits to consumers or to competition. The Court therefore finds that this practice was unfair in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

16. The Court further finds that NorVergence provided others with the means and instrumentalities for the commission of deceptive and unfair acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), by furnishing third-party finance companies with rental agreements from consumers that allowed the finance companies to:

(A) Misrepresent that consumers owe money on the rental agreements regardless of whether NorVergence provided the promised telecommunications services; and

(B) File collection suits against consumers in distant forums.

17. By its unfair and deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), defendant NorVergence caused injury to consumers in the amount of at least $172,997,758. This is a good faith,

conservative estimate by the FTC of consumer injury using the limited documentation and information currently available.

18. Plaintiff is entitled to permanent injunctive and equitable relief, including consumer restitution, disgorgement, and rescission of contracts, from defendant NorVergence in the form and amounts set forth below.

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

DEFINITIONS

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

1. "Consumer" means any natural person, business, non-profit organization, government agency, or other entity.

2. "Consumer financing agreement" means any financing arrangement, whether styled as a rental agreement, contract, lease, or otherwise, made with a consumer in conjunction with offering or sale of telecommunications services or equipment.

3. "Bankruptcy Case" means the bankruptcy case of NorVergence filed and pending in the United States Bankruptcy Court for the District of New Jersey, Case No. 04-32079-RG.

ORDER

I. CESSATION OF TELECOMMUNICATIONS BUSINESS ACTIVITIES

IT IS ORDERED that NorVergence shall not engage in any telecommunications-related business.

II. CANCELLATION OF NORVERGENCE FINANCING OF MATRIX BOXES AND SIMILAR AGREEMENTS

IT IS FURTHER ORDERED that:

A. Any consumer financing agreement owned or held in whole or part by NorVergence is void and unenforceable by any person or entity.

B. Any NorVergence consumer financing agreement transferred or assigned to, or taken by, any third party after those contracts were rejected in the Bankruptcy Case pursuant to 11 U.S.C. § 365 is void and unenforceable by any person or entity.

C. To the extent that NorVergence has a residual, contingent, or similar right to any consumer financing agreements not currently owned or held by NorVergence, those agreements shall be void and unenforceable by any person or entity as of the time that NorVergence's residual, contingent, or similar right matures or otherwise becomes effective.

D. NorVergence shall notify all consumers affected by Paragraphs II.A-B above within 90 days after entry of this Order that their consumer financing agreements have been deemed unenforceable and void or, alternatively, provide access to the FTC to information and documents necessary for the FTC to provide this notification.

E. The FTC shall be authorized to give any additional notice to consumers potentially affected by this Section and to holders or assignees of consumer financing agreements that may be affected by Paragraph II.C above.

III. LIQUIDATION OF MONETARY CLAIM

IT IS FURTHER ORDERED that Judgment in the amount of $181,721,914 is entered against NorVergence as restitution for consumer injury. This amount takes into account a good faith, conservative estimate by the FTC of the value of the cancellation of indebtedness pursuant to Section II of this Order and of the services that some consumers may have received for a short period.

IV. COMPLIANCE REPORT

IT IS FURTHER ORDERED that 90 days after the date of entry of this Order, NorVergence shall provide a written report to the FTC, setting forth the manner in which it has complied with Section II of this Order, including copies of the form of notice sent to any consumers and a list of consumers to whom the notices were sent. For the purposes of this Order, NorVergence shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications or other communications to the Commission to:

Director, Northwest Region
Federal Trade Commission
915 2nd Avenue, Room 2896
Seattle, WA 98174

V. RETENTION OF JURISDICTION

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

SO ORDERED, this 29th day of June, 2005.

HON. DICKINSON R. DEBEVOISE,
UNITED STATES DISTRICT JUDGE

Presented by PLAINTIFF FTC:

Dated: June 8, 2005

/s/ Randall H. Brook
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