

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

FEDERAL TRADE COMMISSION, )

Plaintiff, )

v. )

1492828 ONTARIO INC., d/b/a FIRST CAPITAL )  
CONSUMERS GROUP, US GUARDIAN UNITED )  
CONSUMERS, TRANS AMERICA UNITED BENEFITS )  
GROUP, TRANSGLOBAL NATIONAL CONSUMERS )  
GROUP, and FIRST GUARDIAN NATIONAL )  
BENEFITS, )

1533649 ONTARIO INC., d/b/a INTER OFFICE )  
MARKETING SERVICES, CAPITAL )  
COMMUNICATIONS, US GUARDIAN UNITED )  
CONSUMERS, TRANS AMERICA UNITED BENEFITS )  
GROUP, TRANSGLOBAL NATIONAL CONSUMERS )  
GROUP, and FIRST GUARDIAN NATIONAL )  
BENEFITS, )

DAVID DALGLISH, )

LESLIE ANDERSON, )

LLOYD PRUDENZA, )

MARK LENNOX, and )

PAUL SCHROEDER, d/b/a PAUL SCHROEDER & )  
ASSOCIATES, PS&A, and YOUR BENEFITZ, )

Defendants. )

Civil Action No. 02 C 7456  
Judge Guzman  
Magistrate Judge Nolan

**DOCKETED**  
DEC 08 2004

**ORDER FOR PERMANENT INJUNCTION AND FINAL JUDGMENT AGAINST  
DEFENDANTS 1492828 ONTARIO INC., 1533649 ONTARIO INC., DAVID DALGLISH,  
LLOYD PRUDENZA, AND MARK LENNOX**

Plaintiff, the Federal Trade Commission ("FTC" or "the Commission"), commenced this action by filing its complaint for injunctive and other equitable relief pursuant to Sections 13(b)

55

and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101, *et seq.*, charging that the Defendants engaged in deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC's Trade Regulation Rule entitled "Telemarketing Sales Rule," 16 C.F.R. Part 310.

The Commission now seeks the entry of default judgment on all counts of the complaint against Defendants 1492828 Ontario Inc., d/b/a First Capital Consumers Group, US Guardian United Consumers, Trans America United Benefits Group, Transglobal National Consumers Group, and First Guardian National Benefits; 1533649 Ontario Inc., d/b/a Inter Office Marketing Services, Capital Communications, US Guardian United Consumers, Trans America United Benefits Group, Transglobal National Consumers Group, and First Guardian National Benefits; David Dalglish; Lloyd Prudenza; and Mark Lennox, pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure.

The Commission's motion to enter default judgment is hereby granted, and it is therefore **ORDERED, ADJUDGED, AND DECREED** as follows:

#### **FINDINGS**

1. This Court has jurisdiction over the subject matter of this case and all parties hereto.
2. Venue in the United States District Court for the Northern District of Illinois is proper.
3. The activities of Defendants are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

4. The Defendants were properly served with the summons and complaint.

5. The Commission's complaint states a claim upon which relief may be granted against Defendants under Sections 5, 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45, 53(b) and 57b, the Telemarketing Act, 15 U.S.C. §§ 6101, *et seq.*, and the FTC's Telemarketing Rule, 16 C.F.R. Part 310.

6. Defendants, directly or through their telemarketers, have made false or misleading statements in connection with the telemarketing of advance fee credit cards, that include, but are not limited to, the following:

- a. that after paying Defendants a fee, consumers will, or are highly likely to, receive an unsecured major credit card, such as a VISA or MasterCard credit card; and
- b. that Defendants can guarantee or have a high likelihood of success in obtaining or arranging for the acquisition of an unsecured credit card, such as a VISA or MasterCard credit card, for consumers.

7. The evidence establishes that Defendants violated Section 5 of the FTC Act, 15 U.S.C. § 45, and the Telemarketing Sales Rule, 16 C.F.R. Part 310 .

8. Defendants are likely to continue to engage in the activities alleged in the complaint unless they are permanently enjoined from such acts and practices.

9. Plaintiff is entitled to judgment pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure.

10. Plaintiff is entitled to judgment against the Defendants in the amount of \$8,273,893.50 (USD), for which Defendants are jointly and severally liable.

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

**ORDER**

**DEFINITIONS**

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

1. "Defendants" means 1492828 Ontario Inc., d/b/a First Capital Consumers Group, US Guardian United Consumers, Trans America United Benefits Group, Transglobal National Consumers Group, and First Guardian National Benefits; 1533649 Ontario Inc., d/b/a Inter Office Marketing Services, Capital Communications, US Guardian United Consumers, Trans America United Benefits Group, Transglobal National Consumers Group, and First Guardian National Benefits; David Dalglish; Lloyd Prudenza; and Mark Lennox, and each of them, by whatever names each might be known.

2. "Corporate Defendants" means 1492828 Ontario Inc., d/b/a First Capital Consumers Group, US Guardian United Consumers, Trans America United Benefits Group, Transglobal National Consumers Group, and First Guardian National Benefits; 1533649 Ontario Inc., d/b/a Inter Office Marketing Services, Capital Communications, US Guardian United Consumers, Trans America United Benefits Group, Transglobal National Consumers Group, and First Guardian National Benefits, and any subsidiaries, affiliates, and any fictitious business entities or business names created or used by these entities, or any of them.

3. "Individual Defendants" means David Dalglish; Lloyd Prudenza; and Mark Lennox; or any of them.

4. "Asset" or "assets" means any legal or equitable interest in, right to, or claim to, any real and personal property, including, but not limited to, "goods," "instruments,"

“equipment,” “fixtures,” “general intangibles,” “inventory,” “checks,” or “notes,” (as these terms are defined in the Uniform Commercial Code), lines of credit, and all cash, chattels, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, and funds, wherever located.

5. “Customer” means any person who has paid or may be required to pay for goods or services.

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

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

8. “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.

9. “Assisting others” means: (1) performing customer service functions including, but not limited to, receiving or responding to consumer complaints, receiving identifying and financial information from consumers, and communicating with consumers about extensions of credit; (2) developing, providing or arranging for the development or provision of sales scripts or any other marketing material; (3) providing names of, or arranging for the provision of names of, potential customers; or (4) performing marketing services of any kind.

10. "Credit-related products, programs, or services" means any product, program, or service which is advertised, offered for sale, or sold to consumers as a method by which consumers may establish or obtain any extension of credit or credit device, including, but not limited to, credit cards, loans, or financing, or as a method to consolidate or liquidate debts.

11. "Telemarketing" means the advertising, offering for sale, or sale of any good or service to any person by means of telephone sales presentations, either exclusively or in conjunction with the use of other advertising.

**I.**

**BAN ON THE TELEMARKETING OF ANY PRODUCT OR SERVICE TO CONSUMERS IN THE UNITED STATES**

**IT IS FURTHER ORDERED** that Defendants are hereby permanently restrained and enjoined from engaging in, participating in, or assisting the telemarketing, in any manner, of any product or service to any consumer in the United States. Nothing in this Order shall be construed as being an exception to this Section.

**II.**

**BAN ON SELLING CREDIT-RELATED PRODUCTS, PROGRAMS, OR SERVICES TO CONSUMERS IN THE UNITED STATES**

**IT IS FURTHER ORDERED** that Defendants are hereby permanently restrained and enjoined from promoting, offering for sale, or selling, directly or indirectly, credit-related products, programs, or services to any consumer in the United States. Nothing in this Order shall be construed as being an exception to this Section.

### III.

#### PROHIBITED BUSINESS ACTIVITIES

**IT IS FURTHER ORDERED** that, in connection with the advertising, marketing, promoting, offering for sale, or sale of any product, program, or service, Defendants, their successors, assigns, officers, agents, servants, employees, and all other persons or entities 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 corporate or other device, are hereby permanently restrained and enjoined from:

- A. Misrepresenting, directly or by implication, that Defendants will provide consumers with, or arrange for consumers to receive, a major credit card, such as a Visa or MasterCard;
- B. Misrepresenting, directly or by implication, Defendants' ability to provide consumers with any credit-related product, program, or service;
- C. Misrepresenting, directly or by implication, any fact material to a consumer's decision to purchase any product, program or service;
- D. Violating or assisting others to violate any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, *et seq.*, including, but not limited to:
  1. Violating Section 310.3(a)(2) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(2), by misrepresenting, directly or by implication, any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer, 16 C.F.R. § 310.3(a)(2)(iii); and

2. Violating Section 310.4(a)(4) of the Telemarketing Sales Rule, 16 C.F.R. § 310.4(a)(4), by requesting or receiving payment of any fee or consideration in advance of obtaining or arranging an extension of credit when they have guaranteed or represented a high likelihood of success in obtaining or arranging an extension of credit;

E. Assisting others who violate any provision of Subsections A through D of this Section.

#### IV.

#### **MONETARY JUDGMENT AND REDRESS**

**IT IS FURTHER ORDERED** that:

A. Defendants, jointly and severally, shall pay consumer redress in the amount of eight million two hundred seventy three thousand eight hundred ninety three dollars and fifty cents (USD) (\$8,273,893.50 (USD)), pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b). This redress 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. These payments shall be made in U.S. funds by certified or cashier's check, made payable to the Federal Trade Commission, and delivered to the Director, Federal Trade Commission, 55 East Monroe Street, Suite 1860, Chicago, Illinois 60603. These funds will be used to provide redress to consumers injured by Defendants' violations of the FTC Act and the Telemarketing Sales Rule. If Plaintiff determines, in its sole discretion, that redress is wholly or partially impracticable, any funds not so used shall be paid into the U.S. Treasury as



disgorgement. Defendants may be notified as to how funds are disbursed, but shall have no right to contest the manner of distribution chosen by Plaintiff.

V.

**ASSETS HELD BY THIRD PARTIES**

**IT IS FURTHER ORDERED** that any financial or brokerage institution, business entity or person, including, but not limited to, Check Recovery Systems, Inc., and Diversified Financial Systems, Inc., that holds, controls, or maintains custody of any account or asset of the Corporate Defendants, or has held, controlled, or maintained custody of any account or asset of the Corporate Defendants at any time since January 1, 2001, shall transfer all such assets to the Plaintiff in accordance with instructions provided by the Plaintiff Federal Trade Commission to effectuate such transfer, within ten (10) business days of receiving a copy of this Order.

VI.

**CUSTOMER LISTS**

**IT IS FURTHER ORDERED** that Defendants, their successors, assigns, officers, agents, servants, employees, and all other persons or entities 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 corporate or other device, are 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 or received any credit-related product, program, or service from any Defendant, or whose identifying information was obtained for the purpose of soliciting them to pay money to or receive services from any Defendant at any

time prior to the date this Order is entered, in connection with the sale or rendition of the products, programs, or services referenced in the complaint. *Provided, however,* that Defendants, their successors, assigns, officers, agents, servants, employees, and all other persons or entities 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 corporate or other device, may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order.

**VII.**

**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 on Appendix A to this Order, acknowledging receipt of this Order.

**VIII.**

**COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE**

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

A. Within ten days of receipt of written notice from a representative of the Commission, each Defendant 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 Defendants, without the necessity of identification or prior notice; *provided* 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)).

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.

## IX.

### COMPLIANCE REPORTING BY DEFENDANT

**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. The Individual Defendants shall notify the Commission of the following:
    - a. Any changes in Defendant's residence, mailing addresses, and

telephone numbers, within ten (10) days of the date of such change;

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

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

2. The Individual Defendants and the Corporate Defendants shall notify the Commission of any changes in corporate structure 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 corporation; 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, the Individual Defendants and the Corporate Defendants shall provide a written report to the FTC, sworn to under penalty of perjury under the laws of the United States, 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. Any changes required to be reported pursuant to Subsection A above;
2. A copy of each acknowledgment of receipt of this Order obtained by

Defendant pursuant to Section VII of this Order.

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:

Director for Midwest Region  
Federal Trade Commission  
55 East Monroe Street, Suite 1860  
Chicago, Illinois 60603  
Re: FTC v. 1492828 Ontario Inc., et al., Civil Action No. 02 C 7456.

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

#### X.

#### **MONITORING COMPLIANCE OF SALES PERSONNEL**

**IF IS FURTHER ORDERED** that Defendants, in connection with any business in which (1) any Defendant is the majority owner of the business or directly or indirectly manages or controls the business, and (2) the business is engaged in marketing or selling any product or service to consumers, or materially assists others engaged in these activities, are hereby permanently restrained and enjoined from:

A. Failing to take reasonable steps sufficient to monitor and ensure that all employees and independent contractors engaged in sales or other customer service functions comply with Sections I, II, and III of this Order. Such steps shall include adequate monitoring of

sales presentations or other calls with customers, and shall also include, at a minimum, the following: (1) listening to the oral representations made by persons engaged in sales or other customer service functions; (2) establishing a procedure for receiving and responding to consumer complaints; and (3) ascertaining the number and nature of consumer complaints regarding transactions in which each employee or independent contractor is involved;

B. Failing promptly to investigate fully any consumer complaint received by any business to which this Section applies; and

C. Failing to take corrective action with respect to any sales person whom Defendants determine is not complying with this Order, which may include training, disciplining, and/or terminating such sales person.

## **XI.**

### **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:

A. The Corporate Defendants shall deliver a copy of this Order to all principals, officers, directors, managers, employees, agents, and representatives having responsibilities with respect to the subject matter of this Order, and shall secure from each such person a signed and dated statement acknowledging receipt of the Order. The Corporate Defendants shall deliver this Order to current personnel within thirty (30) days after the date of service of this Order, and to new personnel within thirty (30) days after the person assumes such position or responsibilities.

B. The Individual Defendants shall deliver a copy of this Order to the principals, officers, directors, managers and employees under the Individual Defendants' control for any

business that (a) employs or contracts for personal services from the Individual Defendants and (b) has responsibilities with respect to the subject matter of this Order. The Individual Defendants shall secure from each such person a signed and dated statement acknowledging receipt of the Order within thirty (30) days after the date of service of the Order or the commencement of the employment relationship.

## **XII.**

### **RECORD KEEPING PROVISIONS**

**IT IS FURTHER ORDERED** that, for a period of eight (8) years from the date of entry of this Order, for any business where (1) any Defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where (2) the business is engaged in marketing or selling any product or service to consumers, or materially assists others engaged in these activities, 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, telephone 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. Complaint and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests; and

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

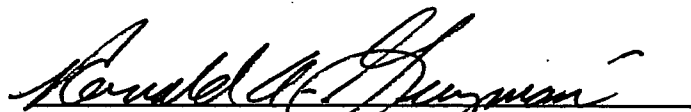
**XIII.**

**RETENTION OF JURISDICTION**

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

There being no just reason for delay, the Clerk of the Court is hereby directed to enter this Order.

**SO ORDERED**, this 2<sup>nd</sup> day of December, 2003.

  
HONORABLE RONALD A. GOZMAN  
United States District Judge





I declare under penalty of perjury under the laws of the United States that the foregoing is

true and correct. Executed on \_\_\_\_\_, at \_\_\_\_\_.  
[date] [city and state/province]

\_\_\_\_\_  
[Full name of Defendant]

State/Province of \_\_\_\_\_, City of \_\_\_\_\_

Subscribed and sworn to before me  
this \_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Notary Public  
My Commission Expires:  
\_\_\_\_\_