

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

_____)	
FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
1306506 ONTARIO LIMITED, a Canadian)	
Corporation;)	
)	
T.S.I. SERVICE CORP., a Nevada Corporation;)	
)	
VINNY BUBIC, individually and as a director and)	PLAINTIFF’S PROPOSED
officer of 1306506 Ontario Limited and T.S.I.)	TEMPORARY RESTRAINING
Service Corp.; and)	ORDER WITH ASSET FREEZE
)	AND OTHER RELIEF
ERROL ALEXANDER, individually and as a)	
director and officer of 1306506 Ontario Limited)	
and T.S.I. Service Corp.;)	
)	
Defendants.)	
_____)	

Plaintiff, Federal Trade Commission (“FTC” or “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 having moved for an *ex parte* Temporary Restraining Order and other relief pursuant to Rule 65 of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 65, and the Court having considered the complaint, declarations, exhibits, and memorandum of law filed in support thereof, and now being advised in the premises finds, that:

1. This Court has jurisdiction over the subject matter of this case and there is good

cause to believe it will have jurisdiction over all parties hereto.

2. There is good cause to believe that Plaintiff will ultimately succeed in establishing that Defendants 1306506 Ontario Limited; T.S.I. Service Corp.; Vinny Bubic, individually and as a director and officer of 1306506 Ontario Limited and T.S.I. Service Corp.; and Errol Alexander, individually and as a director and officer of 1306506 Ontario Limited and T.S.I. Service Corp.; have engaged in and are likely to engage in the future in acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Telemarketing Sales Rule, 16 C.F.R. Part 310, and that Plaintiff is therefore likely to prevail on the merits of this action.

3. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for consumers in the form of monetary restitution will occur from the sale, transfer, or other disposition or concealment by Defendants of their assets or corporate records unless Defendants are immediately restrained and enjoined by Order of this Court. There is thus good cause for relieving Plaintiff of the duty to provide Defendants with prior notice of Plaintiff's motion.

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

5. Plaintiff is not required to post any security, pursuant to Fed. R. Civ. P. 65(c), which provides that no security is required of any agency of the United States for issuance of a restraining order.

ORDER

DEFINITIONS

For purposes of this temporary restraining order, the following definitions shall apply:

1. “Plaintiff” means the Federal Trade Commission.
2. “Defendant” or “Defendants” means 1306506 Ontario Limited; T.S.I. Service Corp.; Vinny Bubic, individually and as a director and officer of 1306506 Ontario Limited and T.S.I. Service Corp.; Errol Alexander, individually and as a director and officer of 1306506 Ontario Limited and T.S.I. Service Corp.; and any subsidiaries, affiliates, and any fictitious business entities or business names created or used by these entities, including but not limited to TSI, TSI Financial Services, TSI Services, TSI Security, TeleConsultant Service International/TSI; or any of them.
3. “Asset” or “Assets” means any legal or equitable interest in, right to, or claim to, any real or 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, funds, and all cash, wherever located.
4. The term “Document” or “Documents” means any materials listed 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, into reasonably usable form through detection devices. A draft or nonidentical copy is a separate Document within the meaning of the term.

I.

CEASE AND DESIST

IT IS THEREFORE ORDERED that Defendants, and their officers, agents, directors,

servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, successors, and assigns, and all other persons or entities in active concert or participation with them, including, but not limited to, CGSI, COMPAID, American Card Registry, Vacation Link Centres Ltd., Tel-A-Sell Marketing, Coast to Coast, and NTS, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, in connection with the telemarketing, advertising, marketing, proposed sale, or sale of any product or service, or the entering into any contract or any other arrangement relating to the telemarketing, advertising, marketing, proposed sale or sale of any product or service, are hereby restrained and enjoined from making, or assisting in the making of, directly or by implication, orally or in any writing, any false or misleading statement or representation of material fact, including, but not limited to, any false or misleading representation regarding:

- A. Any affiliation with a consumer's credit card issuer or any other third party;
- B. Consumers' liability for unauthorized use of their credit cards; and
- C. Any amounts due by consumers who have not agreed to purchase any product or service from Defendants.

II.

MAINTAIN RECORDS

IT IS FURTHER ORDERED that Defendants, and their officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, successors, and assigns, and all other persons or entities in active concert or participation with them, including, but not limited to, CGSI, COMPAID, American Card

Registry, Vacation Link Centres Ltd., Tel-A-Sell Marketing, Coast to Coast, and NTS, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby restrained and enjoined from:

A. Failing to create and maintain 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, fairly and completely reflect the incomes, disbursements, transactions and uses of the Defendants' Assets; and

B. Destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any books, records, tapes, disks, contracts, accounting data, handwritten notes, checks (fronts and backs), correspondence, forms, advertisements, brochures, manuals, telemarketing scripts, sales presentations, electronically stored data, banking records, customer lists, customer files, mailing lists, telemarketer lists, invoices, telephone records, receipt books, postal receipts, ledgers, payroll records, or other Documents of any kind, including information stored in computer-maintained form (such as electronic mail), in their possession, custody or control.

C. Creating, operating, or exercising any control over any new business entity, including any partnership, sole proprietorship or corporation, without first providing Plaintiff with a written statement disclosing: (1) the name of the business entity; (2) the address and telephone number of the business entity; (3) the names of the business entity's officers, directors, principals, managers, and employees; and (4) a detailed description of the business entity's intended

activities.

III.

ASSET FREEZE

IT IS FURTHER ORDERED that Defendants, and their officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, successors, and assigns, and all other persons or entities in active concert or participation with them, including, but not limited to, CGSI, COMPAID, American Card Registry, Vacation Link Centres Ltd., Tel-A-Sell Marketing, Coast to Coast, and NTS, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby restrained and enjoined until further order of this Court, from:

A. Transferring, liquidating, converting, encumbering, pledging, loaning, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, granting a lien or security interest or other interest in, or otherwise disposing of any Assets, or any interest therein, wherever located, that are (1) owned, controlled or held by, or for the benefit of, in whole or in part, any Defendant; or (2) in the actual or constructive possession of any Defendant, including, but not limited to, any Assets held in any account at any bank or savings and loan institution, or any credit card processing agent, customer service agent, commercial mail receiving agency, or mail holding or forwarding company, or any credit union, IRA custodian, money market or mutual fund, storage company, trustee, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, or other financial institution or depository of any kind, either within or outside the United States;

B. Opening or causing to be opened any safe deposit boxes, commercial mail boxes, or storage facilities titled in the name of any Defendant, or subject to access by any Defendant or under the control of any Defendant, without providing Plaintiff prior notice and an opportunity to inspect the contents in order to determine that they contain no Assets covered by this Section;

C. Incurring charges or cash advances on any credit card issued in the name, singly or jointly, of any Defendant;

D. Notwithstanding the asset freeze provisions of Subsections III.A-C above, Defendants Vinny Bubic and Errol Alexander may, upon compliance with Section V of this Order, pay from his or her individual personal funds reasonable, usual, ordinary, and necessary living expenses not to exceed \$500, subject to prior written agreement with Plaintiff;

E. Transferring any funds or other Assets subject to this Order for attorneys' fees or living expenses, except from accounts or other Assets identified by prior written notice to Plaintiff and prior approval by the Court. Provided further, that no attorneys' fees or living expenses, other than those set forth in Subsection D, and only in accordance with the procedures set forth in Subsection D, shall be paid from funds or other Assets subject to this Order unless and until the Defendant requesting such funds has completed a sworn financial statement as required by Section V of this Order, and submitted such statement to the Court and served such statement upon counsel for Plaintiff.

F. The Assets affected by this Section shall include both existing Assets and Assets acquired after the effective date of this Order.

IV.

DUTIES OF THIRD PARTIES

IT IS FURTHER ORDERED that, pending determination of Plaintiff's request for a preliminary injunction, that each of the entities named in Sections III.A. above, maintaining or having custody or control of any account or other Asset of any Defendant, or that at any time since July 1, 1997, has maintained or had custody of any such Asset, and which is provided with a copy of this Order, or otherwise has actual or constructive knowledge of this Order, shall:

A. Hold and retain within its control and prohibit the withdrawal, removal, assignment, transfer, pledge, hypothecation, encumbrance, disbursement, dissipation, conversion, sale, liquidation or other disposal of any of the Assets or other property held by, under its control, or on behalf of any Defendant in any account maintained in the name of, or for the benefit or use of, any Defendant, in whole or in part, except in accordance with any further order of the Court; and

B. Deny Defendants access to any safe deposit boxes, commercial mail boxes or storage facilities that are either titled in the name, individually or jointly, of any Defendant, or otherwise subject to access by any Defendant.

C. Within four (4) business days of the date of notice of this Order, provide to counsel for Plaintiff a statement setting forth:

1. The identification of each account or Asset titled in the name, individually or jointly, of any Defendant, or held on behalf of, or for the benefit or use of, any Defendant;

2. The balance of each such account, or a description and appraisal of the value of such Asset, as of the close of business on the day on which notice of this Order is received, 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

3. The identification of any safe deposit box, commercial mail box, or storage facility that is either titled in the name individually or jointly, of any Defendant, or is otherwise subject to access or control by any Defendant.

D. Allow representatives of Plaintiff immediate access to inspect and copy any records or other Documents pertaining to such account or Asset, including, but not limited to originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs.

E. The Assets and accounts affected by this Section shall include both existing Assets and Assets acquired after the effective date of this Order.

V.

COMPLETE AND FILE FINANCIAL STATEMENT

IT IS FURTHER ORDERED that not less than five (5) days prior to the scheduled date and time for a hearing on a preliminary injunction in this matter, but in no event later than ten (10) days after entry of this Order, each Defendant named in the caption of this Order shall provide this Court and serve upon counsel for Plaintiff a completed financial statement on the forms served with this Order. The financial statements shall be accurate as of the date of the entry of this Order and shall be verified under oath. Defendants shall attach to these completed financial statements copies of all local, state, provincial, and federal income and property tax returns, with attachments

and schedules, as called for by the instructions to the financial statements.

VI.

REPATRIATION OF ASSETS AND DOCUMENTS LOCATED IN FOREIGN COUNTRIES

IT IS FURTHER ORDERED that Defendants, and their officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, successors, and assigns, and all other persons or entities in active concert or participation with them, including, but not limited to, CGSI, COMPAID, American Card Registry, Vacation Link Centres Ltd., Tel-A-Sell Marketing, Coast to Coast, and NTS, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, shall:

A. Within three (3) business days following service of this Order, take such steps as are necessary to repatriate to the territory of the United States of America all Documents and Assets that are located outside of such territory and are held by or for Defendants or are under Defendants' direct or indirect control, jointly, severally, or individually;

B. Within three (3) business days following service of this Order, provide Plaintiff with a full accounting of all Documents and Assets that are located outside of the territory of the United States of America or that have been transferred to the territory of the United States pursuant to Subsection A above and are held by or for any Defendant or are under any Defendant's direct or indirect control, jointly, severally, or individually, including the names and address of any foreign or domestic financial institution or other entity holding the Assets, along with the account numbers and balances;

C. Hold and retain all transferred Documents and Assets and prevent any transfer, disposition, or dissipation whatsoever of any such Documents or Assets; and

D. Provide Plaintiff access to Defendants' records and Documents held by financial institutions or other entities outside the territorial United States, by signing the Consent to Release of Financial Records attached as Attachment A.

VII.

EXPEDITED DISCOVERY

IT IS FURTHER ORDERED that Plaintiff is granted leave, at any time after service of this Order and pursuant to Federal Rules of Civil Procedure 30(a), 34, and 45 to: (1) take the deposition of any person or entity for the purpose of discovering the nature, location, status, and extent of Defendants' Assets, the nature and location of Documents reflecting the business transactions of Defendants, and the applicability of any evidentiary privileges to this action; and to (2) demand the production of Documents from any person or entity relating to the nature, status, and extent of Defendants' Assets, the location of Documents reflecting the business transactions of Defendants, and the applicability of any evidentiary privileges to this action. Three (3) days notice shall be deemed sufficient for any such deposition, five (5) days notice shall be deemed sufficient for the production of any such Documents, and twenty-four (24) hours notice shall be deemed sufficient for the production of any such computer data. The provisions of this Section shall apply both to parties to this case and to non-parties.

The limitations and conditions set forth in Fed.R.Civ.P. 30(a)(2)(B) and 31(a)(2)(B) regarding subsequent depositions of an individual shall not apply to depositions taken pursuant to this Section. Any such depositions taken pursuant to this Section 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 Western District of New York, including those set forth in Fed.R.Civ.P. 30(a)(2)(A) and 31(a)(2)(A). Service of discovery upon a party, taken pursuant to this Section, shall be sufficient if made by facsimile or by overnight delivery.

VIII.

DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that Defendants shall immediately provide a copy of this Order to each of their corporations and corporations' employees, subsidiaries, affiliates, directors, officers, successors, assigns, employees, agents, and independent contractors. Within five (5) calendar days following service of this Order by Plaintiff, Defendants shall file with this Court and serve on Plaintiff, an affidavit identifying the names, titles, addresses, and telephone numbers of the persons and entities Defendants have served with a copy of this Order in compliance with this provision.

IX.

EXPIRATION DATE OF TEMPORARY RESTRAINING ORDER

IT IS FURTHER ORDERED that the Temporary Restraining Order granted herein shall expire on _____, 2000, at 11:59 p.m., unless within such time the Order, for good cause shown, is extended, or unless, as to any Defendant, the Defendant consents that it should be extended for a longer period of time.

X.

DATE OF NEXT COURT PROCEEDING

IT IS FURTHER ORDERED that each Defendant shall appear before this Court on the _____ day of _____, 2000, at _____ .m. at the United States Courthouse, Courtroom _____, Western District of New York, to show cause, if any there be, why this Court should not enter a preliminary injunction, pending final ruling on the complaint, against said Defendants enjoining them from further violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), continuing the freeze of their Assets, and imposing such additional relief as may be appropriate.

XI.

SERVICE OF ANSWERING AFFIDAVITS, MEMORANDA, AND OTHER EVIDENCE

IT IS FURTHER ORDERED that Defendants shall serve answering affidavits, pleadings, and legal memoranda on counsel for Plaintiff not less than four business days prior to the hearing on Plaintiff's request for a preliminary injunction. Defendants shall serve copies of all such materials on Plaintiff by personal service or facsimile to David A. O'Toole, Federal Trade Commission, 55 East Monroe Street, Suite 1860, Chicago, Illinois 60603, facsimile (312) 960-5600.

XII.

WITNESS LIST

IT IS FURTHER ORDERED that if any party to this action intends to present the testimony of any witness at the hearing on a preliminary injunction in this matter, that both parties shall, at least seventy-two (72) hours prior to the scheduled date and time of hearing, serve on

counsel for the other party a statement of the name, address, and telephone number of any such witness, and either a summary of the witness' expected testimony, or the witness' affidavit or declaration revealing the substance of such witness' expected testimony.

XIII.

NOTICE OF THIS ORDER

IT IS FURTHER ORDERED that copies of this Order may be distributed by first class mail, overnight delivery, facsimile, electronic mail, or personally, by agents or employees of Plaintiff, upon any credit card processing agent, customer service agent, commercial mail receiving agency, mail holding or forwarding company, bank, savings and loan institution, credit union, financial institution, brokerage house, escrow agent, IRA custodian, money market or mutual fund, title company, commodity trading company, common carrier, storage company, trustee, or any other person, partnership, corporation, or legal entity that may be in possession of any Documents, records, Assets, property, or property right of any named Defendant, and any Internet service provider or other person, partnership, corporation, or legal entity that may be subject to any provision of this Order. For purposes of notice on anyone in possession of Documents, records, Assets, property, or property rights, actual notice of this Order shall be deemed complete upon notification by any means, including, but not limited to, notice from distribution by facsimile transmission of the first page, Sections III, IV, VI, IX, X, XIII, and the final page of this Order, provided that such notice is followed within five business days by delivery of a complete copy of this Order.

XIV.

CONSUMER REPORTING AGENCIES

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

XV.

JURISDICTION

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

Dated: _____, 2000

_United States District Judge

PRESENTED BY:

Dated: _____

DEBRA A. VALENTINE
General Counsel

DAVID A. O'TOOLE
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Attorneys for Plaintiff
FEDERAL TRADE COMMISSION

ATTACHMENT A

CONSENT TO RELEASE OF FINANCIAL RECORDS

I, _____, 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, 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 I have an account of any kind, or at which a corporation or other entity has a bank 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 your 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 *Federal Trade Commission v. 1306506 Ontario Limited, et al.*, Civ. No. _____, now pending in the United States District Court for the Western District of New York, 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.

Dated: _____, 2000

Signature: _____

Printed full name _____