

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

FEDERAL TRADE COMMISSION,)
)
)
Plaintiff,)
)
v.)
)
120194 CANADA, LTD., d/b/a VERITECH)
COMMUNICATIONS, VERITECH)
COMMUNICATION SERVICES, VERITECH,)
PRIME ONE BENEFITS, PRIME ONE)
FINANCIAL, PRIME ONE, FIRST NATIONAL)
CREDIT SERVICE, and U.S. NATIONAL)
CREDIT;)
)
PRIME ONE FINANCIAL GROUP, INC., d/b/a)
PRIME ONE BENEFITS, PRIME ONE)
FINANCIAL, PRIME ONE, FIRST NATIONAL)
CREDIT SERVICE, and U.S. NATIONAL)
CREDIT;)
)
MARKETING DIRECTIVES, INC.;)
)
PAUL PRICE; and)
)
ELISSA R. PRICE, a/k/a LISA PRICE and)
LISA WELLS,)
)
Defendants.)

Civil Action No.

04C 7204

JUDGE GOTTSCHALL

MAGISTRATE JUDGE MASON

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JUDGE JOAN B. GOTTSCHALL
U.S. District Court Judge

**TEMPORARY RESTRAINING ORDER WITH ASSET FREEZE AND ORDER TO
SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

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 the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C.

§ 6101 *et seq.*, and having moved *ex parte* for a Temporary Restraining Order and for an order to show cause why a preliminary injunction should not be granted 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 the Commission will ultimately succeed in establishing that Defendants 120194 Canada Limited, d/b/a Veritech Communications, Veritech Communication Services, Veritech, Prime One Benefits, Prime One Financial, Prime One, First National Credit Service, and U.S. National Credit; Prime One Financial Group, Inc., d/b/a/ Prime One Benefits, Prime One Financial, Prime One, First National Credit Service, and U.S. National Credit; Marketing Directives, Inc.; Paul Price; and Elissa R. Price, a/k/a Lisa Price and Lisa Wells have engaged, and are likely to continue to engage, in acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC's Trade Regulation Rule entitled "Telemarketing Sales Rule" (the "Rule"), 16 C.F.R. Part 310, and that the Commission 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 records unless Defendants are immediately restrained and enjoined by Order of this

Court. There is thus good cause for relieving the Commission of the duty to provide Defendants with prior notice of the Commission's motion;

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

5. No security is required of any agency of the United States for the issuance of a restraining order. Fed. R. Civ. P. 65(c).

DEFINITIONS

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

1. "Defendant" or "Defendants" means 120194 Canada Limited, d/b/a Veritech Communications, Veritech Communication Services, Veritech, Prime One Benefits, Prime One Financial, Prime One, First National Credit Service, and U.S. National Credit; Prime One Financial Group, Inc., d/b/a/ Prime One Benefits, Prime One Financial, Prime One, First National Credit Service, and U.S. National Credit; Marketing Directives, Inc.; Paul Price; and Elissa R. Price, a/k/a Lisa Price and Lisa Wells.

2. "Asset" or "assets" means any legal or equitable interest in, right to, or claim to, any real and personal property of any Defendant, or held for the benefit of any Defendant, including, but not limited to, "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," "notes" (as these terms are defined in the Uniform Commercial Code), chattels, leaseholds, contracts, mails or other deliveries, shares of stock, lists of consumer names, accounts, credits, receivables, funds, monies, and all cash, wherever located.

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

4. “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.

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

6. The term “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, into reasonably usable form through detection devices. A draft or nonidentical copy is a separate document within the meaning of the term.

7. “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. *Provided further*, that for the purposes of Paragraph ID (requiring compliance with the TSR), the definition of telemarketing shall be consistent with 16 C.F.R. § 310.2.

8. “Assisting others” means: (1) performing customer service functions including, but not limited to, receiving or responding to consumer complaints; (2) formulating or providing, or arranging for the formulation or provision of, any sales script or any other marketing material; (3) providing names of, or assisting in the generation of, potential customers; or (4) performing marketing services of any kind.

9. “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.

I.

PROHIBITED BUSINESS ACTIVITIES

IT IS THEREFORE ORDERED that Defendants, and their officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, successors, and assigns, 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 trust, corporation, subsidiary, division, or other device, or any of them, are hereby temporarily 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 MasterCard or Visa;

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; and

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

II.

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, 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 trust, corporation, subsidiary, division, or other device, or any of them, except as provided in Section III below, as stipulated by the parties, or as directed by further order of the Court, are hereby temporarily restrained and enjoined from:

A. Transferring, converting, loaning, encumbering, selling, liquidating, concealing, dissipating, disbursing, assigning, spending, withdrawing, or otherwise disposing of any funds, real or personal property, or other assets, wherever located, including any assets outside the territorial United States, that are:

1. in the actual or constructive possession of any Defendant;
2. owned or controlled by, or held, in whole or in part for the benefit of, or subject to access by, or belong to any Defendant; or
3. owned, controlled by, or in the actual or constructive possession of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by, or under common control with any Defendant, including, but not limited to, any assets held by or for any Defendant in any account at any bank or savings and loan institution, or with any credit card processing agent, automated clearing house, network transaction processor, bank debit processing agent, customer service agent, commercial mail receiving agency, or mail holding or

forwarding company, or any credit union, retirement fund 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 of any kind, including, but not limited to, assets at Huntington National Bank, also d/b/a Huntington Service Company;

B. Opening or causing to be opened any safe deposit boxes or storage facilities titled in the name of any Defendant, or subject to access by any Defendant or under any Defendant's control, 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. Cashing any checks or depositing any payments received from customers of Defendants; and

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

Notwithstanding the asset freeze provisions of Paragraphs II. A - D above, and subject to prior written agreement with Plaintiff, Defendants Paul Price and Elissa Price, upon compliance with Section V, may pay from their individual personal funds reasonable, usual, ordinary, and necessary living expenses, subject to prior written agreement with Plaintiff.

The assets affected by this Section shall include both existing assets and assets acquired after the issuance of this Order.

III.

REPATRIATE ALL FOREIGN ASSETS

IT IS FURTHER ORDERED that within three (3) business days following service of this Order, Defendants shall:

A. Repatriate to the United States all funds and assets in foreign countries held either: (1) by them; (2) for their benefit; or (3) under their direct or indirect control, jointly or singly; and

B. Provide Plaintiff with a full accounting of all funds and assets outside of the territory of the United States held either: (1) by them; (2) for their benefit; or (3) under their direct or indirect control, jointly or singly. The full accounting shall include providing Plaintiff access to Defendants' records and documents held by financial institutions outside the territorial United States, by signing the Consent to Release Financial Records attached as Appendix A to this Order.

IV.

MAINTAIN RECORDS AND REPORT NEW BUSINESS ACTIVITY

IT IS FURTHER ORDERED that Defendants, and their officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, successors, and assigns, 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 trust, corporation, subsidiary, division, or other device, or any of them, are hereby temporarily restrained and enjoined from:

A. Failing to make and keep books, records, accounts, bank statements, current accountants' reports, general ledgers, general journals, cash receipts ledgers, cash disbursements ledgers and source documents, documents indicating title to real or personal property, and any other data which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of Defendants;

B. Destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any contracts, agreements, customer files, customer lists, customer addresses and telephone numbers, correspondence, advertisements, brochures, sales material, training material, sales presentations, documents evidencing or referring to Defendants' products or services, data, computer tapes, disks, or other computerized records, books, written or printed records, handwritten notes, telephone logs, "verification" or "compliance" tapes or other audio or video tape recordings, receipt books, invoices, postal receipts, ledgers, personal and business canceled checks (fronts and backs) and check registers, bank statements, appointment books, copies of federal, state, provincial or local business or personal income or property tax returns, and other documents or records of any kind, including electronically-stored materials, that relate to the business practices or business or personal finances of Defendants or other entities directly or indirectly under the control of Defendants; and

C. Creating, operating, or controlling any new business entity, whether newly-formed or previously inactive, including any partnership, limited partnership, joint venture, 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.

V.

FINANCIAL STATEMENTS

IT IS FURTHER ORDERED that each Defendant shall serve upon counsel for the Commission, no later than seven (7) calendar days after service of this Order, a completed financial statement on the forms served with this Order, for him or herself individually, and for each corporation or business entity under which he or she conducts business or of which he or she is an officer, and for each trust of which he or she is a trustee, accurate as of the date of service of this Order upon such Defendant. Said financial statement shall include assets held outside of the territory of the United States. 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.

DUTIES OF THIRD PARTIES HOLDING DEFENDANTS' ASSETS

IT IS FURTHER ORDERED that pending determination of Plaintiff's request for a preliminary injunction, any financial or brokerage institution, escrow agent, trustee, title company, commodity trading company, business entity, or person that holds, controls, or maintains accounts or assets belonging to or titled in the name of any Defendant, or to which any of these Defendants is a signatory, or which is held on behalf of or for the benefit of any of the Defendants, individually or jointly, or has held, controlled or maintained custody of any such asset at any time since January 1, 1999, 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, funds, documents, or other property held by, or under its control, on behalf of any Defendant in any account maintained in the name of or for the benefit of any Defendant, in whole or in part, except in accordance with any further order of the Court;

B. Deny Defendants access to any safe deposit 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 five (5) business days of the date of service of this Order provide to counsel for Plaintiff a certified 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 of, any Defendant, including all trust accounts managed on behalf of any Defendant or subject to any Defendant's control;

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 this Order is served, and, if the account or other asset has been closed or removed since January 1, 1999, 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 and location of any safe deposit 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; and

D. Upon request, within five (5) business days, provide to the FTC, copies of all 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.

The assets and funds affected by this Section shall include both existing assets and assets acquired after the issuance date of this Order.

VII.

DUTIES OF THIRD PARTIES PROCESSING PAYMENTS FOR DEFENDANTS

IT IS FURTHER ORDERED that, pending determination of the Plaintiff's request for a preliminary injunction, Huntington National Bank, also d/b/a Huntington Service Company, or any other automated clearing house, network transaction processor, business entity or person providing any services or assistance in processing Defendants' customer payments, including, but not limited to, payments made by bank account debits or checks, for any of the Defendants, and which is served with a copy of this Order, or otherwise has actual knowledge of this Order, is hereby temporarily restrained and enjoined from providing any assistance in the processing of any payments made by consumers to any of the Defendants.

VIII.

DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that Defendants shall immediately provide a copy of this Order to each affiliate, subsidiary, division, sales entity, successor, assign, officer, director,

employee, independent contractor, salesperson, agent, attorney, and representative of any Defendant. Within seven (7) calendar days following service of this Order by Plaintiff, Defendants shall 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.

EXPEDITED DISCOVERY

IT IS FURTHER ORDERED that, notwithstanding the provisions of Federal Rules of Civil Procedure 26(d) and (f) and 30(a)(2)(C), and pursuant to Federal Rules of Civil Procedure 30(a), 34, and 45, Plaintiff is granted leave, at any time after service of this Order, to:

A. Take the deposition, on five (5) calendar days' notice, of any person, whether or not a party, for the purpose of discovering the nature, location, status, and extent of the assets of the Defendants, or their affiliates or subsidiaries; the nature and location of documents reflecting the Defendants' business transactions, or the business transactions of the Defendants' affiliates or subsidiaries; the location of any premises where Defendants, directly or through any third party, conduct business operations; the Defendants' whereabouts; and/or the applicability of any evidentiary privileges to this action. 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 the ten (10) deposition limit 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; and

B. Demand the production of documents, on five (5) calendar days' notice, from any person, whether or not a party, relating to the nature, status, or extent of Defendants' assets, or of their affiliates or subsidiaries; the location of documents reflecting the business transactions of Defendants, or of their affiliates or subsidiaries; the location of any premises where Defendants, directly or through any third party, conduct business operations; the Defendants' whereabouts; and/or the applicability of any evidentiary privileges to this action, provided that twenty-four (24) hours' notice shall be deemed sufficient for the production of any such documents that are maintained or stored only as electronic data.

X.

SERVICE OF PLEADINGS, 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 three (3) 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 delivery or facsimile to Karen D. Dodge, Esq., Federal Trade Commission, 55 East Monroe Street, Suite 1860, Chicago, Illinois 60603, facsimile (312) 960-5600.

XI.

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 all parties shall, at least seventy-two (72) hours prior to the scheduled date and time of hearing, file with this Court and 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.

XII.

SERVICE OF ORDER

IT IS FURTHER ORDERED that copies of this Order may be served by first class mail, overnight delivery, facsimile, electronic mail, or personally, by employees or agents of Plaintiff, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets, as defined in this Order, of any Defendant, or that may be subject to any provision of this Order.

XIII.

CONSUMER CREDIT REPORTS

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.

XIV.

EXPIRATION DATE OF TEMPORARY RESTRAINING ORDER

IT IS FURTHER ORDERED that the Temporary Restraining Order granted herein shall expire on July 22, 2004, 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.

XV.

DATE OF NEXT COURT PROCEEDING

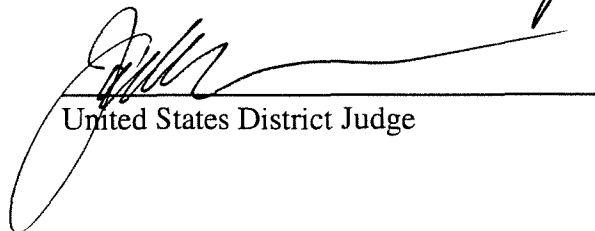
IT IS FURTHER ORDERED that each Defendant shall appear before this Court on the 17th day of November, 2004, at 9:30 a.m. at the United States Courthouse located at 219 S. Dearborn, Chicago, Illinois, Courtroom 1919, to show cause, if any there be, why this Court should not enter a preliminary injunction, 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), and the FTC's Trade Regulation Rule entitled the "Telemarketing Sales Rule," 16 C.F.R. Part 310, continuing the freeze of their assets, and imposing such additional relief as may be appropriate.

XVI.

RETENTION OF JURISDICTION

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

IT IS SO ORDERED, this 17th day of November, 2004, at 4 p.m.


United States District Judge

APPENDIX 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, automated clearing house, network transaction processor, bank debit 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. 120194 Canada, Ltd., et al.*, Civ. No. _____, now pending in the United States District Court for the Northern District of Illinois, 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: _____

[Signature]

[Print Name]