STATE OF NORTH DAKOTA | BEFORE THE

COUNTY OF BURLEIGH | ATTORNEY GENERAL

STATE OF NORTH DAKOTA EX REL. WAYNE STENEHJEM, ATTORNEY GENERAL, Petitioner, -vs- KARL GARON, KEVIN SECOURS, and BRIAN NORBERG, Individually and THOMPSON HILL PUBLISHING, INC. d/b/a THE OFFICIAL YELLOW PAGES Respondents.	))))))))))))))))	**CEASE AND DESIST, ORDER, NOTICE OF CIVIL PENALTY, NOTICE OF RIGHT TO REQUEST A HEARING** CPAT 070012.014

THE ATTORNEY GENERAL OF THE STATE OF NORTH DAKOTA TO THE FOLLOWING (HEREINAFTER COLLECTIVELY REFERRED TO AS "RESPONDENTS"):

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and

Thompson Hill Publishing, Inc. d/b/a
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and

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and

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and

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(including all of those entities' officers, directors, owners, agents, servants, employees and representatives as well as all other persons in active concert or participation with them, extending to all "doing business as" names, formal corporate names, fictitious names of any kind or any variations of the same)

BACKGROUND

1. The Attorney General of North Dakota has a reasonable basis to believe Respondents have engaged in and are engaging in acts or practices declared unlawful by N.D.C.C. ch. 51-15, the Consumer Fraud Law and N.D.C.C. ch. 51-12, the False Advertising Law. It is necessary and appropriate in the public interest and for the protection of consumers to restrain these acts or practices of Respondents.

2. Respondents have been the subject of numerous North Dakota consumer inquiries and complaints alleging misleading or deceptive advertising and fraudulent

business practices in connection with the advertisement and sale of merchandise as those terms are defined in N.D.C.C. § 51-15-01.

3. Respondents, by telephone and through written representations, with the intent to sell, have made untrue, deceptive and misleading representations, and/or have made or engaged in deceptive acts or practices, fraud, false pretenses, false promises or misrepresentations with the intent that others rely thereon.

4. Respondents are located in Montreal, Quebec in Canada. Respondents are believed to have rented mail drop boxes or maintained fronts in Champlain, New York and Auburn, Maine to make it appear that they are a business located within the United States. Respondents contact businesses by telephone to sell advertisements in Respondents' business directory publication titled "The Official Yellow Pages." North Dakota consumers allege Respondents contacted them by telephone and they were asked if they would like to renew their previously listed advertisement in "The Official Yellow Pages," falsely suggesting that the consumer's business had previously approved a listing in "The Official Yellow Pages" and that the business had been listed previously in "The Official Yellow Pages." None of the customers were aware that their business had been listed in "The Official Yellow Pages" prior to the telephone call. In some cases, Respondents told the consumer that "The Official Yellow Pages" is the same as their local yellow pages.

Respondents follow up the telephone calls by sending false and fraudulent invoices to businesses for advertisements in "The Official Yellow Pages." Respondents send invoices even if the consumer denied their offer or ended the telephone conversation by hanging up. The invoices sent by Respondents claim that the consumer owes $399.99 per two-year listing. Complainants assert they did not authorize a listing of their business with Respondents or agree to pay for such listing. Complainants assert they are unable to

cancel the unauthorized listings. Complainants assert Respondents repeatedly harass complainants regarding unpaid "invoices." In at least one instance, a complainant has paid the bogus invoice just to put a stop to contact with Respondents. Respondents threaten complainants with unfounded claims regarding collection or legal action.

5. An Assurance of Voluntary Compliance was sent to Respondents on July 9, 2007 pursuant to Section 51-15-06.1 of the North Dakota Century Code. Respondents did not respond to the Assurance, despite repeated phone calls and e-mails from the Attorney General. Respondents were advised that if they did not respond, it could result in an enforcement action against them.

6. Respondents, by their foregoing conduct, with the intent to sell or induce consumers to enter into an obligation relative to, or to acquire title or interest in any merchandise or service, made, published, disseminated, circulated and placed before the public advertisements which contained assertions, representations and statements of fact which were untrue, deceptive, or misleading in violation of N.D.C.C. §§ 51-12-01 and -08. Violations of N.D.C.C. §§ 51-12-08 through 51-12-12 are a class B misdemeanor.

7. Respondents have engaged in the foregoing deceptive acts or practices through telephone and/or mail solicitations to North Dakota consumers. Respondents have disseminated advertisements, as that term is defined in N.D.C.C. § 51-15-01, and engaged in efforts to induce North Dakota consumers to enter into an obligation or acquire any title or interest in merchandise. Such actions are in violation of N.D.C.C. § 51-15-02.

8. Each of the Respondents is engaged in a combination of two or more persons who have agreed to act together to inflict a wrong or an injury upon another, or who have agreed to act together to commit a lawful act using unlawful means to inflict a

wrong or injury upon another, namely violation of North Dakota's False Advertising Law at ch. 51-12 and Consumer Fraud Law at ch. 51-15. In so doing, Respondents have committed acts in pursuit of the agreement and the agreement has proximately caused damage to North Dakota consumers.

9. Respondents are liable for their own misconduct and/or for directing others to engage in misconduct. *See e.g. Zimprich v. North Dakota Harvestore Sys., Inc.*, 419 N.W.2d 912, 914 (N.D. 1988); *Rickbeil v. Grafton Deaconess Hosp.*, 23 N.W.2d 247, 257 (N.D. 1946)("The general rule with reference to this feature is considered and set out in the great series of volumes of jurisprudence familiar to the courts. In 52 Am. Jur. 440, this rule is stated, 'It is a conceded general rule that all persons or entities are liable for torts committed by them, or by their agents while acting within the scope of their duties.'").

10. Respondents who are natural persons will additionally be subject to personal liability for corporate misconduct. *Hilzendager v. Skwarok*, 335 N.W.2d 768 (N.D 1983)(quoting *Schriock v. Schriock*, 128 N.W.2d 852, 866 (N.D. 1964)("'... but, when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons.' Fletcher, Private Corporations Sec. 41 (1963 rev. vol.)."). The crime/fraud exception to the protections of corporate form has long been recognized in North Dakota, "neither law nor equity will ever recognize the right of a corporate entity to become the receptacle or cover for fraud or wrong based on deception for the purpose of defeating the right of innocent parties." *McFadden v. Jenkins*, 169 N.W. 151, 163 (N.D. 1918). *See also Danks v. Holland*, 246 N.W.2d 86 (N.D. 1976); *Family Center Drug v. North Dakota St. Bd. of Pharm.*, 181 N.W.2d 738, 745 (N.D. 1970).

ORDER

NOW, THEREFORE, IT IS ORDERED pursuant to N.D.C.C. § 51-15-07 that Respondents, individually, and where applicable their officers, directors, owners, agents, servants, employees, contractors, representatives (extending to all "doing business as" names, formal corporate names, aliases, fictitious names of any kind or any variations of the same) as well as all other persons in active concert or participation with them, whether directly or indirectly, immediately **CEASE AND DESIST** from soliciting, advertising or selling goods, services and/or merchandise as defined N.D.C.C. § 51-15-01(3) in North Dakota. Respondents also shall immediately **CEASE AND DESIST** from issuing any invoices or bills and **CEASE AND DESIST** from taking any payments from North Dakota consumers including but not limited to direct debits or withdrawals from consumers' bank accounts, cash, checks or credit card payments.

YOU ARE NOTIFIED that pursuant to N.D.C.C. § 12.1-09-03 a person is guilty of a criminal offense if he or she intentionally "alters, destroys, mutilates, conceals, or removes a record, document, or thing with intent to impair its verity or availability" in an official proceeding. As such, intentional destruction of any documents related to this matter may result in criminal prosecution.

NOTICE OF CIVIL PENALTIES

YOU ARE FURTHER NOTIFIED that pursuant to N.D.C.C. § 51-15-07 any violation of this Cease and Desist Order is subject to civil penalties not to exceed $1,000 per violation. Any violation of this Order that is also a violation of N.D.C.C. ch. 51-12 may result in additional civil penalties of not more than $5,000 per violation and is a Class B misdemeanor. Any violation of this Order that is also a violation of N.D.C.C. ch. 51-15 may result in additional civil penalties of not more than $5,000 per violation. Such

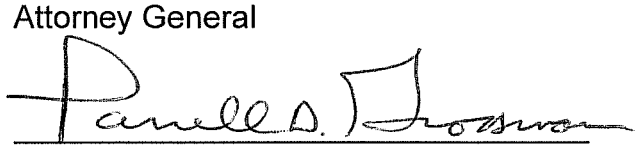
penalties are separate and in addition to any civil penalties, costs, expenses, investigation fees and attorney fees pursuant to N.D.C.C. ch. 51-15 or any other applicable statute. Nothing in this Order is intended to limit or waive any rights and remedies available to the State of North Dakota or consumers.

NOTICE OF RIGHT TO REQUEST HEARING

YOU ARE NOTIFIED that pursuant to N.D.C.C. § 51-15-07 you may request a hearing before the Attorney General if such a request is made in writing WITHIN TEN (10) DAYS AFTER THE RECEIPT OF THIS ORDER. Respondents have the right to be represented by legal counsel at the hearing.

Dated this 19 day of July, 2007.

STATE OF NORTH DAKOTA
Wayne Stenehjem
Attorney General

BY: 

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