



OFFICE OF ATTORNEY GENERAL
 CONSUMER PROTECTION AND ANTITRUST DIVISION
 GATEWAY PROFESSIONAL CENTER
 1050 E INTERSTATE AVENUE, STE 200
 BISMARCK, NORTH DAKOTA 58503-5574



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STATE OF NORTH DAKOTA
 OFFICE OF ATTORNEY GENERAL

STATE OF NORTH DAKOTA EX REL.
 WAYNE STENEHJEM,
 ATTORNEY GENERAL,

Petitioner,

**CEASE AND DESIST ORDER,
 NOTICE OF CIVIL PENALTY
 AND NOTICE OF RIGHT
 TO REQUEST A HEARING**

-vs-

YELLOW BOOK, and
 MARIO KLEMP, Individually

Respondents.

CPAT 140001.002

To the individuals and entities identified below (hereinafter "Respondents"):

YELLOW BOOK
 123 SOUTHEASTER 3 AVE #372
 MIAMI FL 33131-2003

YELLOW BOOK
 7022 ST LAURENT
 MONTREAL QC H2S 3E2
 CANADA

MARIO KLEMP
 7022 ST LAURENT
 MONTREAL QC H2S 3E2
 CANADA

KLEMPMARIO@GMAIL.COM

(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 reasonable grounds to believe Respondents have engaged in and are engaging in acts or practices declared unlawful by N.D.C.C. ch. 51-15, "Unlawful Sales or Advertising Practices" (Consumer Fraud Law). It is necessary and appropriate in the public interest and for the protection of North Dakota residents to restrain Respondents' unlawful acts or practices.

2. Respondents are either doing business as Yellow Book or, in the alternative, are engaged with those persons 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 Consumer Fraud Law. In doing so, Respondents have committed acts in pursuit of the agreement and the agreement has proximately caused damage to North Dakota consumers.

3. Yellow Book is a Canadian company with its principal place of business at 7022 St Laurent, Montreal QC H2S 3E2, Canada. Yellow Book used an address of 123 Southeastern 3 Avenue #372 in Miami, Florida 33131, which is a mail drop box that is now closed.

4. Mario Klemp is a Canadian resident with an address at 7022 St Laurent, Montreal QC H2S 3E2, Canada. Mario Klemp does business as, and is the owner and president of Yellow Book.

5. Mario Klemp and Yellow Book (“Respondents”) are engaged in the business of advertising and sale of business listings services for online business listings via mailed invoice solicitations.

6. Respondents have been the subject of complaints from North Dakota persons alleging Respondents have engaged in deceptive practices in violations of North Dakota Law. Based on the complaint and information received by the Attorney General, Petitioner believes that Respondents have engaged in a practice that is commonly referred to as an “invoice scam.” Petitioner alleges that Respondents sent unsolicited invoices to persons in North Dakota requesting payment for online business listings that were never ordered, authorized or performed, in violation of N.D.C.C. § 51-15-02.2.

7. Petitioner alleges that Respondents have made untrue, deceptive and misleading representations, and have engaged in deceptive acts or practices, fraud, false pretenses, false promises or misrepresentations with the intent that others rely thereon, in violation of N.D.C.C. § 51-15-02, including misrepresenting to North Dakota persons that Respondents are owed payment for merchandise, when no merchandise was ever ordered, performed, authorized or delivered.

8. Petitioner believes that Respondents’ unlawful conduct has affected numerous persons in North Dakota, whom Respondents sent invoices in an attempt to deceive them into believing they owe money to Respondents for online business listing services. Petitioner further believes that the North Dakota persons, who receive invoices from Respondents, never ordered any services from Respondents, never communicated with Respondents regarding the purchase of business listing services, and do not have any records of ever receiving any business listing services from Respondents.

9. Respondents' business practices are prohibited by N.D.C.C. § 51-15-02, which provides that a person is prohibited from engaging in any deceptive act or practice, fraud, false pretense, false promise, or misrepresentation, with the intent that others rely thereon in connection with the sale or advertisement of any merchandise. "Merchandise" is defined as any objects, wares, goods, commodities, intangibles, real estate, charitable contributions, or services. N.D.C.C. § 51-15-01(3).

10. Respondents' mailings are prohibited by N.D.C.C. § 51-15-02.2, which provides that it is a deceptive practice to "send, deliver, or transmit a bill, an invoice, or a statement of account due, or a writing that could reasonably be interpreted as a bill, an invoice, or a statement of account due, to solicit payment of money by another person for goods not yet ordered or for services not yet performed and not yet ordered."

11. Based on the complaint and other information received, it appears to the Attorney General that Respondents have engaged in violations of N.D.C.C. ch. 51-15. Therefore, on March 27, 2014, the Attorney General, pursuant to his authority under N.D.C.C. § 51-15-04, issued an Order to Produce Information to Respondents regarding their business practices in North Dakota. Petitioner provided the Order to Produce Information to Respondents via mail and email. Petitioner requested Respondents to respond by April 8, 2014.

12. On April 1, 2014, the Attorney General's Consumer Protection Division received a letter via facsimile from Respondents in response to the consumer complaint. The letter did not address or provide a response to the Order to Produce Information. The letter was signed by Mario Klemp, who identified himself as President of Yellow Book.

13. On April 1, 2014, Petitioner sent an email to Respondents, to the attention of Mario Klemp, explaining that the facsimile would not be considered an adequate response to the Order to Produce Information, and further explaining the need to comply with the Order to Produce Information. Respondents, however, failed to provide a response to the Order to Produce Information.

14. On April 10, 2014, Petitioner sent a letter to Respondents again requesting compliance with the Order to Produce Information and asking that Respondents comply no later than April 17, 2014. Respondents did not provide any response.

15. On April 25, 2014, Petitioner mailed another letter to Mario Klemp at his address at 7022 St Laurent, Montreal, Quebec, Canada, again requesting compliance with the Order to Produce Information. Respondents have not responded.

16. Pursuant to N.D.C.C. § 51-15-07, the Attorney General may issue a cease and desist order for Respondents' failure or refusal to file a statement or report under N.D.C.C. § 51-15-04.

17. Based on information received, it appears to the Attorney General that Respondents have engaged in and are engaging in acts or practices declared unlawful by N.D.C.C. ch. 51-15. Respondents have refused to comply with the Attorney General's request for information pursuant to N.D.C.C. § 51-15-04. Due to the risk of ongoing violations of North Dakota law and the continued risk of injury to North Dakota residents, it is necessary and appropriate in the public interest and for the protection of the state's residents to restrain the Respondents' unlawful acts or practices.

18. 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 N.D.C.C. ch. 51-15. In doing so, Respondents have committed acts in pursuit of the agreement and the agreement has proximately caused damage to North Dakota persons.

19. 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.'").

20. 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

Based upon the foregoing information, it appears to the Attorney General that Respondents have engaged in violations of N.D.C.C. ch. 51-15, and that Respondents have failed or refused to respond to the Order to Produce Information as required by N.D.C.C. § 51-15-04; **NOW, THEREFORE, IT IS ORDERED** pursuant to N.D.C.C. § 51-15-07 that Respondents and their 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: 1) advertising, soliciting, or selling merchandise to North Dakota persons; 2) advertising, soliciting, or selling merchandise to North Dakota persons through the use of mailings that could reasonably be interpreted to be a bill, invoice, or a statement of account due in violation of N.D.C.C. § 51-15-02.2; 3) soliciting payment from North Dakota persons for goods or services that have not yet been ordered or properly authorized; 4) collecting, attempting to collect, or contacting Dakota persons regarding collection of payment for merchandise allegedly ordered, delivered, authorized, or performed; and 5) using untrue, deceptive or misleading representations or engaging in deceptive acts or practices, fraud, false pretenses, false promises or misrepresentations with the intent that others rely thereon, in connection with the sale or advertisement of merchandise, in violation of N.D.C.C. § 51-15-02. Respondents also shall immediately **CEASE AND DESIST** from issuing or mailing any invoices or bills to North Dakota persons for the sale of merchandise, as defined by N.D.C.C. § 51-15-01(3), and **CEASE AND DESIST** from taking, collecting, charging, billing or accepting any payment from any North Dakota person, including, but

not limited to, cash, check, direct credit, debits or withdrawals from North Dakota person's credit cards, debit cards or bank accounts for any alleged past or future order or sale of merchandise, in the State of North Dakota.

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 also is 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 its residents.

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 10th day of June, 2014.

STATE OF NORTH DAKOTA

Wayne Stenehjem
Attorney General

BY:



Parrell D. Grossman, ID No. 04684
Assistant Attorney General
Director, Consumer Protection and
Antitrust Division
Office of Attorney General
Gateway Professional Center
1050 E. Interstate Ave., Suite 200
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STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL

STATE OF NORTH DAKOTA EX REL.
WAYNE STENEHJEM,
ATTORNEY GENERAL,

Petitioner,

-vs-

YELLOW BOOK, and
MARIO KLEMP, Individually

Respondents.

**AFFIDAVIT OF SERVICE OF
CEASE AND DESIST ORDER**

CPAT 140001.002

STATE OF NORTH DAKOTA)
) ss
COUNTY OF BURLEIGH)

Alexis Bieber states under oath as follows:

1. I swear and affirm upon penalty of perjury that the statements made in this affidavit are true and correct and made upon personal knowledge.

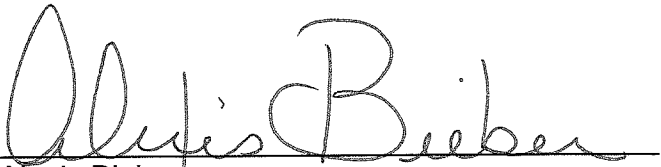
2. I am of legal age and on the 10th day of June, 2014, I served the CEASE AND DESIST ORDER, NOTICE OF CIVIL PENALTY AND NOTICE OF RIGHT TO REQUEST A HEARING upon the following by placing true and correct copies thereof in an envelope addressed as follows:

YELLOW BOOK
7022 ST LAURENT
MONTREAL QC H2S 3E2
CANADA

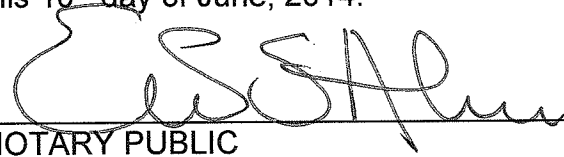
MARIO KLEMP
7022 ST LAURENT
MONTREAL QC H2S 3E2
CANADA

and depositing the same, with postage prepaid, in the United States mail at Bismarck, North Dakota, as first class mail.

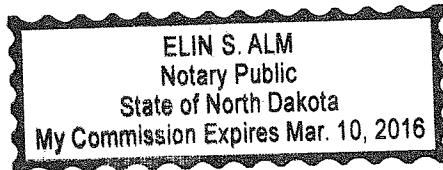
3. Also on the 10th day of June, 2014, I served CEASE AND DESIST ORDER, NOTICE OF CIVIL PENALTY AND NOTICE OF RIGHT TO REQUEST A HEARING upon Mario Klemp via electronic mail by e-mailing the document to KLEMPMARIO@GMAIL.COM


Alexis Bieber

Subscribed and sworn to before me
this 10th day of June, 2014.


NOTARY PUBLIC

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News Release