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CLERK, U S DISTRICT COURT  
DISTRICT OF ARIZONA  
BY \_\_\_\_\_ DEPUTY

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

**FEDERAL TRADE COMMISSION,** )  
 )  
 ) **Plaintiff,** )  
 )  
 ) **v.** )  
 )  
 ) **NEXGEN3000.COM, INC., et al.** )  
 )  
 ) **Defendants.** )  
 )

**Case No.: CIV 03 120TUCWDB**  
**DEFAULT JUDGMENT AND  
ORDER FOR PERMANENT  
INJUNCTION AS TO  
DEFENDANTS GLOBION, INC.,  
AND NEXGEN3000.COM, INC.**

Plaintiff, the Federal Trade Commission ("Commission"), commenced this action by filing a Complaint on February 21, 2003. The Complaint charged NexGen3000.com, Inc., and Globion, Inc., and others with deceptive acts and practices in violation of Section 5(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45. The alleged violations of Section 5(a) of the FTC Act were that Defendants had operated a pyramid scheme, misrepresented income likely to be received by participants through a program offered by NexGen3000.com, Inc., failed to disclose the structure of the program offered through NexGen3000.com, Inc., ensured that a substantial percentage of participants would lose money, and provided the means and instrumentalities for the commission of deceptive acts and practices. The Complaint also

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charged that NexGen3000.com, Inc., Globion, Inc., and another defendant had operated as a common enterprise while engaging in the deceptive acts and practices alleged by the Complaint. A default was entered by the Clerk of the Court against NexGen3000.com, Inc., on June 17, 2003 and against Globion, Inc., on September 26, 2003, for failure to answer or otherwise defend. Now upon motion of the Commission for Default Judgment against Defendants NexGen3000.com, Inc., and Globion, Inc. (hereinafter "Defendants") and upon proof that consumers were injured in the amount of \$1,651,034.25, it is by the Court **ORDERED, ADJUDGED, AND DECREED** as follows:

**FINDINGS AND CONCLUSIONS**

1. This Court has jurisdiction over the subject matter of this case and the parties hereto and venue is proper in this Court;
2. The Commission's complaint states claims upon which relief may be granted against Defendants under Sections 5(a), and 13(b) of the FTC Act, 15 U.S.C. § 45(a), and 53(b);
3. The acts and practices of the Defendants as alleged in the complaint are or were in or affecting commerce, as defined in 15 U.S.C. § 44;
4. Pursuant to Rules 8(d) and 55 of the Federal Rules of Civil Procedure, Defendants have admitted to all allegations of the complaint in this matter;
5. As alleged in the Complaint, Defendants have violated Section 5(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45(a), by engaging in deceptive acts or practices;
6. As a result of these violations, consumers have been injured by Defendants in the amount of \$1,651,034.25;

7. This is a proper case for the issuance of a permanent injunction and equitable monetary relief pursuant to Section 13(b) of the FTC Act, 15 U.S.C. §§ 53(b); and

8. Entry of this Default Judgment is in the public interest.

#### **DEFINITIONS**

For purposes of this Order, the following definitions apply:

A. “Defendants” means NexGen3000.com, Inc., and Globion, Inc..

B. “Business Venture” means any written or oral business arrangement, however denominated, whether or not covered by the Franchise Rule, that consists of the payment of any consideration by a person or entity to obtain: (1) the right or means to offer, sell, or distribute goods or services (whether or not identified by a trademark, service mark, trade name, advertising or other commercial symbol); and (2) the promise or provision of assistance to any person in connection with or incident to the establishment, maintenance, or operation of a new business or the entry by an existing business into a new line or type of business.

C. “Business Venture Pyramid Scheme” means a scheme in which the compensation structure is based primarily on payments to participants for the recruitment of new participants, not on the retail sale of products or services, thereby, resulting in a substantial percentage of participants losing money.

D. “Multi-level Marketing Program” means any marketing program in which participants pay money to the program promoter in return for which the participants obtain the right to (1) recruit additional participants, or have additional participants placed by the promoter or any other person into the program participant's downline, tree, cooperative, income center, or other similar program grouping; (2) sell goods or services; and (3) receive payment or other

compensation, in whole or in part, based upon the sales of those in the participant's downline, tree, cooperative, income center or similar program grouping.

E. "Clear and conspicuous" when used with regard to any disclosure means in a manner that would be easily recognizable and understandable to a reasonable consumer, including, but not limited to, the following: (1) any disclosure shall be made in the same language as that used principally in any information imparted at or near the time of the disclosure; (2) any disclosure provided through print, television, video or the Internet shall be of a color or shade that readily contrasts with the background of the disclosure; (3) any disclosure given in print shall appear in type font that is at least one-third larger than all other text on the page and be located in a position of prominence on the top one-third of the first page; (4) any oral disclosure shall be delivered in a cadence and volume sufficient for an ordinary consumer to understand; and (5) nothing contrary to the disclosure shall be imparted at or near the time of the disclosure.

F. "Material" means likely to affect a person's choice of, or conduct regarding goods or services, for purposes of Paragraph II, herein.

G. "Means and instrumentalities" means providing the apparatus, mechanism, method, medium, system, equipment, or vehicle by which others may mislead or deceive consumers.

H. "Retail Sales" means sales of products, services, or business ventures by Defendants, their successors, assigns, agents, servants, employees, and those persons in active concert or participation with them, individually or jointly, to third-party end users. "Retail sales"

does not include sales made by participants in a multi-level marketing program to other participants or recruits or to such a participant's own account.

## **ORDER**

### **I. PROHIBITED BUSINESS ACTIVITY**

**IT IS THEREFORE ORDERED** that Defendants, whether acting directly or through any business entity or other device, their successors, assigns, officers, agents, servants, employees, and those persons in active concert or participation with them, individually or jointly, who receive actual notice of this Order by personal service or otherwise are permanently restrained and enjoined from engaging, participating or assisting in, any manner or capacity whatsoever, including, but not limited to, receiving any remuneration of any kind whatsoever from, holding any ownership interest or stock in, or serving as an officer, director, trustee, advisor or consultant to, any business entity or other device engaged in, in whole or in part, any Business Venture Pyramid Scheme or Multi-Level Marketing Program.

### **II. PROHIBITED ILLEGAL CONDUCT**

**IT IS FURTHER ORDERED** that Defendants, whether acting directly or through any business entity or other device, their successors, assigns, officers, agents, servants, employees, and those persons in active concert or participation with them, individually or jointly, who receive actual notice of this Order by personal service or otherwise, in connection with the advertising, promoting, offering for sale, sale, or distribution of any Business Venture are hereby permanently restrained and enjoined from:

A. Making, expressly or by implication, directly or indirectly, orally or in writing, any false or misleading statement or misrepresentation of material fact including, but not limited

to, the following:

1. Misrepresentations of the earnings or income any participant can derive or has derived from such activity and
2. Misrepresentations of the benefits any participant can or has derived from such activity.

B. Providing to others the means and instrumentalities with which to make, expressly or by implication, orally or in writing, any false or misleading representation or omission of material fact.

### **III. DISCLOSURE OF BASIS FOR EARNINGS REPRESENTATIONS**

**IT IS FURTHER ORDERED** that Defendants, whether acting directly or through any business entity or other device, their successors, assigns, officers, agents, servants, employees, and those persons in active concert or participation with them, individually or jointly, who receive actual notice of this Order by personal service or otherwise, in connection with the advertising, promoting, offering for sale, sale, or distribution of any Business Venture are hereby restrained and enjoined from failing to disclose to any participant or prospective participant in any Business Venture to whom Defendants, or their officers, agents, servants, employees, or persons in active concert or participation with them, individually or jointly, has made representations concerning earnings, profits or sales volume relating to the Business Venture: (1) the number of persons who have earned, profited or sold at least the amount represented; and (2) the percentage of the total participants or purchasers who have earned, profited or sold at least the amount represented. All such disclosures shall be made prior to the receipt of any payment and in a manner that is both clear and conspicuous.

**IV. MONITORING COMPLIANCE OF SALES PERSONNEL**

**IT IS FURTHER ORDERED** that Defendants and their officers, agents, servants, employees, and those persons in active concert or participation with them, individually or jointly, who receive actual notice of this Order by personal service or otherwise, are hereby 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 Paragraphs 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 written procedure for receiving and responding to consumer complaints and disseminating that procedure on a website, if there is one, and to each individual sales or customer service representative; and (3) ascertaining the number and nature of any consumer complaints;

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

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

**V. MONETARY JUDGMENT**

**IT IS FURTHER ORDERED** that:

A. A Judgment in the amount of \$1,651,034.25 is entered in favor of the

Commission against Defendants, jointly and severally, for equitable monetary relief, including but not limited to, refund of monies paid, rescission of contracts and/or disgorgement, and for paying attendant expenses of administering the distribution of funds. No portion of the payment as herein provided shall be deemed payment of any fine, penalty, forfeiture, or punitive assessment.

B. All funds paid to the Commission pursuant to this Paragraph shall be deposited in a fund administered by the Commission or its agent to be used for equitable relief, including but not limited to, refund of monies paid, rescission of contracts and any attendant expenses for the administration of any redress fund. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the Treasury as disgorgement. Defendants shall have no right to challenge the Commission's choice of remedies under this Paragraph.

C. In establishing a redress plan, the Commission shall have full and sole discretion to determine the criteria and parameters for participation by injured consumers in a redress program, and may delegate any and all tasks connected with such redress program to any individuals, partnerships, or corporations, and pay the fees, salaries, and expenses incurred thereby in carrying out said tasks from the funds received pursuant to this Order.



## VI. RECORD KEEPING PROVISION

**IT IS FURTHER ORDERED** that, for a period of eight (8) years from the date of entry of this Order, in connection with any business engaged in the advertising, promoting, offering for sale, sale, or distribution of any Business Venture, Defendants and their agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or participation with them, individually or jointly, 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, phone 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 all responses to those complaints or requests;
- E. Copies of all sales scripts, training materials, advertisements, websites or other marketing materials; and
- F. Records containing the names of the media with whom Defendants, their agents,

representatives, servants, employees, salespersons, or any corporations, trusts, or other entities managed or controlled in whole or in part by NexGen3000.com, Inc., or Globion, Inc., have placed advertisements, the months during which those advertisements were published or broadcast, the caller paid and/or toll-free telephone numbers utilized in furtherance of the sale of products or services, the URL of all websites utilized in furtherance of the sale of products and services, and the local carriers and/or telephone service common carriers utilized in furtherance of any telemarketing or teleconferencing activities.

## VII. COMPLIANCE MONITORING

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

A. Within ten (10) days of receipt of written notice from a representative of the Commission, NexGen3000.com, Inc., and Globion, Inc., each 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 its 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 NexGen3000.com, Inc., and Globion, Inc., their employees, or any other entity managed or controlled in whole or in part by NexGen3000.com, Inc., or Globion, Inc., 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. NexGen3000.com, Inc., and Globion, Inc., 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.

#### **VIII. COMPLIANCE REPORTING BY DEFENDANTS**

**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) NexGen3000.com, Inc., and Globion, Inc., 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, NexGen3000.com, Inc., and Globion, Inc., each shall provide a written report to the Commission, sworn to under penalty of perjury, setting forth in detail the manner and form in which it has complied and is complying with this Order. This report shall include, but not be limited to, a copy of each acknowledgment of receipt of this Order obtained by Defendant pursuant to Paragraph IX;

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:

Regional Director of the Southeast Region  
Federal Trade Commission  
225 Peachtree Street, NE, Suite 1500  
Atlanta, Georgia 30303  
Re: *FTC v. NexGen3000.com, Inc., et al.*, Case No. CIV 03 120TUCWDB.

#### **IX. 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, NexGen3000.com, Inc., and Globion, Inc., 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. NexGen3000.com, Inc., and Globion, Inc., 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.

**X. ACKNOWLEDGMENT OF RECEIPT 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 acknowledging receipt of this Order.

**XI.**

**IT IS FURTHER ORDERED** that:


A. The expiration of any requirement imposed by this Order shall not affect any other obligation arising under this Order; and

B. This action and the relief awarded herein is in addition to and not in lieu of other remedies as may be provided by law including administrative, civil and criminal remedies.

**XII.**

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

**SO ORDERED**, this 2 day of Feb, 2004.

  
Honorable William D. Browning  
United States District Judge