

FEDERAL TRADE COMMISSION  
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IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF ARIZONA

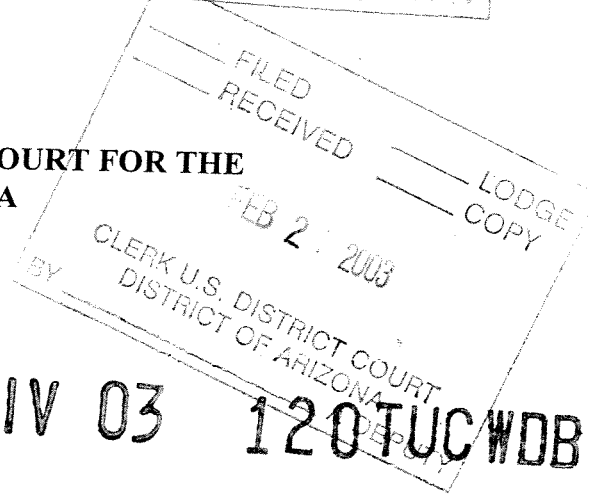
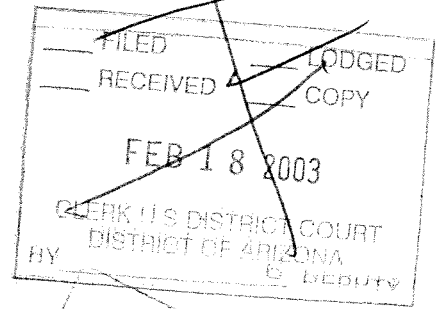
FEDERAL TRADE COMMISSION,

Plaintiff,

v.

NEXGEN3000.COM, INC.  
GLOBION, INC.,  
INFINITY2, INC.,  
DAVID A. CHARETTE,  
JENNIFER K. CHARETTE,  
ROBERT J. CHARETTE, JR.,  
MARTA N. CHARETTE,  
STEPHEN M. DIAMOND,  
CHRISTINE A. WASSER, and  
EDWARD G. HOYT,

Defendants.



COMPLAINT FOR  
PERMANENT INJUNCTION  
AND OTHER  
EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), by its undersigned attorneys, allege:

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to secure a permanent injunction, preliminary relief and

other equitable relief against Defendants for their unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

### **JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction over the FTC's claims pursuant to 15 U.S.C. §§ 45(a) and 53(b) and 28 U.S.C. §§ 1331, 1337(a) and 1345.

3. Venue in the District of Arizona is proper under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b), (c), and (d).

### **PLAINTIFF**

4. Plaintiff, the FTC, is an independent agency of the United States government created by statute, 15 U.S.C. §§ 41 et seq. The Commission enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The Commission may initiate federal district court proceedings to enjoin violations of the FTC Act and to secure such equitable relief as is appropriate in each case. 15 U.S.C. § 53(b).

### **DEFENDANTS**

5. Defendant NexGen3000.com, Inc. ("NexGen") is a Cayman Islands corporation with its principal place of business at 8049 E. Lakeside Parkway, Suite 202, Tucson, Arizona 85730. NexGen began operating in 2000 as a multi-level marketing company selling Internet malls and nutritional supplements. NexGen has transacted business in the District of Arizona.

6. Defendant Globion, Inc. ("Globion") is an Arizona corporation with its principal place of business at 8049 E. Lakeside Parkway, Suite 202, Tucson, Arizona 85730. It has conducted business since at least 1998. Globion and NexGen have or had common directors and

owners. Globion supplied Internet malls to NexGen for resale. Globion transacts business in the District of Arizona.

7. Infinity2, Inc. ("Infinity2") is an Arizona corporation with its principal place of business at 14500 N. Northsight, Suite 316, Scottsdale, Arizona 85260. It has conducted business since 1993. Infinity2 and NexGen share or have shared a common owner and director, Edward G. Hoyt. Infinity2 sold nutritional supplements through NexGen's Internet malls and to affiliates of NexGen. Infinity2 transacts business in the District of Arizona.

8. Defendant David A. Charette ("David Charette") is the chief executive officer of and an owner of Globion and has been its president. He is an owner of NexGen and is or has been a director of NexGen. Individually or in concert with others, David Charette directs, controls or participates in or has directed, controlled or participated in the acts and practices of Globion and NexGen. David Charette resides and transacts business in the District of Arizona.

9. Defendant Jennifer K. Charette is named as the wife of defendant David Charette. At all times, David Charette has acted on behalf of the marital community, and Jennifer K. Charette is being named for community liability purposes.

10. Defendant Robert J. Charette, Jr., ("Robert Charette") is or has been a director, a vice president, and owner of Globion. Individually or in concert with others, Robert Charette directs, controls or participates in or has directed, controlled or participated in the acts and practices of Globion and NexGen. Robert Charette resides and transacts business in the District of Arizona.

11. Defendant Marta N. Charette is named as the wife of defendant Robert Charette. At all times, Robert Charette has acted on behalf of the marital community, and Marta N.

Charette is being named for community liability purposes.

12. Defendant Stephen M. Diamond (“Diamond”) is a director and owner of Globion and an owner of NexGen. He is or has been a director of NexGen. Individually or in concert with others, Diamond directs, controls or participates in or directed, controlled or participated in the acts and practices of Globion and NexGen. Diamond resides and transacts business in the District of Arizona.

13. Defendant Christine A. Wasser (“Wasser”) is a director, officer and owner of Globion and is an owner of NexGen. Individually or in concert with others, Wasser directs, controls or participates in or directed, controlled or participated in the acts and practices of Globion and NexGen. Wasser resides and transacts business in the District of Arizona.

14. Defendant Edward G. Hoyt (“Hoyt”) is a director and president of Infinity2 and is or has been an owner and director of NexGen. Individually or in concert with others, Hoyt directs, controls or participates in or directed, controlled or participated in the acts and practices of Infinity2 and NexGen. Hoyt resides and transacts business in the District of Arizona.

#### **COMMERCE**

15. At all times material to this complaint, Defendants’ course of business, including the acts and practices alleged herein, have been and are in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

#### **DEFENDANTS’ BUSINESS PRACTICES**

16. Defendants sold Internet malls through NexGen beginning in 2000.

17. The Internet malls contained a collection of links to retail websites maintained by

merchants.

18. Defendants promoted the sale of Internet malls directly through NexGen websites and through a network of affiliates.

19. NexGen states its corporate mission as the following: "To enhance and enrich the quality of life for millions of people worldwide, physically, mentally and financially."

20. In the NexGen website, live presentations, and telephone calls, Defendants represented, expressly or by implication, that consumers who become affiliated with NexGen and promote its business opportunity were likely to receive substantial income from NexGen, including, but not limited to, the following:

- A. "Whether you're looking for a few extra dollars each month to help make ends meet, or your dream is to build a whole new career and establish the strong financial security and live the lifestyle you and your family deserves, NexGen3000.com is the vehicle for your journey. And what's more, you determine how successful you will be."
- B. "Our WebSuite Packages provide the potential for unlimited income! You have control of you future by getting in on the ground floor of the Internet explosion."
- C. "Each activated business center has the potential to earn up to \$60,000 per week."
- D. "We're going to have people liquid - - cash liquid who when they go buy a car, they're going to learn how to generate enough money to buy those cars cash. When they go buy a home, they're going to be able to buy that home, cash."
- E. "If you just want to make an extra \$400 or \$500 a month or even an extra \$1000 a month, you don't need to come to Atlanta. But if you ever thought about wanting to secure yourself and learning how to make a six-figure income, come on over to Atlanta and see what happens."

F. “We want to pay you well while you’re building your business, we want to pay you extremely well for getting that business off the ground, and we want to pay you exorbitantly well when it’s time for you to retire.”

21. Consumers paid to become affiliated with the NexGen program. Most consumers became affiliated with NexGen by purchasing a “websuite” which included the Internet mall plus related goods and services. For a “Power Pack WebSuite” and a registration fee, NexGen charged consumers approximately \$555. For a “Basic WebSuite” and a registration fee, NexGen charged approximately \$185.

22. By purchasing a websuite, a new affiliate qualified to earn commissions on the sale of websuites to new recruits.

23. When a NexGen affiliate recruited another person by selling that person a websuite, one or more activated business centers for the recruit were placed below that of his or her recruiter in NexGen’s binary compensation plan. Commissions were earned through activated business centers. Each position in the compensation plan had two positions below it, hence the term “binary.” Recruits placed below a NexGen affiliate become that affiliate’s “downline.” As recruits in turn recruited others, the downline of the original affiliate grew. NexGen affiliates earned commissions on their sales of websuites as well as the sales of websuites by their downline. The primary way that NexGen paid its affiliates was through commissions derived from the sale of websuites to new recruits.

24. NexGen also paid commissions to affiliates on purchases from Internet merchants that resulted from visits to the affiliates’ malls. Similarly, affiliates earned commissions from purchases directed to third-party Internet merchants as a result of visits through the malls of their

downline. The commissions NexGen paid on these purchases were relatively small compared to the commissions it paid on sales of websites to new recruits.

25. NexGen paid commissions to affiliates on their sale of websites whether or not the affiliates earned commissions on purchases from Internet merchants.

26. In addition to the compensation already described, Defendants paid special commissions on the sale of Infinity2 nutritional supplements when those sales were made on the basis of a standing monthly or quarterly order, known as "autoship." These special commissions provided further financial incentives for joining the NexGen program through buying a website and then recruiting new affiliates. For example, NexGen paid commissions on the sale of Infinity2 products through another multi-level marketing program referred to as a "matrix." The matrix was a tertiary compensation plan, i.e., each position in the plan had three positions below it. One of the conditions to participating in the matrix was that an affiliate have an activated business center. Affiliates immediately obtained at least one activated business center by purchasing a website. Therefore, the matrix provided additional incentive to join the NexGen program by purchasing a website. The matrix also provided incentive for recruiting new affiliates because NexGen paid commissions to an affiliate through the matrix only if the affiliate had a downline, and downlines only grew through recruitment.

27. The NexGen program was structured so that financial gains were primarily dependent upon the continued, successful recruitment of additional affiliates.

28. The vast majority of NexGen affiliates made little or no profit.

29. Defendants failed to disclose, in connection with the offering for sale or sale of participation in the NexGen program, that the vast majority of NexGen affiliates would make

little or no profit.

30. Defendants NexGen3000, Globion, and Infinity2 operated together as part of a common enterprise to market a pyramid scheme.

### **VIOLATIONS OF SECTION 5 OF THE FTC ACT**

#### **COUNT 1**

31. In numerous instances, Defendants represented, expressly or by implication, that participants in the NexGen program were likely to receive substantial income.

32. In truth and in fact, in numerous instances, consumers who participated in the NexGen program were not likely to receive substantial income.

33. Therefore, the representation set forth in paragraph 31 is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

#### **COUNT 2**

34. By furnishing NexGen affiliates with promotional material to be used in recruiting new participants that contain false and misleading representations including, but not limited to, the false and misleading representations described in paragraph 31 above, Defendants provided the means and instrumentalities for the commission of deceptive acts and practices.

35. Therefore, Defendants' practices, as described in paragraph 34, constitute deceptive acts and practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

#### **COUNT 3**

36. In numerous instances, Defendants represented, expressly or by implication, that participants in the NexGen program were likely to receive substantial income.



37. Defendants failed to disclose that the structure of the NexGen compensation plan ensured that a substantial percentage of participants would lose money.

38. This additional information, described in paragraph 37, would have been material to customers in deciding whether to participate in the NexGen program.

39. The Defendants' failure to disclose the material information in paragraph 37, in light of the representations made in paragraph 36, constitutes a deceptive act and practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

#### **COUNT 4**

40. As alleged in paragraphs 15 through 30, the NexGen program was an inherently unlawful scheme in which the compensation structure was 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.

41. This type of scheme, referred to as a pyramid scheme, is a deceptive act and practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

#### **COMMON ENTERPRISE**

42. Defendants NexGen3000, Globion, and Infinity2 operated as a common enterprise while engaging in the deceptive acts and practices alleged above in paragraphs 31 through 41.

43. Because each of the defendants NexGen3000, Globion, and Infinity2 functioned as a common enterprise in the commission of the deceptive acts and practices alleged above, they have each violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

#### **CONSUMER INJURY**

44. Defendants' violations of Section 5 of the FTC Act, as set forth above, have

caused substantial injury to consumers. Absent injunctive relief by this Court, Defendants are likely to injure consumers in the future.

### **THIS COURT'S POWER TO GRANT RELIEF**

45. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief, including consumer redress, disgorgement and restitution, to prevent and remedy any violations of any provisions of law enforced by the Federal Trade Commission.

### **PRAYER FOR RELIEF**

WHEREFORE Plaintiff Federal Trade Commission pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, request that this Court:

1. Award Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief;
2. Permanently enjoin Defendants from violating the FTC Act as alleged herein;
3. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act as alleged herein including, but not limited to, rescission of contracts, the refund of monies paid, and the disgorgement of ill-gotten monies.

4. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Dated: February 14, 2003

Respectfully submitted,

WILLIAM E. KOVACIC  
General Counsel



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