

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

FEDERAL TRADE COMMISSION,)	
600 Pennsylvania Ave., N.W.,)	
Washington, DC 20580,)	
)	
Petitioner,)	
)	
v.)	No. _____
)	
IFC CREDIT CORPORATION,)	
8700 Waukegan Rd., Suite 100,)	
Morton Grove, IL 60053,)	
)	
Respondent.)	

DECLARATION UNDER PENALTY OF PERJURY OF RANDALL H. BROOK

Pursuant to 28 U.S.C. § 1746, Randall H. Brook declares as follows:

1. I am a Senior Attorney employed by the Federal Trade Commission (“FTC” or “Commission”), in its Northwest Regional Office, Seattle, Washington. I am assigned to the FTC’s Non-Public Investigation of the Acts and Practices of Unnamed Persons or Entities in Connection with the Offering, Sale, or Financing of Telecommunications Services and Products by NorVergence, Inc. (FTC File No. 0523010).

2. I am authorized to execute a declaration verifying the contents of the Commission’s Petition for an Order to Enforce Civil Investigative Demand (“CID”). I have read the Petition and exhibits thereto (hereinafter referred to as “Pet. Exh. __”), and verify that Pet. Exh. 2 through Pet. Exh. 4 (this declaration is Pet. Exh. 1) are true and correct copies of original documents contained in the official files of the FTC.

3. IFC Credit Corporation (“IFC”) is a finance company that purchased, and is an

assignee of, telecommunications equipment rental contracts sold to consumers by NorVergence, Inc. (“NorVergence”), a company that was investigated and later sued by the Commission for unfair or deceptive trade practices.

4. On September 2, 2004, I sent a letter addressed to the “President or CEO” of IFC requesting the production of documents and information in connection with the Commission’s investigation of NorVergence and various companies that have been involved with NorVergence in the sale or financing of NorVergence products or services. The letter explained that the purpose of the Commission’s investigation was to determine whether NorVergence had violated Section 5 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45, in connection with the selling or financing of telecommunications products or services or the use of certain provisions in NorVergence rental agreements. The letter also explained that a further purpose of the investigation was to determine whether collection activities for alleged debts based on those rental agreements, by NorVergence assignees like IFC, might violate the FTC Act.

5. IFC provided a partial response to the Commission’s September 2, 2004 request for documents and information. In a letter dated October 8, 2004, IFC’s attorney Vincent Borst indicated that IFC would produce additional responsive material after completing a privilege review.

6. In November 2004, the Commission initiated an action against NorVergence in federal district court, alleging that the company had defrauded consumers through false and misleading claims that it would provide them with substantial long-term savings on telecommunication services, in violation of Section 5 of the FTC Act. As detailed in the complaint, NorVergence claimed that part of the savings would be generated by a "Matrix" black box that it would install

on customers' premises; but, in reality, the black boxes were nothing more than standard telephone routers, which NorVergence rented to customers for inflated prices. The complaint also alleged that NorVergence unlawfully provided others with the means and instrumentalities for the commission of deceptive and unfair acts or practices by furnishing third-party finance companies with rental agreements from consumers that allowed the finance companies: (a) to misrepresent that consumers owe money on the rental agreements regardless of whether NorVergence provided the promised telecommunication services, and (b) file collection suits against consumers in distant forums, which made it difficult for customers to dispute the monthly rental fees. This action ultimately ended in a default judgment against NorVergence in July 2005.

6. On February 22, 2005, I wrote to Mr. Borst, asking for information on the status of IFC's production of documents in response to the Commission's September 2, 2004 letter. I also identified several additional categories of information that the Commission required from IFC in connection with its investigation. I received no reply to this letter.

7. On March 22, 2005, the Commission issued a Resolution Directing Use of Compulsory Process in Non-Public Investigation of the Acts and Practices of Unnamed Persons or Entities in Connection with the Offering, Sale, or Financing of Telecommunications Services and Products by NorVergence, Inc. (FTC File No. 0523010). The Resolution authorized the use of compulsory process to determine whether such entities have engaged in unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1), in direct or indirect connection with the offering, sale, or financing of telecommunications services and products by NorVergence. A copy of the Resolution is attached

as Pet. Exh. 2.

8. In late June 2005, I called Mr. Borst to ask when we would receive the additional information responsive to the Commission's requests. In response, Mr. Borst left me a phone message stating that, in January 2005, IFC sent the Commission a CD-ROM containing additional information responsive to the Commission's September 2, 2004 letter. He also stated that most of the supplemental information the Commission had requested in the February 22, 2005 letter could be found in a deposition of an IFC official, John Estok, taken in private litigation, and that he would send me a copy of that deposition. On June 28, 2005, I replied to Mr. Borst's phone message with one of my own, confirmed with a letter sent that day, informing him that the Commission had never received the additional information that Mr. Borst said was sent in January 2005. That letter also contained a revised supplemental request, replacing the one sent on February 22, 2005. The Commission did not receive any reply to this letter. Nor did the Commission receive any of the materials that Mr. Borst referenced in his June 2005 phone message.

9. As a consequence, on August 8, 2005, the Commission issued an administrative CID to IFC, directed to its president and CEO, Rudolph D. Trebels. A copy of the CID is attached hereto as Pet. Exh. 3. The CID seeks documents and information about potential overcharges to consumers in connection with the NorVergence telecommunications equipment rental agreements. Specifically, the CID seeks information about attempts by IFC, as an assignee of those rental agreements, to collect from consumers charges for insurance premiums and local property and use taxes. This information is important because it relates to payments by consumers that may have been induced by deceptive practices. The CID also seeks information

about IFC's accounting practices for the rental agreements. In addition, the CID seeks copies of testimony given by IFC employees in any litigation involving the telecommunications products and services sold by NorVergence. As indicated above, IFC's attorney previously informed the Commission that at least one such deposition exists, containing information directly relevant to many of the CID specifications as they appeared in the Commission's February 2005 letter to IFC requesting documents and information.

10. The CID had a response date of August 31, 2005. The FTC received no communication from Mr. Borst or any other representative of IFC after service of the CID. On September 19, 2005, my office sent a letter to Mr. Borst notifying him that if IFC failed to respond to the CID by the end of the week, we would forward the matter to the FTC's Office of the General Counsel with a recommendation that it seek judicial enforcement of the CID. A copy of the letter is attached as Pet. Exh. 4.

11. As of the date of this declaration, my office has received no further communication from Mr. Borst or any other representative of IFC.

12. Without the materials and information demanded by the CID, the FTC is unable to conclude its investigation of IFC's potential violations of the FTC Act or to determine whether an enforcement action is appropriate or necessary.

I declare, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

Executed in Seattle, Washington, on November __, 2005.

RANDALL H. BROOK