

ROBB EVANS & ASSOCIATES LLC

Receiver of

Assail, Inc.; Infinium, Inc.; Market-Rep.com, Inc.;
Summit Communications International, Inc.; d/b/a Advantage Capital;
Capital First Benefits, Inc.; Premier One Benefits, Inc., et al.
and Assets of Kyle Kimoto

11450 Sheldon Street
Sun Valley, California 91352-1121
Telephone No.: (818) 768-8100
Facsimile No.: (818) 768-8802

Federal Trade Commission v. Assail, Inc., et al.
CASE No. W-03-CA-007

Amended Order of Monetary Judgment for
\$106 Million Against Kyle Kimoto

Filed September 24, 2004

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

FILED

SEP 24 2004

WACO DIVISION

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY DEPUTY CLERK

FEDERAL TRADE COMMISSION,
Plaintiff,

v.

ASSAIL, INC., KYLE KIMOTO, et al.,
Defendants.

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CIVIL ACTION NO. W-03-CA-007

AMENDED ORDER

The Order filed on September 17, 2004 as document # 380 is hereby **WITHDRAWN** and replaced with the following:

The Federal Trade Commission ("FTC") has filed an application for a temporary restraining order and preliminary injunction to preserve the assets of Kyle Kimoto. On the day prior to the hearing scheduled on this matter, Kimoto filed for bankruptcy in the United States Bankruptcy Court for the District of Nevada. Kimoto then sought to remove this action to the bankruptcy court and to halt further proceedings under the automatic stay provisions of the bankruptcy code. The FTC has notified the Court that Kimoto's bankruptcy case has now been dismissed. Accordingly, it is

ORDERED that Defendant Kimoto's Motion In Support of Automatic Stay is **DENIED** as moot.

The notice filed by the FTC further indicates that a stipulation has been reached in regard to the property located at 10217 Stony Ridge Drive in Las Vegas, Nevada.

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Accordingly, it is **ORDERED** that the FTC's Application for Temporary Restraining Order is **DENIED** as moot.

The Court next considers the FTC's Motion to Lift Suspension of Previously Imposed Monetary Judgment Against Kyle Kimoto. The exhibits presented persuade the Court that the FTC's motion is meritorious and should be granted. The suspension of the balance of the \$106 million contained in the stipulated order for permanent injunction and monetary judgment was conditioned upon Kimoto's truthful and complete disclosure of his financial condition to the FTC. The exhibits before the Court establish that Kimoto continued to transfer assets which were never disclosed to the FTC. Accordingly, it is

ORDERED that the FTC's Motion to Lift Suspension of Previously Imposed Monetary Judgment Against Kyle Kimoto and Renewed Request for Entry of Previously Suspended Monetary Judgment are **GRANTED**. The Court will enter a Final Monetary Judgment as to Defendants Kyle Kimoto and Assall, Inc. in the form included as Appendix A to the Stipulated Order for Permanent Injunction and Monetary Judgment.

SIGNED this 24th day of September, 2004.



WALTER S. SMITH, JR.
Chief United States District Judge