

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

WACO DIVISION

**FEDERAL TRADE COMMISSION,
Plaintiff,**

v.

**ASSAIL, INC., et al.,
Defendants.**

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CIVIL ACTION NO. W-03-CA-007

ORDER

Came on to be considered the Receiver's Notice of Motion and Motion for Orders: (A) Approving Receiver's Final Report and Accounting and Report of Receiver's Activities for the Period of November 1, 2006 Through March 31, 2007; (B) Approving Receiver's Fees and Expenses for the Periods of October 1, 2006 Through March 31, 2007 and April 1, 2007 Through the Conclusion of the Case and Authorizing Final Payment Thereof; (C) Authorizing Transfer of Receivership Funds and Assignment of Judgments to Plaintiff; (D) Authorizing Abandonment and Destruction of Records; (E) Discharging the Receiver and Relieving the Receiver of All Duties, Liabilities and Responsibilities; (F) Exonerating the Receiver's Bond; and (G) Related Relief. Having reviewed the motions and noting that no objection has been filed, the Court is persuaded the following Order should issue:

It is **ORDERED** that the Receiver's Motions and all relief requested therein are **GRANTED** in their entirety. It is further

ORDERED that, without limiting the generality of the foregoing, the Court hereby grants the following relief:

1. The Court hereby approves the Report of Receiver's Activities for the Period April 1, 2007 through September 4, 2007 ("Final Report") attached to the Motion as Exhibit 1 together with the Receiver's final accounting attached as Tab 1 to Exhibit 1 thereto (collectively "Final Report and Accounting");

2. The Court hereby approves the Report of Receiver's Activities for the Period of November 1, 2006 through March 31, 2007 ("Eighth Report"), as to which the Receiver previously sought Court approval by motion filed May 18, 2007 and which was denied by the Court's order filed June 8, 2007;

3. The Court hereby approves and confirms all actions and activities undertaken by or on behalf of the Receiver in connection with the administration of the receivership estate of the Receivership Entities;

4. The Court hereby approves the Receiver's fees and expenses for the period of April 1, 2007 through the conclusion and wind up of the receivership estate pursuant to the Motion as reflected in Tab 1 to Exhibit 1 attached thereto and

approves final payment thereof by the Receiver in connection with the wind up of the receivership estate;

5. The Court hereby approves the Receiver's fees and expenses for the period of October 1, 2006 through March 31, 2007 and approves payment thereof, as to which the Receiver previously sought Court approval by motion filed May 18, 2007 and which was denied by the Court's order filed June 8, 2007;

6. The Court hereby approves all receivership administrative expenses, including the Receiver's fees and expenses and those of its professionals, incurred in connection with the receivership proceeding.

7. The Court hereby authorizes the Receiver to wind up and close the receivership estate without the Receiver implementing a distribution to creditors or a claims procedure pertaining to the receivership estate of the Receivership Entities and without payment of pre-receivership claims;

8. The Court by this Order hereby makes an order for final payments pursuant to which the Receiver is authorized to transfer to plaintiff Federal Trade Commission ("FTC") or its agent all funds in the receivership estate, less any unpaid fees and expenses and closing expenses as allowed by the Court pursuant to this Motion, pursuant to section XVII of the Stipulated Order for Permanent Injunction and

Monetary Judgment for Defendant Kyle Kimoto and Assail, Inc. (“Final Assail Judgment”) and pursuant to section XVII of the Stipulated Order for Permanent Injunction and Monetary Judgment for Brian Schofield, Infinium, Inc. and Market-Rep.com, Inc. d/b/a Market-Reps.com, Inc. (“Final Infinium Judgment”);

9. The Court hereby authorizes the Receiver to transfer and assign to the FTC all rights, claims and interests held by the Receiver in that certain Judgment Pursuant to Stipulation entered in favor of the Receiver as plaintiff against Eric Bowen filed February 15, 2005 (“Bowen Judgment”) in the United States District Court for the District of Nevada in the action entitled Robb Evans & Associates LLC as Receiver for Assail, Inc., et al. v. Eric Bowen, et al., Case No. CV-5-03-1639-LDG-RJJ (“Bowen Action”), and in connection therewith, authorizes the Receiver to execute and deliver all documents, instruments, instructions and papers necessary or convenient to effectuate the transfer and assignment of the Receiver’s rights therein;

10. The Court hereby orders and directs that the FTC shall be entitled to be paid, receive, recover, collect and liquidate all amounts outstanding under the Bowen Judgment which when received by the FTC shall be applied toward satisfaction of the amounts due thereunder and may be used and disbursed by the

FTC in the same manner as the other receivership funds transferred by the Receiver to the FTC pursuant to section XVII of the Final Assail Judgment and section XVII of the Final Infinium Judgment;

11. The Court hereby authorizes the Receiver to transfer and assign to the FTC all rights, claims and interests held by the Receiver in that certain Stipulation Resolving Contempt Proceedings Against James Fales and for Entry of Judgment and the related Judgment entered against James Fales in this case (individually and collectively, the "Fales Judgment"), and in connection therewith, authorizes the Receiver to execute and deliver all documents, instruments, instructions and papers necessary or convenient to effectuate the transfer and assignment of the Receiver's rights therein;

12. The Court hereby orders and directs that the FTC shall be entitled to be paid, receive, recover, collect and liquidate all remaining sums outstanding under the Fales Judgment, including without limitation all amounts due from commissions earned by James Fales ("Fales") required to be paid by Fales and applied toward satisfaction of the Fales Judgment under paragraph 11 of the Fales Judgment, all of which sums when received by the FTC shall be applied toward satisfaction of the amounts due under the Fales Judgment and may be used and disbursed by the FTC

in the same manner as the other receivership funds transferred by the Receiver to the FTC pursuant to section XVII of the Final Assail Judgment and section XVII of the Final Infinium Judgment;

13. The Court hereby authorizes the Receiver to abandon records of the Receivership Entities and to destroy all records of the Entities if, within 60 days after service of written notice to plaintiff FTC, the FTC or any other governmental regulatory or law enforcement agency does not take custody of such records directly or through any designated agent;

14. The Court hereby discharges the Receiver, its agents, employees, members, officers, independent contractors, attorneys and representatives and relieves the Receiver, its agents, employees, members, officers, independent contractors, attorneys and representatives of all duties, liabilities and responsibilities pertaining to the receivership previously established in this action;

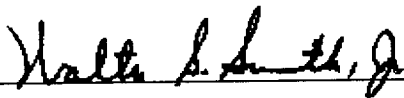
15. The Court hereby orders exonerated the Receiver's bond posted in this action; and

16. The Court finds that notice of the Motion was sufficient and appropriate under the circumstances based on service of the Motion by mail on the parties to this action and the known creditors of the receivership estate as reflected in the proof of

service on file with the Court and by the posting of the Motion on the Receiver's website for this case. It is further

ORDERED that the FTC inform the Court within ten (10) days from the date of this Order what issues remain to be resolved and when the final distribution of assets will be accomplished.

SIGNED on this 3rd day of October, 2007.



A handwritten signature in black ink, reading "Walter S. Smith, Jr.", is written over a horizontal line.

WALTER S. SMITH, JR.
CHIEF UNITED STATES DISTRICT JUDGE