

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

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

Notice of Filing of Report of Receiver's Activities for the Period
March 1, 2006 Through October 31, 2006

Filed November 13, 2006

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS, WACO DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

ASSAIL, INC., et al.,

Defendants.

CASE NO. W03CA007

**NOTICE OF FILING OF REPORT OF
RECEIVER'S ACTIVITIES FOR THE
PERIOD MARCH 1, 2006 THROUGH
OCTOBER 31, 2006**

TO: THE HONORABLE WALTER S. SMITH, JR., CHIEF UNITED STATES
DISTRICT JUDGE:

COMES NOW, Robb Evans & Associates, LLC, permanent receiver of Assail, Inc., et al. (“Receiver”), and files its Report of Receiver’s Activities for the period of March 1, 2006 through October 31, 2006.

Dated: November 10, 2006

MCKENNA LONG & ALDRIDGE LLP
Gary Owen Caris
Lesley Anne Hawes

By: /s/ Lesley Anne Hawes
Lesley Anne Hawes
Attorneys for ROBB EVANS &
ASSOCIATES LLC, as Receiver for ASSAIL,
INC., et al.

ROBB EVANS & ASSOCIATES LLC
Receiver of
Assail, Inc.
Infinium, Inc.
Market-Rep.com, Inc.
Summit Communications International, Inc. dba
Advantage Capital
Capital First Benefits, Inc.
Premier One Benefits, Inc.
Par 3, Inc.
Valdine Management Company, Inc.
And the assets of Kyle Kimoto

REPORT OF RECEIVER'S ACTIVITIES
MARCH 1, 2006 THROUGH OCTOBER 31, 2006

This report covers the activities of the Receiver since the last report. This is the Eighth Report to the Court. The purpose of this report is to provide updated information on the progress of the receivership. This report does not constitute an audit of the financial condition of the receivership; it is intended only for the information of the Court and should not be relied upon for other purposes.

Collection Activities

The following paragraphs discuss the status of demands made to various individuals and entities, which the Receiver has identified as recipients of estate assets or active participants in the scheme to hide assets from the Court.

Global Benefits, Inc. (Global)

The Receiver provided details of a sham transaction designed to hide assets from the Receiver. Global transferred \$400,000 to Eric Bowen, President of Members Express, Inc. Thereafter, Members Express transferred \$275,000 to Brian Lorenz, doing business as Mediatel Data USA (Mediatel).

The Receiver made demand on Members Express, Inc. and Mediatel for return of these funds and the demand was refused. The Receiver commenced litigation against Eric Bowen, Members Express, and Mediatel to recover these funds.

The Receiver entered into a stipulation for entry of judgment with Eric Bowen to resolve the Receiver's claims against him. Bowen defaulted on the stipulation by failing to make the settlement payment required thereunder, and the Receiver caused judgment to be entered

against him in the sum of \$50,000. The Receiver has pursued post-judgment enforcement steps, but the likelihood of a substantial recover appears unlikely.

The Receiver has described the procedural history of this case in previous reports. Briefly, defendant Mediatel filed a motion for summary judgment, which the Receiver opposed. The original counsel of record for Mediatel withdrew from the case on June 29, 2005. Mediatel was ordered by the Court to engage new counsel within 30 days. Mediatel failed to engage new counsel and the Court issued an order denying Mediatel's pending motion for summary judgment. Based on Mediatel's failure to engage new counsel, on January 3, 2006, the Court entered a default judgment in favor of the Receiver and against Mediatel for the full amount of the Receiver's claim against Mediatel, \$275,000 plus interest. The Receiver started pursuing post-judgment enforcement steps. Thereafter, the Receiver was notified that Mediatel retained new counsel and filed a motion to vacate the default judgment under F.R.C.P. Rule 60(b) on the grounds of excusable neglect, inadvertence and mistake regarding Mediatel's failure to timely engage new counsel. The Receiver's counsel has been in communication with counsel for Mediatel in an effort to resolve the Receiver's claim through settlement. Based on those negotiations, the parties entered into a stipulation to extend the deadline for the Receiver to file opposition to the motion to April 5, 2006. The extension has been approved by Court order and settlement negotiations commenced.

Mediatel failed to make any meaningful settlement offer and claimed financial hardship. The Receiver demanded financial statements, which Mediatel failed to provide. The Receiver then attempted to expedite the litigation and a mandatory settlement conference was scheduled on October 20, 2006. Once again, Mediatel failed to make a meaningful offer and the local magistrate excused the parties. The Court has ordered trial in the action to commence no later than February 28, 2007. The Receiver continues to press the litigation, but will continue to analyze the settlement options after receiving financial statements from Mediatel.

As previously reported, from the \$275,000 in funds paid to Mediatel, \$180,000 was paid to the entity Desert Valley Marketing. The Receiver traced a \$50,000 payment from Desert Valley Marketing to Ideal Financial Group and interviewed the president, Steven L. Sunyich. Mr. Sunyich was cooperative and reported that Kyle Kimoto directed the investment of \$50,000 be paid to IFS to secure exclusive marketing rights to the services offered by IFS. According to Mr. Sunyich, Joel Best, a former officer of Assail, was running a telemarketing call center for Kimoto. Joel Best did not meet the sales quotas required to maintain the exclusive rights to market IFS services and the arrangement was terminated. On September 24, 2004, IFS issued 500,000 shares of common stock to Desert Valley Marketing. The Receiver demanded the original stock certificate, and Mr. Sunyich complied with the Receiver's request. The Receiver believes the original transfer by Brian Lorenz from Mediatel Data to Desert Valley Marketing was done under the direction of, and for the benefit of Kyle Kimoto and that 500,000 shares of common stock are properly an asset of the receivership estate. Because the stock was part of an unregistered securities offering, all restrictions on the sale of the stock were not be removed until September 24, 2006. The Receiver has monitored the value of stock and has determined that the stock has limited marketability and no net realizable value for the receivership estate after expenses of sale and other factors are taken into account. The

Receiver therefore intends to abandon the stock from the receivership estate as an asset with no consequential value or benefit to the estate.

Liquidation of Assets

In the Sixth Report to the Court, the Receiver reported net proceeds to the estate from the sale of personal and real property totaling \$3,413,652. All of the real and personal property assets of Assail have now been liquidated.

Quiet Title Action: When selling the commercial property in Cedar City, Utah, the Receiver was advised that a lien existed against the property in the amount of \$174,182. The Receiver investigated the facts supporting the lien and did not consider the deed of trust to be a legitimate business transaction and filed a quiet title action to extinguish the cloud on title. Utah law requires a bond of 150% of the lien amount. The Receiver agreed to deposit \$261,750 in the escrow fund until the quiet title action is resolved.

On October 30, 2006, the court held a hearing and entered a judgment and order removing the lien from the property. The order was immediately recorded with the County Recorder and the Receiver anticipates recovery of the \$261,750 within the next 30 days.

Compliance with Fales Judgment

As previously reported, James and Lyndi Fales decded to the Receiver all properties identified in Section N of the Fales Judgment and have continued to cooperate with the Receiver. All real estate has been sold except three income properties located in Cedar City, Utah.

To date, Mr. Fales has paid \$598,714.19, which includes rental income, the sale of personal and real property assets and payment of 15% of his sales commissions. The Receiver has advanced \$85,018.47 in expenses to preserve the assets turned over by Mr. Fales including utilities, insurance, mortgage payments and required maintenance. After deducting the advanced expenses, Mr. Fales has paid a total of \$513,695.72 toward the Fales Judgment.

Mr. Fales continues to provide reports of his business activities to the Receiver, including an accounting of all income received, and continues to pay 15% of his income to the Receiver as payment toward the Fales Judgment.

Respectfully submitted,



Robb Evans & Associates LLC
Receiver

Coates, Pamela

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U.S. District Court [LIVE]

Western District of Texas

Notice of Electronic Filing

The following transaction was received from Hawes, Lesley Anne entered on 11/13/2006 at 12:03 PM CST and filed on 11/13/2006

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Case Number: 6:03-cv-7
Filer: Robb Robb Evans & Associates, LLC
Document Number: 439

Docket Text:

STATUS REPORT *Notice of Filing of Report of Receiver's Activities for the Period March 1, 2006 Through October 31, 2006* by Robb Robb Evans & Associates, LLC. (Hawes, Lesley)

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