

**UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	Case No.: 03-C-3904
)	
v.)	Hon. Robert W. Gettleman
)	
KEVIN TRUDEAU,)	
)	
Defendant.)	
)	

NOTICE OF MOTION

PLEASE TAKE NOTICE that, on Thursday, April 24, 2014, at 9:15 a.m., or as soon thereafter as counsel may be heard, the undersigned shall appear before the Honorable Robert W. Gettleman, United States District Court for the Northern District of Illinois, Eastern Division, or such other judge as may be sitting in his place in Courtroom 1703, 219 S. Dearborn Street, Chicago, Illinois 60604, and shall present the **Receiver’s Motion for Entry of an Order (A) Setting Hearing for Approval of the Sale of GIN Club Assets and (B) Approving the Form and Manner of Notice**, a copy of which is hereby served upon you.

Dated: April 21, 2014

Respectfully Submitted,
**ROBB EVANS & ASSOCIATES LLC,
RECEIVER**

By: /s/ Blair Zanzig
(One of Its Attorneys)

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FEDERAL TRADE COMMISSION,)	
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Plaintiff,)	Case No.: 03-C-3904
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KEVIN TRUDEAU,)	
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**RECEIVER’S MOTION FOR ENTRY OF ORDER (A) SETTING
HEARING FOR APPROVAL OF THE SALE OF GIN CLUB
ASSETS AND (B) APPROVING THE FORM AND MANNER OF NOTICE**

Robb Evans & Associates LLC, in its capacity as the court-appointed receiver for the assets of Kevin Trudeau and the Trudeau Entities et al. (the “Receiver”), by and through its undersigned counsel, hereby moves (the “Motion”) for entry of an order (a) setting a hearing on May 21, 2014 at 9:15 a.m. to confirm the proposed sale of certain assets of the Global Information Network (the “GIN Club”) free and clear of all liens, claims and encumbrances, and (b) approving the form and manner for providing notice of such sale and hearing. In support of its Motion, the Receiver states as follows:

BACKGROUND

1. On July 13, 2012, the FTC moved to hold Defendant Kevin Trudeau (“Trudeau”) in contempt for failing to comply with the Court’s June 2, 2010 order directing Trudeau to pay to the Federal Trade Commission (“FTC”) \$37.6 million corresponding to the consumer loss resulting from Trudeau’s contumacious infomercial marketing of the *Weight Loss Cures* book.

2. On July 26, 2013, following extensive discovery and subsequent evidentiary hearing, the Court granted the FTC’s motion holding Trudeau in contempt of the June 2, 2010

order to pay. (Order [Dkt. #729].) As part of its findings, the Court held that Trudeau had created and controlled a number of domestic and offshore entities through which he operated the GIN Club, including GIN USA Inc. (“GIN”), Global Information Network FDN (“Global”), and Website Solutions USA Inc. (“Website Solutions”) (collectively with Trudeau, the “GIN Sellers”). (FTC Findings ¶¶ II.B-D [Dkt. #713].)¹ The Court also found that Trudeau controlled Trudeau Approved Products, Inc. (“TAP”). (FTC Findings ¶ II.A.4.) The GIN Sellers together with TAP shall be referred to as the “Sellers.”

3. Pursuant to its order dated August 7, 2013 (the “Receivership Order”), the Court appointed Robb Evans & Associates LLC as the receiver over Trudeau’s Assets, the Trudeau Entities, and any affiliates or subsidiaries thereof controlled by Trudeau or any Trudeau Entity. (Receivership Order § IV [Dkt. #742].) Each of the Sellers are “Trudeau Entities” under the Receivership Order. (*Id.* § I.(9).)

4. The Court authorized the Receiver to “sell, liquidate, or auction any marketable Assets of Trudeau or the Trudeau Entities, or the Trudeau Entities themselves.” (Receivership Order §§ V(13).) To that end, as previously reported to the Court, the Receiver has been working to stabilize the GIN Club so that it could be operated as a legal and financially stable company and ultimately transferred to new owners for a fair price. (*See, e.g.*, Receiver’s Report [Dkt. #815] at 4.) As the final phase of that process, on March 17, 2014, the Receiver announced that it was soliciting written letters of intent to purchase the assets of the GIN Club. The Receiver received nearly 20 inquiries expressing interest in acquiring such assets. Exercising its business judgment, the Receiver deemed an offer received from AXS Consulting, LLC (the

¹ Having “thoroughly reviewed and confirmed the accuracy of the findings of fact and conclusions of law proposed by the FTC” [Dkt. 713], the Court adopted Findings II through VI and Conclusions I through IV. (7/26/2013 Order at ¶ (2) [Dkt. #729].)

“Purchaser”) to be the highest and best offer. The Purchaser consists of an investment group of current GIN Club members.

5. After arms-length negotiations, the Receiver and Purchaser entered into that certain Asset Purchase Agreement dated April 16, 2014 (the “APA”), subject to court approval. Given the Receiver’s widely distributed requests for offers and as a necessary inducement to the Purchaser, such sale shall not be subject to overbidding.

6. The principal terms of the APA are as follows:

Consideration. The Purchaser shall pay the sum of \$200,000 plus twelve monthly payments calculated as the monthly aggregate of (a) 8% of gross collected membership dues for the calendar month ending on the day preceding the due date of each Purchase Price Installment for all GIN Club members who were members as of the Closing Date; and (b) 4% of gross collected membership dues for the calendar month ending on the day preceding the due date of each Purchase Price Installment for all GIN Club members who become members of GIN Club after the Closing Date.

Assets to be Acquired by Purchaser. The Purchaser shall purchase from the Sellers, the Sellers’ right, title and interest in:

(a) all training materials owned by any of the GIN Sellers, whether in hard copy or electronic format, including but not limited to all audio and video recordings, printed materials, webinars, website and website content, marketing materials, audio and video masters, and any physical copies of such audio, visual or printed materials located at the five “Training Material Locations” (as defined in the APA) (collectively, the “Training Materials”), excluding any Training Materials determined by the Court, FTC or Receiver to constitute a violation of the Federal Trade Commission Act or other applicable law;

(b) all GIN customer databases which evidence or itemize past or current GIN members, associates or affiliates regardless of their past or present membership status in the GIN Club, and all rights to payment of initial membership fees, monthly dues and all other revenue derived from GIN Club members, associates or affiliates based upon such membership, association or affiliation (the “Membership Databases”);

(c) all intellectual property owned or licensed by any of the GIN Sellers and used in connection with the GIN Club, if any exists, consisting of

trademarks, copyrights, trade names and logos (the “Intellectual Property”);

(d) all information technology owned by any of the GIN Sellers which was created or acquired in connection with the past or present operations of any of the GIN Sellers and used in connection with the GIN Club, including but not limited to customized code, passwords, software programs, database information, customer files and business reports (collectively, the “Information Technology”), excluding any Information Technology determined by the Court, FTC or Receiver to constitute a violation of the Federal Trade Commission Act or other applicable law;

(e) all furniture, office equipment, supplies, computers, telephone systems and audiovisual equipment owned by any of the GIN Sellers presently located at the Westmont Offices (the “Furniture and Equipment”); and

(f) all finished products owned by TAP located at the “Duarte Property” (as defined in the APA) consisting of approximately 3,300 30-day supplies of nutritional supplements (the “TAP Assets”).

The Training Materials, Membership Databases, Intellectual Property, Information Technology, Furniture and Equipment, and TAP Assets shall be collectively referred to as the “Purchased Assets.”

“AS IS” Sale. The Purchased Assets are sold “AS IS” without representations or warranties by the Sellers, express or implied, with respect to any matter relating to the Purchased Assets.

Free and Clear Sale. The Purchased Assets shall be transferred to the Purchaser free and clear of all Encumbrances and Liabilities except for any Encumbrances that may exist as a result of the storage or warehousing of the TAP Assets.

Assumption of Liabilities. The Purchaser shall assume all liabilities arising from and after the closing date out of or relating to the Purchaser’s ownership or operation of the Purchased Assets, including claims that use of the Purchased Assets by the Purchaser infringes on the rights of any third party; and liabilities for taxes in connection with the acquisition of the Purchased Assets or attributable to the ownership or operation of the Purchased Assets after the closing date.

7. The Receiver is in the process of preparing and finalizing an appropriate motion seeking approval of the APA (“Sale Motion”) to be filed no later than Friday, April 25, 2014. In order to expedite a final sale hearing so that the Purchased Assets can be transferred to the Purchaser without further disruption to the operation of the GIN Club, the Receiver now seeks

entry of an order (a) setting a final hearing for approval of the sale on the terms set forth in the APA, and (b) approving the form and manner of providing notice of such sale and hearing.

REQUESTED RELIEF

8. As reflected in Federal Rule of Civil Procedure 66, the Court has broad powers and wide discretion in the administration of a receivership estate. In particular, the Court may order the sale of all property within its custody and control. *See SEC v. Elliot*, 953 F.2d 1560, 1566 (11th Cir. 1992) (authorizing receiver's disposal of receivership assets); *SEC v. American Capital Invs., Inc.*, 98 F.3d 1133, 1144 (9th Cir. 1996) (approving receiver's decision to sell receivership estate property), abrogated on other grounds, *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83 (1998).

9. Under 28 U.S.C. § 2004, the Court also has wide discretion to set the terms and procedures used to sell personal property so as to maximize the proceeds from such sales. *See U.S. v. Stonehill*, 83 F.3d 1156, 1160 (9th Cir. 1996) (holding that district court had discretion under Section 2004 to tailor requirements for selling personal property); *United States v. Branch Coal Corp.*, 390 F.2d 7, 10 (3d Cir. 1968) (holding that court appointing receiver has wide discretion in setting terms and conditions for judicial sales that will be undisturbed other than for abuse of discretion). Indeed, in overseeing a receivership, the Court must "make rules which are practicable as well as equitable." *See SEC v. Hardy*, 803 F.2d 1034, 1039 (9th Cir. 1986).

10. Here, the Receiver is proposing to sell substantially all of the assets of the GIN Club free and clear of liens, claims and other encumbrances. *See Regions Bank v. Egyptian Concrete Co.*, No. 09-cv-1260, 2009 WL 4431133, at *7 (E.D. Mo. Dec. 1, 2009) ("[I]t has long been recognized that under appropriate circumstances, a federal court presiding over a receivership may authorize the assets of the receivership to be sold free and clear of liens and

related claims.”) (collecting authority). As such, the Receiver anticipates providing broad notice of the proposed sale to all interested persons, including all of the GIN Club’s disputed and undisputed creditors and its members. In order to facilitate an orderly sale confirmation process and make it possible for the Receiver to expeditiously provide notice to all such interested parties, the Receiver requests the Court now (a) set a final hearing to approve the sale for Wednesday, May 21, 2014, at 9:15 a.m.; (b) require that any objections to the Sale Motion be filed in writing and served on the parties no later than Friday, May 9, 2014, at 5:00 p.m. (CDT); and (c) provide that any replies in support of the Sale Motion be filed no later than Friday, May 16, 2014, at 5:00 p.m. (CDT).

11. Further, given the large number of persons to be provided notice and corresponding expense that would be associated with sending out physical copies to all potentially interested persons, the Receiver seeks the Court’s authorization to provide notice of the sale and hearing as follows:

(a) the Receiver shall serve the Purchasers, their counsel, and each party to the case with a copy of the Sale Motion and APA as provided by the Federal Rules of Civil Procedure and;

(b) the Receiver shall send a notice of sale substantially in the form of Exhibit A (the “Sale Notice”) to (i) all known disputed and undisputed creditors of the Sellers; (ii) all persons who are members or affiliates of the GIN Club; and (iii) all persons who submitted expressions of interest in response to the Receiver’s March 17, 2014 request for letter of intent. As reflect in the form of notice attached as Exhibit A, the Sale Notice shall (x) give notice of the hearing date and objection deadline; (y) summarize the principal terms of the APA; and (z) provide directions for accessing a copy of the Sale Motion and APA electronically via the

Receiver's website.² Because of the number of potentially interested persons, including the members or affiliates of the GIN Club, delivery of a physical copy of the Sale Motion and APA would be prohibitively expensive. Accordingly, the Receiver will send the Sale Notice to the persons identified above electronically using their last known email addresses. Where an email address is unavailable or impractical, the Receiver will exercise its business judgment to transmit notice using any alternative means reasonably calculated to effect delivery of the Sale Notice.

12. The Receiver shall send the forgoing notice no later than Friday April 25, 2014—that is 14 days in advance of the Objection Deadline and 26 days before the proposed May 21, 2014 hearing to approve the sale.

13. The Receiver believes that such notice procedures, including providing electronic access to complete copies of the Sale Motion and APA, will provide actual notice to all interested persons in the most expeditious manner possible while minimizing unnecessary expenses to the receivership estate.

WHEREFORE, Robb Evans & Associates LLC, in its capacity as court-appointed Receiver, respectfully requests the Court enter an order: (a) granting the Motion; (b) approving the form and manner of notice set forth in the Motion; (c) providing that the Receiver shall file its Sale Motion no later than April 25, 2014, that all objections to such Sale Motion be filed and served on the parties no later than 5:00 p.m. (CDT) on May 9, 2014, and that any replies in support of the Sale Motion be filed no later than 5:00 p.m. (CDT) on May 16, 2014; (c) setting a hearing on the Sale Motion for May 21, 2014 at 9:15 a.m.; and (d) granting the Receiver such further relief as the Court may deem just and proper.

² Such Notice of Sale exceeds the requirements Local Rule 69.1 providing that a notice of sale for property directed to be made by an order or judgment of the court in a civil action need not set out the terms of the sale.

Dated: April 21, 2014

Respectfully submitted,

**ROBB EVANS & ASSOCIATES LLC,
RECEIVER**

By: /s/ Blair Zanzig
(One of Its Attorneys)

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Counsel for Robb Evans & Associates, Receiver

EXHIBIT A

NOTICE OF SALE AND HEARING

PLEASE TAKE NOTICE THAT, on May __, 2014, at __ a.m. (CDT), Robb Evans & Associates LLC, not for itself, but solely in its representative capacity as court-appointed receiver of the Assets of Kevin Trudeau and the Trudeau Entities (the “Receiver”) shall appear before the United States District Court for the Northern District of Illinois, the Honorable Robert W. Gettleman presiding, in Courtroom 1703 at the Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, Illinois 60604, to seek entry of an order approving the sale of certain assets of GIN USA, Inc. (“GIN”), Global Information Network FDN (“Global”), Website Solutions USA (“Website Solutions”), Trudeau Approved Products Inc. (“TAP”), and Kevin Trudeau (“Trudeau”) (collectively, the “Sellers”) pursuant to the terms and conditions of that certain Asset Purchase Agreement (the “APA”) dated April 16, 2014, by and between the Sellers and AXS Consulting, LLC (the “Purchaser”).

Summary of Terms and Conditions. The following summary is for informational purposes only and is not intended as a complete description of all terms and conditions of such sale. A complete copy of APA and the Receiver’s Motion for Approval of the Sale of Assets Free and Clear of All Liens, Claims and Encumbrances (the “Sale Motion”) may be accessed at [Website Address]. To the extent that there are any inconsistencies between the terms described in this notice or the Sale Motion and the APA, the terms set forth in the APA shall control.

Purchased Assets. The Sellers shall sell to the Purchaser: (a) all training materials owned by any of the GIN Sellers; (b) all GIN customer databases; (c) all intellectual property, if any, owned or licensed by any of the GIN Sellers used in connection with the GIN Club; (d) all information technology owned by any of the GIN Sellers; (e) all furniture, equipment and supplies owned by any of the GIN Sellers located at the Westmont Offices; and (f) all finished products owned by TAP (the “Purchased Assets”). The Purchased Assets are sold “AS IS” without representations or warranties, express or implied, with respect to any matter relating to the Purchased Assets.

Consideration. The Purchaser shall pay the sum of \$200,000 plus twelve monthly payments calculated as the monthly aggregate of (a) 8% of gross collected membership dues for all current GIN Club members and (b) 4% of gross collected membership dues for all new GIN Members.

Free and Clear Sale. The Purchased Assets shall be transferred to the Purchaser free and clear of all Encumbrances and Liabilities except for any Encumbrances that may exist as a result of the storage or warehousing of the TAP Assets.

Assumption of Liabilities. The Purchaser shall assume all liabilities arising from and after the closing date out of or relating to the Purchaser’s ownership or operation of the Purchased Assets, including claims that use of the Purchased Assets by the Purchaser infringes on the rights of any third party; and liabilities for taxes in connection with the acquisition of the Purchased Assets or attributable to the ownership or operation of the Purchased Assets after the closing date.

OBJECTION DEADLINE. ANY OBJECTIONS TO THE SALE MOTION MUST BE FILED WITH THE COURT AND SERVED ON THE PARTIES NO LATER THAN MAY 9, 2014, AT 5:00 P.M. (CDT). ANY OBJECTIONS NOT RECEIVED BY THAT TIME SHALL BE DEEMED WAIVED.