

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

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 03C 7486
)	
9094-5114 QUEBEC, INC.,)	Judge Harry D. Leinenweber
a Quebec corporation,)	
)	Magistrate Sidney I. Schenkier
ACMS, Inc.,)	
a Nevada corporation,)	
)	
d/b/a KINITO, KINITO, INC., KINITO)	
BENEFITS SERVICES, KBS, and FIRST)	
APPROVAL BENEFITS,)	
)	
NIKOLAOS ROTHOS, individually and as an)	
officer of the corporate defendant,)	
)	
STEVE VRONTAKIS, individually and as an)	
officer of the corporate defendant, and)	
)	
ROBERTO MENDEZ, individually,)	
)	
Defendants.)	

STIPULATED ORDER FOR PERMANENT INJUNCTION AND FINAL JUDGMENT

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), commenced this action by filing its complaint for injunctive and other equitable relief pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101, *et seq.*, charging that the Defendants engaged in deceptive acts or practices in violation

of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC's Trade Regulation Rule entitled "Telemarketing Sales Rule," 16 C.F.R. Part 310.

The parties having been represented by counsel and acting by and through such counsel, have consented to the entry of this Stipulated Order for Permanent Injunction and Final Judgment ("Stipulated Order") without a trial or adjudication of any issue of law or fact herein.

NOW, THEREFORE, the Commission and Defendants, having requested the Court to enter this Stipulated Order, and the Court having considered the Stipulated Order reached among the parties and for other cause appearing, it is **ORDERED, ADJUDGED, AND DECREED** as follows:

FINDINGS

1. This is an action by the Commission instituted under Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, the Telemarketing Act, 15 U.S.C. §§ 6101, *et seq.*, and the FTC's Telemarketing Rule, 16 C.F.R. Part 310. Pursuant to these statutes and regulations, the Commission has the authority to seek the relief contained herein.

2. The Commission's complaint states a claim upon which relief may be granted under Sections 5, 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45, 53(b) and 57b, the Telemarketing Act, 15 U.S.C. §§ 6101, *et seq.*, and the FTC's Telemarketing Rule, 16 C.F.R. Part 310.

3. This Court has jurisdiction over the subject matter of this case and all parties hereto.

4. Venue in the United States District Court for the Northern District of Illinois is proper.

5. The alleged activities of Defendants are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

6. This Order does not constitute and shall not be interpreted to constitute an admission by Defendants or a finding by the Court that they have engaged in a violation of the FTC Act or of any other law.

7. Defendants, without admitting the allegations set forth in Plaintiff's complaint, agree to entry of this Stipulated Order.

8. The parties shall each bear their own costs and attorneys' fees incurred in this action and have waived all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, and all rights to seek judicial review, or otherwise to challenge the validity of this Stipulated Order.

9. Entry of this Stipulated Order is in the public interest.

ORDER

DEFINITIONS

For purposes of this Order, the following definitions shall apply:

1. "Defendant" or "Defendants" means 9094-5114 Quebec, Inc., ACMS, Inc., also doing business as Kinito, Kinito, Inc., Kinito Benefits Services, KBS, and First Approval Benefits; Nikolaos Rothos; Steve Vrontakis; and Roberto Mendez and each of them, by whatever names they might be known.

2. "Asset" or "assets" means any legal or equitable interest in, right to, or claim to, any real and personal property, including, but not limited to, "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," or "notes," (as these terms are defined in the Uniform Commercial Code), lines of credit, and all cash, chattels, leaseholds,

contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, and funds, wherever located.

3. “Customer” means any person who has paid or may be required to pay for goods or services.

4. “Person” means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

5. “Material” means likely to affect a person’s choice of, or conduct regarding, goods or services.

6. “Document” is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

7. “Assisting others” means: (1) performing customer service functions including, but not limited to, receiving or responding to consumer complaints, receiving identifying and financial information from consumers, and communicating with consumers; (2) developing, providing or arranging for the development or provision of sales scripts or any other marketing material; (3) providing names of, or arranging for the provision of names of, potential customers; or (4) performing marketing services of any kind.

8. “Credit-related products, programs, or services” means any product, program, or service which is advertised, offered for sale, or sold to consumers as a method by which

consumers may establish or obtain any extension of credit or credit device, including, but not limited to, credit cards, loans, or financing, or as a method to consolidate or liquidate debts. It does not include the sale of goods or services that are paid for by a credit card or charge account.

9. “Telemarketing” means the advertising, offering for sale, or sale of any good or service to any person by means of telephone sales presentations, either exclusively or in conjunction with the use of other advertising.

I.

PROHIBITED BUSINESS ACTIVITIES

IT IS FURTHER ORDERED that, in connection with the advertising, marketing, promoting, offering for sale, or sale of any product, program, or service, Defendants, their successors, assigns, officers, agents, servants, employees, and all other persons or entities in active concert or participation with them who receives actual notice of this Order by personal service or otherwise, whether acting directly or through any corporate or other device, are hereby permanently restrained and enjoined from:

A. Misrepresenting, directly or by implication, that Defendants will provide consumers with, or arrange for consumers to receive, a major credit card, such as a Visa or MasterCard;

B. Misrepresenting, directly or by implication, Defendants’ ability to provide consumers with any credit-related product, program, or service;

C. Misrepresenting, directly or by implication, any fact material to a consumer’s decision to purchase any product, program or service;

D. Violating or assisting others to violate any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, *et seq.*, including, but not limited to:

1. Violating Section 310.3(a)(2) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(2), by misrepresenting, directly or by implication, any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer, 16 C.F.R. § 310.3(a)(2)(iii); and

2. Violating Section 310.4(a)(4) of the Telemarketing Sales Rule, 16 C.F.R. § 310.4(a)(4), by requesting or receiving payment of any fee or consideration in advance of obtaining or arranging an extension of credit when Defendants have guaranteed or represented a high likelihood of success in obtaining or arranging an extension of credit;

E. Assisting others to violate any provision of Subsections A through D of this Section I when Defendants know or consciously avoid knowing that such others are engaged in any act or practice that violates Subsections A through D of this Section I.

II.

CONSUMER REDRESS

IT IS FURTHER ORDERED that:

A. Judgment in the amount of \$6,546,126 (USD) (six million, five hundred forty-six thousand, one hundred twenty-six United States dollars) is entered against Defendants, jointly and severally, as equitable monetary restitution for consumer injury relief;

Provided, that, upon fulfillment of the payment obligations of this Section II and subject to the conditions set forth in Section III (Right to Reopen), this judgment shall be suspended until further order of the Court;

Provided further, that the judgment shall be deemed satisfied when Global Marketing Group, Inc. (“Global”) transfers to the Commission, pursuant to the direction of Defendants in accord with directions provided by the Commission, the entire balance of all funds in merchant accounts (“Merchant Accounts”) used for settlement by Global (as the terms, “merchant account,” and “settlement” are used in the ACH Origination Agreement with Global signed by Nick Rothos, President of ACMS, Inc.(“ACH Origination Agreement”));

Provided further, that entry of this Stipulated Order shall constitute Defendants’ direction to Global to transfer said Merchant Accounts;

Provided further, that Defendants shall not construe Global’s transfer of funds pursuant to this Stipulated Order to be a violation of said ACH Origination Agreement and Defendants shall take no action or litigation against Global respecting said transfer, except such action or litigation as may be required in the event that the Commission seeks to enforce said transfer;

Provided further, that Defendants have assigned to the Commission their interest and the interest of any of their successors or assigns to any positive balance that may exist in the Merchant Accounts as of the date of entry of this Stipulated Order. Defendants shall take all necessary steps to ensure that such positive balance(s) are remitted to the Commission by wire transfer on or before thirty days after this Stipulated Order is entered, including the exercise of all legal or equitable rights or remedies that are at their disposal, or would have been at their disposal in the absence of this action. Defendants’ full cooperation with the Commission shall include, but not be limited to, promptly executing any documents necessary to effectuate any transfer of funds to the Commission or its agents or representatives. In the event that Global does not wire funds to the Commission within thirty days following the entry of this Stipulated

Order, Defendants shall take all necessary steps, in cooperation with the Commission, to assure the timely transfer of such funds to the Commission. All payments required to be made to the Commission under this Section shall be made by certified check or other guaranteed funds payable to and delivered to the Commission, or by wire transfer in accord with directions provided by the Commission;

B. All funds paid pursuant to this Section II shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including, but not limited to, consumer redress and any attendant expenses for the administration of any redress fund. If the Commission determines, in its sole discretion, that redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the practices alleged in the complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Defendants shall have no right to challenge the Commission's choice of remedies under this Section. The Commission and Defendants acknowledge and agree that this judgment for equitable monetary relief is solely remedial in nature and is not a fine, penalty, punitive assessment, or forfeiture;

C. In the event of any default on any obligation to make payment under this Section, interest, computed pursuant to 28 U.S.C. § 1961(a), shall accrue from the date of default to the date of payment, and shall immediately become due and payable; and

D. For purposes of any subsequent proceedings to enforce payments required by this Section, including, but not limited to, a non-dischargeability complaint filed in a bankruptcy proceeding, Defendants waive any right to contest any allegations in Plaintiff's complaint.

III.

RIGHT TO REOPEN: ACCURACY OF FINANCIAL STATEMENTS

IT IS FURTHER ORDERED that within five (5) business days after the date of entry of this Stipulated Order, Defendants shall each submit to the Commission truthful sworn statements (in the form shown on Appendix A to this Stipulated Order) that shall reaffirm and attest to the truthfulness, accuracy, and completeness of their financial statements dated March 17, 2004. The Commission's agreement to this Stipulated Order is expressly premised upon the financial condition of Defendants, as represented in their financial statements, which contain material information upon which the Commission relied in negotiating and agreeing upon this Stipulated Order.

If, upon motion of the Commission, the Court finds that a Defendant failed to file the sworn statements required by this Section, or that a Defendant failed to disclose any material asset, materially misrepresented the value of any asset, or made any other material misrepresentation in or omission from the financial statement, the Court shall enter judgment against such Defendant, in favor of the Commission, in the amount of \$6,546,126 (USD) (six million, five hundred forty-six thousand, one hundred twenty-six United States dollars) (the total amount of consumer injury in this case), and the entire amount of the judgment shall become immediately due and payable, less any amount already paid.

Provided, however, that in all other respects, this judgment shall remain in full force and effect, unless otherwise ordered by the Court; and *provided further,* that proceedings instituted under this Section are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including, but not limited to, contempt proceedings, or any other proceedings that the Commission or the United States might initiate to enforce this Stipulated Order.

IV.

CUSTOMER LISTS

IT IS FURTHER ORDERED that Defendants, their successors, assigns, officers, agents, servants, employees, and all other persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporate or other device, are permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, social security number, credit card number, bank account number, e-mail address, or other identifying information of any person who paid any money to or received any credit-related product, program, or service from any Defendant, or whose identifying information was obtained for the purpose of soliciting them to pay money to or receive services from any Defendant at any time prior to the date this Order is entered, in connection with the sale or rendition of the products, programs, or services referenced in the complaint. *Provided, however,* that Defendants, their successors, assigns, officers, agents, servants, employees, and all other persons or entities in active concert or participation with any of them who receives actual notice of this Order by personal service or otherwise, whether acting directly or through any corporate

or other device, may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order.

V.

ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that Defendants, within five (5) business days of receipt of this Order as entered by the Court, must each submit to the Commission a truthful sworn statement, in the form shown on Appendix B to this Order, acknowledging receipt of this Order.

VI.

COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order,

A. Within ten days of receipt of written notice from a representative of the Commission, each Defendant shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in such Defendant's possession or direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to monitor compliance with this Order by all other lawful means, including, but not limited to, the following:

1. obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;

2. posing as consumers and suppliers to: Defendants, Defendants' employees, or any other entity managed or controlled in whole or in part by Defendants, without

the necessity of identification or prior notice; *provided that nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).*

C. Defendants shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

VII.

COMPLIANCE REPORTING BY DEFENDANT

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

- A. For a period of five (5) years from the date of entry of this Order,
- I. Defendants shall each notify the Commission of the following:
- a. Any changes in Defendant's residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
- b. Any changes in Defendant's employment status (including self-employment) within ten (10) days of the date of such change. Such notice shall include the name and address of each business that Defendant is affiliated with, employed by, or performs services for; a statement of the nature of the business; and a statement of Defendant's duties and responsibilities in connection with the business;

c. Any changes in Defendant's name or use of any aliases or fictitious names; and

2. Defendant 9094-5114 Quebec, Inc., shall notify the Commission of any changes in corporate structure that may affect compliance obligations arising under this Order, including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which the Defendant learns less than thirty (30) days prior to the date such action is to take place, Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Order, Defendants shall each provide a written report to the FTC, sworn to under penalty of perjury under the laws of the United States, setting forth in detail the manner and form in which they have complied and are complying with this Order. This report shall include, but not be limited to:

1. Any changes required to be reported pursuant to Subsection A above;
2. A copy of each acknowledgment of receipt of this Order obtained by

Defendants pursuant to Section IX of this Order.

C. For the purposes of this Order, Defendants shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Director for Midwest Region
Federal Trade Commission
55 East Monroe Street, Suite 1860
Chicago, Illinois 60603

Re: *FTC v. 9094-5114 Quebec, Inc., et al.*, Civil Action No. 03 C 7486

D. For purposes of the compliance reporting required by this Section, the Commission is authorized to communicate directly with Defendants.

VIII.

MONITORING COMPLIANCE OF SALES PERSONNEL

IF IS FURTHER ORDERED that each Defendant, in connection with any business in which (1) such Defendant is the majority owner of the business or directly or indirectly manages or controls the business, and (2) the business is engaged in marketing or selling any product or service to consumers, or materially assists others engaged in these activities, is hereby permanently restrained and enjoined from:

A. Failing to take reasonable steps sufficient to monitor and ensure that all employees and independent contractors engaged in sales or other customer service functions comply with Sections I, II and III of this Order. Such steps shall include adequate monitoring of sales presentations or other calls with customers, and shall also include, at a minimum, the following: (1) listening to the oral representations made by persons engaged in sales or other customer service functions; (2) establishing a procedure for receiving and responding to consumer complaints; and (3) ascertaining the number and nature of consumer complaints regarding transactions in which each employee or independent contractor is involved;

B. Failing promptly to investigate fully any consumer complaint received by any business to which this Section applies; and

C. Failing to take corrective action with respect to any sales person whom Defendants determine is not complying with this Order, which may include training, disciplining, and/or terminating such sales person.

IX.

DISTRIBUTION OF ORDER BY DEFENDANT

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, each Defendant shall deliver a copy of this Order to the principals, officers, directors, managers and employees under such Defendant's control for any business that (1) employs or contracts for personal services from such Defendant, and (2) has responsibilities with respect to the subject matter of this Order. Defendants shall secure from each such person a signed and dated statement acknowledging receipt of the Order within thirty (30) days after the date of service of the Order or the commencement of the employment relationship.

X.

RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, for any business where (1) Defendants are the majority owners of the business or directly or indirectly manage or control the business, and where (2) the business is engaged in marketing or selling any product or service to consumers, or materially assists others engaged in these activities, Defendants and their agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from failing to create and retain the following records:

- A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- C. Customer files containing the names, addresses, telephone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;
- D. Complaint and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests; and
- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials.

XI.

RETENTION OF JURISDICTION

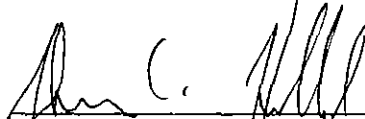
IT IS FURTHER ORDERED that the Court shall retain jurisdiction of this matter for purposes of construction, modification and enforcement of this Order.

The Commission and Defendants hereby stipulate and agree to entry of the foregoing Stipulated Order, which shall constitute a final judgment in this action.

SIGNED AND STIPULATED BY:

FEDERAL TRADE COMMISSION

Dated: September 21, 2004

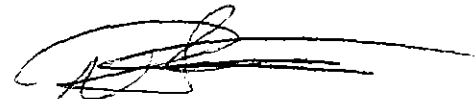


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Chicago, Illinois 60603
(312) 960-5634 [telephone]
(312) 960-5600 [facsimile]

DEFENDANTS


9094-5114 QUEBEC, INC., and
ACMS, Inc.

Dated: MAY 21st 2004



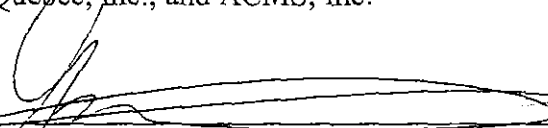
NIKOLAOS ROTHOS
as an officer of 9094-5114 Quebec, Inc., and
ACMS, Inc.

Dated: May 21st 2004




NIKOLAOS ROTHOS
individually and as an officer of 9094-5114
Quebec, Inc., and ACMS, Inc.

Dated: MAY 21st, 2004



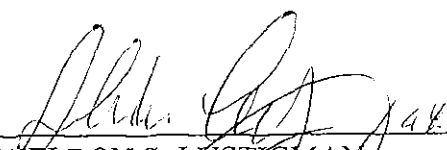
STEVE VRONTAKIS
individually and as an officer of 9094-5114
Quebec, Inc.

Dated: MAY 21 2004



ROBERTO MENDEZ
individually

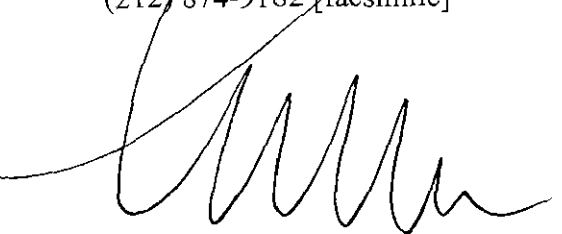
Dated: 5/26/04



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(212) 874-9182 [facsimile]

IT IS SO ORDERED.

Dated: 9/23/04



HONORABLE HARRY D. LEINENWEBER
United States District Judge

APPENDIX B
to *Federal Trade Commission v. 9094-5114, Inc., et al.*,
Stipulated Order for Permanent Injunction and Final Judgment

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

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	Civil Action No. 03 C 7486
)	Judge Leinenweber
v.)	Magistrate Judge Schenkier
)	
9094-5114 QUEBEC, INC., <i>et al.</i> ,)	
)	
Defendants.)	
)	

[Name of defendant], being duly sworn, hereby states and affirms as follows:

1. My name is _____. My current residence address is _____.

I am a citizen of _____ and am over the age of eighteen. I have personal knowledge of the facts set forth in this Affidavit.

2. I am a defendant in *Federal Trade Commission v. 9094-5114 Quebec, Inc., et al.*, Civil Action No. 03 C 7486 (United States District Court for the Northern District of Illinois).

3. On _____, I received a copy of the Stipulated Order for Permanent Injunction and Final Judgment, which was signed by the Honorable Harry D. Leinenweber, United States District Court Judge, and entered by the Court on _____.

_____ A true and correct copy of the Order I received is appended to this Affidavit.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on _____, at _____.
[date] [city and state/province]

[Full name of Defendant]

State/Province of _____, City of _____

Subscribed and sworn to before me
this __ day of _____, 2004.

Notary Public
My Commission Expires:
