

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

_____)
FEDERAL TRADE COMMISSION,)

Plaintiff,)

v.)

ASIA PACIFIC TELECOM, INC, a foreign)
corporation, also d/b/a ASIA PACIFIC)
NETWORKS, *et al.*,)

Defendants.)
_____)

Case No. 10 C 3168

Magistrate Judge Morton Denlow

**STIPULATED FINAL JUDGEMENT AND ORDER FOR PERMANENT INJUNCTION
AGAINST DEFENDANTS JOHAN HENDRIK SMIT DUYZENTKUNST, JANNEKE
BAKKER-SMIT DUYZENTKUNST, SBN PERIPHERALS, INC., AND REPO, B.V.**

Plaintiff Federal Trade Commission (“FTC” or “Commission”) filed 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. §§ 6101-6108, to secure temporary, preliminary, and permanent injunctive relief, restitution, disgorgement of ill-gotten gains, and other equitable relief for Defendants’ acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and in violation of the FTC’s Trade Regulation Rule entitled “Telemarketing Sales Rule” (“TSR”), 16 C.F.R. Part 310.

Plaintiff and Defendants Johan Hendrik Smit Duyzentkunst, Janneke Bakker-Smit Duyzentkunst, SBN Peripherals, Inc., and Repo, B.V. (“Stipulating Defendants”), by and through their attorneys, have agreed to entry of this Stipulated Final Judgment and Order for Permanent Injunction (“Order”) by this Court in order to resolve all claims against Stipulating

Defendants in this action. Plaintiff and Stipulating Defendants have consented to entry of this Order without trial or adjudication of any issue of law or fact herein.

NOW THEREFORE, Plaintiff and Stipulating Defendants, having requested the Court to enter this Order, and the Court having considered the Order reached between the parties, **IT IS HEREBY 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. §§ 6101-6108, and the TSR, 16 C.F.R. Part 310. Pursuant to these Sections of the FTC Act and the Telemarketing Act, 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(a), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b), and 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b).

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

4. Venue in the United States District Court for the Northern District of Illinois is proper pursuant to 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b) and (c).

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

6. Stipulating Defendants, without admitting the allegations set forth in the Commission's complaint and without any admission or finding of liability thereunder, agree to entry of this Order.

7. Stipulating Defendants waive: (a) all rights to seek judicial review or otherwise challenge or contest the validity of this Order; (b) any claim that they may have against the Commission, its employees, representatives, or agents; (c) all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, *as amended by* Pub. L. 104-121, 110 Stat. 847, 863-64 (1996); and (d) any rights to attorneys' fees that may arise under said provision of law. The Commission and Stipulating Defendants shall each bear their own costs and attorney's fees incurred in this action.

8. This Order is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.

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

DEFINITIONS

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

1. **"Asset"** or **"Assets"** means any legal or equitable interest in, right to, or claim to, any real or 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, chattels, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and all cash, wherever located.
2. **"Assisting others"** includes, but is not limited to: (1) performing customer service functions, including, but not limited to, receiving or responding to consumer complaints; (2) formulating or providing, or arranging for the formulation or provision of, any sales script or other marketing material; (3)

providing names of, or assisting in the generation of, potential customers; (4) performing or providing marketing or billing services of any kind; (5) acting as an officer or director of a business entity; or (6) providing telemarketing services.

3. **“California Tax Deficiency”** means the final amount assessed by the State of California Franchise Tax Board against the Individual Defendants for taxable year 2005 for account numbers 1216347636 and 1216403601.
4. **“Corporate Defendants”** means Asia Pacific Telecom, Inc., SBN Peripherals, Inc., Repo, B.V. and their successors and assigns, as well as any subsidiaries and any fictitious business entities or business names created or used by these entities, or any of them.
5. **“Defendants”** means all of the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination.
6. **“Document”** or **“documents”** 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. **“Individual Defendant”** or **“Individual Defendants”** means Johan Hendrik Smit Duyzentkunst (“Smit”) and Janneke Bakker-Smit Duyzentkunst (“Bakker-Smit”), and by whatever other names each may be known.

8. **“Investment Properties”** means:

- a. The Stipulating Defendants’ 100% ownership interest in six (6) parcels of undeveloped land located in Calabasas, California with the following Los Angeles County Assessor Identification Numbers:
 - i. 2072-024-015;
 - ii. 2072-027-003;
 - iii. 2072-024-005;
 - iv. 2072-030-010;
 - v. 2072-024-016;
 - vi. 2072-025-014;
 - vii. 2072-025-015;
 - viii. 2072-025-016;
- b. The Stipulating Defendants’ 50% ownership interest in real property identified in Item 15 of their sworn financial statements dated August 26, 2010 located at 3219E Camelback Road, Phoenix Arizona 851018;
- c. The Stipulating Defendants’ 50% ownership interest in the partnership that owns the commercial office building identified in Item 15 of their sworn financial statements dated August 26, 2010, known as the Marianas Business Plaza, located at Naura Loop, Susupe, Saipan, Northern Marianas Islands 96950; and
- d. 2003 Newmar Essex Recreational Vehicle titled to SBN Peripherals identified in its sworn financial statement dated August 26, 2010.

9. **“Investment Property Net Proceeds”** means the total proceeds from the sale or liquidation of the Investment Properties, individually or collectively, after payment of obligations due and owing to any and all valid mortgage holders and other perfected lien holders, any property taxes owed, any adjustments in favor of the buyer(s) required to sell the Real Property, and any reasonable and customary real estate agent fees and closing costs, but not including the Receiver’s own fees and costs unless the California Tax Deficiency has been fully satisfied, incurred in connection with such sale or auction that have been approved in advance by counsel for the FTC, which approval shall not be unreasonably withheld.
10. **“Outbound telephone call”** means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.
11. **“Person”** or **“persons”** means a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.
12. **“Personal Property”** means Stipulating Defendants’ 100% interest in the following property identified in their sworn financial statements dated August 26, 2010:
- a. 2003 Chevrolet Corvette titled to Individual Defendants, California Registration 5BWN511;
 - b. 2005 BMW X5 titled to SBN Peripherals;
 - c. 2004 Dodge Durango titled to SBN Peripherals;; and
 - d. All IVR computers and parts titled to SBN Peripherals.

13. **“Plaintiff”** means the Federal Trade Commission (“FTC” or “Commission”).
14. **“Receiver”** means Robb Evans & Associates, LLC.
15. **“Real Property”** means the real property situated at 3230 Cornell Road, Agora, California 91301, together with the dwelling house, other structures, improvements, appurtenances, hereditaments, and other rights appertaining or belonging thereto, also known as Los Angeles County Office of the Assessor ID Number 2063-027-026, and whose Property Boundary Description is BK 79 P 96-98 OF P M LOT 4.
16. **“Real Property Net Proceeds”** means the total proceeds from the sale or auction of the Real Property, after payment of obligations due and owing to any and all valid mortgage holders and other perfected lien holders, any property taxes owed, any adjustments in favor of the buyer(s) required to sell the Real Property, and any reasonable and customary real estate agent fees and closing costs incurred in connection with such sale or auction that have been approved in advance by counsel for the FTC, which approval shall not be unreasonably withheld.
17. **“Stipulating Defendants”** means Johan Hendrik Smit Duyzentkunst, Janneke Bakker-Smit Duyzentkunst, SBN Peripherals, Inc., and Repo, B.V., by whatever names they may be known, and any subsidiaries, successors, assigns, and any fictitious business entities or business names created or used by any of them.
18. **“Stipulating Corporate Defendants”** means SBN Peripherals, Inc., and Repo, B.V., by whatever names they may be known, and any subsidiaries, successors, assigns, and any fictitious business entities or business names created or used by any of them.

19. “**Telemarketing**” means a plan, program, or campaign (whether or not covered by the Telemarketing Sales Rule, 16 C.F.R. Part 310) that is conducted to induce the purchase of goods or services or a charitable contribution by the use of one or more telephones.

I.

PERMANENT BAN ON TELEMARKETING

IT IS THEREFORE ORDERED that Stipulating Defendants, whether acting directly or through any person, business entity, trust, corporation, partnership, limited liability company, subsidiary, division, or other device, or any of them, are hereby permanently restrained and enjoined from telemarketing, or assisting others engaged in telemarketing.

II.

PROHIBITED BUSINESS ACTIVITIES

IT IS FURTHER ORDERED that Stipulating Defendants and their officers, agents, servants, employees, and attorneys, and all other persons 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 trust, corporation, subsidiary, division, or other device, or any of them, in connection with the advertising, promotion, marketing, offering for sale, or sale of any good or service, are hereby restrained and enjoined from misrepresenting, or assisting others in misrepresenting, directly or indirectly, expressly or by implication, any material fact, including, but not limited to:

- A. That Defendants or any other person possesses specific information about a consumer’s credit card or automobile warranty;

- B. That Defendants or any other person is affiliated with the manufacturer or dealer of a consumer's automobile or the issuer of a consumer's credit card, or is affiliated with, endorsed or approved by, or otherwise connected to any other person; government entity; public, non-profit, or other non-commercial program; or any other program;
- C. That expiration of a consumer's original automobile warranty is imminent;
- D. That consumers will substantially lower their credit card interest rates in all or virtually all instances;
- E. That consumers will save thousands of dollars in a short time in all or virtually all instances as a result of lowered credit card interest rates;
- F. That consumers have won or been specially selected to receive a vacation travel package;
- G. The total cost to purchase, receive, or use the goods or services;
- H. Any material restrictions, limitations, or conditions to purchase, receive, or use the goods or services;
- I. Any material aspect of the nature or terms of a refund, cancellation, exchange, or repurchase policy for the goods or services; and
- J. Any material aspect of the performance, efficacy, nature, or central characteristics of the goods or services.

Provided, however, that nothing in this Section or in any other Section of this Order shall void the ban provision set forth in Section I of this Order.

III.

MONETARY JUDGMENT

IT IS FURTHER ORDERED that judgment is hereby entered in favor of the Commission and against Stipulating Defendants, jointly and severally, for equitable monetary relief, including, but not limited to, consumer redress, in the amount of Five Million Three Hundred and Thirty Thousand Dollars (\$5,330,000), an estimate of the total amount of consumer injury caused by the activities alleged in the Commission's complaint; *provided, however*, that the judgment for equitable monetary relief shall be suspended upon the satisfaction by Stipulating Defendants of the obligations imposed by Subsections A through C(3) and E of this Section, and subject to the conditions set forth in Section IV of this Order:

A. Stipulating Defendants and the Receiver shall take the following steps with respect to the Investment Properties:

1. Within ten (10) days from the date of entry of this Order, Stipulating Defendants shall cause to be transferred to the Receiver or a Qualified Settlement Fund administered by the Receiver, in a form satisfactory to the Receiver, title to the Investment Properties;
2. The Receiver shall, within six (6) months from the date of entry of this Order, make all good faith efforts to sell the Investment Properties. The Receiver shall ensure that the Investment Properties are appraised and listed for sale at or above the appraised fair market value, and the proposed sale price shall be subject to the approval of FTC counsel, which approval shall not be unreasonably withheld. If the proposed sale price is less than 67 percent of the appraised value, the proposed sale price shall

be subject to Court approval. The Receiver shall provide Defendant Smit a complete copy of each sales contract for the Investment Properties within twenty-four (24) hours of execution;

3. In the event that any of the Investment Properties have not sold or been placed in a bona fide escrow within six (6) months from the date of entry of this Order, the Receiver shall undertake the necessary steps to auction such properties, including, but not limited to, retaining an auction company and directing it to sell all interests in the remaining Investment Properties at a public auction to occur within eight (8) months from the date of entry of this Order. With respect to any such property that is in a bona fide escrow within six (6) months from the date of entry of this Order, but has not closed, the property shall close within three (3) months thereafter or such other time as the Court may direct, or the Receiver shall undertake the necessary steps to auction the property, including, but not limited to, retaining an auction company and directing it to sell all interests in the property at a public auction; and
4. Within ten (10) business days of the sale or liquidation at auction of the last of the Investment Properties, the Receiver shall transfer all or a portion of the Investment Property Net Proceeds to the State of California Franchise Tax Board for the purpose of settling the California Tax Deficiency. If the value of the Investment Property Net Proceeds exceeds the California Tax Deficiency, the Receiver shall transfer the excess amount to the Commission or its designated agent by wire transfer in

accordance with wiring instructions to be provided by counsel for the
FTC.

B. Within ten (10) days from the date of entry of this Order, Stipulating Defendants shall cause possession of the Personal Property to be transferred to the Receiver. Within five (5) days of a request from the Receiver, Stipulating Defendants shall cause to be transferred to the Receiver, or such other transferee as the Receiver shall designate, in a form satisfactory to the Receiver, title to the Personal Property. The Receiver shall, within two (2) months from the date of entry of this Order, sell or liquidate the Personal Property, and transfer the proceeds, after payment of any reasonable and customary fees incurred in connection with such sale or liquidation that have been approved in advance by counsel for the FTC, to the Commission or its designated agent by wire transfer in accordance with wiring instructions to be provided by counsel for the FTC.

C. Individual Defendants shall take the following steps with respect to the Real Property:

1. Individual Defendants hereby grant to the Commission a voluntary lien and security interest in the amount of \$375,000 on the Real Property;
2. Individual Defendants shall cooperate fully with the Commission and be responsible (at their expense) for preparing, executing, and recording the necessary documents and taking any other actions necessary to perfect the Commission's voluntary lien and security interest in the Real Property. Individual Defendants shall deliver to the Commission copies of all recording documents used to perfect the Commission's voluntary lien on the Real Property within ten (10) days from the date of entry of this Order;

3. Individual Defendants represent and acknowledge that the Commission is relying on the material representations that they are the sole owners of the Real Property; that title to the Real Property is marketable; and that the Real Property is not encumbered by any lien, mortgage, deed of trust, assignment, pledge, security interest, or other interest except for the liens, mortgages, or security interests identified in Individual Defendants' sworn financial statement dated August 26, 2010;
4. Upon close of escrow after sale of the Real Property, Individual Defendants, or the designated escrow, shall transfer all Real Property Net Proceeds, not to exceed \$375,000, to the Commission or its designated agent by wire transfer in accordance with wiring instructions to be provided by counsel for the FTC; and
5. Individual Defendants shall be responsible for timely payment of all taxes, fees, association dues, and all other attendant expenses related to the maintenance and ownership of the Real Property until such time as the property is sold. Individual Defendants further are required to continue and to maintain in full force insurance coverage on the Real Property.

D. Within ten (10) days from the date of entry of this Order, the Receiver shall transfer Ninety-Three Thousand One Hundred Twenty-Three Dollars (\$93,123) held in accounts in the name of, or controlled by, Stipulating Corporate Defendants to the Commission or its designated agent by wire transfer in accordance with wiring instructions to be provided by counsel for the FTC.

E. Stipulating Defendants shall cooperate fully with the Receiver and take such other steps as the Receiver may require to transfer to the Receiver, the Commission, or their designated agents, possession and legal and equitable title to the assets identified in Paragraphs A through C of this Section, including executing any documents, procuring the signatures of any person or entity under control of the Stipulating Defendants, providing access to the Investment Properties and Personal Property, providing any necessary information, and turning over the Investment Properties and Personal Property.

F. Stipulating Defendants relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law. Stipulating Defendants shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise. Stipulating Defendants further disclaim any right or claim to the One Million Two Hundred Thousand Dollars (\$1,200,000) transferred by Defendant Asia Pacific Telecom, Inc. to the Receiver.

G. Stipulating Defendants agree that the facts as alleged in the Complaint filed in this action shall be taken as true without further proof in any bankruptcy case or subsequent civil litigation pursued by the Commission to enforce its rights to any payment or money judgment pursuant to this Order, including but not limited to a nondischargeability complaint in any bankruptcy case. Stipulating Defendants further stipulate and agree that the facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and that this Order shall have collateral estoppel effect for such purposes. Notwithstanding anything to the contrary in this Order, the Stipulating Defendants expressly retain the right and ability to contest all or any of the facts alleged in the Complaint filed in this action in any proceeding to which the FTC is not a party.

H. Time is of the essence for the payments and other actions specified above. In the event of any default by Stipulating Defendants on any obligation imposed under this Section, including, but not limited to, the failure to timely and completely fulfill their payment obligations:

1. The judgment imposed herein will not be suspended, and the full amount of that judgment shall immediately become due and payable, plus interest from the date of entry of this Order pursuant to 28 U.S.C. § 1961, as amended, less any amounts already paid; and

2. The Commission shall be entitled to immediately exercise any and all rights and remedies against Stipulating Defendants and their assets to collect the full amount of the judgment and interest thereon, less any amounts already paid.

I. All funds paid pursuant to this Order 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 such equitable relief. Stipulating Defendants shall cooperate fully to assist the Commission in identifying consumers who may be entitled to redress pursuant to this Order. If the Commission determines, in its sole discretion, that direct 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 Defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Stipulating Defendants shall have no right to challenge the Commission's choice of remedies under this Section. Stipulating Defendants shall have no right to contest the manner of distribution chosen by the

Commission. This judgment for equitable monetary relief is solely remedial in nature and is not a fine, penalty, punitive assessment, or forfeiture.

J. In accordance with 31 U.S.C. § 7701, as amended, Stipulating Defendants are hereby required, unless they already have done so, to furnish to the Commission their respective taxpayer identifying numbers (social security numbers or employer identification numbers), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of Stipulating Defendants' relationship with the government. Stipulating Defendants are further required, unless they have already done so, to provide the Commission with clear, legible and full-size photocopies of all valid passports that they possess, which will be used for reporting and compliance purposes.

K. 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 any other proceedings the Commission may initiate to enforce this Order.

L. Except as expressly provided herein, the Receiver shall not be required to seek or obtain any further Court order or approval with respect to the sale of the Investment Properties and Personal Property.

IV.

RIGHT TO REOPEN

IT IS FURTHER ORDERED that:

A. Plaintiff's agreement to this Order is expressly premised upon the truthfulness, accuracy, and completeness of Stipulating Defendants' financial condition, as represented in the financial statements signed by them dated August 26, 2010, and provided to the Commission, including all attachments and supplemental information provided to the FTC in an email from

defense counsel dated November 29, 2010, which contain material information upon which Plaintiff relied in negotiating and agreeing to the terms of this Order;

B. If, upon motion of the FTC, the Court finds that any Stipulating 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 Stipulating Defendant's financial statement or supporting documents, the Court will lift the suspension of the judgment against such Stipulating Defendant, in favor of the Commission, and the entire judgement (less any amounts already paid) shall become immediately due and payable as to that Stipulating Defendant. *Provided, however*, that, in all other respects, this Order shall remain in full force and effect, unless otherwise ordered by the Court; and

C. Any proceedings instituted under this Section shall be 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 Order. For purposes of this Section, Stipulating Defendants waive any right to contest any of the allegations in the Commission's complaint.

V.

PROHIBITIONS REGARDING CONSUMER INFORMATION

IT IS FURTHER ORDERED that Stipulating Defendants, and their officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, are hereby permanently restrained and enjoined from:

A. Disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, social security number, other identifying information,

or any data that enables access to a customer's account (including credit card, bank account, or other financial account), of any person which any Defendant obtained prior to entry of this Order in connection with providing telemarketing services to initiate outbound telephone calls that deliver pre-recorded messages; and

B. Failing to dispose of such customer information in all forms in their possession, custody, or control within thirty (30) days after entry of this Order. Disposal shall be by means that protect against unauthorized access to the customer information, such as by burning, pulverizing, or shredding any papers, and by erasing or destroying any electronic media, to ensure that the customer information cannot practicably be read or reconstructed.

Provided, however, that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by a law, regulation, or court order.

VI.

COOPERATION WITH FTC COUNSEL

IT IS FURTHER ORDERED that Stipulating Defendants shall, in connection with this action or any subsequent investigations related to, or associated with, the transactions or the occurrences that are the subject of the FTC's Complaint, cooperate in good faith with the FTC and appear, or cause their officers, employees, representatives, or agents to appear, at such places and times as the FTC shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by the FTC. If requested in writing by the FTC, Stipulating Defendants shall appear, or cause their officers, employees, representatives, or agents to appear, and provide truthful testimony in any trial, deposition, or other proceeding related to or associated with the

transactions or the occurrences that are the subject of the Complaint, without the service of a subpoena.

VII.

ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Stipulating Defendants obtain acknowledgments of receipt of this Order:

A. Each Stipulating Defendant, within 7 days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For ten (10) years after entry of this Order, each Individual Defendant for any business that such Defendant, individually or collectively with any other Defendant, is the majority owner or directly or indirectly controls, and each Stipulating Corporate Defendant, must deliver a copy of this Order to: (1) all principals, officers, directors, and managers; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. To all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which a Stipulating Defendant delivered a copy of this Order, that Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

VIII.

COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Stipulating Defendants make timely submissions to the Commission:

A. 180 days after entry of this Order, and annually thereafter for ten (10) years, each Stipulating Defendant must submit a compliance report, sworn under penalty of perjury.

1. Each Stipulating Defendant must: (a) designate at least one telephone number and an email, physical, and postal address as points of contact, which representatives of the Commission may use to communicate with Stipulating Defendant; (b) identify all of that Stipulating Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the products and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Individual Defendants must describe if they know or should know due to their own involvement); (d) describe in detail whether and how that Stipulating Defendant is in compliance with each Section of this Order; (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission; and (f) either certify that the Stipulating Defendant has not engaged in any telemarketing-related conduct banned by Section I of this Order, such as through the execution and submission to the Commission of the Certification attached to this Order, or provide a full written explanation

of any telemarketing-related conduct engaged in by the Stipulating Defendant.

2. Additionally, each Individual Defendant must: (a) identify all telephone numbers and all email, Internet, physical, and postal addresses, including all residences; (b) identify all titles and roles in all business activities, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest; and (c) describe in detail such Defendant's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For twenty (20) years following entry of this Order, each Stipulating Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Each Stipulating Defendant must report any change in: (a) any designated point of contact; or (b) the structure of any Stipulating Corporate Defendant or any entity that any Stipulating Defendant has any ownership interest in or directly or indirectly controls that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.
2. Additionally, each Individual Defendant must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which such

Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest, and identify its name, physical address, and Internet address, if any.

C. Each Stipulating Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or any similar proceeding by or against such Stipulating Defendant within 14 days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____" and supplying the date, signatory's full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *FTC v. Asia Pacific Telecom, Inc., X100035*.

IX.

RECORDKEEPING

IT IS FURTHER ORDERED that Stipulating Defendants must create certain records for twenty (20) years after entry of the Order, and retain each such record for 5 years.

Specifically, each Stipulating Corporate Defendant and each Individual Defendant for any

business in which that Defendant, individually or collectively with any other Defendants, is a majority owner or directly or indirectly controls, must maintain the following records:

A. Accounting records showing the revenues from all goods or services sold, all costs incurred in generating those revenues, and the resulting net profit or loss;

B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name, addresses, and telephone numbers; job title or position; dates of service; and, if applicable, the reason for termination;

C. Customer files showing the names, addresses, telephone numbers, dollar amounts paid, and the quantity and description of goods or services purchased;

D. Complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;

E. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission ;and

F. A copy of each advertisement or other marketing material.

X.

COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Stipulating Defendants' compliance with this Order, including the financial representations upon which part of the judgment was suspended and any failure to transfer any assets as required by this Order:

A. Within 14 days of receipt of a written request from a representative of the Commission, each Stipulating Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents, for inspection and copying. The Commission is also authorized to

obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69, provided that, Defendants, after attempting to resolve a dispute without court action and for good cause shown, may file a motion with this Court seeking an order including one or more of the protections set forth in Rule 26(c).

B. For matters concerning this Order, the Commission is authorized to communicate directly with each Stipulating Defendant. Stipulating Defendants must permit representatives of the Commission to interview any employee or other person affiliated with any Stipulating Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. The Commission may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to Stipulating Defendants or any individual or entity affiliated with Stipulating Defendants, without the necessity of identification or prior notice. Nothing in this Order limits 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.

XI.

DISSOLUTION OF ASSET FREEZE

IT IS FURTHER ORDERED that the freeze on the assets of Individual Defendants shall remain in effect until Stipulating Defendants have complied with all requirements set forth in Section III.A(1), B, C(1-3), and E of this Order; *provided, however*, that Stipulating Defendants, with the express written consent of counsel for the Commission, may transfer funds to the extent necessary to make all payments required by Section III. Once Stipulating

Defendants have fully complied with the requirements of Section III.A(1), B, C(1-3), and E, the freeze against the assets of Individual Defendants shall be lifted permanently. A financial institution shall be entitled to rely upon a letter from Plaintiff stating that the freeze on the assets of Individual Defendants has been lifted.

The freeze against the assets of the Corporate Defendants shall remain in effect until such time as the Receiver receives payment of all Court-approved fees and expenses of the Receiver and the Receiver is discharged by the Court.

XII.

COMPLETION OF RECEIVERSHIP

IT IS FURTHER ORDERED that the appointment of Robb Evans & Associates, LLC pursuant to previous orders of this Court is hereby continued. The Receiver's duties pursuant to the Preliminary Injunction are modified as described herein.

A. The Receiver is directed to accomplish the following:

1. Sell, liquidate, or auction any marketable assets of Stipulating Corporate Defendants, including, but not limited to, the assets listed in Section III of this Order. For purposes of performing this task, the Receiver is authorized to obtain a tax identification number for a Qualified Settlement Fund as described in Internal Revenue Code Section 468B and Treasury Regulation Section 1.468-1.
2. Perform all acts necessary to protect, conserve, preserve, and prevent waste or dissipation of assets of Corporate Defendants, including: a) funds

related to Defendant Asia Pacific Telecom, Inc., and b) the assets to be sold pursuant to Section III above;

3. Prepare and submit a final report, as necessary, to this Court and to the Plaintiff, describing the Receiver's efforts to comply with the terms of this Order, and recommending any additional action required by this Court; and
4. Distribute to the Commission any remaining liquid assets at the conclusion of the Receiver's duties without further order of the Court.

B. The Receiver is entitled to reasonable compensation for the performance of its duties pursuant to this Order and for all duties performed pursuant to the Preliminary Injunction from the existing assets of the Stipulating Defendants in the receivership estate subject to Section III.A.4 of this Order and, if necessary, from the assets of Asia Pacific in the receivership estate, but subject to agreement with the Commission, and such agreement shall not be unreasonably withheld. No liens will be imposed on Stipulating Defendants' assets as a result of the actions taken by the Receiver pursuant to this Order.

C. Upon the final sale of all assets and the transfer of any funds to the Commission pursuant to this Section, the duties of the Receiver over Stipulating Corporate Defendants shall terminate, at which time the Receiver shall return all original business records in its possession, and copies of any accounting materials the Receiver prepared in reviewing those original business records, to Stipulating Corporate Defendants.

XIII.

SEVERABILITY

IT IS FURTHER ORDERED that the provisions of this Order are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions shall remain in full force and effect.

XIV.

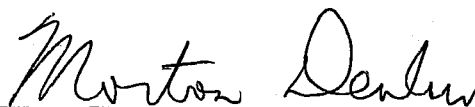
RETENTION OF JURISDICTION

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

IT IS SO ORDERED.

Dated:

March 22, 2012



HONORABLE MORTON DENLOW
United States Magistrate Judge

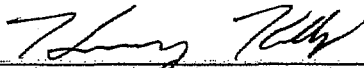
SO STIPULATED AND AGREED:



STEVEN WERNIKOFF
JAMES DAVIS
Attorneys for Plaintiff
Federal Trade Commission

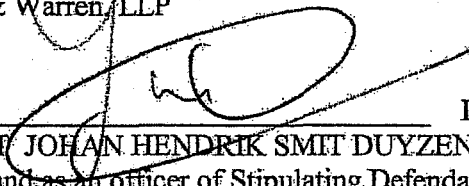
Date:

MARCH 21, 2012



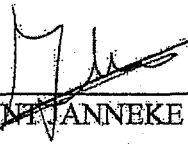
Date: 12-31-11

HENRY T. KELLY
MICHAEL DOVER
Attorneys for Stipulating Defendants
Kelley Drye & Warren, LLP



Date: 12/14/2011

DEFENDANT JOHAN HENDRIK SMIT DUYZENTKUNST,
Individually, and as an officer of Stipulating Defendants SBN Peripherals and Repo B.V.



Date: 12/14/11

DEFENDANT JANNEKE BAKKER-SMIT DUYZENTKUNST

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

| | | |
|--------------------------------------|---|--------------------------------|
| FEDERAL TRADE COMMISSION, |) | |
| |) | |
| Plaintiff, |) | |
| |) | Case No. 10 C 3168 |
| v. |) | |
| |) | Magistrate Judge Morton Denlow |
| ASIA PACIFIC TELECOM, INC, a foreign |) | |
| corporation, also d/b/a ASIA PACIFIC |) | ACKNOWLEDGMENT |
| NETWORKS, <i>et al.</i> , |) | BY AFFIDAVIT OF |
| |) | COMPLIANCE |
| Defendants. |) | |

1. My name is [Johan Hendrik Smit Duyzentkunst/Janneke Bakker-Smit Duyzentkunst]. I am over the age of eighteen, and I have personal knowledge of the facts set forth in this Acknowledgment.

2. I was a Defendant and in *FTC v. Asia Pacific Telecom, Inc., et al.*, which is the court case listed near the top of this page.

3. On _____, 201__, I received a copy of the Stipulated Final Judgement and Order for Permanent Injunction Against Defendants Johan Hendrik Smit Duyzentkunst, Janneke Bakker-Smit Duyzentkunst, SBN Peripherals, Inc., and Repo, B.V. ("the Order"), which was signed by the Honorable Morton Denlow and entered by the Court on _____, 201__.

4. I am one of the Stipulating Defendants subject to the Order. Section I of the Order states as follows:

I. PERMANENT BAN ON TELEMARKETING

IT IS THEREFORE ORDERED that Stipulating Defendants, whether acting directly or through any person, business entity, trust, corporation, partnership, limited liability company, subsidiary, division, or other device, or any of them, are hereby permanently restrained and enjoined from telemarketing, or assisting others engaged in telemarketing.

Additionally, the Order states: "telemarketing means a plan, program, or campaign (whether or not covered by the Telemarketing Sales Rule, 16 C.F.R. Part 310) that is conducted to induce the purchase of goods or services or a charitable contribution by the use of one or more telephones."

4. I hereby certify that during the past year, I have not engaged in any telemarketing-related conduct banned by Section I of the Order.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on _____, 201__.

[[Johan Hendrik Smit Duyzentkunst/Janneke
Bakker-Smit Duyzentkunst]

State of _____, City of _____

Subscribed and sworn to before me
this ____ day of _____, 201__.

Notary Public

My commission expires:
