

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

9131-4740 QUÉBEC, INC., et al.,

Defendants.

CIVIL NO. 1:07-cv-2242

Judge Polster

**STIPULATED FINAL JUDGMENT INCLUDING AN INJUNCTION,
CONSUMER REDRESS, AND OTHER EQUITABLE RELIEF**

Plaintiff, Federal Trade Commission (FTC or Commission), initiated this lawsuit by filing a Complaint seeking an injunction, consumer redress, and other equitable relief. The Complaint alleges that Defendants, 9131-4740 Québec, Inc., JPE Holdings, Inc., Jean-Pierre Brault, and Eli Foner, violated Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 5(a), and the FTC's Telemarketing Sales Rule, 16 C.F.R. Part 310. The parties, represented by the attorneys whose names appear below, have agreed to settle this matter upon the terms and conditions contained in this STIPULATED FINAL JUDGMENT INCLUDING AN INJUNCTION, CONSUMER REDRESS, AND OTHER EQUITABLE RELIEF, without adjudication of any issue of law or fact except as stated below and without Defendants admitting liability or wrongdoing for the conduct alleged in the Complaint. Defendants expressly deny any wrongdoing alleged in the Complaint. Therefore, it is ORDERED, ADJUDGED, AND DECREED as follows:

FINDINGS

1. The FTC initiated this action under Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing Act, 15 U.S.C. §§ 6101-6108. The Complaint seeks a permanent injunction, rescission of contracts and restitution, disgorgement of ill-gotten gains and other equitable relief for Defendants' alleged deceptive acts or practices in connection with the sale and offering for sale of telephone-calling cards. Sections 13(b) and 19 of the FTC Act authorize the Commission to seek the requested relief, and the Complaint states a claim upon which relief can be granted.

2. This Court has jurisdiction over the subject matter of this case and personal jurisdiction over Defendants. Venue in the Northern District of Ohio is proper.

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

4. Defendants waive all rights they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, in connection with this matter. Defendants also waive all rights they may have to seek judicial review of or otherwise to challenge or contest the validity of this Judgment.

5. Defendants and the Commission agree that entry of this Order by this Court resolves all matters alleged in the Complaint in this action.

6. This action and the relief awarded in this Stipulated Final Judgment are in addition to, and not in lieu of, other remedies that may be provided by law, whether civil or criminal.

7. Entry of this Stipulated Final Judgment is in the public interest.

8. This action is the "commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power," as set forth in 11 U.S.C. § 362(b)(4). Any bankruptcy petition, voluntary or involuntary, does not automatically stay this action.

9. Any bankruptcy petition, voluntary or involuntary, does not divest this Court of jurisdiction to enter this Stipulated Consent Judgment.

10. After Plaintiff filed its Complaint in this matter, Defendant Eli Foner terminated all employment, financial, and other interests in Defendant 9131-4740 Quebec, Inc., and he no longer has any authority to act for or on behalf of that entity. He still has authority to act for or on behalf of Defendant JPE Holdings, Inc.

11. After Plaintiff filed its Complaint in this matter, Defendant Jean-Pierre Brault terminated all employment, financial, and other interests in Defendant JPE Holdings, Inc., and he no longer has any authority to act for or on behalf of that entity. He still has authority to act for or on behalf of Defendant 9131-4740 Québec, Inc.

DEFINITIONS

12. The following definitions shall apply to this Stipulated Final Judgment:
- a. **“Corporate Defendants”** means 9131-4740 Québec, Inc., and JPE Holdings, Inc., and their successors and assigns.
 - b. **“Customer”** means any person who is or may be required to pay for goods or services offered through telemarketers.
 - c. **“Defendants”** means Corporate Defendants and Individual Defendants.
 - d. **“Established Business Relationship”** means a relationship between a seller and a person based on: (a) the person's purchase, rental, or lease of the seller's goods or services or a financial transaction between the person and the seller, within the eighteen (18) months immediately preceding the date of a telemarketing call; or (b) the person's inquiry or application regarding a product or service offered by the seller, within the three (3) months immediately preceding the date of a telemarketing call.

- e. **“Individual Defendants”** means Jean-Pierre Brault individually and as an officer of 9131-4740 Québec, Inc. and Eli Foner individually and as an officer of JPE Holdings, Inc.
- f. **“National Do Not Call Registry”** means the do not call registry maintained by the Federal Trade Commission by virtue of 16 C.F.R. § 310.4(b)(1)(iii)(B).
- g. **“Outbound telephone call”** means a telephone call initiated by a person to induce the purchase of goods or services or to solicit a charitable contribution.
- h. **“Person”** means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.
- i. **“Seller”** means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration, regardless of whether such person is under the jurisdiction of the Commission.
- j. **“Telemarketing”** means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which: contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only

receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term "further solicitation" does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call or in a substantially similar catalog.

- k. **"Telemarketing Sales Rule"** or **"Rule"** means the FTC Rule entitled "Telemarketing Sales Rule," 16 C.F.R. Part 310, attached as Appendix A, or as it may be amended.

O R D E R

I. PROHIBITION ON UNFAIR OR DECEPTIVE ACTS OR PRACTICES

IT IS ORDERED that Defendants, their officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, in connection with the marketing, offering for sale, or sale of, or the refunding or promise to refund any amounts paid for, any product or service, are permanently restrained and enjoined from the following:

- A. Misrepresenting or assisting others in misrepresenting, directly or indirectly, expressly or by implication, any material fact, including but not limited to:
1. That their calls are from, on behalf of, or affiliated with, consumers' banks, credit-card companies, or other person with which the consumers have an established relationship.
 2. That consumers will receive the products Defendants promise to send, along with any other materials necessary for consumers to use or to cancel the products.

- B. Causing consumers' bank or credit-card accounts to be charged or debited without obtaining consumers' express informed consent.

II. PROHIBITION ON VIOLATING THE TELEMARKETING SALES RULE

IT IS FURTHER ORDERED that Defendants, their officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise are permanently restrained and enjoined from violating the Telemarketing Sales Rule, 16 C.F.R. § 310, as set forth in Attachment A to this Stipulated Final Judgment or as it may be amended in the future, including, but not limited to:

- A. Making, directly or indirectly, any false or misleading statements to induce any person to pay for goods or services or to induce a charitable contribution;
- B. Misrepresenting, directly or by implication, an affiliation with or endorsement by any person or government entity;
- C. Initiating or causing others to initiate an outbound telephone call to a person whose telephone number is on the National Do Not Call Registry unless
 1. The seller has obtained the express written agreement of such person to place calls to that person. The written agreement must clearly evidence the person's authorization that calls made by or on behalf of a specific party may be placed to that person, and must include the telephone number to which the calls may be place and the signature of the person; or
 2. The seller can prove that it has an established business relationship with the person and the person has not stated that he or she does not wish to receive outbound telephone calls from the seller; and

- D. Initiating or causing others to initiate outbound telephone calls to a telephone number within a given area code without first paying, directly or through another person, the annual fee for accessing telephone numbers within that area code that are included on the National Do Not Call Registry.

III. MONETARY RELIEF AND CONSUMER REDRESS

- A. **IT IS FURTHER ORDERED** that judgment is entered against Defendants, jointly and severally, for equitable monetary relief in the amount of three million four hundred sixty thousand dollars (\$3,460,000.00) in United States Currency; **PROVIDED, HOWEVER**, that this monetary judgment shall be suspended upon the satisfaction of Subpart B, below, and subject to Section IV of this Order.
- B. **IT IS FURTHER ORDERED** that Defendants, jointly and severally, shall pay to the Plaintiff as equitable monetary relief, including but not limited to consumer redress, disgorgement, and the expenses of administering any redress fund, the amount of ten thousand dollars (\$10,000) in United States currency within thirty (30) days of Entry of this Order.
1. Payment of all funds due under this Stipulated Final Judgment shall be made by a wire transfer, by a certified or cashier's check, or by a check drawn on Defendants' attorney's trust account, with any check being made payable to the Commission or to such agent as the Commission may direct. The Commission shall notify the Court of the receipt of any payment.
 2. Once the funds described in this Subpart B are transferred to the Commission the three million four hundred sixty thousand dollar (\$3,460,000.00) judgment against Defendants shall be suspended

automatically, except as otherwise provided in this Subpart B and in Section IV of this Order.

3. **PROVIDED, HOWEVER**, that if Defendants default in making the payment required by this Subpart B, the judgment of three million four hundred sixty thousand dollars (\$3,460,000.00), less the amount of any payments made to the Commission, shall become immediately due and payable.
4. **PROVIDED FURTHER**, that if Defendants fail to meet any obligation imposed by this Section III, Defendants waive any and all rights they may otherwise have to challenge the validity, accuracy, or reasonableness of the three million four hundred sixty thousand dollar (\$3,460,000.00) judgment in any proceeding or forum in which the Commission seeks to enforce its rights under this Stipulated Final Judgment, including but not limited to a nondischargeability proceeding in any bankruptcy court.

- C. **IT IS FURTHER ORDERED** that all amounts paid in compliance with this Stipulated Final Judgment shall be deposited into a fund administered by the Commission or its agent to be used for consumer redress and any expenses related to the administration of a consumer redress program. If in the absolute discretion of the Commission direct redress to consumers is wholly or partially impracticable, or if funds remain after redress is completed, any funds not used for redress shall be deposited to the United States Treasury as disgorgement of allegedly ill-gotten gains. Defendants shall have no right to challenge the Commission's choice of remedies under this Subpart C. No portion of any payments in compliance with

this Stipulated Final Judgment shall be deemed a fine, penalty, punitive assessment, or forfeiture.

- D. **IT IS FURTHER ORDERED** that, unless already done, Defendants shall provide the Commission with clear, legible, and full-size photocopies of all valid driver's licenses and passports in their possession, which will be used for collection, reporting, and compliance purposes.

IV. RIGHT TO REOPEN WITH SUM CERTAIN

- A. **IT IS FURTHER ORDERED** that the Commission's agreement to, and the Court's approval of, Section III are expressly premised upon the truthfulness, accuracy, and completeness of the financial disclosure statements provided to the Commission by Defendants on or about November 26 and 27, 2007 as supplemented by the asset depositions of Defendants conducted on or about April 4, 2008, and April 11, 2008 (collectively referred to as "Financial Information"). The Financial Information contains material information relied upon by the Commission in negotiating and agreeing to the terms of Section III of this Stipulated Final Judgment. If the Court finds, upon motion by the Commission, that the Financial Information failed to disclose any asset with a value of one thousand dollars or more, materially misrepresented the value of any asset, or made any other material misrepresentation or omission, the Court shall reinstate the suspended judgment in the amount of three million four hundred sixty thousand dollars (\$3,460,000.00). Such reinstatement shall not be joint and several. A Financial Statement submitted on behalf of a Corporate Defendant shall be deemed to have been submitted by all Defendants. **PROVIDED, HOWEVER**, that in all other respects this Stipulated Final Judgment shall remain in force and effect

unless otherwise ordered by the Court. Any proceedings brought by the Commission under this Section IV shall be in addition to and not in lieu of any other proceedings the Commission may bring to enforce this Stipulated Final Judgment. Should any proceedings be brought under this Section, Defendants waive any right to contest the amount of the three million four hundred sixty thousand dollar (\$3,460,000.00) judgment.

- B. **IT IS FURTHER ORDERED** that any person, including but not limited to any bank, other financial institution, credit reporting agency, investment company, or broker, wherever located, is authorized to provide the Commission with any documents or information (collectively referred to as "material") appropriate for verifying the Financial Information. Defendants shall cooperate fully with the Commission's effort under this Subpart B, including but not limited to by providing location and contact information about any person holding such material, providing account numbers, and executing any authorizations, releases, or other documents requested by the person before providing the material.

V. PROHIBITION ON TRANSFERRING BUSINESS INFORMATION

IT IS FURTHER ORDERED that Defendants are permanently restrained and enjoined from selling, leasing, renting, transferring, or in any other way providing to any person, directly or indirectly, any trade secrets related to any Defendant, including but not limited to scripts, advertisements, customer lists or other customer information, consumer lists or other consumer information, books, records, tapes, disks, accounting data, manuals, electronically stored data, banking records, invoices, telephone records, ledgers, payroll records, or other documents of any kind. **PROVIDED, HOWEVER**, that Defendants may disclose such information as may be necessary (1) to an attorney representing them in connection with their activities doing business

as Fusion Telekom; (2) to an accountant for purposes of preparing and filing required tax returns; (3) to the FTC for purposes of administering the redress program described in Section III above; or (4) to a law-enforcement agency or as required by law, regulation, or court order.

VI. COMPLIANCE MONITORING

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

- A. Within thirty (30) days of receipt of written notice from a representative of the Commission, Defendants each shall submit additional written reports, sworn to under penalty of perjury of the laws of the United States; 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 use all other lawful means, including but not limited to:
 1. obtaining discovery from any person, without further leave of the 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, their employees, or any other entity managed or controlled in whole or in part by any Defendant, without the necessity of identification or prior notice; and
- 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.

PROVIDED, HOWEVER, that nothing in this Order shall limit the Commission's lawful use of compulsory process, under 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)).

VII. COMPLIANCE REPORTING BY DEFENDANTS

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

- A. For a period of three (3) years from the date of entry of this Order,
 1. Each Individual Defendant shall notify the Commission of the following:
 - a. Any changes in such Defendant's residence, mailing addresses, and telephone numbers, within thirty (30) days of the date of such change;
 - b. Any changes in such Defendant's employment status (including self-employment), and any change in such Defendant's ownership in any business entity, within thirty (30) days of the date of such change. Such notice shall include the name and address of each business that such Defendant is affiliated with, employed by, creates or forms, or performs services for; a statement of the nature of the business; and a statement of such Defendant's duties and responsibilities in connection with the business or employment; and
 - c. Any changes in such Defendant's name or use of any aliases or fictitious names; and

2. Defendants shall notify the Commission of any changes in corporate structure of Corporate Defendants or any business entity that an Individual Defendant directly or indirectly controls, or has an ownership interest in, 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 entity; 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 a Defendant learns less than thirty (30) days prior to the date such action is to take place, such 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 each shall provide a written report to the FTC, sworn to under penalty of perjury of 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. For each Individual Defendant:
 - a. Such Defendant's then-current residence address, mailing addresses, and telephone numbers;
 - b. Such Defendant's then-current employment and business addresses and telephone numbers of such Defendant, a description of the

business activities of each such employer or business, and the title and responsibilities of such Defendant; and

c. Any other changes required to be reported under subparagraph A of this Section VII.

2. For all Defendants:

a. A copy of each acknowledgment of receipt of this Order, obtained under Section IX; and

b. Any other changes required to be reported under subparagraph A of this Section VII.

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:

Associate Director for Enforcement
Federal Trade Commission
600 Pennsylvania Avenue, N.W., Room NJ2122
Washington, DC 20580

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

VIII. RECORD-KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of six (6) years from the date of entry of this Order, Defendants, in connection with the telemarketing of any product or service, or in connection with any business that any Defendant directly or indirectly manages, controls or has a majority ownership interest in, and their officers, agents, employees, 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, phone 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. Complaints and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests;
- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials; and
- F. All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, copies of acknowledgments of receipt of this Order, required by Section IX, and all reports submitted to the FTC under Section VII.

IX. DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Order, Defendants shall deliver copies of this Order as directed below:

- A. Corporate Defendants: Each Corporate Defendant shall deliver a copy of this Order to all of its principals, officers, directors, and managers. Each Corporate Defendant also must deliver copies of this Order to all of its employees, agents, and representatives who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within five (5) days of service of this Order upon such Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities.
- B. Individual Defendant as Control Person: For any business that an Individual Defendant controls, directly or indirectly, or in which such Defendant has a majority ownership interest, such Defendant must deliver a copy of this Order to all principals, officers, directors, and managers of that business. Such Defendant must also deliver copies of this Order to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within five (5) days of service of this Order upon such Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities.
- C. Individual Defendant as employee or non-control person: For any business where an Individual Defendant is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, such Defendant must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.
- D. Defendants must secure a signed and dated statement acknowledging receipt of the Order within thirty (30) days of delivery from all persons receiving a copy of the Order under this Section IX.

X. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that each Defendant, within thirty (30) days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

XI. 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.


SO ORDERED this 24th day of November.

/s/Dan Aaron Polster
DAN A. POLSTER
United States District Judge

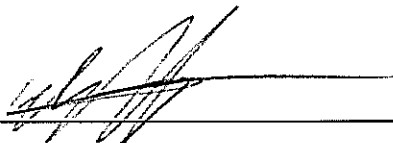
STIPULATED AND AGREED TO:

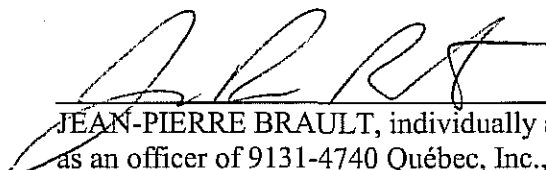
DEFENDANTS

9131-4740 Québec, Inc., d/b/a
Fusion Telekom, d/b/a Global Contact
Services

By: 
Print Name: Jean-Pierre Brault
Title: President
Date: 30 Sept 2008


JPE Holdings, Inc., d/b/a Fusion Telekom

By: 
Print Name: ELI FONER
Title: PRESIDENT
Date: 21 SEP 2008


JEAN-PIERRE BRAULT, individually and
as an officer of 9131-4740 Québec, Inc.,
Date: 30 Sept. 2008

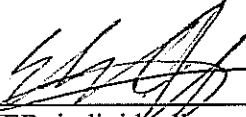
PLAINTIFF

WILLIAM BLUMENTHAL
Federal Trade Commission
General Counsel


JONATHAN L. KESSLER
CO Bar # 15094
JKessler@ftc.gov
216-263-3436
MICHAEL B. ROSE
PA Bar # 52954
MRose@ftc.gov
216-263-3412
JULIE A. LADY
OH Bar # 0075588
JLady@ftc.gov
216-263-3409
HARRIS A. SENTURIA
OH Bar # 0062480
HSenturia@ftc.gov
216-263-3420
JON MILLER STEIGER, Assistant Director
Licensed in the District of Columbia
JMSteiger@ftc.gov
216-263-3442

Federal Trade Commission
1111 Superior Ave., Suite 200
Cleveland, OH 44114
216-263-3455
FAX 216-263-2426

Date: November 24, 2008



ELI FONER, individually and as an officer
of JPE Holdings

Date: 21 SEP 2008

COUNSEL FOR DEFENDANTS



SUBODH CHANDRA
OH # 0069233
Subodh.Chandra@StanfordAlumni.org
JAIME BOUVIER
OH # 0071426

THE CHANDRA LAW FIRM, LLC
1265 W. 6th Street, Suite 400
Cleveland, OH 44113-1326
216-578-1700
FAX 216-578-1800

Date: 10 October 2008