

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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

XTEL MARKETING, INC.,
an Ontario corporation,

NAVIN BABOOLAL, individually and as an
officer of the corporate defendant, and

ANNILLA RAMKISSOON, individually,

d/b/a MILLENIUM CONSULTING and MED SUPPLY,

Defendants.

Civil Action No.

040 7238

JUDGE ZAGEL

MAJESTY'S JUDGE
GERALDINE SOAT BROWN

**TEMPORARY RESTRAINING ORDER WITH ASSET FREEZE AND ORDER TO
SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

Plaintiff, Federal Trade Commission ("FTC" or "Commission"), having filed its complaint for a permanent injunction and other relief in this matter, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101, *et seq.*, and Section 522(a) of the Gramm-Leach-Bliley ("GLB") Act, 15 U.S.C. § 6822(a), and having moved *ex parte* for a Temporary Restraining Order and for an order to show cause why a preliminary injunction should not be granted pursuant to Rule 65 of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 65, and the Court having considered the complaint,

declarations, exhibits, and memorandum of law filed in support thereof, and now, being advised in the premises, finds that:

1. This Court has jurisdiction over the subject matter of this case and there is good cause to believe it will have jurisdiction over all parties hereto;
2. Venue properly lies with this Court;
3. Good cause exists to believe that the Commission will ultimately succeed in establishing that Defendants Xtel Marketing, Inc., Navin Baboolal, and Annilla Ramkissoo, individually, and d/b/a Millenium (*sic*) Consulting and Med Supply, have engaged in, and are likely to engage in the future, in acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), the FTC's Trade Regulation Rule entitled "Telemarketing Sales Rule" (the "Rule"), 16 C.F.R. Part 310, and Section 521 of the GLB Act, 15 U.S.C. § 6821, and that the Commission is therefore likely to prevail on the merits of this action;
4. Good cause exists to believe that immediate and irreparable harm will result from Defendants' ongoing violations of Section 5(a) of the FTC Act unless Defendants are restrained and enjoined by order of this Court;
5. Good cause exists to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for consumers in the form of monetary restitution will occur from the sale, transfer, or other disposition or concealment by Defendants of their assets or corporate records unless Defendants are immediately restrained and enjoined by Order of this Court. Therefore, good cause exists for relieving the Commission of the duty to provide Defendants with prior notice of the Commission's motion;

6. Good cause exists for issuing this Order pursuant to Federal Rule of Civil Procedure 65(b);

7. Weighing the equities and considering the Commission's likelihood of ultimate success, a Temporary Restraining Order with asset freeze and other equitable relief is in the public interest; and

8. No security is required of any agency of the United States for the issuance of a temporary restraining order. Fed R. Civ P. 65(c).

DEFINITIONS

1. "Plaintiff" means the Federal Trade Commission.
2. "Defendant" or "Defendants" means Xtel Marketing, Inc., Navin Baboolal, and Annilla Ramkissoon, individually, and d/b/a Millenium Consulting and Med Supply.
3. "Asset" or "assets" means any legal or equitable interest in, right to, or claim to, any real and personal property of any Defendant, or held for the benefit of any Defendant, including, but not limited to, "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," "notes" (as these terms are defined in the Uniform Commercial Code), chattels, leaseholds, contracts, mails or other deliveries, shares of stock, lists of consumer names, accounts, credits, receivables, funds, monies, and all cash, wherever located.
4. "Material" means likely to affect a person's choice of, or conduct regarding, goods or services.
5. "Person" or "persons" means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

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

7. The term “document” or “documents” means any materials listed 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, into reasonably usable form through detection devices. A draft or nonidentical copy is a separate document within the meaning of the term.

8. “Telemarketing” means any business activity (which includes, but is not limited to, initiating or receiving telephone calls, managing others who initiate or receive telephone calls, operating an enterprise that initiates or receives telephone calls, owning an enterprise that initiates or receives telephone calls, or otherwise participating as an officer, director, employee or independent contractor in an enterprise that initiates or receives telephone calls) that involves attempts to induce consumers to purchase any item, good, service, partnership interest, trust interest or other beneficial interest, or to enter a contest for a prize, by means of telephone sales presentations, either exclusively or in conjunction with the use of other forms of marketing.

Provided that the term “telemarketing” shall not include transactions that are not completed until after a face-to-face contact between the seller or solicitor and the consumers solicited. *Provided further*, that for the purposes of Subsection I. B. (requiring compliance with the Telemarketing Sales Rule), the definition of telemarketing shall be consistent with 16 C.F.R. § 310.2.

9. “Assisting others” means: (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 any other marketing material;

(3) providing names of, or assisting in the generation of, potential customers; or (4) performing marketing services of any kind.

10. "Financial institution" means any bank, savings and loan institution, credit union, or any financial depository of any kind, including, but not limited to, any brokerage house, trustee, broker-dealer, escrow agent, title company, commodity trading company, or precious metal dealer.

I.

PROHIBITED BUSINESS ACTIVITIES

IT IS THEREFORE ORDERED that Defendants, and their officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, successors, and assigns, all other persons or entities in active concert or participation with 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, are hereby temporarily restrained and enjoined from:

A. Making, or assisting others in making, any express or implied representation or omission of material fact that is false or misleading, in any manner, to any person or entity, including, but not limited to, any false or misleading statement:

1. That Defendants are employed by or affiliated with the Social Security Administration or Medicare;

2. That consumers are required to provide Defendants with bank account information because a computer failure caused the Social Security Administration to lose that information;

3. That the payment of Social Security, Supplemental Security Income, or Medicare benefits will be delayed, interrupted, or halted if consumers do not provide information requested by Defendants;

4. That Defendants will provide consumers with, or arrange for consumers to receive, new Medicare insurance cards or drug discount cards that will entitle consumers to discounts on purchases of medications and eyeglasses; and

5. Concerning any material term, condition, or limitation of the transaction or about the use of any offered good or service;

B. 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 310.3(a)(2) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(2), by misrepresenting, directly or by implication, Defendants' affiliation with, or endorsement or sponsorship by, any person or government agency, 16 C.F.R. § 310.3(a)(2)(vii);

C. Violating or assisting others to violate any provision of the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801, *et seq.*, including, but not limited to:

1. Violating Section 521(a) of the GLB Act, 15 U.S.C. § 6821(a), by obtaining or attempting to obtain, or causing to be disclosed or attempting to cause to be

disclosed to any person, customer information of a financial institution relating to another person, by making a false, fictitious, or fraudulent statement or representation to a customer of a financial institution including, but not limited to, misrepresenting, expressly or by implication, that Defendants are affiliated with, or are calling from or on behalf of, a government entity; and

D. Assisting others who violate any provision of Subsections A through C of this Section.

II.

ASSET FREEZE

IT IS FURTHER ORDERED that Defendants, and their officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, successors, and assigns, all other persons or entities in active concert or participation with 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, except as stipulated by the parties, or as directed by further order of the Court, are hereby temporarily restrained and enjoined from:

A. Transferring, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, or otherwise disposing of any funds, property, artwork, coins, precious metals, jewelry, contracts, shares of stock, or other assets, wherever located, that are (1) owned, controlled, or held, in whole or in part, for the benefit of, or subject to access, by any Defendant; (2) in the actual or constructive possession of any Defendant; or (3) owned, controlled by, or in the actual or constructive possession of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by, or under common control

with any Defendant, including, but not limited to, any assets held by or for any Defendant in any account at any bank or savings and loan institution, or with any credit card processing agent, automated clearing house, network transaction processor, bank debit processing agent, customer service agent, commercial mail receiving agency, or mail holding or forwarding company, or any credit union, retirement fund custodian, money market or mutual fund, storage company, trustee, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, or other financial institution of any kind either within or outside the United States;

B. Opening or causing to be opened any safe deposit boxes or storage facilities titled in the name of any Defendant, or subject to access by any Defendant or under any Defendant's control, without providing Plaintiff prior notice and an opportunity to inspect the contents in order to determine that they contain no assets covered by this Section;

C. Cashing any checks or depositing any payments received from customers of Defendants; and

D. Incurring charges or cash advances on any credit card issued in the name, singly or jointly, of any Defendant.

Notwithstanding the asset freeze provisions of Subsections II. A - D above, and subject to prior written agreement with Plaintiff, Defendants Navin Baboolal and Annilla Ramkissoon, upon compliance with Section V, may pay from their individual personal funds reasonable, usual, ordinary, and necessary living expenses, subject to prior written agreement with Plaintiff.

The assets affected by this Section shall include both existing assets and assets acquired after the issuance of this Order.

III.

MAINTAIN RECORDS AND REPORT NEW BUSINESS ACTIVITY

IT IS FURTHER ORDERED that Defendants, and their officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, successors, and assigns, all other persons or entities in active concert or participation with 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, are hereby restrained and enjoined from:

A. Failing to make and keep books, records, accounts, bank statements, current accountants' reports, general ledgers, general journals, cash receipt ledgers, and source documents, documents indicating title to real or personal property, and any other data which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of Defendants;

B. Destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any books, records, tapes, discs, accounting data, checks (fronts and backs), correspondence, forms, advertisements, brochures, manuals, electronically stored data, banking records, customer lists, customer files, invoices, telephone records, ledgers, payroll records, or other documents of any kind, including information stored in computer-maintained form (such as electronic mail), in their possession, custody or control; and

C. Creating, operating, or exercising any control over any new business entity, including any partnership, sole proprietorship, or corporation, without first providing Plaintiff with a written statement disclosing: (1) the name of the business entity; (2) the address and

telephone number of the business entity; (3) the names of the business entity's officers, directors, principals, managers, and employees; and (4) a detailed description of the business entity's intended activities.

IV.

FINANCIAL STATEMENTS

IT IS FURTHER ORDERED that each Defendant shall serve upon counsel for the Commission, no later than five (5) business days after service of this Order, a completed financial statement on the forms served with this Order, for him or herself individually, and for each corporation or business entity under which he or she conducts business or of which he or she is an officer, and for each trust of which he or she is a trustee, accurate as of the date of service of this Order upon such Defendant. Said financial statement shall include assets held outside of the territory of the United States. Defendants shall attach to these completed financial statements copies of all local, state, provincial, and federal income and property tax returns, with attachments and schedules as called for by the instructions to the financial statements.

V.

DUTIES OF THIRD PARTIES HOLDING DEFENDANTS' ASSETS

IT IS FURTHER ORDERED that pending determination of Plaintiff's request for a preliminary injunction, any financial or brokerage institution, escrow agent, trustee, title company, commodity trading company, business entity, or person that holds, controls, or maintains accounts or assets belonging to or titled in the name of any Defendant, or to which any of these Defendants is a signatory, or which is held on behalf of or for the benefit of any of the Defendants,

individually or jointly, or has held, controlled or maintained custody of any such asset at any time since January 1, 2002, shall:

A. Hold and retain within its control and prohibit the withdrawal, removal, assignment, transfer, pledge, hypothecation, encumbrance, disbursement, dissipation, conversion, sale, liquidation, or other disposal of any of the assets, funds, documents, or other property held by, or under its control, on behalf of any Defendant in any account maintained in the name of or for the benefit of any Defendant, in whole or in part, except in accordance with any further order of the Court;

B. Deny Defendants access to any safe deposit boxes or storage facilities that are either titled in the name, individually or jointly, of any Defendant, or otherwise subject to access by any Defendant;

C. Within five (5) business days of the date of service of this Order provide to counsel for Plaintiff a certified statement setting forth:

1. The identification of each account or asset titled in the name, individually or jointly, of any Defendant, or held on behalf of, or for the benefit of, any Defendant, including all trust accounts managed on behalf of any Defendant or subject to any Defendant's control;

2. The balance of each such account, or a description and appraisal of the value of such asset, as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed since January 1, 2002, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and

3. The identification and location of any safe deposit box or storage facility that is either titled in the name individually or jointly, of any Defendant, or is otherwise subject to access or control by any Defendant; and

D. Within five (5) business days of a request from the FTC, provide to the FTC copies of all records or other documents pertaining to such account or asset, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs.

The assets and funds affected by this Section shall include both existing assets and assets acquired after the issuance date of this Order.

VI.

PROHIBITION ON DISCLOSING CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendants, their agents, servants, and employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, are hereby temporarily restrained and enjoined from:

A. Selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, social security number, or other identifying information of any person who purchased or paid to participate in a work at home opportunity at any time prior to the date this Order is entered; and

B. Benefitting from or using the name, address, telephone number, credit card number, bank account number, date of birth, email address, or other identifying or financial information of any person who submitted this information to Defendants as a result of, or otherwise related to, the activities alleged in the FTC's Complaint;

Provided, however, that Defendants may disclose identifying information to a law enforcement agency or as required by any law, regulation, or court order.

VII.

DUTIES OF THIRD PARTIES PROCESSING PAYMENTS FOR DEFENDANTS

IT IS FURTHER ORDERED that, pending determination of the Plaintiff's request for a preliminary injunction, any automated clearing house, network transaction processor, business entity or person providing any services or assistance in processing Defendants' customer payments, including, but not limited to, payments made by bank account debits or checks, for any of the Defendants, and which is served with a copy of this Order, or otherwise has actual knowledge of this Order, is hereby temporarily restrained and enjoined from providing any assistance in the processing of any payments made by consumers to any of the Defendants.

VIII.

DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that Defendants shall immediately provide a copy of this Order to each affiliate, subsidiary, division, sales entity, successor, assign, officer, director, employee, independent contractor, salesperson, agent, attorney, and representative of any Defendant. Within five (5) business days following service of this Order by Plaintiff, Defendants

shall serve on Plaintiff, an affidavit identifying the names, titles, addresses, and telephone numbers of the persons and entities Defendants have served with a copy of this Order in compliance with this provision.

IX.

EXPEDITED DISCOVERY

IT IS FURTHER ORDERED that, notwithstanding the provisions of Federal Rules of Civil Procedure 26(d) and (f) and 30(a)(2)(C), and pursuant to Federal Rules of Civil Procedure 30(a), 34, and 45, Plaintiff is granted leave, at any time after service of this Order, to:

A. Take the deposition, on three (3) business days' notice, of any person, whether or not a party, for the purpose of discovering the nature, location, status, and extent of the assets of the Defendants, or their affiliates or subsidiaries; the nature and location of documents reflecting the Defendants' business transactions, or the business transactions of the Defendants' affiliates or subsidiaries; the location of any premises where Defendants, directly or through any third party, conduct business operations; the Defendants' whereabouts; and/or the applicability of any evidentiary privileges to this action. The limitations and conditions set forth in Fed. R. Civ. P. 30(a)(2)(B) and 31(a)(2)(B) regarding subsequent depositions of an individual shall not apply to depositions taken pursuant to this Section. Any such depositions taken pursuant to this Section shall not be counted toward the ten (10) deposition limit set forth in Fed. R. Civ. P. 30(a)(2)(A) and 31(a)(2)(A). Service of discovery upon a party, taken pursuant to this Section, shall be sufficient if made by facsimile or by overnight delivery; and

B. Demand the production of documents, on three (3) business days' notice, from any person, whether or not a party, relating to the nature, status, or extent of Defendants' assets,

or of their affiliates or subsidiaries; the location of documents reflecting the business transactions of Defendants, or of their affiliates or subsidiaries; the location of any premises where Defendants, directly or through any third party, conduct business operations; the Defendants' whereabouts; and/or the applicability of any evidentiary privileges to this action, provided that twenty-four (24) hours' notice shall be deemed sufficient for the production of any such documents that are maintained or stored only as electronic data.

X.

SERVICE OF PLEADINGS, MEMORANDA, AND OTHER EVIDENCE

IT IS FURTHER ORDERED that Defendants shall serve answering affidavits, pleadings, and legal memoranda on counsel for Plaintiff not less than three (3) business days prior to the hearing on Plaintiff's request for a preliminary injunction. Defendants shall serve copies of all such materials on Plaintiff by delivery or facsimile to John C. Hallerud, Esq., Federal Trade Commission, 55 East Monroe Street, Suite 1860, Chicago, Illinois 60603, facsimile (312) 960-5600.

XI.

WITNESS LIST

IT IS FURTHER ORDERED that if any party to this action intends to present the testimony of any witness at the hearing on a preliminary injunction in this matter, that all parties shall, at least seventy-two (72) hours prior to the scheduled date and time of hearing, file with this Court and serve on counsel for the other party a statement of the name, address, and

telephone number of any such witness, and either a summary of the witness' expected testimony, or the witness' affidavit or declaration revealing the substance of such witness' expected testimony.

XII.

SERVICE OF THIS ORDER

IT IS FURTHER ORDERED that copies of this Order may be served by first class mail, overnight delivery, facsimile, electronic mail, or personally, by employees or agents of Plaintiff, upon any bank, savings and loan institution, credit union, financial institution, brokerage house, escrow agent, retirement fund custodian, money market or mutual fund, title company, commodity trading company, common carrier, storage company, trustee, credit card processing agent, automated clearing house, network transaction processor, bank debit processing agent, commercial mail receiving agency, mail holding or forwarding company, Internet service provider, or any other person, partnership, corporation, or legal entity that may be in possession of any documents, records, assets, property, or property right of any Defendant, and any other person, partnership, corporation, or legal entity that may be subject to any provision of this Order.

XIII.

CONSUMER CREDIT REPORTS

IT IS FURTHER ORDERED that, pursuant to Section 604 of the Fair Credit Reporting Act, 15 U.S.C. § 1681(b), any consumer reporting agency may furnish a consumer or credit report concerning any Defendant to Plaintiff.

XIV.

EXPIRATION DATE OF TEMPORARY RESTRAINING ORDER

IT IS FURTHER ORDERED that the Temporary Restraining Order granted herein shall expire on NOVEMBER 19, 2004, at ^{3:35}~~11:59~~ p.m., unless within such time the Order, for good cause shown, is extended, or unless, as to any Defendant, the Defendant consents that it should be extended for a longer period of time.

XV.

DATE OF NEXT COURT PROCEEDING

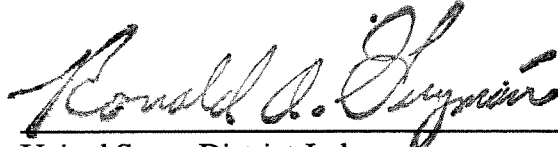
IT IS FURTHER ORDERED that each Defendant shall appear before this Court on the 19th day of NOVEMBER, 2004, at 9:30 A.m. at the United States Courthouse located at 219 S. Dearborn, Chicago, Illinois, Courtroom 18/2, to show cause, if any there be, why this Court should not enter a preliminary injunction, pending final ruling on the complaint, against said Defendants enjoining them from further violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), the Telemarketing Sales Rule, 16 C.F.R. Part 310, and Section 521 of the GLB Act, 15 U.S.C. § 6821, continuing the freeze of their assets, and imposing such additional relief as may be appropriate.

XVI.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

IT IS SO ORDERED, this 9th day of November, 2004, at 3:35.m.


United States District Judge