

United States District Court
for the
Southern District of Florida

Federal Trade Commission,)	
Plaintiff,)	
)	
v.)	Civil Action No. 19-25046-Civ-Scola
)	
On Point Global LLC and others,)	
Defendants.)	

Amended Permanent Injunction

This matter is before the Court upon the Motion to modify the Permanent Injunction portion of the Court’s September 29, 2021 Order on Cross Motions for Summary Judgment (ECF No. 528) (the “September 29, 2021 Order”), filed by Melanie E. Damian (the “Receiver”), as the Court-approved Receiver in the above-captioned action. After careful consideration of the Receiver’s Motion and after oral argument held contemporaneously with the bench trial in this matter, the Court **grants** the Motion and modifies the Permanent Injunction incorporated in the September 29, 2021 Order, at pages 28 through 36, as follows.

DEFINITIONS

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

- A. **“Clear(ly) and conspicuous(ly)”** means that a required disclosure is difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:
 1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure is made in only one means.
 2. A visual disclosure, by its size, contrast, location, the length

of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.

3. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.
 4. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.
 5. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.
 6. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.
 7. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.
 8. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, "ordinary consumers" includes reasonable members of that group.
- B. **"Corporate Defendants"** means On Point Global LLC; On Point Employment LLC; On Point Guides LLC f/k/a Rogue Media Services LLC; DG DMV LLC; On Point Domains LLC; Final Draft Media LLC; Waltham Technologies LLC; Cambridge Media Series LLC f/k/a License America Media Series LLC; Issue Based Media LLC; Bella Vista Media Ltd. also d/b/a BV Media; Carganet S.A. also d/b/a G8 Labs; Direct Market LLC; Bluebird Media LLC; Borat Media LLC; Bring Back the Magic Media LLC; Chametz Media LLC; Chelsea Media LLC; Coinstar Media LLC; Domain Development Studios LLC; Domain Dividends Media LLC; Eagle Media LLC; Falcon Media LLC; GNR Media LLC; Island Media LLC; Leatherback Media Group LLC; Macau Media LLC; CEG Media LLC f/k/a Matzoh Media LLC; MBL Media Ltd. Inc.; Orange and Blue Media LLC; Orange Grove Media LLC; Panther Media LLC; Pirate

Media LLC; Pivot Media Group LLC; PJ Groove Media LLC; Sandman Media Group LLC; Shadow Media LLC; Skylar Media LLC; Slayer Billing LLC; Spartacus Media LLC; Very Busy Media LLC; Wasabi Media LLC; Yamazaki Media LLC; Bronco Family Holdings LP a/k/a Bronco Holdings Family LP; BAL Family LP; Cardozo Holdings LLC; 714 Media Ltd.; Mac Media Ltd.; License America Management LLC; License America Holdings LLC; Blackbird Media LLC; and their successors and assigns, individually, collectively, or in any combination.

- C. **“Defendants”** means all of the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination.
- D. **“Express Verifiable Authorization”** means express written authorization by the customer, which includes the customer’s signature, and shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law, and which evidences clearly both the customer’s authorization of the uses Defendant will make of the customer’s information and the customer’s receipt, prior to providing such authorization, of:
- (1) an accurate description, Clearly and Conspicuously stated, of the information to be collected;
 - (2) an accurate description, Clearly and Conspicuously stated, of the goods or services to be provided in exchange for the information;
 - (3) an accurate description, Clearly and Conspicuously stated, of the specific use, disclosure, or sale Defendants are authorized to make of the information the customer is providing; and
 - (4) an accurate description, Clearly and Conspicuously stated, of the identity or specific category of any third party to whom the information will be disclosed or sold. For clarity, Express Verifiable Authorization is satisfied by the templates attached hereto as Exhibit A and Exhibit B.
- E. **“Individual Defendants”** means Burton Katz, Brent Levison, Christopher Sherman, and Elisha Rothman, individually, collectively, or in any combination.
- F. **“Sensitive Information”** means:
1. information about an individual’s past, present, or future physical or mental health or condition, the provision of health care to the individual, or the past, present, or future payment for the provision of healthcare to the individual;
 2. a consumer’s financial institution account number, credit or

debit card information, or any other information by which a consumer's financial account can be accessed, or by which a consumer might be charged for goods or services;

3. Social Security number;
4. Precise geolocation information; or,
5. information about an individual if any information that individual provided indicates he or she is a minor.
6. "Sensitive Information" does not include either of the following, so long as the following is not associated with a user's personal information, such as name, email address, or phone number in a way that it correlates to a specific identifiable individual:
 - a. The fact that the consumer does or does not have medical or other insurance; or
 - b. A general identification of the consumer's insurance status, such as whether the consumer is uninsured, privately insured, insured through work, or has Medicaid or Medicare.

ORDER

I. BAN ON SALE OR DISCLOSURE OF SENSITIVE INFORMATION

IT IS ORDERED that Corporate Defendants, Burton Katz, and Brent Levison are permanently restrained and enjoined from selling, disclosing, or permitting third parties to access customers' Sensitive Information, whether directly or through an intermediary, unless the disclosure or access is necessary to provide the good or service offered to the customer that induces the customer to provide the Sensitive Information. Customers' self-identification of injuries, illnesses, or ailments to screen for class action or clinical trial qualification falls within the exemption for information necessary to provide the good or service offered to the customer that induces the customer to provide the Sensitive Information.

II. PROHIBITION AGAINST USE OF INFORMATION WITHOUT EXPRESS VERIFIABLE AUTHORIZATION

IT IS FURTHER ORDERED that Defendants, Defendants' officers,

agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from disclosing or using information obtained from a customer without that customer's Express Verifiable Authorization for such disclosure or use. This Order does not prohibit Defendants, including Defendants' officers, agents, employees, attorneys, or other persons in active concert or participation with any of them, from disclosing or using information about a customer's Internet activity that is collected automatically from a customer's electronic devices, so long as the information collected from a customer's electronic devices does not include and is not combined with "Sensitive Information" as defined by this Order, or any other information used to ascertain the identity of a specific individual beyond a unique device identifier. This Section does not allow Defendants to disclose or use information in violation of any other applicable law, regulation, or other legal obligation.

III. PROHIBITION AGAINST MISREPRESENTATIONS

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with promoting or offering any good or service are permanently restrained and enjoined from misrepresenting or assisting others in misrepresenting, expressly or by implication:

- A. that consumers can complete state motor vehicle or state licensing transactions, eligibility determinations for public benefits, or any other governmental transactions on Defendants' websites;
- B. that consumers who submit payment or personal information on Defendants' websites will receive a state motor vehicle service, state license, eligibility determination for public benefits, or any other governmental service;
- C. that consumers who submit payment or personal information on Defendants' websites can demonstrably conduct or complete a government transaction more quickly or efficiently on Defendants' websites than by conducting the same transaction directly with the government;
- D. that the information Defendants provide regarding government services and transactions is demonstrably more accurate or easier to understand than information the government provides about those services and transactions; or

- E. any other fact material to consumers concerning any good or service, such as: the total costs; any material restrictions, limitations, or conditions; or any material aspect of its performance, efficacy, nature, or central characteristics

IV. CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order are permanently restrained and enjoined from directly or indirectly:

- 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 a credit card, bank account, or other financial account), that any Defendant obtained prior to May 19, 2020 in connection with the operation of websites offering assistance with government services and transactions; and
- B. failing to destroy such customer information in all forms in their possession, custody, or control within 30 days after receipt of written direction to do so from a representative of the Commission.

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 law, regulation, or court order. Notwithstanding the foregoing, Defendants may retain customer information only to the extent and for so long as it is required to demonstrate Defendants' compliance with applicable laws, regulations, court orders, or other legal requirements. If customer information is retained under this Section, it shall not be retained, used, or shared for any other purpose, and Defendants must use reasonable security measures designed to protect the confidentiality and integrity of the customer information.

V. ORDER ACKNOWLEDGMENTS

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

- A. Each 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 10 years after entry of this Order, each Individual Defendant

for any business that such Defendant, individually or collectively with any other Defendants, is the majority owner or controls directly or indirectly, and each Corporate Defendant, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees having managerial responsibilities for conduct related to the subject matter of the Order and all 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. For all others, delivery must occur before they assume their responsibilities.

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

VI. COMPLIANCE REPORTING

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

- A. One year after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury:
 - 1. Each Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Defendant; (b) identify all of that 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 goods 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 Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.
 - 2. Additionally, each Individual Defendant must: (a) identify all

telephone numbers and all physical, postal, email and Internet addresses, including all residences; (b) identify 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 20 years after entry of this Order, each Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:
1. Each Defendant must report any change in: (a) any designated point of contact; or (b) the structure of any Corporate Defendant or any entity that Defendant has any ownership interest in or controls directly or indirectly 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 names, 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 the name, physical address, and any Internet address of the business or entity.
- C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such 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. On Point Global LLC, et al., X130054.

VII. RECORDKEEPING

IT IS FURTHER ORDERED that Defendants must create certain records for 20 years after entry of the Order and retain each such record for 5 years. Specifically, each Corporate Defendant and each Individual Defendant for any business that such Defendant, individually or collectively with any other Defendants, is a majority owner or controls directly or indirectly, must create and retain the following records:

- A. accounting records showing the revenues from all goods or services sold;
- B. personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
- D. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and
- E. a copy of each unique advertisement, website, or other marketing material.

VIII. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendants' compliance with this Order:

- A. Within 14 days of receipt of a written request from a representative of the Commission, each 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

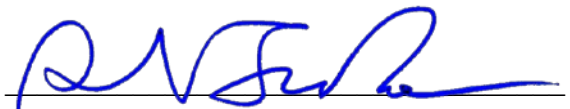
is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

- B. For matters concerning this Order, the Commission is authorized to communicate directly with each Defendant. Defendant must permit representatives of the Commission to interview any employee or other person affiliated with any 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 Defendants or any individual or entity affiliated with 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.
- D. Upon written request from a representative of the Commission, any consumer reporting agency must furnish consumer reports concerning Individual Defendants, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. §1681b(a)(1).

IX. RETENTION OF JURISDICTION

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

Done and ordered at Miami, Florida, on November 15, 2021.



Robert N. Scola, Jr.
United States District Judge

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