

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 16-62186-CIV-ZLOCH

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

DOTAUTHORITY.COM, INC., et al.,

Defendants.

PRELIMINARY INJUNCTION ORDER

THIS MATTER is before the Court upon Plaintiff's Motion For A Temporary Restraining Order With Asset Freeze, Appointment Of A Receiver, Immediate Access, And Other Equitable Relief And For An Order To Show Cause Why A Preliminary Injunction Should Not Issue (DE 19) and this Court's Ex Parte Temporary Restraining Order With Other Equitable Relief, And Order To Show Cause Why A Preliminary Injunction Should Not Issue (DE 29). The Court has carefully reviewed the entire court file herein and is otherwise fully advised in the premises.

On September 13, 2016, Plaintiff, the Federal Trade Commission ("FTC" or the "Commission"), filed its Complaint for Permanent Injunction and Other Equitable Relief (DE 1) pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"),

15 U.S.C. § 53(b), and Section 5 of the Restore Online Shoppers' Confidence Act ("ROSCA"), 15 U.S.C. § 8404, and Motion for a Temporary Restraining Order with Asset Freeze, Appointment of a Receiver, Immediate Access, and Other Equitable Relief, and for an Order to Show Cause Why a Preliminary Injunction Should Not Issue (DE 19). Plaintiff FTC's Motion for a Temporary Restraining Order was submitted to the Court pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 65(b). The Court subsequently issued a sealed Ex Parte Temporary Restraining Order with Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue (DE 29) with an asset freeze as to all Defendants and a temporary receiver appointed for all Corporate Defendants.

The Court, having conducted a preliminary injunction hearing on September 28, 2016, and having considered the Complaint, declarations, exhibits, testimony, memoranda, and argument presented by the parties, makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. This Court has jurisdiction of the subject matter of this case, and there is good cause to believe it will have

jurisdiction over all parties and that venue lies properly in this district.

2. There is good cause to believe that Defendants have engaged in and are likely to engage in acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and Section 4 of the Restore Online Shoppers' Confidence Act ("ROSCA"), 15 U.S.C. § 8403, and that the FTC therefore is likely to prevail on the merits of this action. As demonstrated by the consumer declarations, copies of websites, transcripts of calls with and from the Defendants, consumer complaints, and the additional documentation filed by the FTC, the FTC has established a likelihood of success in showing that the Defendants have violated the FTC Act by making serious misrepresentations regarding Defendants' government affiliation and fees charged to consumers, and by failing to adequately disclose the material terms and conditions of their automatic renewal offers. Through the documents filed by the FTC, the FTC has also established a likelihood of success in showing that the Defendants have violated ROSCA by engaging in illegal negative option marketing.

3. Weighing the equities and considering the Commission's likelihood of ultimate success on the merits, it is in the public interest that the Court enter a preliminary injunction that: enjoins and restrains Defendants from making misrepresentations, failing to make disclosures of material facts, and violating ROSCA; (b) requires certain other disclosures as set forth more fully herein; and (c) provides other equitable relief.

4. The FTC is an independent agency of the United States of America and no security is required of any agency of the United States for the issuance of a preliminary injunction. Fed. R. Civ. P. 65(c).

DEFINITIONS

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

1. "**Assets**" means any legal or equitable interest in, right to, or claim to, any real, personal, or intellectual property of any Corporate Defendant or Individual Defendant (as defined below) or held for the benefit of any Corporate Defendant or Individual Defendant, wherever located, including, chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, premises, contracts, mail or other

deliveries, shares of stock, securities, lists of customer names, inventory, checks, notes, accounts, credits, receivables (including as those terms are defined in the Uniform Commercial Code), insurance policies, lines of credit, funds, cash, trusts (including asset protection trusts and any other trust held for the benefit of any Corporate Defendant or Individual Defendant, any Individual Defendant's minor children, or any Individual Defendant's spouse), and reserve funds or any other accounts associated with any payments processed by, or on behalf of, any Defendant, including such reserve funds held by payment processors, credit card processors, banks or other financial institutions, wherever any such asset is located, whether in the United States or abroad.

2. "**Clear and Conspicuous**" 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:

a. 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.

b. 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.

c. 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.

d. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.

e. 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.

f. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.

g. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.

h. 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.

3. "**Defendants**" means all of the Corporate Defendants and the Individual Defendants, individually, collectively, or in any combination.

a. "**Corporate Defendants**" means DOTAuthority.com, Inc., also doing business as On-Line Registration; DOTFilings.com, Inc.; Excelsior Enterprises International, Inc., also doing business as DOTFilings.com, UCR Registration, UCR Filings, and James P. Lamb & Associates; JPL Enterprises International, Inc., also doing business as DOTAuthority.com, DOTFilings.com, On-Line Registration,

Registration Services Online, and James P. Lamb & Associates, and their successors, assigns, affiliates, and subsidiaries, wherever located, individually, collectively, or in any combination.

b. **"Individual Defendants"** means James P. Lamb and Uliana Bogash, also known as Juliana Bogash, Yuliana Bogash, Yana Bogash, and Uliana Vogash, individually, collectively, and in any combination.

4. **"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, sound and video recordings, images, Internet sites, Web pages, Web sites, electronic correspondence, including e-mail, text messages, and instant messages, contracts, accounting data, advertisements (including advertisements placed on the World Wide Web), FTP Logs, Server Access Logs, USENET Newsgroup postings, World Wide Web pages, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, computer records, and any other electronically stored information, and

other data or data compilations from which information can be obtained directly or, if necessary, after translation into a reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

5. "**Material**" means likely to affect a Person's choice of, or conduct regarding, goods or services.

6. "**Negative Option Feature**" means, in an offer or agreement to sell or provide any good or service, a provision under which the Person's silence or failure to take an affirmative action to reject a good or service or to cancel the agreement is interpreted by the seller or provider as acceptance or continuing acceptance of the offer or agreement.

7. "**Person**" means a natural person, organization, or other legal entity, including a corporation, limited liability company, partnership, proprietorship, association, cooperative, government or governmental subdivision or agency, or any other group or combination acting as an entity.

8. "**Plaintiff**" or "**Commission**" or "**FTC**" means the Federal Trade Commission.

9. **"SafeRenew Customer"** means any Person identified in Defendants' records as enrolled in SafeRenew or any other program with a Negative Option Feature.

10. The terms **"and"** and **"or"** shall be construed conjunctively or disjunctively as necessary, and to make the applicable phrase or sentence inclusive rather than exclusive.

I.

BAN ON NEGATIVE OPTION SALES

IT IS THEREFORE ORDERED that Defendants are **hereby restrained and enjoined from**, directly or indirectly, advertising, marketing, promoting, offering for sale, or selling any goods or services with a Negative Option Feature. If Defendants continue to utilize SafeRenew or any other automatic renewal feature in connection with the sale of any goods or services, Defendants shall list all available options for renewal without pre-selecting any such option.

II.

PROHIBITED BUSINESS ACTIVITIES

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 the advertising, marketing, promotion, offering for sale, or sale of any goods or services, are **hereby restrained and enjoined from** making misrepresentations, expressly or by implication:

- A. That Defendants are representatives of, related to, associated with, vetted by, or in any way affiliated with a local, state, or federal government authority, such as the United States Department of Transportation or the Indiana Department of Revenue, Motor Carrier Services Division, and
- B. That Defendants' goods or services are being offered by or on behalf of a government authority, including through the use of business names and aliases, official government agency depictions or images, or URLs for public-facing websites.

III.

REQUIRED DISCLOSURES

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 the advertising, marketing, promotion, offering for sale, or sale of any goods or services that are represented, expressly or by implication, to satisfy a Person's compliance or registration obligations, are **hereby restrained and enjoined** from failing to disclose in a Clear and Conspicuous manner:

A. That Defendants are private third-party service providers offering their goods or services in exchange for a fee;

B. In any solicitation or advertisement, the following statement: "This is a commercial solicitation and advertisement. [Insert name of Defendant] is NOT affiliated with any government authority"; and

C. Before a consumer submits payment, the amount of the total charge that is attributable to Defendants' service fees.

IT IS FURTHER ORDERED that by midnight on Thursday, September 29, 2016, Defendants shall provide to all Persons enrolled in SafeRenew, or any other automatic renewal program used in connection with the sale of Defendants' goods or services, a notification that provides the following: (1) notice that the Person is enrolled in SafeRenew or any other automatic renewal program; (2) the amount and date on which the Person's account will be charged; (3) the service for which such Person is being charged; and (4) that any person wishing to opt out of SafeRenew or other automatic renewal program must immediately notify Defendants by phone or email at (202) 521-1486, (954) 900-4392, (888) 414-1874, or support@dotfilings.com, or any other method by which Defendant can promptly receive such notice. Defendants shall remove any Person who so requests and ensure that such Person is not charged for any goods or services.

IV.

PROHIBITIONS CONCERNING THREATS

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 the advertising, marketing, promotion, offering for sale, or sale of any goods or services, are **hereby restrained and enjoined from** utilizing threats of government action, expressly or by implication, in communications with consumers, including threats that the failure of a consumer to act will result in civil or criminal penalties; loss of mandatory government registration, such as with regard to USDOT numbers; or fines.

V.

ASSET FREEZE

IT IS FURTHER ORDERED that the asset freeze previously Ordered by this Court is hereby lifted, set aside, and of no further force and effect.

VI.

FINANCIAL INSTITUTIONS HOLDING ASSETS

IT IS FURTHER ORDERED that any financial or brokerage institution, credit card processing company, payment processor, depository bank, merchant bank, acquiring bank, business entity, or Person that (a) holds, controls, or maintains custody of any account or Asset of any Defendant, (b) holds, controls, or maintains custody of any Asset associated with credit or debit card charges, including but not limited to reserve funds held by payment processors, made on behalf of any Defendant or any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by any Defendant, or of which any Defendant is an officer, director, member, or manager, or (c) has held, controlled, or maintained custody of any such account or Asset at any time since the date of entry of this Order, shall release any hold or freeze placed on any account or Asset of Defendants. Said institutions are hereby relieved of any further duty, responsibility, or liability over any account or Asset of Defendants that was imposed by this Court's prior Temporary Restraining Order. The asset freeze previously Ordered by this Court is hereby lifted, set aside, and of no further force and effect.

VII.

FINANCIAL REPORTS AND ACCOUNTING

IT IS FURTHER ORDERED that each Individual Defendant and each Corporate Defendant, within thirty (30) days of service of this Order upon them, shall provide the Commission with completed financial statements, verified under oath and accurate as of the date of entry of this Order, on the forms "Financial Statement of Individual Defendant" (DE 43-22) for each Individual Defendant and "Financial Statement of Corporate Defendant" (DE 43-23) for each Corporate Defendant, for each business entity under which any Defendant conducts business or of which that Defendant is an officer, and for each trust for which any Defendant is a trustee. The financial statements shall be accurate as of the date of entry of this Order and signed under penalty of perjury. Each Defendant shall include in the financial statements a full accounting of all funds and Assets, whether located inside or outside of the United States, that are (a) titled in the name of such Defendant, jointly, severally, or individually; (b) held by any person or entity for the benefit of such Defendant; or (c) under the direct or indirect control of any Defendant. 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.

VIII.

REPATRIATION OF FOREIGN ASSETS AND DOCUMENTS

IT IS FURTHER ORDERED that, within ten (10) days following the service of this Order, each Defendant shall:

A. Provide the Commission with a full accounting of all Documents and Assets outside of the United States that are: (1) titled in the name, individually or jointly, of any Defendant; (2) held by any person or entity for the benefit of any Defendant; or (3) under the direct or indirect control, whether jointly or singly, of any Defendant;

B. Transfer to the territory of the United States all Documents and Assets located in foreign countries that are: (1) titled in the name individually or jointly of any Defendant; (2) held by any person or entity for the benefit of any Defendant; or (3) under the direct or indirect control, whether jointly or singly, of any Defendant;

C. The same business day as any repatriation, (1) notify counsel for the Commission of the name and location of the

financial institution or other entity that is the recipient of such Documents or Assets; and (2) serve this Order on any such financial institution or other entity; and

D. Provide the Commission any and all information regarding accounts or Assets of any Defendant held by financial institutions located outside the territorial United States by signing the "Consent to Release of Financial Records" (DE 43-24).

IX.

NONINTERFERENCE WITH REPATRIATION

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 **hereby restrained and enjoined from** taking any action that may result in the encumbrance or dissipation of foreign Assets, or in the hindrance of the repatriation required by Section VIII (Repatriation of Foreign Assets and Documents) of this Order, including:

A. Sending any statement, letter, fax, e-mail, or wire transmission, telephoning or engaging in any other act, directly or indirectly, that results in a determination by a foreign

trustee or other entity that a "duress" event has occurred under the terms of a foreign trust agreement until such time that all Assets have been fully repatriated pursuant to Section VIII of this Order; or

B. Notifying any trustee, protector, or other agent of any foreign trust or other related entities of either the existence of this Order or of the fact that repatriation is required pursuant to a court order, until such time that all Assets have been fully repatriated pursuant to Section VIII of this Order.

X.

CONSUMER CREDIT REPORTS

IT IS FURTHER ORDERED that, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(1), any consumer reporting agency served with this Order shall promptly furnish consumer reports as requested concerning any Defendant and any spouse of a Defendant to the Commission. The Commission may also directly access any Defendant's consumer report.

XI.

PRESERVATION OF RECORDS AND REPORT OF NEW BUSINESS ACTIVITY

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 **hereby restrained and enjoined from:**

A. Destroying, erasing, mutilating, concealing, altering, transferring, writing over, or otherwise disposing of, in any manner, any Documents or records of any kind that relate to the business practices, Assets, or business or personal finances of any Defendant, including but not limited to records of sales, chargebacks, and returns, websites, sales and customer service scripts, advertisements and marketing materials, and customer records, except otherwise Ordered herein.

B. Failing to create and maintain Documents that, in reasonable detail, accurately, fairly, and completely reflect Defendants' incomes, disbursements, transactions, Assets, and use of the Defendants' Assets; and

C. Creating, operating, or exercising any control over any new business entity, whether newly formed or previously inactive, including any partnership, limited partnership, joint venture, sole proprietorship, or corporation, without first providing counsel for the FTC 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.

XII.

PROHIBITION ON RELEASE OF 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, whether acting directly or indirectly, are **hereby restrained and enjoined from:**

A. Selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, social security number, credit card number, debit card number, bank account number, e-mail address, or other identifying information of any Person who paid any money to any Defendant, at any time prior to entry of this Order, for services in connection with the advertising, marketing, promotion, offering for sale, or sale of any state or federal reporting requirement services, or who were contacted or are on a list to be contacted by the Defendants.

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

B. Benefitting from or using the name, address, birth date, telephone number, social security number, credit card number, debit card number, bank account number, e-mail address, or other identifying information of any Person from whom or about whom any Defendant obtained such information in connection with any activity that pertains to the subject matter of this Order.

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

XIII.

TERMINATION OF TEMPORARY RECEIVER

IT IS FURTHER ORDERED that Scott M. Dimond, the Temporary Receiver appointed by this Court, is hereby relieved of all duties and obligations imposed by this Court's prior Temporary Restraining Order.

XIV.

DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that Defendants shall immediately provide a copy of this Order to each affiliate, subsidiary, hosting company, division, sales entity, successor, assign, officer, director, member, employee, independent contractor, client company, agent, attorney, and spouse of each Defendant, and shall, within ten (10) days from the date of entry of this Order, provide the Commission with a sworn statement that the Defendants have complied with this provision of the Order, which statement shall include the names, physical addresses, and e-mail addresses of each such person or entity who received a copy of the Order. Furthermore, Defendants shall not take any action that would encourage officers, directors, members, employees, salespersons, independent contractors, agents, attorneys, affiliates, subsidiaries, divisions, successors, assigns, or other persons or entities in active concert or participation with them to disregard this Order or believe that they are not bound by its provisions.

XV.

SERVICE ON FINANCIAL INSTITUTIONS, ENTITIES OR PERSONS

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission, e-mail, and overnight delivery service, upon any financial institution or other entity or person that may have possession, custody, or control of any Documents or Assets of any Defendant, or that were subject to this Court's prior Temporary Restraining Order. Service upon any branch or office of any financial institution shall effect service upon the entire financial institution.

XVI.

GENERAL SERVICE OF ORDER

IT IS FURTHER ORDERED that this Order and the initial papers filed in this matter may be served on Defendants, upon the business premises of Defendants, and upon any financial institution or other entity or person that may have possession, custody, or control of any Documents or Assets of any Defendant, or that were subject to this Court's prior Temporary Restraining Order, by employees of the Plaintiff, by employees of any other law enforcement agency, by any agent of Plaintiff or by any agent of any process service retained by Plaintiff.

XVII.

COMPLIANCE REPORT

IT IS FURTHER ORDERED that Defendants shall file with the clerk of court a report in writing under oath setting forth in detail the manner and form in which they have complied with the terms of the Preliminary Injunction issued herein. Such report shall be filed no later than noon on Friday, October 28, 2016.

XVIII.

CORRESPONDENCE

IT IS FURTHER ORDERED that, for the purpose of this Order, all correspondence and service of pleadings on Plaintiff shall be addressed to:

Karen Hobbs
Danielle Estrada
P. Connell McNulty
Federal Trade Commission
600 Pennsylvania Avenue NW
Mailstop CC-8528
Washington, DC 20580

Or by electronic mail to: khobbs@ftc.gov, destrada@ftc.gov, and pmcnulty@ftc.gov.

XIX.

RETENTION OF JURISDICTION

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

SO ORDERED, this 29th day of September, 2016.



WILLIAM J. ZLOCH
United States District Judge

Copies Furnished:

All Counsel of Record