

United States District Court
for the
Southern District of Florida

Federal Trade Commission, Plaintiff)
)
v.) Civil Action No. 14-60166-Civ-Scola
)
Acquinity Interactive, LLC, and)
others, Defendants)

Preliminary Injunction

This matter is before the Court upon the FTC’s motion for temporary restraining order, which as set forth in the Court’s omnibus order, the Court construes as a motion for preliminary injunction. (ECF No. 138.) As set forth in the Court’s August 13, 2021 omnibus order (ECF No. 174), the Court grants the FTC’s motion.

On October 16, 2014, the Court entered a Stipulated Order for Permanent Injunction and Other Equitable Relief as to Defendants Burton Katz and Jonathan Smyth (the “2014 Order”). The 2014 Order resolved the case filed by the Federal Trade Commission (“FTC”) as to Defendant Burton Katz. The 2014 Order provided that Katz, along with his “officers, agents, servants, and employees, 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, sale, or distribution of any product or service,” are “permanently restrained and enjoined from making, or assisting others in making, expressly or by implication, any false or misleading material misrepresentation. (ECF No. 132, at 3.)

In December 2019, the FTC filed a separate complaint against the Contempt Defendants and others, alleging their deceptive websites violated Section 5 of the FTC Act. The case is styled *FTC v. On Point Global LLC, et al.*, 19-25046-Civ (S.D. Fla.) (the “*On Point Matter*”). In the *On Point Matter*, the FTC concurrently sought a temporary restraining order, including an asset freeze. The Court granted the FTC’s request for a temporary restraining order on December 13, 2019, freezing the Contempt Defendants’ assets. The FTC noted in its initial filings in the *On Point Matter* that the complaint in *FTC v. On Point Global* was related to this matter, that the FTC intended to file a motion for contempt in this matter, and that the factual and legal issues in the two cases overlapped. (*On Point Matter*, ECF No. 5.)

On January 14, 2020, following a two-day evidentiary hearing on the FTC's motion for a Preliminary Injunction in the *On Point Matter*, the Court entered a Preliminary Injunction, which continued the freeze on the Contempt Defendants' assets.

In February 2020, the FTC moved for an order to show cause why Burton Katz and the Corporate Contempt Defendants should not be held in contempt for their violations of the 2014 Order (the "First Contempt Motion"), seeking civil contempt compensatory remedies for those violations. In April 2021, the FTC moved for an order to show cause why Robert Zangrillo, Brent Levison, and Elisha Rothman should not be held in contempt for their violations of the 2014 Order (the "Second Contempt Motion"), which sought the same civil contempt compensatory remedies against those defendants. With the April 2021, motion, the FTC filed a motion for a temporary restraining order freezing the Contempt Defendants' Assets (the "TRO Motion").

Findings of Fact

The Court, having considered the TRO Motion, First Contempt Motion, Second Contempt Motion, declarations, exhibits, and the memorandum of points and authorities filed in support thereof¹; having heard testimony and reviewed evidence concerning the business practices of the Contempt Defendants during the two-day preliminary injunction hearing in the *On Point Matter*; and being otherwise fully advised, finds that:

A. The Court has jurisdiction over this matter for all purposes as provided in Section XI (Retention of Jurisdiction) of the 2014 Order.

B. The 2014 Order is lawful, valid, and unambiguous.

C. There is good cause to believe the Contempt Defendants has actual notice of the 2014 Order and the ability to comply with it.

D. There is good cause to believe that the Contempt Defendants have engaged in acts or practices that violate Section II of the 2014 Order, and that the Plaintiff is therefore likely to prevail on the merits of this action. As the Court previously ruled on January 14, 2020, following a two-day evidentiary hearing during which the Contempt Defendants were represented by counsel, the Plaintiff demonstrated by the records of undercover purchases; consumer complaints and declarations; expert testing; corporate, banking, and payment processing records; and additional documents filed by the FTC, the FTC has established a likelihood of success in showing that Contempt Defendants, with

¹ "At the preliminary injunction stage, a district court may rely on affidavits and hearsay materials which would not be admissible evidence for a permanent injunction, if the evidence is appropriate given the character and objectives of the injunctive proceeding." *Levi Strauss and Co. v. Sunrise Intern. Trading*, 51 F.3d 982 (11th Cir. 1995).

knowledge of the 2014 Order, have made, or assisted others in making, expressly by implication, false or misleading material representations. The Contempt Defendants deceived consumers by misrepresenting the services they offer, thus inducing consumers to pay money or divulge personal information under false pretenses. The Court need not, as a matter of law, depend on a consumer survey to prove that the websites had a tendency to deceive. *FTC v. Brown & Williamson Tobacco Corp.*, 778 F.2d 35, 40-41 (D.C. Cir. 1985) (“Evidence of consumer reaction usually takes the form of market research or consumer surveys, but a trial court may accord other forms of evidence substantial weight if that evidence appears reliable.”). Although the consumer surveys presented in this case by the FTC had some minor flaws, the results clearly show that consumers were misled by the websites. And, thus independent evidence is unnecessary in this case. The Court finds that the websites were patently misleading. The websites were cleverly designed so that even though disclosures appeared on many or most of the pages, consumers’ attention would be drawn to links and language in larger, more colorful font that directed them to the service they were seeking (such as renewing a driver’s license) and most consumers would likely ignore the disclosures written in relatively smaller and pale-colored font. And, if a consumer did read the disclosures, they would learn they could purchase a guide and would also learn that the site is a privately-owned company selling guides that can be obtained for free elsewhere on governmental sites. But, most importantly, they were not clearly informed that they could not obtain the government service they were misled to believe was available to them.

E. There is good cause to believe that immediate and irreparable damage to the Court’s ability to grant effective full compensatory contempt relief will occur from the sale, transfer, destruction or other disposition or concealment by Contempt Defendants of their assets or records, unless Contempt Defendants are immediately restrained and enjoined by order of this Court.

F. There is good cause to believe that a reasonable approximation of the total consumer loss caused by the Contempt Defendants’ violation of the 2014 Order, which represents the full compensatory relief, equals \$104,723,274.62.

G. Good cause exists for freezing the Contempt Defendants’ Assets.

H. Weighing the equities and considering the Plaintiff’s likelihood of ultimate success on the merits, a preliminary injunction with an asset freeze is in the public interest.

I. This Court has authority to issue this Order pursuant to its own inherent authority, *see United States v. United Mine Workers of America*, 300 U.S. 258, 290, 301 (1947), and the All Writs Act, 28 U.S.C. § 1651.

J. No security is required of any agency of the United States for Issuance of a t preliminary injunction. Fed. R. Civ. P. 65(c).

Definitions

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

A. **“Asset”** means any legal or equitable interest in, right to, or claim to, any property, where located and by whomever held.

B. **“Corporate Contempt Defendant”** means On Point Global LLC; On Point Employment LLC; On Point Guides LLC f/k/a Rogue Media Services LLC; DG DMV LLC; Waltham Technologies LLC; Cambridge Media Series LLC f/k/a License America Media Series LLC; Issue Based Media LLC; Dragon Global LLC; Dragon Global Management LLC; Dragon Global Holdings LLC; Direct Market LLC; Bronco Family Holdings LP a/k/a Bronco Holdings Family LP; and each of their subsidiaries, affiliates, successors, and assigns.

C. **“Contempt Defendant(s)”** means the Corporate Contempt Defendants and Individual Contempt Defendants, individually, collectively, or in any combination.

D. **“Document”** is synonymous in meaning and equal in scope to the usage of “document” and “electronically stored information” in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, sound and video recordings, images, Internet sites, web pages, websites, electronic correspondence, including e-mail and instant messages, contracts, accounting data, advertisements, FTP Logs, Server Access Logs, 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, customer or sales databases and any other electronically stored information, including Documents located on remote servers or cloud computing systems, 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.

E. **“Electronic Data Host”** means any person or entity in the business of storing, hosting, or otherwise maintaining electronically stored information. This includes, but is not limited to, any entity hosting a website or server, and any entity providing “cloud based” electronic storage.

F. **“Individual Contempt Defendant(s)”** means Burton Katz, Brent Levison, and Elisha Rothman, individually, collectively, or in any combination.

G. **“Receiver”** means Melanie Damian, as the Receiver in the On Point Matter, and any deputy receivers she names.

Order

I. Asset Freeze

It is further ordered that the Contempt Defendants and their officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who received actual notice of this Order, whether acting directly or indirectly, are hereby preliminarily restrained and enjoined from:

A. Transferring, liquidating, converting, encumbering, pledging, loaning, selling, concealing, dissipating, disbursing, assigning, relinquishing, spending, withdrawing, granting a lien or security interest or other interest in, or otherwise disposing of any Assets that are:

1. owned or controlled, directly or indirectly, by any Contempt Defendant;
2. held, in part or in whole, for the benefit of any Contempt Defendant; or
3. owned or controlled by, in the actual or constructive possession of, or otherwise held for the benefit of, any corporation, partnership, asset protection trust, or other entity that is directly or indirectly owned, managed or controlled by any Contempt Defendant.

B. Opening or causing to be opened any safe deposit boxes, commercial mail boxes, or storage facilities titled in the name of any Contempt Defendant or subject to access by any Contempt Defendant, except as necessary to comply with written requests from the Receiver acting pursuant to its authority in the On Point Matter;

C. Incurring charges or cash advances on any credit, debit, or ATM card issued in the name, individually or jointly, of any Corporate Contempt Defendant or any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by any Contempt Defendant or of which any Contempt Defendant is an officer, director, member, or manager. This includes any corporate bankcard or corporate credit card account for which any Contempt Defendant is, or was on the date that this Order was signed, an authorized signor; and

D. Cashing any checks or depositing any money orders or cash received from consumers, clients, or customers of any Contempt Defendant.

The Assets affected by this Section shall include: (1) all Assets of Contempt Defendants as of the time this Order is entered; and (2) Assets obtained by Contempt Defendants after this Order is entered if those Assets are derived from any activity that is the subject of or that is prohibited by this

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