

The Honorable Marsha J. Pechman

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

JESSE WILLMS, individually and as a director or owner of 1021018, 1016363, and 1524948 Alberta Ltd; Circle Media Bids Limited; Coastwest Holdings Limited; Farend Services Ltd; JDW Media, LLC; Net Soft Media, LLC; Sphere Media, LLC; True Net, LLC; and Mobile Web Media, LLC;
PETER GRAVER, individually and as an officer of JDW Media, LLC;
ADAM SECHRIST, individually and as a director and shareholder of Circle Media Bids Limited and manager of Sphere Media, LLC;
BRETT CALLISTER, individually and as an officer of True Net, LLC;
CAREY L. MILNE, individually and as an officer of Net Soft Media, LLC;
ELIZABETH GRAVER, individually and as an officer of Mobile Web Media, LLC;

Case No. 2:11-cv-828-MJP

STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT INJUNCTION AND MONETARY RELIEF AS TO ELIZABETH GRAVER

1 **1021018 ALBERTA LTD**, also d.b.a.
2 Just Think Media, Credit Report America,
3 eDirect Software, WuLongsource, and Wuyi
4 Source;
5 **1016363 ALBERTA LTD**, also d.b.a.
6 eDirect Software;
7 **1524948 ALBERTA LTD**, also d.b.a. Terra
8 Marketing Group, SwipeBids.com, and
9 SwipeAuctions.com;
10 **CIRCLE MEDIA BIDS LIMITED**, also
11 d.b.a. SwipeBids.com, SwipeAuctions.com,
12 and Selloffauctions.com;
13 **COASTWEST HOLDINGS LIMITED**;
14 **FAREND SERVICES LTD**;
15 **JDW MEDIA, LLC**;
16 **NET SOFT MEDIA, LLC**, also d.b.a.
17 SwipeBids.com;
18 **SPHERE MEDIA, LLC**, also d.b.a.
19 SwipeBids.com and SwipeAuctions.com;
20 **TRUE NET, LLC**, also d.b.a.
21 Selloffauctions.com; and
22 **MOBILE WEB MEDIA, LLC**;

23 Defendants.

24 Plaintiff, Federal Trade Commission ("Commission"), filed its Complaint for a
25 permanent injunction and other equitable relief in this matter pursuant to Section 13(b) of the
26 Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), and Section 917(c) of the
27 Electronic Fund Transfer Act ("EFTA"), 15 U.S.C. § 1693o(c). The Commission and defendant
28 Elizabeth Graver stipulate to entry of this Stipulated Final Judgment and Order for Permanent
Injunction and Monetary Relief ("Order") to resolve all matters in dispute in this action between
them.

THEREFORE, IT IS ORDERED as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and all of the parties pursuant to 15 U.S.C. §§ 45(a), 53(b), and 1693o(c), and 28 U.S.C. §§ 1331, 1337(a), and 1345.

1 2. Venue is proper in this District under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b), (c), and
2 (d).

3 3. The activities of defendant Elizabeth Graver, as alleged in the Complaint, are “in or
4 affecting commerce,” as that term is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

5 4. The Complaint states a claim upon which relief may be granted against defendant
6 Elizabeth Graver under Section 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and
7 53(b).

8 5. Defendant Elizabeth Graver does not admit any allegations of the Complaint, except for
9 facts necessary to establish jurisdiction and as otherwise specifically stated in this Order.

10 6. Plaintiff and defendant Elizabeth Graver waive all rights to appeal or otherwise challenge
11 or contest the validity of this Order.

12 7. Defendant Elizabeth Graver waives any claim that she may hold under the Equal Access
13 to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the
14 date of this Order, and agrees to bear her own costs and attorneys fees.

15 **DEFINITIONS**

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

17 1. **“Affiliate Network”** means any person or entity that operates an Affiliate Program using
18 third-party marketers.

19 2. **“Affiliate Program(s)”** means any arrangement under which the defendant pays, offers
20 to pay, or provides or offers to provide any form of consideration to any third party to
21 market, advertise, or offer for sale any product or service on behalf of the defendant or
22 his clients including, but not limited to, by providing the defendant or his clients with, or
23 referring to the defendant or his clients, potential or actual customers.

24 3. **“Assist others” or “assisting others”** means providing products or services to another
25 person or entity including, but not limited to (a) formulating, developing, or providing, or
26 arranging for the formulation, development, or provision of, any advertising or marketing
27 content; (b) performing advertising or marketing services of any kind including, but not
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1 limited to, soliciting endorsements or testimonials, selecting sponsored search result
2 terms or the criteria for contextual or behavioral advertising delivery; tracking, testing,
3 optimizing, or otherwise assessing the efficacy of any advertisement; registering or
4 advising others about the registration of domain names; presenting or making available to
5 others the opportunity to participate in any advertising campaign or to act as a publisher
6 of advertising or driving traffic to any web page, URL, or mobile application; (c)
7 providing names, or assisting in the generation, of potential customers; or (d) processing
8 or arranging for processing of credit card, debit card, Automated Clearinghouse (“ACH”)
9 debits, remotely-created checks, or payments through any other system.

- 10 4. **“Corporate Defendants”** means 1021018 Alberta Ltd, also d.b.a. Just Think Media,
11 Credit Report America, Wulongsource, and Wuyi Source; 1016363 Alberta Ltd, also
12 d.b.a. eDirect Software; 1524948 Alberta Ltd, also d.b.a. Terra Marketing Group,
13 SwipeBids.com, and SwipeAuctions.com; Circle Media Bids Limited, also d.b.a.
14 SwipeBids.com, SwipeAuctions.com, and Selloffauctions.com; Coastwest Holdings
15 Limited; Farend Services Ltd; JDW Media, LLC; Net Soft Media, LLC, also d.b.a.
16 SwipeBids.com; Sphere Media, LLC, also d.b.a. SwipeBids.com and SwipeAuctions.com;
17 True Net, LLC, also d.b.a. Selloffauctions.com; Mobile Web Media, LLC, and their
18 successors and assigns.
- 19 5. **“Marketing Affiliate”** means any person or entity with whom defendants are in direct
20 privity who participates with defendants in marketing any product or service.
- 21 6. **“Product or service”** includes merchandise, goods, plans, and programs.

22 ORDER

23 I. MISREPRESENTATIONS TO THIRD PARTIES

24 **IT IS FURTHER ORDERED** that, in connection with procuring services from third
25 parties including, but not limited to, affiliate networks, payment processors, banks or other
26 financial institutions, marketing affiliates, customer service providers, lead brokers, web
27 designers, and fulfillment houses, defendant Elizabeth Graver and her officers, agents, servants,
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1 employees, attorneys, and all other persons in active concert or participation with any of them
2 who receive actual notice of this Order by personal service or otherwise, are permanently
3 restrained and enjoined from:

- 4 A. Making, or assisting others in making, directly or indirectly, expressly or by
5 implication, any false or misleading material representation including, but not
6 limited to, misrepresentations about:
- 7 1. The control or affiliation between any person or entity seeking to procure
8 services and any other person or entity;
 - 9 2. The nature, terms, conditions, and disclosures associated with the
10 advertising, marketing, promoting, offering for sale, or sale of any product
11 or service offered by defendants; and
 - 12 3. Third party approvals or endorsements, or the substantiation for or the
13 legality of advertising claims for any product or service offered for sale by
14 defendants;
- 15 B. Failing to disclose to any payment processor or financial institution the following
16 information: (1) the identity of the owner, manager, director, or officer of the
17 applicant for or holder of a merchant account, and (2) any material connection
18 between the owner, manager, director, or officer of the applicant for or holder of a
19 merchant account and any third party who has been or is placed in a merchant
20 account monitoring program, has had a merchant account terminated by a
21 payment processor or a financial institution, or has been fined or otherwise
22 disciplined in connection with a merchant account by a payment processor or a
23 financial institution; and
- 24 C. Engaging in any practice that would have the effect of circumventing any
25 chargeback monitoring program or other risk management program implemented
26 by a credit card payment association.

1 **II. PROHIBITION ON COLLECTING PAST ACCOUNTS**

2 **IT IS FURTHER ORDERED** that defendant Elizabeth Graver and her officers, agents,
3 servants, employees, and attorneys, and all other persons in active concert or participation with
4 any of them who receive actual notice of this Order by personal service or otherwise, are
5 permanently restrained and enjoined from attempting to collect, collecting, selling, assigning, or
6 otherwise transferring the right to collect payment for any product or service sold prior to the
7 entry of this Order.

8 **III. PROHIBITION AGAINST USING CUSTOMER INFORMATION**

9 **IT IS FURTHER ORDERED** that defendant Elizabeth Graver and her officers, agents,
10 servants, employees, and attorneys, and all other persons in active concert or participation with
11 any of them who receive actual notice of this Order by personal service or otherwise, are
12 permanently restrained and enjoined from:

- 13 A. Disclosing, using, or benefitting from customer information, including the name,
14 address, telephone number, email address, social security number, other
15 identifying information, or any data that enables access to a customer's account
16 (including a credit card, bank account, or other financial account), of any person
17 which any defendant obtained in connection with the sale of any product or
18 service by defendant Jesse Willms or any of the corporate defendants prior to
19 entry of this Order; and
- 20 B. Failing to dispose of such customer information in all forms in her possession,
21 custody, or control within thirty (30) days after entry of this Order. Disposal shall
22 be by means that protect against unauthorized access to the customer information,
23 such as by burning, pulverizing, or shredding any papers, and by erasing or
24 destroying any electronic media, to ensure that the customer information cannot
25 practicably be read or reconstructed.

26 *Provided, however,* that customer information need not be disposed of, and may be disclosed, to
27 the extent requested by a government agency or required by a law, regulation, or court order.

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IV. MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

- A. Judgment is entered in favor of the Commission and against defendant Elizabeth Graver in the amount of \$38,000 as equitable monetary relief. This amount shall be paid to the Commission within ten (10) days of entry of this Order in accordance with directions provided by counsel for the Commission;
- B. In the event of any default on defendant Elizabeth Graver's obligation to make payment under this Order, interest, compounded pursuant to 28 U.S.C. § 1961, as amended, shall accrue from the date of default to the date of payment, and shall immediately become due and payable;
- C. Unless she has already done so, defendant Elizabeth Graver is required, in accordance with 31 U.S.C. § 7701, to furnish to the Commission her Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), that shall be used for purposes of collecting and reporting on any delinquent amount arising out of defendant Elizabeth Graver's relationship with the government;
- D. All money paid to the Commission under this Order shall be deposited into a fund administered by the Commission or its representatives to be used for equitable relief including consumer redress and any attendant expenses for the administration of any redress fund. If direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for any other equitable relief (including consumer information remedies) as it determines to be reasonably related to defendant Elizabeth Graver's practices alleged in the Complaint. Any monies not used for such equitable relief shall be deposited to the U.S. Treasury as disgorgement. Defendant Elizabeth Graver shall have no right to challenge

1 any actions the Commission or its representatives may take pursuant to this
2 Subsection;

3 E. Defendant Elizabeth Graver relinquishes all dominion, control, and title to the
4 funds paid to the fullest extent permitted by law. Defendant Elizabeth Graver
5 shall make no claim to or demand for return of the funds, directly or indirectly,
6 through counsel or otherwise;

7 F. Defendant Elizabeth Graver agrees that the facts as alleged in the Complaint filed
8 in this action shall be taken as true without further proof in any bankruptcy case
9 or subsequent civil litigation pursued by the Commission to enforce its rights to
10 any payment or money judgment pursuant to this Order including, but not limited
11 to, a nondischargeability complaint in any bankruptcy case. Defendant Elizabeth
12 Graver further stipulates and agrees that the facts alleged in the Complaint
13 establish all elements necessary to sustain an action by the Commission pursuant
14 to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and
15 that this Order shall have collateral estoppel effect for such purposes; and

16 G. Proceedings instituted under this Section are in addition to, and not in lieu of, any
17 other civil or criminal remedies as may be provided by law, including any other
18 proceedings the Commission may initiate to enforce this Order.

19 **V. COMPLIANCE REPORTING**

20 **IT IS FURTHER ORDERED** that defendant Elizabeth Graver make timely
21 submissions to the Commission:

22 A. One hundred and eighty (180) days after entry of this Order, defendant Elizabeth
23 Graver must submit a compliance report, sworn under penalty of perjury:

- 24 1. She must: (a) designate at least one telephone number and an email,
25 physical, and postal address as points of contact, which representatives of
26 the Commission may use to communicate with her; (b) identify all of her
27 businesses by all of their names, telephone numbers, and physical, postal,
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1 email, and Internet addresses; (c) describe the activities of each business,
2 including the products and services offered, the means of advertising,
3 marketing, and sales, and the involvement of any other defendant (which
4 defendant Elizabeth Graver must describe if she knows or should know
5 due to her own involvement); (d) describe in detail whether and how
6 defendant Elizabeth Graver is in compliance with each Section of this
7 Order; and (e) provide a copy of each Order Acknowledgment obtained
8 pursuant to this Order, unless previously submitted to the Commission;

9 2. Additionally, defendant Elizabeth Graver must: (1) identify all telephone
10 numbers and all email, Internet, physical, and postal addresses, including
11 all residences; (b) identify all titles and roles in all business activities,
12 including any businesses for which she performs services whether as an
13 employee or otherwise and any entity in which she has any ownership
14 interest; and (c) describe in detail her involvement in each such business,
15 including title, role, responsibilities, participation, authority, control, and
16 any ownership;

17 B. For twenty (20) years following entry of this Order, defendant Elizabeth Graver
18 must submit a compliance notice, sworn under penalty of perjury, within fourteen
19 (14) days of change in the following:

20 1. Defendant Elizabeth Graver must report any change in: (a) any designated
21 point of contact; (b) the structure of any entity that she has any ownership
22 interest in or directly or indirectly controls that may affect compliance
23 obligations arising under this Order, including: creation, merger, sale, or
24 dissolution of the entity or any subsidiary, parent, or affiliate that engages
25 in any acts or practices subject to this Order;

26 2. Additionally, defendant Elizabeth Graver must report any change in: (a)
27 name, including aliases or fictitious names, or residence address; or (b)
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1 title or role in any business, including any business for which she
2 performs services whether as an employee or otherwise and any entity in
3 which she has an ownership interest, and identify its name, physical
4 address, and Internet address, if any;

5 C. Defendant Elizabeth Graver must submit to the Commission notice of the filing
6 of any bankruptcy petition, insolvency proceeding, or any similar proceeding by
7 or against her within fourteen (14) days of its filing;

8 D. Any submission to the Commission required by this Order to be sworn to under
9 penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746,
10 such as by concluding: "I declare under penalty of perjury under the laws of the
11 United States of America that the foregoing is true and correct. Executed on: ____"
12 and supplying the date, signatory's full name, title (if applicable), and signature;
13 and

14 E. Unless otherwise directed by a Commission representative in writing, all
15 submissions to the Commission pursuant to this Order must be emailed to
16 Debrief@ftc.gov or sent by overnight courier (not U.S. Postal Service) to:
17 Associate Director for Enforcement, Bureau of Consumer Protection, Federal
18 Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, DC 20580.
19 The subject line must begin: *FTC v. Jesse Willms, et al.* [X110031]

20 VI. COMPLIANCE MONITORING

21 **IT IS FURTHER ORDERED** that, for the purpose of monitoring defendant Elizabeth
22 Graver's compliance with this Order:

23 A. Within fourteen (14) days of receipt of a written request from a representative of
24 the Commission, defendant Elizabeth Graver must: submit additional compliance
25 reports or other requested information, which must be sworn under penalty of
26 perjury; appear for depositions; and produce documents for inspection and
27 copying. The Commission is also authorized to obtain discovery, without further
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1 leave of court, using any of the procedures prescribed by Federal Rules of Civil
2 Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69;

3 B. For matters concerning this Order, the Commission is authorized to communicate
4 directly with defendant Elizabeth Graver. Defendant Elizabeth Graver must
5 permit representatives of the Commission to interview any employee or other
6 person affiliated with her who has agreed to such an interview. The person
7 interviewed may have counsel present; and

8 C. The Commission may use all other lawful means, including posing through its
9 representatives, as consumers, suppliers, or other individuals or entities, to
10 defendant Elizabeth Graver or any individual or entity affiliated with her, without
11 the necessity of identification or prior notice. Nothing in this Order limits the
12 Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of
13 the FTC Act, 15 U.S.C. §§ 49, 57b-1.

14 VII. RECORD KEEPING

15 **IT IS FURTHER ORDERED** that defendant Elizabeth Graver must create certain
16 records for twenty (20) years after entry of this Order, and retain each such record for five (5)
17 years. Specifically, defendant Elizabeth Graver, for any business in which she, individually or
18 collectively with any other defendant, is a majority owner or directly or indirectly controls, must
19 maintain the following records:

- 20 A. Accounting records showing the revenues from all products or services sold, all
21 costs incurred in generating those revenues, and the resulting net profit or loss;
- 22 B. Personnel records showing for each person providing services, whether as an
23 employee or otherwise, that person's: name, address, and telephone numbers;
24 that person's job title or position; the dates of service; and if applicable, reason
25 for the person's termination;
- 26 C. Complaints and refund requests whether received directly or indirectly, as
27 through a third party, and any responses;

- 1 D. A copy of each advertisement or other marketing material; and
2 E. All records necessary to demonstrate full compliance with each provision of this
3 Order, including submissions to the Commission.

4 **VIII. ORDER ACKNOWLEDGMENTS**

5 **IT IS FURTHER ORDERED** that defendant Elizabeth Graver obtain acknowledgments
6 of receipt of this Order:

- 7 A. Defendant Elizabeth Graver, within seven (7) days of entry of this Order, must
8 submit to the Commission an acknowledgment of receipt of this Order sworn
9 under penalty of perjury;
- 10 B. For five (5) years after entry of this Order, defendant Elizabeth Graver, for any
11 business that she, individually or collectively with any other defendant, is the
12 majority owner or directly or indirectly controls, must deliver a copy of this Order
13 to: (1) all principals, officers, directors, and managers; (2) all employees, agents,
14 and representatives who participate in conduct related to the subject matter of the
15 Order; and (3) any business entity resulting from any change in structure as set
16 forth in the Section titled "Compliance Reporting." Delivery must occur with
17 seven (7) days of entry of this Order for current personnel. To all others, delivery
18 must occur before they assume their responsibilities; and
- 19 C. From each individual or entity to which defendant Elizabeth Graver delivered a
20 copy of this Order, she must obtain, within thirty (30) days, a signed and dated
21 acknowledgment of receipt of this Order.

22 **IX. RETENTION OF JURISDICTION**

23 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for
24 purposes of construction, modification, and enforcement of this Order.

25
26 **SO ORDERED**, this ____ day of _____.

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Honorable Marsha J. Pechman
United States District Judge

1 Presented by:

2 For Plaintiff

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5 KATHRYN C. DECKER, WSBA #12389

6 NADINE S. SAMTER, WSBA #23881

7 ELEANOR DURHAM

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9 RICHARD MCKEWEN

10 Federal Trade Commission

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24 Attorneys for Plaintiff Federal Trade Commission

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1 For Defendant Elizabeth Graver

2 REDACTED

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4 Elizabeth Graver

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10 Attorney for Defendant Elizabeth Graver

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