

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
J. Thomas Rosch
Edith Ramirez
Julie Brill

In the Matter of)
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)
)
ASPEN WAY ENTERPRISES, INC.,)
a corporation.)
_____))
)

AGREEMENT CONTAINING
CONSENT ORDER

FILE NO. 1123151

AGREEMENT CONTAINING CONSENT ORDER

The Federal Trade Commission has conducted an investigation of certain acts and practices of Aspen Way, Inc. (“proposed respondent”). Proposed respondent, having been represented by counsel, is willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

IT IS HEREBY AGREED by and between Aspen Way, Inc., and counsel for the Federal Trade Commission that:

1. Proposed respondent Aspen Way, Inc., is a Montana corporation with its principal office or place of business at 2702 Montana Ave., Suite 202, Billings, Montana 59101.
2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint.
3. Proposed respondent waives:
 - a. Any further procedural steps;
 - b. The requirement that the Commission’s decision contain a statement of findings of fact and conclusions of law; and
 - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of thirty (30) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it pub

2. “Commerce” shall be defined as it is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

3. “Computer” shall mean any desktop or laptop computer, handheld device, tablet, telephone, or other electronic product or device that has a platform on which to download,

6. “Monitoring technology” shall mean any hardware, software, or application utilized in conjunction with a computer that can cause the computer to (1) capture, monitor, or

B. Installing or activating on rented computers geophysical location tracking technology where that technology does not provide clear and prominent notice to the computer user immediately prior to each use of the geophysical location tracking technology; and

C. Failing to provide clear and prominent notice to computer users and obtaining affirmative express consent from computer renters, as required in subpart A, above, by the following means:

1. Clear and Prominent Notice: respondent shall provide a clear and prominent notice to the user, separate and apart from any “privacy policy,” “data use policy,” “terms of service,” “end-user license agreement,” “lease agreement,” or other similar document, that discloses (1) that geophysical location tracking technology is installed and/or currently running on the computer; (2) the types of user activity or conduct that is being captured by such technology; (3) the identities or specific categories of entities with whom any data or information that is collected will be shared or otherwise provided; (4) the purpose(s) for the collection, use, or sharing of such data or information; and (5) where and how the user can contact someone for additional information.

2. Affirmative Express Consent: respondent shall obtain affirmative express consent by giving the computer renter an equally clear and prominent choice to either agree or not agree to any geophysical location tracking technology, and neither option

(b). For purposes of this Order, “filing of a police report” means the filing of the renter’s or respondent’s complaint with the police department in any form recognized in the jurisdiction.

III.

NO DECEPTIVE GATHERING OF CONSUMER INFORMATION

IT IS FURTHER ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and its officers, agents, servants, employees, and all persons or entities in active concert or participation with it who receive actual notice of this order, by personal service or otherwise, in connection with any covered rent-to-own transaction, are hereby permanently restrained and enjoined from making or causing to be made any false representation or depiction in any notice, prompt screen, or other software application appearing on the screen of any computer that results in gathering information from or about a consumer, including without limitation location information.

IV.

NO USE OF IMPROPERLY OBTAINED INFORMATION IN COLLECTIONS

IT IS FURTHER ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and its officers, agents, servants, employees, and all persons or entities in active concert or participation with it who receive actual notice of this order, by personal service or otherwise, are hereby permanently restrained and enjoined from using, in connection with collecting or attempting to collect a debt, money, or property pursuant to a covered rent-to-own transaction, any information or data obtained in a manner that does not comply with Parts I, II, and III of this Order.

V.

PROTECTION OF DATA

IT IS FURTHER ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and its officers, agents, servants, employees, and all persons or entities in active concert or participation with it who receive actual notice of this order, by personal service or otherwise, shall:

- A. Delete or destroy all user data previously gathered using any monitoring or geophysical location tracking technology that does not comply with Parts I, II, and III of this Order, unless such action is otherwise prohibited by court order or other legal obligation; and
- B. Transfer data or information gathered by any monitoring or geophysical location tracking technology from the computer upon which the technology is installed to respondent’s server(s), and from the respondent’s server(s) to any other computers or servers only if the information collected is rendered unreadable, unusable, or indecipherable during transmission.

VI.
NO MISREPRESENTATIONS ABOUT PRIVACY

IT IS FURTHER ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and its officers, agents, servants, employees, and all persons or entities in active concert or participation with it who receive actual notice of this order, by personal service or otherwise, in connection with any covered rent-to-own transaction shall not misrepresent, in any manner, expressly or by implication, the extent to which respondent maintains and protects the security, privacy, or confidentiality of any personal information collected from or about consumers.

VII.
DISTRIBUTION OF ORDER

the respondent shall notify the Commission as soon as is practicable after obtaining such knowledge.

C. Unless otherwise directed by a representative of the Commission, all notices required by this Part shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, with the subject line Aspen Way Enterprises, Inc., File No. 1123151. *Provided, however;* that, in lieu of overnight courier, notices may be sent by first class mail, but only if an electronic version of each such notice is contemporaneously sent to the Commission at DEbrief@ftc.gov.

IX. RECORDKEEPING

IT IS FURTHER ORDERED that respondent shall, for five (5) years after the last date of any act or practice covered by Parts I – VI of this Order, maintain and upon reasonable notice make available to the Federal Trade Commi

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed afte