**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

| | | |
|---|---|---|
| **FEDERAL TRADE COMMISSION,** | ) | |
| | ) | |
| **Plaintiff,** | ) | |
| | ) | |
| **vs.** | ) | **Case No. 17 C 194** |
| | ) | |
| **CREDIT BUREAU CENTER, LLC and MICHAEL BROWN,** | ) | |
| | ) | |
| | ) | |
| **Defendants.** | ) | |

**MEMORANDUM OPINION AND ORDER**

MATTHEW F. KENNELLY, District Judge:

On January 10, 2017, the Federal Trade Commission (FTC) filed a complaint against Credit Bureau Center, LLC, Michael Brown, Danny Pierce, and Andrew Lloyd seeking a permanent injunction and equitable relief. The FTC alleges that defendants violated section 5(a) of the FTC Act**,** 15 U.S.C. § 45(a); section 612(g)(1) of the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681j(g)(1), and the Free Annual File Disclosures Rule (Free Reports Rule), 12 C.F.R. § 1022.138; and the Restore Online Shoppers' Confidence Act (ROSCA), 15 U.S.C. § 8403.

The FTC moved *ex parte* for a temporary restraining order including an asset freeze, appointment of a receiver, and other relief. On January 11, 2017, Judge Sharon Johnson Coleman, acting as emergency judge in the undersigned judge's absence, granted the requested TRO.

The FTC also moved for a preliminary injunction against all of the defendants. Lloyd and Pierce agreed to entry of a preliminary injunction, and CBC and Brown opposed the FTC's motion. The Court held an evidentiary hearing on the preliminary injunction motion on February 13-14, 2017 and extended the TRO through 5:00 p.m. on February 21, 2017 to permit consideration of the evidence and arguments presented at the preliminary injunction hearing. For the following reasons, the Court grants the FTC's motion for preliminary injunction.

## Background

CBC, formerly known as MyScore LLC, also doing business as eFreeScore.com, Creditupdates.com, and FreeCreditNation.com, is a single-member LLC that is owned and run by Brown. CBC has only one employee, Brown himself. It uses independent contractors for sales, marketing, customer service, and accounting.

CBC offers online credit scores and credit monitoring services to consumers. Brown says that CBC engaged in two primary lines of business: (1) the offering of credit monitoring solutions that take the form of "white-labeled" or "co-branded" credit

*Id.*; Pl.'s Reply, Ex. 12, Att. A, pp. 28-30. This wrongdoing alleged in this case concerns CBC's affiliate marketing business.

From the company's inception in the second half of 2011 through January 19, 2017, CBC generated more than $10.1 million in revenue, net of chargebacks, returns, and other adjustments. CBC's total net income from its inception to January 19, 2017 was approximately $1.67 million, of which $659,159 was distributed to Brown. The lion's share of CBC's revenue was obtained in 2014, 2015, and 2016 (its total revenue for 2013, its best year up to that point, was under $600,000). In early 2014, CBC hired Revable Network LLC, a company owned and run by Pierce, to perform affiliate marketing to drive consumer traffic to CBC's websites. Pierce, in turn engaged Lloyd, click" commission by inducing a consumer to click on a link that leads the consumer to the merchant's website. Pl.'s Mot. for Prelim. Inj., Ex. 10 ¶ 6. From December 2014 to demonstrate irreparable injury." *Id.* "The greater the plaintiff's likelihood of success on the merits . . ., the less harm from denial of the preliminary injunction the plaintiff need show in relation to the harm that the defendant will suffer if the preliminary injunction is granted." *FTC v. Elders Grain, Inc.*, 868 F.2d 901, 903 (7th Cir. 1989).

**A. Likelihood of success**

**1. Section 5(a) of the FTC Act**

Section 5 of the FTC Act prohibits "unfair or deceptive acts or practices in or affecting commerce." 15 U.S.C. § 45(a)(1). The "FTC may establish corporate liability under section 5 with evidence that a corporation made material representations likely to mislead a reasonable consumer." *FTC v. Bay Area Bus. Council, Inc.*, 423 F.3d 627, 635 (7th Cir. 2005); *FTC v. QT, Inc.*, 512 F.3d 858, 863 (7th Cir. 2008) (citing *Kraft, Inc. v. FTC*, 970 F.2d 311, 314 (7th Cir. 1992)). The FTC need not prove intent to deceive in order to establish liability, because the primary purpose of § 5 is to protect public consumers "rather than to punish the wrongdoer." *FTC v. Freecom Commc'ns, Inc.*, 401 F.3d 1192, 1202 (10th Cir. 2005). Indeed, "an advertiser's good faith does not immunize it from responsibility for its misrepresentations." *World Travel Vacation Brokers*, 861 F.2d at 1029 (internal quotation marks omitted). Accordingly, to make a finding that a corporation's practice is deceptive, the Court looks to the "practice's likely effect on [the] mind of ordinary consumer." *Bay Area Bus. Council*, 423 F.3d 627 at 635 (citing *Freecom Commc'ns*, 401 F.3d at 1202). "The existence of some satisfied customers does not constitute a defense under the FTCA." *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 572 (7th Cir. 1989).

It is undisputed that Pierce and Lloyd's method of generating sales for CBC constituted a fraud on consumers and violated section 5 of the FTC Act. Lloyd (with Pierce's knowledge) created advertisements for fake rental listings on Craigslist to direct consumers to CBC's websites to obtain a "free credit report," knowing that signing up for the report would result in a monthly charge for credit monitoring. What is disputed is whether and the extent to which CBC and Brown were aware of or legally responsible for Lloyd's false advertising campaign.

**a. Liability of CBC**

It is well established that "[p]rincipals are liable for the misrepresentations of their agents under the FTC Act." *FTC v. Lifewatch Inc.*, 176 F. Supp. 3d 757, 779 (N.D. Ill. 2016). To bind a principal, the "agent must have either actual authority, apparent

*Fund v. A&A Drug Co.*, 736 F.3d 1054, 1059 (7th Cir. 2013)). A party may show ratification through circumstantial evidence, "including long-term acquiescence, after notice, to the benefits of an allegedly unauthorized transaction." *Sphere Drake Ins.*, 376 F.3d at 677 (internal quotation marks omitted).

The FTC has established a reasonable likelihood of succeeding on a contention that Pierce and Lloyd acted, directly or indirectly, as CBC's agents. Pierce and his affiliate network had express authority to use advertisements to direct traffic to CBC's websites. Brown testified that CBC's engagement of Pierce and his affiliate network permitted Pierce to delegate to others the work of driving traffic to CBC's websites.

Pierce was fully aware of Lloyd's fraudulent advertisements from the inception of Lloyd's Craigslist campaign. Pierce was directly involved in aspects of Lloyd's mailing campaign, such as giving Lloyd his approval to continue mailing advertisements. Pl.'s Reply, Ex. 12, Att. C, p. 10.

There is also evidence that CBC and Brown were anything but removed from the saying, "Hey man, in your message can you make it say, 'please don't email the report, print it out and bring it on the tour.'" *Id.*, Att. C, p. 24. This evidence, taken together, gives the FTC a reasonable likelihood of showing that Pierce and Lloyd acted with CBC's actual authority, either express or implied.

Second, even if Pierce and Lloyd did not have express or implied actual authority from CBC, the FTC has shown a reasonable likelihood of succeeding on a contention that CBC had knowledge of the fraudulent Craigslist advertisements and ratified these activities. CBC received 16,000 inbound calls to its customer service center over a sixty-day period preceding the filing of the lawsuit. Of these calls, over 10,000 were recorded. Pl.'s Reply, Ex. 11, McKenney Supp. Decl. ¶ 3. At least 87 calls were marked in CBC's call logs under the disposition, "Cancellation – [Craigslist] Post." *Id.* ¶ 4. Brown testified that in 2015 he read a complaint about a fraudulent advertisement that traced back to Craigslist, asked for more information on the matter, did not receive the information, but simply stopped investigating. In addition, the Better Business Bureau received 200 complaints against CBC, a number of which referenced Lloyd's fraudulent Craigslist advertisements. Although Brown denies knowledge of the BBB .1dctt66.2(ai0B(d[(.1dctt61(ustoents.(i)5.7(ti)15.549(Al).0012 Tw2ti)15..0012d5.4(f))5.1(ccei)15.5n2.9

center, which was located in the country of Colombia, was never directed to advise Brown of specific complaints or even the types of complaints that it was receiving. For example, Brown initially testified that there were no types of complaints that he instructed CBC's customer service team to forward to him directly. At a later point in the had their own custom landing page, CBC had authority to modify it. As discussed in the previous section, Brown had the ability to control the volume of traffic generated by

### 2. Fair Credit Reporting Act

The FTC argues that CBC's website violates section 612(g)(1) of the FCRA and the Free Reports Rule, 12 C.F.R. § 1022.138. "[A] violation of any requirement or prohibition imposed under [the FCRA] shall constitute an unfair or deceptive act or practice in commerce, in violation of section 5(a) of the Federal Trade Commission Act." 15 U.S.C. § 1681s(a)(1). Section 612(g)(1) states that "any advertisement for a free credit report in any medium shall prominently disclose in such advertisement that free credit reports are available under Federal law at: 'AnnualCreditReport.com.'" 15 U.S.C. § 1681j(g)(1). The Free Reports Rule specifies that a website offering free credit reports must display a disclosure, inside a box, "across the top of each page where the disclosure is required to appear," that states the following:

> THIS NOTICE IS REQUIRED BY LAW. Read more at consumerfinance.gov/learnmore. You have the right to a free credit report from AnnualCreditReport.com or 877-322-8228, the ONLY authorized source under federal law.

15 U.S.C. § 1681j(g)(1).

The FTC has submitted several images from landing pages that were linked through Lloyd's fraudulent Craigslist advertisements. None of these landing pages included the disclaimer required by section 612(g)(1) of the FCRA and the Free Reports Rule. Accordingly, the FTC has established a reasonable likelihood of success on this claim. And on this claim, there is no question regarding Brown and CBC's knowledge or involvement; they are directly responsible for the content of the website.

> It shall be unlawful for any person to charge or attempt to charge any consumer for any goods or services sold in a transaction effected on the Internet through a negative option feature . . . unless the person (1) provides text that clearly and conspicuously discloses all material terms of the transaction before obtaining the consumer's billing information [and] (2) obtains a consumer's express informed consent before charging the consumer's credit card, debit card, bank account, or other financial account for products or services through such transaction.

15 U.S.C. § 8403.

The landing pages for CBC linked in Lloyd's advertisements expressly offers consumers a "free" credit report and credit score. The offer is conveyed in a large, bold-type heading on the landing page, "**Get Your Free Credit Score and Report as of [Date].**

deduction of the monthly fee is placed at the bottom of the page in fainter, smaller font. And although CBC's offer tells the customer that her membership will begin after a 7-day trial period, it does not actually describe what the membership involves. Finally, there is no question that both CBC and Brown have direct responsibility for the terms of the offer.

### B. Balancing of private and public intert

will be adversely impacted because it will be unable to provide them with credit monitoring services, and there is no way for the customers to reach out to CBC because the receiver shut down its customer service center. Finally, CBC claims that a alleged in the FTC's complaint.[2]

preliminary injunction. The Court is willing to consider modifying the injunction to permit CBC to carry on its purportedly separate line of business if CBC and Brown can make a satisfactory showing that this business is indeed separate and untainted by the deceptive and unlawful practices cited by the FTC (as well as commercially viable), and if they can offer a workable mechanism for modifying the injunction to allow them to continue or resume that business.

**Conclusion**

For the foregoing reasons, the Court grants plaintiff's motion for a preliminary injunction against defendants Credit Bureau Center, LLC and Michael Brown. The FTC is directed to immediately provide a Word version of its proposed order via the undersigned judge's proposed order e-mail address. The Court reserves the right to make appropriate modifications to the proposed order. The case is set for a status hearing on Monday, February 27, 2017 at 9:30 a.m.

MATTHEW F. KENNELLY
United States District Judge

Date: February 21, 2017