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Division of Law
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FILED
SEP - 8 2015
Division of Consumer Affairs

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STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS

In the Matter of	:	
	:	
DEALERAPP VANTAGE, LLC	:	Administrative Action
	:	
	:	
	:	
	:	<u>CONSENT ORDER</u>
	:	
Respondent.	:	

WHEREAS this matter was opened by the New Jersey Division of Consumer Affairs, Office of Consumer Protection (“Division”), as an investigation to ascertain whether violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (“CFA”), have been or are being committed by DealerApp Vantage, LLC (“Respondent”) (hereinafter referred to as the “Investigation”);

WHEREAS Respondent is a New Jersey limited liability company headquartered at 136 11th Street, Piscataway, New Jersey 08854, which develops, Advertises and Sells mobile device applications (“Mobile Apps”) within the State of New Jersey and elsewhere;

WHEREAS Respondent develops Mobile Apps for automotive dealerships (“Dealership

Customers”) that are customized for each Dealership Customer and include applying Dealership Customer branding and the availability of the Mobile Apps on a Dealership Customer’s website in such manner that the Mobile Apps appear to Consumers as if they are being Advertised and/or Sold directly by the Dealership Customers when they are actually being Sold by Respondent;

WHEREAS Respondent states, through its website located at <<http://dealerappvantage.com>>, that its Mobile Apps “help[] dealers attract and retain more customers using advanced Mobile Marketing Strategies” and that Respondent “design[s] true native Apps that can be customized per dealer so that each dealer stands apart from the others [and that] [p]art of our Mobile Marketing Solution includes training dealers on how to market the App to existing customers and prospects, ‘best practices’ on sending out Push Notifications, and overall Mobile awareness;”

WHEREAS Respondent has approximately five hundred (500) Dealership Customers worldwide, including thirty-eight (38) located in New Jersey;

WHEREAS Respondent’s Mobile Apps are available for download by Consumers through the Dealership Customers’ websites, Apple’s iTunes App Store, Google Play Store and elsewhere;

WHEREAS Respondent, through its Mobile Apps, collects the following personal information from Consumers: (1) location ID (a five digit number corresponding to an individual Dealership Customer); (2) Consumer specific information including (a) Consumer name, (b) Consumer e-mail address, (c) Consumer phone number, (d) customer ID, (e) unique device identification number (UDID), and (f) zip code; (3) Consumer vehicle information including (a) year of Consumer’s vehicle, (b) make of Consumer’s vehicle, (c) model of

Consumer's vehicle, (d) Consumer's vehicle identification number (VIN), and (e) Consumer's vehicle odometer reading (collectively, "Consumer Information");

WHEREAS Respondent's Mobile Apps transmit Consumer Information to Respondent, as well as to the specific Dealership Customer for which the Mobile App is customized;

WHEREAS the Division has found that Respondent did not notify its Dealership Customers that its Mobile Apps collected and transmitted Consumer Information to Respondent;

WHEREAS the Division has found that Respondent's Dealership Customers were not aware that Consumer Information was transmitted to Respondent;

WHEREAS the Division has found that neither Respondent nor its Dealership Customers' privacy policies adequately disclosed to Consumers Respondent's practice of collecting Consumer Information;

WHEREAS Respondent has transmitted information to third-party data analytics companies concerning Consumers' use of its Mobile Apps;

WHEREAS the Division has found that neither Respondent nor its Dealership Customers' privacy policies adequately disclosed to Consumers Respondent's use of third-party data analytics companies and that Respondent failed to comply with the terms of use of those third-party analytic companies by Respondent's failure to disclose its use of such analytics services in its Mobile Apps;

WHEREAS as a result of the Investigation, the Division alleges that Respondent has violated the CFA by, among other things, failing to adequately disclose to Consumers Respondent's practice of collecting Consumer Information, including failing to disclose to Consumers the types of information collected and failing to adequately disclose its transfer of

such information to third-party data analytics companies;

WHEREAS Respondent denies that it violated the CFA; and

WHEREAS the Division and Respondent (collectively, “Parties”) have reached an amicable agreement hereby resolving the issues in controversy and concluding the Investigation without the need for further action, and Respondent has voluntarily cooperated with the Investigation and consented to the entry of the herein order (“Consent Order”) and for good cause shown:

IT IS ORDERED AND AGREED as follows:

1. EFFECTIVE DATE

1.1 This Consent Order shall be effective on the date that it is filed with the Division (“Effective Date”).

2. DEFINITIONS

As used in this Consent Order, the following words or terms shall have the following meanings, which meanings shall apply wherever the words and terms appear in this Consent Order:

2.1 “Advertisement” shall be defined in accordance with N.J.S.A. 56:8-1(a). This definition applies to other forms of the word “Advertisement” including, without limitation, “Advertises” and “Advertising.”

2.2 “Attorney General” shall refer to the Attorney General of the State of New Jersey and the Office of the Attorney General of the State of New Jersey.

2.3 “Clearly and Conspicuously” shall mean a statement that, regardless of the medium in which it is made, is presented in such type, size, color, contrast, duration, location and

audibility, compared to other information with which it is presented, that it is readily apparent and understandable and in language and terms used in accordance with their common or ordinary usage and meaning. If such statement modifies, explains or clarifies other information with which it is presented, it must be presented in proximity to the information it modifies, explains or clarifies and in a manner that is readily apparent and understandable.

2.4 “Consumer” shall refer to any Person who is offered Merchandise for Sale.

2.5 “Division” or “Division of Consumer Affairs” shall refer to the New Jersey Division of Consumer Affairs.

2.6 “New Jersey” and “State” shall refer to the State of New Jersey.

2.7 “Merchandise” shall be defined in accordance with N.J.S.A. 56:8-1(c) and includes Respondent’s Mobile Apps.

2.8 “Person[s]” shall be defined in accordance with N.J.S.A. 56:8-1(d).

2.9 “Sale” shall be defined in accordance with N.J.S.A. 56:8-1(e). This definition applies to other forms of the word “Sale” including, without limitation, “Sold” and “Sells.”

3. REQUIRED AND PROHIBITED PRACTICES

3.1 Respondent shall not engage in any unfair or deceptive acts or practices in the conduct of any business in the State and shall comply with such State and/or Federal laws, rules and regulations as now constituted or as may hereafter be amended, including, but not limited to, the CFA.

3.2 Respondent shall Clearly and Conspicuously disclose to its Dealership Customers the types of personal information Respondent collects through its Mobile Apps, including, but not limited to, Consumer Information.

3.3 No later than twenty-one (21) days from the Effective Date, Respondent shall provide disclosures within its privacy policies that Clearly and Conspicuously disclose the types of personal information Respondent's collects from Consumers through its Mobile Apps, including, but not limited to, Consumer Information.

3.4 No later than twenty-one (21) days from the Effective Date, Respondent shall provide disclosures within its privacy policies that Clearly and Conspicuously disclose Respondent's use of any third-party data analytics companies and what information such companies may collect from Consumers' use of Respondent's Mobile Apps.

3.5 No later than twenty-one (21) days from the Effective Date, Respondent shall provide disclosures within its privacy policies that Clearly and Conspicuously disclose Respondent's use of any third-party data analytics companies in accordance with those third-party analytics companies terms of use concerning disclosure to Consumers.

3.6 Respondent shall not Sell, rent, or otherwise transfer Consumer Information and/or other personal information to Persons or entities other than the Dealership Customer for which the Mobile App in question was customized without those Consumers' express consent or is otherwise permitted to do so by providing proper disclosure about the manner in which it intends to collect and use such information and offering a mechanism for opting-out of such information collection.

4. SETTLEMENT PAYMENT

4.1 The Parties have agreed to a settlement of the Investigation for the amount of Forty-Eight Thousand Seven Hundred Twenty-Four and 33/100 Dollars (\$48,724.33) ("Settlement Amount").

4.2 The Settlement Amount comprises Thirty-Eight Thousand and 00/100 Dollars (\$38,000.00) in civil penalties, pursuant to N.J.S.A. 56:8-13, Seven Thousand Three Hundred Fifty-Seven and 50/100 Dollars (\$7,357.50) in reimbursement of the Division's attorneys' fees and Three Thousand Three Hundred Sixty-Six and 83/100 Dollars (\$3,366.83) in reimbursement of the Division's investigative costs, pursuant to N.J.S.A.56:8-11 and N.J.S.A. 56:8-19.

4.3 Based upon Respondent's compliance with the Investigation and candor towards the Division, the Division has agreed to suspend a portion of the Settlement Amount. From the Settlement Amount, Twenty-Six Thousand Two Hundred Twenty-Four and 33/100 Dollars (\$26,224.33) shall be suspended and automatically vacated within two (2) years of the Effective Date ("Suspended Amount"), provided:

- a. Respondent makes the remaining settlement payment in full, less the Suspended Amount, as set forth in this Section 4;
- b. Respondent complies with the directions and prohibitions set forth in this Consent Order; and
- c. Respondent does not engage in any acts or practices in violation of the CFA.

4.4 Respondent shall pay to the Division the remaining Twenty-Two Thousand Five Hundred and 00/100 Dollars (\$22,500.00) balance of the Settlement Amount as follows:

- a. Ten Thousand and 00/100 Dollars (\$10,000.00) shall be paid on or before the Effective Date; and
- b. The remaining Twelve Thousand Five Hundred and 00/100 Dollars (\$12,500.00) shall be paid in fifteen equal monthly installments of Eight Hundred Thirty-Three and 33/100 Dollars (\$833.33) commencing on October 1, 2015. For purposes of this subsection each installment payment shall be due on the first business day of each month.

4.5 In the event Respondent fails to comply with the provisions contained in Section

3 of this Consent Order or make a payment as set forth in this Section 4, the entire Suspended Amount shall be immediately due and payable upon written notice by the Division, with interest and with the Division's cost of collections. In any notice, however, the Division shall provide Respondent with the specific details of Respondent's alleged noncompliance and Respondent shall be afforded a thirty (30) day period within which to cure any noncompliance. Failure by Respondent to cure any noncompliance shall be considered an event of default entitling the Division to enter an Order directing the payment of the Suspended Amount and to arrange for the filing of the Order, as a docketed judgment, with the Superior Court Clerk.

4.6 Any payment in satisfaction of the Settlement Amount shall be made by certified or cashier's check, money order, wire transfer or credit card made payable to the "New Jersey Division of Consumer Affairs" and forwarded to:

Van Mallett, Case Tracking Management
Division of Consumer Affairs
124 Halsey Street, 7th Floor
P.O. Box 45025
Newark, New Jersey 07102

4.7 Upon making any payment in satisfaction of the Settlement Amount, Respondent shall immediately be fully divested on any interest in, or ownership of, the amounts paid and all interest in the monies, and any subsequent interest or income derived therefrom, shall inure entirely to the benefit of the Division pursuant to the terms herein.

5. GENERAL PROVISIONS

5.1 This Consent Order is entered into by the Parties as their own free and voluntary act and with full knowledge and understanding of the obligations and duties imposed by this Consent Order.

5.2 This Consent Order shall be governed by, and construed and enforced in accordance with the laws of the State.

5.3 The Parties have negotiated, jointly drafted and fully reviewed the terms of this Consent Order and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of this Consent Order.

5.4 This Consent Order contains the entire agreement between the Parties. Except as otherwise provided herein, this Consent Order shall be modified hereafter only by a written instrument signed by or on behalf of the Parties.

5.5 Except as otherwise explicitly provided in this Consent Order, nothing in this Consent Order shall be construed to limit the authority of the Attorney General to protect the interests or the people of the State.

5.6 If any portion of this Consent Order is held invalid or unenforceable by operation of law, the remaining terms of this Consent Order shall not be affected.

5.7 This Consent Order shall be binding upon Respondent as well as its agents, employees, representatives, successors and assigns, and any entity or device through which it may now or hereafter act, as well as any Persons who have authority to control or who, in fact, control and direct Respondent's business.

5.8 This Consent Order shall be binding upon the Parties and their successors in interest. In no event shall assignment of any right, power or authority under this Consent Order be used to avoid compliance with this Consent Order.

5.9 This Consent Order is entered into by the Parties for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Order shall constitute, or be

construed as: (a) an approval, sanction or authorization by the Attorney General, the Division or any other governmental unit of the State of any act or practice of Respondent; and (b) an admission by Respondent that any of its acts or practices described in or prohibited by this Consent Order are unfair or deceptive or violate the CFA.

5.10 The Parties represent and warrant that an authorized representative of each has signed this Consent Order with full knowledge, understanding and acceptance of its terms and that the representative has done so with authority to legally bind the respective Party.

5.11 Unless otherwise prohibited by law, any signatures by the Parties required for entry of this Consent Order may be executed in counterparts, each of which shall be deemed an original, but all of which shall together be one and the same Consent Order.

6. RELEASE

6.1 In consideration of the payments, undertakings, mutual promises and obligations provided for in this Consent Order, the Division hereby agrees to release Respondent from any and all civil claims or consumer-related administrative claims, to the extent permitted by State law, which the Division could have brought prior to the Effective Date against Respondent for violations of the CFA, arising out of the Investigation as well as the matters specifically addressed in this Consent Order (“Released Claims”).

6.2 Notwithstanding any term of this Consent Order, the following do not comprise Released claims: (a) private rights of action; (b) actions to enforce this Consent Order; and (c) any claims against Respondent by any other agency or subdivision of the State.

7. PENALTIES FOR FAILURE TO COMPLY

7.1 The Attorney General (or designated representative) shall have the authority to

enforce the provisions of this Consent Order or to seek sanctions for violations hereof or both.

8. COMPLIANCE WITH ALL LAWS

8.1 Except as provided in this Consent Order, no provision herein shall be construed as:

- (a) Relieving Respondent of its obligation to comply with all State and Federal laws, regulations or rules, as now constituted or as may hereafter be amended, or as granting permission to engage in any acts or practices prohibited by any such laws, regulations or rules; or
- (b) Limiting or expanding any right the Division may otherwise have to obtain information, documents or testimony from Respondent pursuant to any State or Federal law, regulation or rule, as now constituted or as may hereafter be amended, or limiting or expanding any right Respondent may otherwise have pursuant to any State or Federal law, regulation or rule, to oppose any process employed by the Division to obtain such information, documents or testimony.

9. NOTICES UNDER THIS CONSENT ORDER

9.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Parties pursuant to this Consent Order shall be sent by United States mail, Certified Mail Return Receipt Requested, or other nationally recognized courier service that provides tracking services and identification of Person signing for the documents. The notices and/or documents shall be sent to the following addresses:

For the Division:

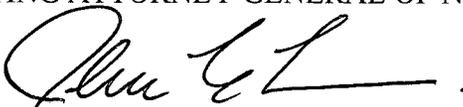
Glenn T. Graham, Deputy Attorney General
Office of the Attorney General
Department of Law and Public Safety
Division of Law
124 Halsey Street – 5th Floor
P.O. Box 45029-5029
Newark, New Jersey 07101

For the Respondent:

Jack A. Traina, Esq.
Traina & Traina
Attorneys at Law
162 Valley Boulevard
Wood-Ridge, New Jersey 07075

IT IS ON THE 8th DAY OF September, 2015 SO ORDERED.

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

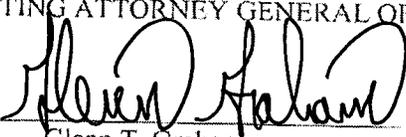
By: 

STEVE C. LEE, ACTING DIRECTOR
DIVISION OF CONSUMER AFFAIRS

THE PARTIES CONSENT TO THE FORM, CONTENT AND ENTRY OF THIS
CONSENT ORDER ON THE DATES BESIDE THEIR RESPECTIVE SIGNATURES.

FOR THE DIVISION:

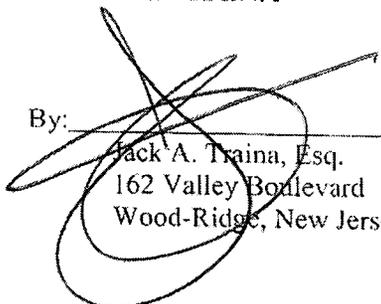
JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: 
Glenn T. Graham
Elliott M. Siebers
Deputy Attorneys General
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

Dated: September 8, 2015

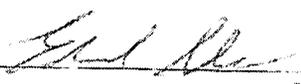
FOR THE RESPONDENT:

TRAINA & TRAINA

By: 
Jack A. Traina, Esq.
162 Valley Boulevard
Wood-Ridge, New Jersey 07075

Dated: Sept 11, 2015

DEALERAPP VANTAGE, LLC

By: 

Dated: 9/3, 2015

Print Name: Edouard Pesselouis

Signature: 

Print Title: CEO, 10 Founder