

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

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

_____)
In the Matter of)
)
) AGREEMENT CONTAINING
) CONSENT ORDER
TIMOTHY KELLY and)
RONALD P. KOLLER.) FILE NO. 1123151
_____)

AGREEMENT CONTAINING CONSENT ORDER

The Federal Trade Commission has conducted an investigation of certain acts and practices of Timothy Kelly and Ronald P. Koller ("proposed respondents"). Proposed respondents, having been represented by counsel, are 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 Timothy Kelly and Ronald P. Koller, and counsel for the Federal Trade Commission that:

b u s i n e s s * 0 a
A n y f u r t 0 r o

ORDER
DEFINITIONS

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

1. Unless otherwise specified, “respondents” shall mean Timothy Kelly and Ronald P. Koller.
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, install, or run any software program, code, script, or other content.
4. “Clear(ly) and prominent(ly)” shall mean:
 - a. In textual communications (e.g., printed publications or words displayed on the screen of a computer or mobile device) the required disclosures are of a type, size, and location sufficiently noticeable for an ordinary consumer to read and comprehend them, in print that contrasts highly with the background on which they appear;
 - b. In communications disseminated orally or through audible means (e.g., radio or streaming audio), the required disclosures are delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend them;
 - c. In communications disseminated through video means (e.g., television or streaming video), the required disclosures are in writing in a form consistent with subpart (a) of this definition and shall appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend them, and in the same language as the predominant language that is used in the communication;
 - d. In communications made through interactive media, such as the Internet, online services, and software, the required disclosures are unavoidable and presented in a form consistent with subpart (a) of this definition, in addition to any audio or video presentation of them; and
 - e. In all instances, the required disclosures are presented in an understandable language and syntax; in the same language as the predominant language that is used in the communication; and including contrary to, inconsistent with, or in mitigation of any statement contained within the disclosure or within any document linked to or referenced therein.
5. “Geophysical location tracking technology” shall mean any hardware, software, or application utilized in conjunction with a computer that collects and reports data or

information that identifies the precise geographic location of the computer. Geophysical location tracking technologies include, for these purposes, technologies that report: the GPS coordinates of a computer; the Wi-Fi signals available to or actually used by a computer to access the Internet; the telecommunication towers or connections available to or actually used by a computer; the processing of any such reported data through geolocation lookup services; or any

II.
USE OF TRACKING TECHNOLOGY LIMITED

IT IS FURTHER ORDERED

information that is collected will be shared otherwise provided; (4) the purpose(s) for the collection, use, or sharing of such data information; and (5) where and how the user can contact someone for additional information;

Provided that the notice requirements of this Part may be suspended and geophysical location tracking technology activated if (a) the renter reports that the computer has been stolen or there is otherwise a reasonable basis to believe that the computer has been stolen, and (b) either the renter or another person has filed a police report stating that the computer has been stolen. Provided further that respondents shall ensure that documents establishing (a) and (b) are retained. For purposes of this Order, "filing of a police report" means the reporting of a complaint with the police department in a form recognized in the jurisdiction;

Provided further that the notice and record-keeping requirements of this Section II shall be satisfied when respondents act as licensees if respondents include the licensing agreement contractual requirements that: (i) licensees may only activate geophysical location tracking technology if (a) the renter reports that the computer has been stolen or there is otherwise a reasonable basis to believe that the computer has been stolen and (b) either the renter or another person has filed a police report stating that the computer has been stolen, and (ii) documents establishing (a) and (b) are retained by the licensees; and

B. Licensing, selling, or otherwise provid

IV.
PROTECTION OF DATA

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

A. Delete or destroy all user data, if any, 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, if any, gathered by any monitoring or geophysical location tracking technology from the computer on which the technology is installed to server(s) operated by respondents and from server(s) operated by respondents to any other computers or servers only if such information is rendered unreadable, unusable, or indecipherable during transmission.

V.
NO MISREPRESENTATIONS ABOUT PRIVACY

IT IS FURTHER ORDERED that respondents, directly or through any corporation, partnership, subsidiary, division, the name, or other device, and their officers, agents, servants, employees, and all persons or entities in active concert or participation with them who receive actual notice of this order, by personal service or otherwise, in connection with using, selling, licensing, or otherwise providing any hardware, software, applicati. -.0011 T9794 and th

VII.
COMPLIANCE REPORTING

IT IS FURTHER ORDERED that:

A. Respondents shall each, within sixty (60) days after the date of service of this order, and at such other times as the Commission may require, file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form in which they have complied with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, they shall submit initial true and accurate written reports.

B. Respondents shall each, for a period of three (3) years after the date of issuance of this order, notify the Commission of the discontinuance of their current business or employment, or of their affiliation with any new business or employment. The notice shall include the new business address and telephone number and a description of the nature of the business or employment and respondent's duties and responsibilities.

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

- C. Contradict, qualify, or call into question respondents' compliance with this order;
- D. Acknowledge receipt of this order obtained pursuant to Part VI.

IX.
TERMINATION OF ORDER

This order will terminate on June 1, 2032, or two (2) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates less than twenty (20) years;
- 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 after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed under federal court rules that respondents did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Signed this _____ day of _____, 2012.

RESPONDENTS

Dated: _____
TIMOTHY KELLY

Dated: _____
RONALD P. KOLLER

Dated: _____
WILLIAM WOODWARD WEBB
The Edmisten & Webb Law Firm
Counsel for Respondents

FEDERAL TRADE COMMISSION

Dated: _____

TRACY S. THORLEIFSON
JULIE K. MAYER
Counsel for the Federal Trade Commission

APPROVED:

ROBERT J. SCHROEDER
Director
Northwest Region

DAVID C. VLADECK
Director
Bureau of Consumer Protection