

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

Federal Trade Commission,

Plaintiff,

vs.

Apply Knowledge, LLC, et al.,

Defendants.

Case No. 2:14-cv-00088 (DB)

**FINAL JUDGMENT AND ORDER
FOR PERMANENT INJUNCTION AND MONETARY JUDGMENT
AS TO ECOMMERCE SUPPORT LLC**

On February 10, 2014, Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), filed its Complaint for Permanent Injunction and Other Equitable Relief under Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108, alleging violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and of two sections of the FTC’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310, by defendants Apply Knowledge LLC; Dahm International LLC; Dominion of Virgo Investments Inc.; eCommerce Support LLC; Essent Media LLC; Evertex Solutions LLC; EVI LLC; Nemrow Consulting LLC; Novus North LLC; Purple Buffalo LLC; Supplier Source LLC; 365DailyFit LLC; Vensure International LLC; VI Education LLC; David G. Bevan; Jessica Bjarnson; Phillip Edward Gannuscia II; Chad Huntsman; Richard Scott Nemrow; Jeffrey Nicol; Thomas J. Riskas III; Babata Sonnenberg; and Kenneth Sonnenberg. [Dkt. No. 1].

On February 11, 2014, the Court entered an *ex parte* Temporary Restraining Order against all defendants. [Dkt. No. 16]. On April 15, 2014, the Court entered an order that

enjoined defendants Dahm International LLC; Dominion of Virgo Investments Inc.; eCommerce Support; Essent Media LLC; EVI LLC; Nemrow Consulting LLC; Novus North LLC; Purple Buffalo LLC; 365DailyFit LLC; Vensure International LLC; VI Education LLC; Jessica Bjarnson; Phillip Edward Gannuscia II; Chad Huntsman; Richard Scott Nemrow; Jeffrey Nicol; and Thomas J. Riskas III from engaging in any sales or marketing of any business education or training product during the pendency of the case. [Dkt. No. 121]. On April 24, 2015, the FTC filed an Amended Complaint [Dkt. No. 216] adding allegations under Section 310.3(b) of the TSR.

On June 24, 2015, the Court entered a stipulated order for permanent injunction and monetary relief as to defendant David G. Bevan. [Dkt. No. 222].

On February 16, 2016, the Court entered a stipulated order for permanent injunction and monetary relief as to defendants Apply Knowledge LLC; Evertex Solutions LLC; Supplier Source LLC; and Kenneth Sonnenberg. [Dkt. No. 261].

On February 18, 2016, the Court entered an order dismissing Babata Sonnenberg as a defendant, with prejudice, pursuant to Fed. R. Civ. P. 41(a)(2). [Dkt. No. 264].

On July 21, 2016, the Court entered a stipulated order for monetary judgment as to defendant VI Education LLC. [Dkt. No. 305].

On April 27, 2018, the Court entered a stipulated order for permanent injunction and monetary relief as to defendants Dahm International LLC; Dominion of Virgo Investments Inc.; Essent Media LLC, EVI LLC; Nemrow Consulting LLC; Novus North LLC; Purple Buffalo LLC; 365DailyFit LLC; Vensure International LLC; Jessica Bjarnson; Phillip Edward

Gannuscia, II; Richard Scott Nemrow; Jeffrey Nicol; and Thomas J. Riskas, III (collectively “Essent Media Defendants”).¹ [Dkt. No. 387]

On December 1, 2016, the FTC moved for summary judgment against eCommerce Support, among other defendants. [Dkt. No. 331]. eCommerce Support has no counsel of record and has not responded to the FTC’s motion for summary judgment as required by Fed. R. Civ. P. 56(c).

Now, the Court grants the FTC’s motion for summary judgment against defendant eCommerce Support LLC under Fed. R. Civ. P. 56(e)(3) and DUCivR 56-1(f), finding that the motion is supported by an undisputed factual record that entitles the FTC to judgment in its favor.

THEREFORE, IT IS ORDERED as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and defendant eCommerce Support LLC.
2. Venue is proper in the District of Utah under 28 U.S.C. § 1391(b) and (c) and 15 U.S.C. § 53(b).
3. The activities of eCommerce Support are or were in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44.
4. The FTC’s Amended Complaint (“Complaint”) states a claim against eCommerce Support upon which relief may be granted under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b), the Telemarketing Act, 15 U.S.C. §§ 6101-6108, and the TSR, 16 C.F.R. Part 310.

¹ Defendant Chad Huntsman died during the litigation of this action and the Commission did not move to substitute a party for him. *See* Dkt. No. 304 at 1.

5. As alleged in Count I of the Complaint, eCommerce Support made false and misleading representations about likely earnings to consumers when marketing its business coaching program.
6. As alleged in Count II of the Complaint, eCommerce Support made false and misleading representations to consumers that the business coaching program was all the consumers needed to buy in order to end up with a successful online business.
7. As alleged in Count III of the Complaint, eCommerce Support misrepresented material aspects of investment opportunities in violation of the TSR, 16 C.F.R. § 310.3(a)(2)(vi).
8. As alleged in Count IV of the Complaint, eCommerce Support made misrepresentations regarding the performance, efficacy, nature, or central characteristics of the business coaching program in violation of the TSR, 16 C.F.R. § 310.3(a)(2)(iii).

ORDER

DEFINITIONS

For the purpose of this Order, the following definitions shall apply:

1. **“Acquirer”** or **“Acquiring Bank”** means a business organization, Financial Institution, or an agent of a business organization or Financial Institution that has authority from an organization that operates or licenses a credit card system (*e.g.*, Visa, MasterCard, American Express, or Discover) to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, products, or anything else of value.
2. **“Add-on Services”** means any additional product offered to a consumer who has purchased a product.
3. **“Assisting Others”** means providing assistance or support to any Person, including providing any of the following services: (a) performing customer service functions including

receiving or responding to consumer complaints; (b) formulating or providing, or arranging for the formulation or provision of, any promotional material; (c) providing names of, or assisting in the generation of, potential customers; (d) verifying, processing, fulfilling, or arranging for the fulfillment of orders; (e) hiring, recruiting, or training personnel; (f) performing promotional or marketing services of any kind; or (g) processing or arranging for processing of credit cards, debit cards, Automated Clearinghouse (“ACH”) debits, remotely-created checks, or payments through any other system.

4. **“Business Coaching Program”** means any program, plan, or product, including those related to work-at-home-opportunities, that is represented, expressly or by implication, to train or teach a participant or purchaser how to establish a business or earn money or other consideration through a business or other activity.

5. **“Credit Card Laundering”** means: (a) presenting or depositing into, or causing or allowing another to present or deposit into, the credit card system for payment, a Credit Card Sales Draft generated by a transaction that is not the result of a credit card transaction between the cardholder and the Merchant; (b) employing, soliciting, or otherwise causing or allowing a Merchant, or an employee, representative, or agent of a Merchant, to present or deposit into the credit card system for payment, a Credit Card Sales Draft generated by a transaction that is not the result of a credit card transaction between the cardholder and the Merchant; or (c) obtaining access to the credit card system through the use of a business relationship or an affiliation with a Merchant, when such access is not authorized by the Merchant Account agreement or the applicable credit card system.

6. **“Credit Card Sales Draft”** means any record or evidence of a credit card transaction.

7. “**Defendant**” means eCommerce Support LLC and its subsidiaries, affiliates, successors, and assigns.
8. “**Financial Institution**” means any institution the business of which is engaging in financial activities as described in section 4(k) of the Bank Holding Company Act of 1956, 12 U.S.C. § 1843(k). An institution that is significantly engaged in financial activities is a Financial Institution.
9. “**Investment Opportunity**” means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.
10. “**Merchant**” means a Person who is authorized under a written contract with an Acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of products.
11. “**Merchant Account**” means any account with an Acquiring Bank or other Financial Institution, service provider, payment processor, independent sales organization, or other entity that enables an individual, a business, or other organization to accept payments of any kind.
12. “**Payment Processing**” means providing a Person, directly or indirectly, with the means used to charge or debit accounts through the use of any payment mechanism, including, but not limited to, remotely created payment orders, remotely created checks, ACH debits, or debit, credit, prepaid, or stored value cards. Whether accomplished through the use of software or otherwise, payment processing includes, among other things: (a) reviewing and approving merchant applications for Payment Processing services; (b) providing the means to transmit sales transactions data from Merchants to Acquiring Banks or other Financial Institutions; (c) clearing, settling, or distributing proceeds of sales transactions from Acquiring Banks or Financial

Institutions to Merchants; or (d) processing chargebacks or returned remotely created payment orders, remotely created checks, or ACH checks.

13. “**Person**” means a natural person, organization, or other legal entity, including a corporation, limited liability company, partnership, proprietorship, association, cooperative, government or governmental subdivision or agency, or any other group or combination acting as an entity.

14. “**Telemarketing**” means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call.

I.

PROHIBITIONS RELATED TO THE SALE OF BUSINESS COACHING PROGRAMS

AND INVESTMENT OPPORTUNITIES

IT IS ORDERED that Defendant is hereby permanently restrained and enjoined from:

- A. Creating, advertising, marketing, promoting, offering for sale, or selling, or Assisting Others in creating, advertising, marketing, promoting, offering for sale, or selling any Business Coaching Program or any Investment Opportunity;
- B. Creating, advertising, marketing, promoting, offering for sale, or selling, or Assisting Others in creating, advertising, marketing, promoting, offering for sale, or selling Add-on Services in connection with a Business Coaching Program or an Investment Opportunity, such as website development and hosting products, social media promotion products, search engine optimization products, and business education, training, formation, and development products;
- C. Holding, directly or through a third-Person, any ownership or other financial interest in any business entity that is creating, advertising, marketing, promoting, offering for sale, or

selling, or that Assists Others in creating, advertising, marketing, promoting, offering for sale, or selling any Business Coaching Program, any Investment Opportunity, any Add-on Services, or any product to assist in the creation or development of a Business Coaching Program or an Investment Opportunity.

II.

PROHIBITION ON TELEMARKETING

IT IS FURTHER ORDERED that Defendant is hereby permanently restrained and enjoined from Telemarketing, or Assisting Others in Telemarketing.

III.

PROHIBITIONS RELATED TO MERCHANT ACCOUNTS

IT IS FURTHER ORDERED that Defendant is hereby permanently restrained and enjoined from:

- A. Credit Card Laundering;
- B. Making, or Assisting Others in making, directly or by implication, any false or misleading statement in order to obtain Payment Processing services; and
- C. Engaging in any tactics to avoid fraud and risk monitoring programs established by any Financial Institution, Acquiring Bank, or the operators of any payment system, including, but not limited to, tactics such as balancing or distributing sales transactions among multiple Merchant Accounts or merchant billing descriptors; splitting a single sales transaction into multiple smaller transactions; or using shell companies to apply for a Merchant Account.

IV.

PROHIBITED BUSINESS ACTIVITIES

IT IS FURTHER ORDERED that Defendant, Defendant's officers, agents, and employees, and all other Persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with advertising, marketing, promoting, or offering for sale any good or service, are permanently restrained and enjoined from:

A. making, or assisting other Persons in making, in any manner, expressly or by implication, any claim about likely earnings, profit, or income unless the representation is non-misleading, and at the time such representation is made, Defendant possesses competent and reliable written substantiation for the claim; or

B. misrepresenting any fact material to consumers concerning any good or service, such as:

1. the total cost to purchase;
2. any material aspect of its performance, efficacy, nature, or central characteristics; or
3. any material restriction, limitation, or condition to purchase, receive or use it.

V.

MONETARY JUDGMENT

A. Judgment in the amount of **Nineteen Million, Two Hundred Fourteen Thousand, Nine Hundred Fifty Dollars and Forty Cents (\$19,214,950.40)** is entered in favor of the FTC against Defendant, jointly and severally as equitable monetary relief.

B. Defendant is ordered to pay to the FTC the full judgment, minus the amount paid to the Commission under Subsection C below, within ten (10) calendar days of entry of this Order, by electronic fund transfer in accordance with instructions to be provided by a representative of the FTC.

C. In partial satisfaction of the judgment against Defendant:

1. U.S. Bank is ordered to transfer all funds held in the accounts identified on Attachment A to this Order to the Commission by electronic funds transfer in accordance with instructions provided by the Commission. The funds shall be transferred within seven (7) calendar days of entry of this Order.

2. Wells Fargo Bank is ordered to transfer all funds held in account XXXXXXXX0421, in the name of Back Office Solutions Inc., to the Commission by electronic funds transfer in accordance with instructions provided by the Commission. The funds shall be transferred within seven (7) calendar days of entry of this Order.

3. The law firm of Ray Quinney & Nebeker (RQN) is ordered to transfer \$47,613.16 to the Commission by electronic funds transfer in accordance with instructions provided by the Commission. The funds shall be transferred within seven (7) days of entry of this Order. The former Temporary Receiver transferred these funds to RQN's trust account under the Court's Order of August 16, 2016, and the funds derive from Defendant. *See* Dkt. No. 311. The Essential Media Defendants have relinquished dominion and all legal and equitable right, title, and interest in all assets of eCommerce Support LLC, including those held in RQN's trust account. *See* Dkt. No. 387 at 13.

D. All money paid to the FTC pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, including but not

limited to consumer redress, and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the unlawful acts or practices alleged in the Complaint. Any money not used for such equitable relief is to be deposited to the U.S. Treasury as disgorgement. Defendant has no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection.

VI.

BAN ON USE OF CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendant and its officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are hereby permanently restrained and enjoined from:

- A. Failing to provide sufficient customer information to enable the Commission, or its designee, to efficiently administer consumer redress. If a representative of the Commission requests in writing any information related to redress, Defendant must provide it, in the form prescribed by the Commission, within fourteen (14) calendar days.
- B. Disclosing, using, or benefitting from customer information derived from the sale of a Business Coaching Program or an Investment Opportunity, including the name, address, telephone number, e-mail address, Social Security number, other identifying information, or any data that enables access to a consumer's account (including a credit card, bank account, or other financial account), or would otherwise allow assessment of a charge against a consumer's account; and

C. Failing to dispose of customer information, in all forms, related to the sale of a Business Coaching Program or an Investment Opportunity that is in Defendant's possession, custody, or control within forty-five (45) calendar days after receipt of written direction to do so from a representative of the FTC. Disposal shall be by means that protect against unauthorized access to consumer information, such as by burning, pulverizing, or shredding any papers, and by erasing or destroying any electronic media, to ensure that consumer information cannot practicably be read or reconstructed.

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

VII.

RETENTION OF JURISDICTION

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

SO ORDERED, this 30th day of April, 2018.



HON. DEE BENSON
UNITED STATES DISTRICT JUDGE

	A	B	C
	FINANCIAL INSTITUTION	ACCOUNT NAME	ACCOUNT NUMBER
1	U.S. Bank	Broadway Consulting LLC	XXXXXXXXXX6486
2	U.S. Bank	eCommerce Support LLC	XXXXXXXXXX6382
3	U.S. Bank	eCommerce Support LLC	XXXXXXXXXX6390
4	U.S. Bank	Emblem 32 LLC	XXXXXXXXXX3463
5	U.S. Bank		