

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT

In the Matter of

COPLEY ADVERTISING, LLC, &
JOHN F. FLYNN

ASSURANCE OF DISCONTINUANCE PURSUANT TO G. L. 93A, § 5

I. Introduction

Pursuant to the provisions of Massachusetts General Laws chapter 93A, the Commonwealth of Massachusetts, by its Attorney General, Maura Healey (“Commonwealth” or “Attorney General”), has conducted an investigation into the acts and practices of Copley Advertising, LLC (“Copley Advertising”), and John F. Flynn (“Flynn”), Member of Copley Advertising in connection with the matters set forth herein.

Based on that investigation, the Attorney General has alleged that Copley Advertising and Flynn have violated the Massachusetts Consumer Protection Act, G.L. c. 93A, § 2.

The Attorney General has conferred in good faith with Copley Advertising, Flynn, and their attorneys and the parties have agreed to resolve the Commonwealth’s allegations through this Assurance of Discontinuance, pursuant to G.L. c. 93A, § 5, in lieu of an action under G.L. c. 93A.

II. Background

1) Copley Advertising is an active Nevada Domestic Limited Liability Company, formed on July 3, 2015 and headquartered and operated at all relevant times within Massachusetts.

2) Flynn is a Massachusetts resident, residing in Brookline, Massachusetts, who is the sole managing member and sole employee of Copley Advertising.

3) Flynn conducts Copley Advertising's business from within Massachusetts.

4) Copley Advertising contracts with third parties to provide "geofencing" technology and advertising services.

5) Copley Advertising's "geofencing" technology, as defined more specifically below, generally encompasses the process of identifying whether an internet-enabled device, such as a smartphone, enters, exits, or is present within a geographic area through the use of any information stored, transmitted, or received by the device, including but not limited to latitude, longitude, GPS (Global Positioning System) information, IP (Internet Protocol) address, wireless Internet access information, so-called Bluetooth technology, Near-Field Communication ("NFC") information, or device identification information.

6) Copley Advertising's geofencing technology enables it to "tag" a smartphone or other internet-enabled mobile device that enters or leaves an area near a specific location, such as supermarket, a hospital, or a doctor's office. Once tagged, Copley Advertising causes third party digital advertisements to display on certain mobile applications the consumer accesses on that mobile device for up to thirty days.

7) As further described by Flynn, Copley Advertising “can set up a mobile geo fence around an area—Planned Parenthood clinic[s], hospitals, doctor's offices that perform abortions,” and “[w]hen a smartphone user enters the geo fence, [Copley Advertising] tag[s] their smartphone’s ID. When the user opens an app [the ad] appears.”¹

8) Throughout 2015 and 2016, Copley Advertising regularly referred to and promoted its “geofencing” activities and capabilities on its website: <http://www.copleyadvertising.com>.

9) During 2015, Copley Advertising contracted with Bethany Christian Services, a global pregnancy counseling and adoption agency with at least one location in Massachusetts (in Franklin, Massachusetts), and RealOptions, a network of crisis pregnancy centers in California, to provide geofencing technology and serve advertisements on those agencies’ behalf to “abortion-minded women” who were either close to or entered the waiting rooms of women’s reproductive health clinics.

10) Copley Advertising’s services for Bethany Christian Services included geofencing medical facilities, including women’s reproductive health clinics, in New York City; Columbus, Ohio; Richmond, Virginia; St. Louis, Missouri; and Pittsburgh, Pennsylvania. The advertisements sent to devices that crossed the geofenced locations included text such as “Pregnancy Help,” “You Have Choices,” and “You’re Not Alone.” “Once [the advertisement] is clicked, users are taken

¹ Naquanna Comeaux, *Target Marketing to Reach Clients . . . In a Planned Parenthood Waiting Room*, Pregnancy Help News, July 22, 2015, <https://pregnancyhelpnews.com/target-marketing-to-reach-clients-in-a-planned-parenthood-waiting-room> (last visited Feb. 15, 2017).

straight to a landing page or webpage complete with pregnancy options information and access to a live mobile chat with a Bethany pregnancy support specialist.”²

11) Once a consumer’s device is tagged, Copley Advertising continues to push such advertisements to the consumer for thirty days thereafter.

12) Consumers do not know that Copley Advertising has tagged their mobile device at the time they approach or enter a geofenced health care facility, or that Copley Advertising is disclosing their geolocation—either directly or indirectly through other entities—to third party advertisers who use it to infer the consumer’s physical or mental health status or medical treatment for the purpose of serving tailored advertisements.

13) Flynn has represented to the Attorney General that neither he nor Copley Advertising has yet geofenced clinics in Massachusetts that offer women’s health services, including but not limited to abortions, for the purposes of sending advertisements.

14) Flynn has stated, however, that he “can tag all the smartphones entering and leaving the nearly 700 Planned Parenthood clinics in the U.S.”³

15) The Attorney General believes that the geofencing conduct described above in paragraphs 4) to 14), were it to occur in Massachusetts, would be an unfair or deceptive act or practice in violation of the Consumer Protection Act, Gen. L. c. 93A, § 2 because it intrudes upon a consumer’s private health or medical affairs or status and/or results in the gathering or

² *Id.*

³ *Id.*

dissemination of private health or medical facts about the consumer without his or her knowledge or consent.

16) Therefore, because the Attorney General has reason to believe that were Copley Advertising and Flynn to engage in geofencing in Massachusetts, it would be unlawful, G.L. c. 93A, § 4, Copley Advertising, Flynn, and the Commonwealth have agreed to enter into this Assurance in accordance with the terms below.

17) Copley Advertising and Flynn deny that they have violated any Massachusetts laws or regulations in connection with the foregoing, and deny that they engaged in any wrongdoing. Without admitting to the Attorney General's allegations or to any violation of law, Copley Advertising and Flynn have voluntarily and knowingly entered into this Assurance of Discontinuance in order to avoid the time, expense, and uncertainty of litigation.

III. Assurances

18) Definitions:

- a) "Device" means any portable or wearable technology capable of accessing the Internet through wifi, Bluetooth, cellular, or other means of connection.
- b) "Geofencing" means the process of identifying whether a Device enters, exits, or is present within a geographic area through the use of any information stored, transmitted, or received by the Device, including but not limited to latitude, longitude, GPS (Global Positioning System) information, IP (Internet Protocol) address, wireless Internet access information, so-called Bluetooth technology, Near-Field Communication ("NFC") information, or

Device identification information. The term “geofencing” includes the conduct described on the following website: <http://www.copleyadvertising.com/>.

- c) “Medical Center” means any facility that provides mental or physical health care, treatment, counseling, or therapy by or under the authority or supervision of licensed health care professionals, including, but not limited to, a hospital, urgent care facility, doctor’s office, health clinic, or family planning clinic; provided, however, that the term “Medical Center” shall not include a Retail Store Pharmacy, even if such Retail Store Pharmacy administers vaccinations, performs blood pressure screening, provides drug prescription counseling, or engages in other such health care activities.
- d) “Retail Store Pharmacy” means any retail establishment that primarily sells merchandise and/or groceries and that may also contain a pharmacy, including but not limited to supermarkets (*e.g.* Stop & Shop, Market Basket and Hannaford’s), retail pharmacies (including but not limited to CVS, Walgreens and Rite Aid), and superstore or “big box” retailers (including but not limited to Target and Wal-Mart).
- e) “Perimeter” means the outermost physical boundary of a Medical Center, including the boundary of any parking garage or parking lot for patrons of the Medical Center that is physically contiguous with the Medical Center.

f) The "Vicinity" means a distance of 250 feet from the Perimeter of a Medical Center.

19) Copley Advertising, and its successors and assigns, shall not Geofence, either directly or indirectly through others, the Vicinity of any Medical Center located in Massachusetts to infer the health status, medical condition, or medical treatment of any person.

20) Flynn shall not Geofence, either directly or indirectly through others, the Vicinity of any Medical Center located in Massachusetts to infer the health status, medical condition, or medical treatment of any person.

21) Flynn shall be personally bound by the conditions of this Assurance, and may not violate any terms of this Assurance under or through any other names, persons, or legal entities.

IV. Payments

22) Each party shall pay their own costs associated with the investigation and this Assurance.

23) Neither Copley Advertising nor Flynn shall pay penalties or restitution to the Attorney General in satisfaction of this Assurance.

V. Miscellaneous Provisions

24) This Assurance of Discontinuance shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts.

25) This Assurance contains the complete agreement between the parties. No promises, representations, or warranties other than those set forth in this Assurance have been made by either party. This Assurance supersedes all prior communications, discussions, or understandings, if any,

of the parties, whether written or oral. This Assurance can be modified or supplemented only by written memorandum signed by both parties.

26) Copley Advertising is represented by and has consulted with counsel in connection with the decision to enter into this Assurance.

27) Flynn is represented by and has consulted with counsel in connection with the decision to enter into this Assurance.

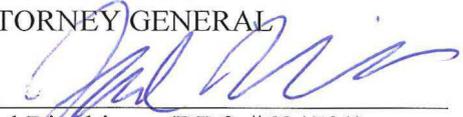
28) This Assurance does not resolve or bar any private causes or rights of action.

29) If the Attorney General determines that Copley Advertising or Flynn have not complied with the terms of this Assurance of Discontinuance and if, in the Attorney General's sole discretion, it determines that the failure to comply does not present an immediate threat to the privacy or other interests of the citizens of the Commonwealth, the Attorney General shall not bring any action to enforce an alleged violation of this Assurance of Discontinuance without first providing Copley Advertising and Flynn with at least fourteen (14) days' written notice that identifies with reasonable particularity the conduct that is alleged to violate this Assurance of Discontinuance.

30) To the extent permitted by law, a violation of this Assurance of Discontinuance shall be prima facie evidence of a violation of Gen. L. c. 93A, § 2.

31) Consent to this Assurance does not constitute an approval by the Commonwealth of any of Copley Advertising's business acts or practices.

COMMONWEALTH OF MASSACHUSETTS
MAURA HEALEY
ATTORNEY GENERAL

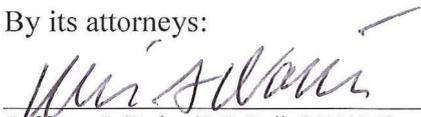
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Dated: March 8, 2017

COPLEY ADVERTISING, LLC

By its attorneys:

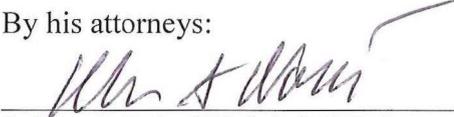

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Dated: February 17, 2017

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Dated: February 17, 2017