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7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10

11 CRAIGSLIST, INC., a Delaware corporation,
12 Plaintiff,
13 v.
14 RADPAD, INC., a Delaware corporation, and
DOES 1-10,
15 Defendants.
16

CASE NO. 3:16-cv-01856-CRB

**~~PROPOSED~~ FINAL JUDGMENT AND
PERMANENT INJUNCTION AGAINST
RADPAD, INC.**

17 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

18 1. Plaintiff craigslist, Inc. (“craigslist”) owns and operates the *craigslist.org* website,
19 the access to, and use of which, is governed by craigslist’s Terms of Use.

20 2. craigslist’s Terms of Use prohibit, among other things, the use of “[r]obots,
21 spiders, scripts, scrapers, crawlers” and the transmission of any “misleading, unsolicited,
22 unlawful, and/or spam postings/email.”

23 3. craigslist’s Terms of Use further prohibit the collection of “users’ personal and/or
24 contact information.”

25 4. craigslist’s Terms of Use are valid and enforceable against Defendant RadPad,
26 Inc. (“Defendant”) and Defendant accepted and agreed to be bound by those terms.

27 5. craigslist is a provider of Internet access service as defined in 15 U.S.C.
28 § 7702(11).

1 6. craigslist’s website and computers are protected computers within the meaning of
2 15 U.S.C § 7702(13) and 18 U.S.C. § 1030(e)(2).

3 7. Defendant owns and operates the RadPad service located at the *onradpad.com*
4 website (the “RadPad Website”).

5 8. craigslist previously filed a related action against a collection of defendants,
6 including 3taps, Inc. (“3taps”), who were scraping, disseminating, receiving, and/or reposting
7 user posts from the *craigslist.org* website, in violation of craigslist’s Terms of Use and various
8 state and federal laws. The related action was captioned *craigslist, Inc. v. 3taps, Inc. et al.*, No.
9 CV 12-03816 CRB (N.D. Cal.) (the “3taps Litigation”).

10 9. This Court entered Final Judgments and Permanent Injunctions against each of
11 the Defendants in the 3taps Litigation. *See 3taps Litigation*, Dkt. Nos. 224, 271, 272, and 280.

12 10. Prior to this Court enjoining 3taps, Defendant received scraped craigslist listings
13 from 3taps, provided feedback to 3taps about 3taps’ scraping service, and assisted 3taps in
14 shaping and tailoring the scraping data feed. RadPad materially contributed to and induced
15 3taps’ unlawful reproduction and distribution of craigslist user listings.

16 11. craigslist owns thirty valid and enforceable copyright registrations covering
17 craigslist postings that Defendant received from 3taps and subsequently publicly displayed on
18 the RadPad Website (the “3taps Copyrighted Works”).

19 12. On or around December 4, 2013, craigslist sent a letter to Defendant expressly
20 prohibiting Defendant “from accessing or using the craigslist website and services for any
21 reason” (the “December 2013 Letter”).

22 13. Following the receipt of the December 2013 Letter and entry of the Final
23 Judgment and Permanent Injunction against 3taps, Defendant continued to access, copy and use
24 craigslist’s website, services, and content—including craigslist users’ contact information—
25 “without authorization,” as that term is used in the Computer Fraud and Abuse Act, 18 U.S.C.
26 §§ 1030 *et seq.* (the “CFAA”) and in violation of, among other things, the CFAA and craigslist’s
27 Terms of Use.

28 14. Defendant hired a team of individuals based in India (the “India Scrapers”) to

1 access the craigslist website and copy craigslist content—including postings, pictures, and
2 craigslist users’ contact information.

3 15. RadPad instructed the India Scrapers how to evade detection by craigslist, despite
4 craigslist’s efforts to block RadPad and the India Scrapers.

5 16. Defendant paid the India Scrapers for each posting that they scraped from
6 craigslist. RadPad took the full text, photographs, and user contact information from the scraped
7 postings and put it into a database stored in the cloud by Amazon Web Services (the “RadPad
8 Database”). RadPad publicly displayed the full text and photographs of the listings within the
9 RadPad Database on the RadPad Website.

10 17. craigslist owns copyright applications for 106 works that Defendant copied in full
11 from craigslist and publicly displayed on the RadPad Website, without consent from craigslist or
12 the craigslist users who authored the posts (the “2016 Copyrighted Works”).

13 18. Defendant harvested craigslist users’ contact information from the RadPad
14 Database and initiated many thousands of electronic mail messages per day to unwitting
15 recipients. The primary purpose of these electronic mail messages was the commercial
16 advertisement or promotion of RadPad’s commercial products or services (including content on
17 an Internet website operated for a commercial purpose).

18 19. Defendant initiated the transmission of commercial electronic messages that
19 failed to clearly and conspicuously identify that the messages were advertisements or
20 solicitations for RadPad’s services, did not contain clear and conspicuous notice of the
21 opportunity to decline to receive further commercial electronic mail messages from the sender
22 (*i.e.*, an unsubscribe button), and did not provide a physical postal address of the sender.

23 20. Defendant initiated the transmission of commercial electronic mail messages that
24 did not contain a functioning return electronic mail address or other internet-based response
25 method.

26 21. Defendant initiated the transmission of commercial electronic mail messages that
27 contained false and misleading (i) header information, (ii) subject lines, and (iii) content in the
28 body of the messages.

1 22. Defendant sent these unlawful commercial electronic mail messages through a
2 whitelisted third party electronic mail delivery service, Mandrill App, in order to deceive and
3 bypass craigslist's spam filters. Defendants co-opted and abused craigslist's own email relay
4 system to transmit their commercial electronic mail messages.

5 23. During the pendency of this litigation, Defendant's former CEO, Jonathan Eppers,
6 certified under penalty of perjury that pursuant to his instructions, "Radpad [] deleted and
7 otherwise expunged all data or property which may have been obtained by scraping or other
8 means from third parties including data which is the subject of [this] litigation from its list of
9 contacts, web page and Radpad's intellectual property."

10 24. Contrary to Defendant's assertions, Defendant failed to remove all of craigslist's
11 data from the RadPad Database.

12 25. On November 2, 2016, Defendant assigned its assets, including the RadPad
13 Database, to Insolvency Service Group, Inc. ("ISG") through a General Assignment for the
14 Benefit of Creditors. ISG is not the Defendant or a defendant in this Action. ISG has no
15 personal knowledge of Defendant's conduct prior to November 2, 2016.

16 26. Defendant's actions, as described above and more fully in craigslist's Amended
17 Complaint (*see* Dkt. No. 40), constitute:

- 18 a. Breach of contract;
- 19 b. Violations of the CAN-SPAM Act, 15 U.S.C. §§ 7701 *et seq.*;
- 20 c. Violations of California Restrictions on Unsolicited Commercial Email
21 Advertisers, Cal. Bus. & Prof. Code §§ 17529 *et seq.*;
- 22 d. Violations of the Computer Fraud and Abuse Act, 18 U.S.C. §§ 1030 *et seq.*;
- 23 e. Violations of the California Comprehensive Data Access and Fraud Act, Cal.
24 Penal Code § 502; and
- 25 f. Direct and Indirect Copyright Infringement, 17 U.S.C. § 501.

26 **I. Final Judgment**

27 Judgment is entered in favor of craigslist against Defendant in the amount of
28 \$60,560,000, comprised of the following:

- 1 A. \$40 million for violations of the CAN-SPAM Act based on 400,000 emails at \$100
2 per email;
- 3 B. \$4.5 million for copyright infringement of the thirty (30) 3taps Copyrighted Works at
4 \$150,000 per infringed work;
- 5 C. \$15.9 million for copyright infringement of the one hundred and six (106) 2016
6 Copyrighted Works at \$150,000 per infringed work; and
- 7 D. \$160,000 for breach of craigslist’s Terms of Use based on collecting personal
8 information (\$1 for each email address and \$1 for each phone number) from 80,000
9 emails.

10 **II. Injunction**

11 Defendant and its past, current and future officers, agents, servants, employees, assignees
12 and other persons who are in active concert or participation with it or individuals within its
13 control (collectively, the “Prohibited Parties”), to the maximum extent permitted by law, are
14 ordered and enjoined as follows:

- 15 A. Within one day (1) day of the entry of this Order, the Prohibited Parties will
16 forever cease access to and/or any use of, including but not limited to
17 reproducing, transmitting, displaying, framing, including, disseminating,
18 publishing, distributing, selling, or giving away (“Access and Use”), any content,
19 including but not limited to user-generated postings, advertisements,
20 information, data, images, messages, or emails, that has been submitted to,
21 posted on, or transmitted via any craigslist website, service, or computer server,
22 including, but not limited to *craigslist.org* (“craigslist Content”). For the
23 avoidance of doubt, this prohibition includes, but is not limited to, craigslist
24 Content that a third party, including without limitation a third party located
25 outside U.S. jurisdiction, has obtained from (i) any craigslist website, service, or
26 computer server, or (ii) any other party, or series of parties, that itself or
27 themselves obtained craigslist Content from any craigslist website, service or
28 computer server.

1 B. The prohibition on Access and Use of craigslist Content includes: 1) direct
2 Access and Use by the Prohibited Parties; 2) indirect Access and Use via a third
3 party, intermediary, or proxy, including but not limited to any search engine or
4 participant in crowd sourcing of craigslist Content; and 3) the sale, distribution
5 and/or disclosure of the RadPad Database to anyone other than craigslist or its
6 attorneys. The prohibition covers all Access and Use by the Prohibited Parties
7 and provides no exceptions, including but not limited to a claim of fair use or
8 implied license.

9 C. The Prohibited Parties are also permanently prohibited from:

- 10 (1) sending or transmitting, or paying, directing, aiding, or conspiring with
11 others to send or transmit (i) any commercial electronic mail or electronic
12 communication to any craigslist email address, user, member or poster,
13 bearing any false, fraudulent, anonymous, inactive, deceptive, or invalid
14 return information, or otherwise using any other artifice, scheme or
15 method of transmission that would prevent the automatic return of
16 undeliverable electronic mail to its original and true point of origin or that
17 would cause the email return address to be that of anyone other than the
18 actual sender or by any other means in violation of the CAN-SPAM Act,
19 15 U.S.C. § 7701, et seq. or (ii) any commercial electronic mail message
20 to email addresses known to have been acquired or harvested from any
21 craigslist website;
- 22 (2) directly or indirectly downloading, harvesting, obtaining, or copying
23 craigslist Content by any means whatsoever, including but not limited to
24 robots, spiders, scrapers, or crawlers;
- 25 (3) directly or indirectly displaying, framing, including, disseminating,
26 publishing, distributing, selling, giving away, or otherwise presenting or
27 making available to any person or entity, or facilitating same, any
28 craigslist Content;

- 1 (4) representing, on their websites, in their mobile apps, or otherwise, that
2 they are in any way affiliated with craigslist, or that any of their products
3 or services contain or include any craigslist Content;
- 4 (5) directly or indirectly circumventing technological measures that control
5 access to any craigslist website or any portions thereof, including but not
6 limited to, measures that: monitor and/or block activity associated with
7 particular IP addresses or provide a set of instructions to any automated
8 technologies visiting the craigslist website that prohibit automated
9 programs (e.g., a robots.txt file), whether through use of multiple IP
10 addresses or any other means;
- 11 (6) directly or indirectly infringing any of craigslist’s copyrighted materials;
- 12 (7) engaging in the purchase, acquisition, collection, harvest, sale, transfer,
13 transmission, distribution, trade, or display of craigslist users’ postings,
14 names, locations, addresses, email addresses, phone numbers, contact
15 information, screen names or other user information, taken from any
16 craigslist website, service, or computer server, including, but not limited to
17 *craigslist.org*, or lists thereof; and
- 18 (8) directly or indirectly using, other than fair use, any craigslist trademark or
19 trade dress, or applying for, or registering any mark, trade name, trade
20 dress, company name, domain name, website username, or url that
21 contains any craigslist trademark or misspelling of any craigslist
22 trademark, or that is confusingly similar to any craigslist trademark; and
23 from using or acquiring any Twitter handle, email address, avatar, domain
24 name, social media user name, or other asset of any kind that contains or
25 suggests the words “craig,” “craigslist,” or anything similar.

26 **III. Monitoring Compliance**

27 It is further ORDERED that:

28 A. The Prohibited Parties shall take reasonable steps sufficient to monitor and ensure

1 that all persons within their control or past or present employment (whether as
2 independent contractors, employees, agents, partners or in some other capacity)
3 comply with this Order, including but not limited to providing a copy of this
4 Order to any person within their control or past or present employment and
5 requesting that such person adhere to its terms;

6 B. The Prohibited Parties shall take all reasonable corrective action with respect to
7 any individual within their control or employment whom any Prohibited Party
8 determines is not in compliance with the terms of this Order, which may include
9 training, disciplining, and/or terminating such individual, and notifying craigslist
10 promptly in writing of the underlying conduct; and

11 C. craigslist is entitled to pursue post-judgment discovery to monitor the Prohibited
12 Parties' compliance with this Order.

13 **IV. Retention of Jurisdiction**

14 It is further ORDERED that this Court shall retain jurisdiction of this matter in law and
15 equity for purposes of (1) enforcing and/or adjudicating claims of violations of this Order or of
16 disputes arising in connection with the Settlement Agreement executed concurrently herewith,
17 with any such dispute being raised by noticed motion; and (2) permitting craigslist to pursue its
18 claims against the Doe Defendants, including by conducting relevant discovery from former
19 RadPad directors, officers, employees, investors, and/or other third parties. For the avoidance of
20 doubt, this Order resolves craigslist's claims solely against RadPad, Inc. and ISG, and does not
21 resolve any potential claims against the Doe Defendants or former officers, agents, servants,
22 employees, assignees of RadPad, Inc.

23 PROPOSED BY:

24 Dated: April 11, 2017

LATHAM & WATKINS LLP

25 By: 
26 _____
Perry J. Viscounty


27 Attorneys for Plaintiff
28 CRAIGSLIST, INC.

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NO OBJECTION TO ENTRY OF ORDER:

Dated: ^{April} March 4, 2017

INSOLVENCY SERVICES GROUP, INC., as
Assignee of RADPAD, INC.

By: 
David Shemano

Attorney for Assignee INSOLVENCY
SERVICES GROUP, INC.

IT IS SO ORDERED.

Dated: April 13, 2017


Honorable Charles R. Breyer