

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO.

COMMONWEALTH OF MASSACHUSETTS,)
)
Plaintiff,)
)
v.)
)
GOOGLE LLC, and)
IHEARTMEDIA, INC.,)
)
Defendants.)
)
_____)

2284CV02684

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SUPERIOR COURT-CIVIL
MICHAEL JOSEPH DONOVAN
CLERK/MAGISTRATE

THE COMMONWEALTH AND IHEARTMEDIA, INC.'S

JOINT MOTION FOR ENTRY OF FINAL JUDGMENT BY CONSENT


Pursuant to Mass. R. Civ. P. 58a, the Plaintiff, the Commonwealth of Massachusetts, represented by and through its Attorney General, Maura Healey, and the Defendant, iHeartMedia, Inc., hereby jointly move this Court for entry of the attached, proposed Final Judgment by Consent (the "Judgment").

The parties have reached an agreement to resolve this litigation pursuant to the Judgment and assert that there is no just cause for delay. Further, the Defendant stipulates and consents to the entry of the Judgment, waiving: (i) all statutorily required notice associated with the commencement of this action, (ii) any defect concerning service of the Plaintiff's Complaint, (iii) issuance of a summons or service of process, (iv) all rights of appeal, and (v) the requirements of Mass. R. Civ. P. 52.

Accordingly, the parties jointly move this Court to enter the Judgment, filed herewith.

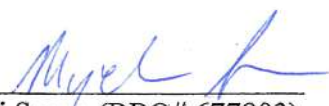
Respectfully submitted,

IHEARTMEDIA, INC.,
Through its attorney,

By: 
Mercedes Kelley Tunstall
Cadwalader, Wickersham & Taft LLP
700 Sixth Street, N.W.
Washington, DC 20001
(202) 862-2266 (Voice)
Mercedes.Tunstall@cwtt.com

Dated: August 12, 2022

COMMONWEALTH OF MASSACHUSETTS
Office of Attorney General Maura Healey

By: 
Mychii Snape (BBO# 677903)
Assistant Attorney General
Consumer Protection Division
Office of the Attorney General
One Ashburton Place, 18th Floor
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Mychii.Snape@mass.gov

Dated: November 21, 2022

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO.

COMMONWEALTH OF MASSACHUSETTS,)
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Plaintiff,)
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v.)
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GOOGLE LLC, and)
IHEARTMEDIA, INC.,)
)
Defendants.)
)
)

FINAL JUDGMENT BY CONSENT

Plaintiff, the Commonwealth of Massachusetts (the “Commonwealth”), appearing by and through its Attorney General Maura Healey, and Defendant iHeartMedia, Inc., a corporation (“Defendant” or “IHEARTMEDIA”), appearing through its attorneys, have stipulated to and jointly moved for the entry of this Final Judgment by Consent (“Judgment”) without the taking of proof and without trial or adjudication of any fact or law, without this Judgment constituting evidence of or an admission or denial by IHEARTMEDIA regarding any issue of law or fact alleged in the Complaint on file, and without IHEARTMEDIA either admitting or denying any liability, and with all parties having waived their right to appeal.

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED
THAT:**

I. PARTIES AND JURISDICTION

1. Plaintiff, the Commonwealth of Massachusetts, is represented by and through its Attorney General, who serves as the chief law enforcement officer for the Commonwealth.
2. Defendant, iHeartMedia, Inc., is a Delaware corporation with its principal office located at 20880 Stone Oak Parkway, San Antonio, Texas 78258.
3. This Court has jurisdiction over the subject matter of this action pursuant to G.L. c. 93A, § 4 and G.L. c. 12, § 10; and jurisdiction over the Defendant in this action pursuant to G.L. c. 223A, § 3. Venue is proper in Suffolk County pursuant to G.L. c. 223, § 5, and G.L. c. 93A, § 4.
4. At all relevant times, IHEARTMEDIA has transacted business in the Commonwealth of Massachusetts, including, but not limited to, in Suffolk County.

II. DEFINITIONS

5. For the purposes of this Judgment, the following definitions shall apply:
 - a. **“COVERED CONDUCT”** shall mean any and all alleged acts or practices relating to IHEARTMEDIA’s recording of ENDORSEMENTS of the Google Pixel 4 by its on-air radio personalities and, from October 2019 through March 2020, airing those ENDORSEMENTS, which the Massachusetts Attorney General’s Office alleges violated the Consumer Protection Act, G.L. c. 93A, § 2.
 - b. **“EFFECTIVE DATE”** shall be the date the Complaint was filed in this action.
 - c. **“ENDORSEMENT”** shall mean any advertising message (including verbal statements, demonstrations, or depictions of the name, signature, likeness or other identifying personal characteristics of an individual or the name or seal of an organization) that consumers are likely to believe reflects the opinions, beliefs, findings, or experiences of a party other than the sponsoring advertiser, even if the views expressed by that party are identical to those of the sponsoring advertiser.

- d. “**ENDORSER**” shall mean the person whose opinions, beliefs, findings, or experience an ENDORSEMENT message appears to reflect, and may be an individual, group, or institution.

III. INJUNCTIVE RELIEF

6. IHEARTMEDIA and its officers, agents, servants, employees, attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Judgment, whether acting directly or indirectly, shall:

- a. Comply with the Consumer Protection Act, G.L. c. 93A, § 2, in connection with the advertising, promotion, offering for sale, or sale of any IHEARTMEDIA product or service in Massachusetts.
- b. Comply with the Federal Trade Commission’s Guides Concerning the Use of Endorsements and Testimonials in Advertising, 16 C.F.R. Part 255, including but not limited to, ensuring that ENDORSEMENTS reflect the honest opinions, findings, beliefs, or experience of the ENDORSER, in connection with the advertising, promotion, offering for sale, or sale of any consumer product or service in Massachusetts.
- c. In connection with the advertising or promotion of any consumer product or service, not make any misrepresentation, expressly or by implication: (i) that an ENDORSER has owned or used the product or service; or (ii) about an ENDORSER’s experience with the product or service.

7. Compliance Reports and Notice to the Attorney General’s Office.

IHEARTMEDIA shall make timely submissions to the Massachusetts Attorney General’s Office, specifically:

- a. One hundred eighty (180) days after the issuance date of this Judgment, and each year thereafter upon request from the Massachusetts Attorney General’s Office for ten (10) years, IHEARTMEDIA shall submit a compliance report, sworn

under penalty of perjury, in which it must: (i) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which the Massachusetts Attorney General's Office may use to communicate with IHEARTMEDIA; (ii) identify all of IHEARTMEDIA's businesses by all of their names, primary telephone numbers, and primary physical, postal, email, and Internet addresses; (iii) describe the activities of each business, including the goods and services offered, and the means of advertising, marketing, and sales; (iv) describe in detail whether and how IHEARTMEDIA is in compliance with each Provision of this Judgment, including a discussion of all of the changes IHEARTMEDIA made to comply with the Judgment; and (iv) provide a copy of each Acknowledgment of the Judgment obtained pursuant to this Judgment, unless previously submitted to the Massachusetts Attorney General's Office.

- b. IHEARTMEDIA shall submit a compliance notice, sworn under penalty of perjury, within fourteen (14) days of any change in: (i) any designated point of contact; or (ii) the structure of IHEARTMEDIA or any entity that IHEARTMEDIA has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Judgment, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Judgment.
- c. IHEARTMEDIA shall submit notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against IHEARTMEDIA within fourteen (14) days of its filing.
- d. Any submission to the Massachusetts Attorney General's Office required by this Judgment to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: ____" and supplying the date, signatory's full name, title (if applicable), and signature.

8. Compliance Monitoring. For the purposes of monitoring IHEARTMEDIA's compliance with this Judgment:

- a. Within fifteen (15) business days of receipt of a written request from the Massachusetts Attorney General's Office, IHEARTMEDIA shall: (i) submit additional compliance reports or other requested information, which must be sworn under penalty of perjury, and (ii) produce records for inspection and copying.
- b. For matters concerning this Judgment, the Massachusetts Attorney General's Office is authorized to communicate directly with IHEARTMEDIA. IHEARTMEDIA shall permit the Massachusetts Attorney General's Office to interview anyone affiliated with IHEARTMEDIA who has agreed to such an interview. The interviewee may have counsel present.
- c. The Massachusetts Attorney General's Office may use all other lawful means, including posing through its representatives as consumers, suppliers, or other individuals or entities, to IHEARTMEDIA or any individual or entity affiliated with IHEARTMEDIA, without the necessity of identification or prior notice. Nothing in this Judgment limits the Massachusetts Attorney General's Office's lawful use of compulsory process pursuant to G.L. c. 93A, §6 or any other lawful means.

9. Cooperation. IHEARTMEDIA must fully cooperate with the Massachusetts Attorney General's Office in any investigation or case related to or associated with the transactions or the occurrences that are the subject of the Complaint. IHEARTMEDIA must provide truthful and complete information, evidence, and testimony. IHEARTMEDIA must cause its officers, employees, representatives, or agents to appear for interviews, discovery, hearings, trials, and any other proceedings that the Massachusetts Attorney General's Office may reasonably request upon five days' written notice, or other reasonable notice, at such places and times as the Massachusetts Attorney General's Office may designate, without the service of a subpoena.

10. Recordkeeping. IHEARTMEDIA must create certain records for ten years after the entry date of this Judgment, and retain each such record for five years, unless otherwise specified below. Specifically, for any business that IHEARTMEDIA is a majority owner or controls directly or indirectly, IHEARTMEDIA must create and retain the following records:

- a. Accounting records showing the revenues from all advertisements or other services sold by IHEARTMEDIA;
- b. Personnel records showing, for each person providing services in relation to any aspect of the Judgment, whether as an employee or otherwise, that person's: name; address(es); telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- c. Copies or records of all consumer or other complaints concerning the subject matter of this Judgment, whether received directly or indirectly, such as through a third party, and any response;
- d. All records necessary to demonstrate full compliance with each provision of this Judgment, including all submissions to the Massachusetts Attorney General's Office;
- e. Copies of all materials used by IHEARTMEDIA to train or otherwise educate any of its principals, officers, directors, managers, employees, agents, or representatives regarding IHEARTMEDIA's policies with respect to ENDORSEMENTS subject to this Judgment; and records reflecting which individuals received such training or educational materials, the date(s) that the individuals received such training or educational materials, and an indication of which training or educational materials were provided;
- f. For any ENDORSEMENT subject to this Judgment that is provided by IHEARTMEDIA or its officers, employees, representatives, agents, or independent contractors: (i) records indicating the ENDORSER's name and contact information used to communicate with the ENDORSER; (ii) records indicating the amount(s) and value(s) of everything the ENDORSER was paid or

given in connection with the ENDORSEMENT; (iii) records indicating whether the ENDORSER was provided with the endorsed product or service; and (iv) a copy of each unique ENDORSEMENT by the ENDORSER; and

- g. A copy of each unique advertisement or other marketing material making a representation subject to this Judgment.

11. Acknowledgement of the Judgment.

- a. Within ten (10) days after the EFFECTIVE DATE of this Judgment, IHEARTMEDIA shall submit to the Massachusetts Attorney General's Office an acknowledgment of receipt of this Judgment sworn under penalty of perjury.
- b. For ten years after the issuance date of this Judgment, IHEARTMEDIA must deliver a copy of this Judgment to: (i) all principals, officers, directors, and IHEARTMEDIA managers and members; (ii) all employees, agents, and representatives having managerial responsibilities for conduct related to the subject matter of the Judgment; and (iii) any business entity resulting from any change in structure as set forth in the Paragraph 7, titled Compliance Reports and Notices to the Attorney General. Delivery must occur within forty-five (45) days after the EFFECTIVE DATE of this Judgment for current personnel. For all others, delivery must occur before they assume their responsibilities.
- c. From each individual or entity to which IHEARTMEDIA delivers a copy of this Judgment, IHEARTMEDIA must obtain, within thirty (30) days, a signed and dated acknowledgment of receipt of this Judgment.

IV. MONETARY PAYMENT

12. No later than thirty (30) days after the EFFECTIVE DATE, IHEARTMEDIA shall pay a total of four hundred thousand (\$400,000) to be divided and paid by IHEARTMEDIA directly to each Attorney General's Office participating in a similar settlement agreement in an amount to be designated by, and at the sole direction and discretion of, the involved state Attorney General's Offices.

13. IHEARTMEDIA shall pay \$35,503.12 to the Massachusetts Attorney General's Office. The Massachusetts Attorney General shall distribute the payment to her office at her sole discretion and in any amount, allocation, or apportionment to: (i) the Commonwealth's General Fund, or (ii) the Commonwealth's local consumer aid fund established by G. L. c. 12, § 11G.

V. RELEASE

14. Upon entry of this Judgment and following full payment of the amounts due under this Judgment, the Massachusetts Attorney General's Office shall release and discharge IHEARTMEDIA from all civil claims that it could have brought based on the known COVERED CONDUCT under the Consumer Protection Act, G.L. c. 93A, § 2, or common law claims, including those concerning unfair, deceptive, or fraudulent trade practices. Nothing contained in this paragraph shall be construed to limit the ability of the Massachusetts Attorney General's Office to enforce the obligations that IHEARTMEDIA has under this Judgment.

15. Notwithstanding any term of this Judgment, any and all of the following forms of liability are specifically reserved and excluded from the release in Paragraph 14, above, as to any entity or person, including IHEARTMEDIA:

- a. Any criminal liability that any person or entity, including IHEARTMEDIA, has or may have.
- b. Any civil or administrative liability that any person or entity, including IHEARTMEDIA, has or may have to the states under any statute, regulation or rule giving rise to any and all of the following claims: (i) state or federal antitrust violations; (ii) state or federal securities violations; or (iii) state or federal tax claims.
- c. Any claims by any agency, board, authority or instrumentality other than the Massachusetts Attorney General's Office.

16. Nothing in this Judgment shall be construed as excusing or exempting IHEARTMEDIA from complying with any state or federal law, rule, or regulation; nor shall any

of the provisions of this Judgment be deemed to authorize or require IHEARTMEDIA to engage in any acts or practices prohibited by any law, rule, or regulation.

17. Nothing in this Judgment shall be construed to settle, release, or resolve any claims individual consumers or other third parties have or may have, including claims under the Consumer Protection Act, G.L. c. 93A, and any common law claims they may have concerning unfair, fraudulent or deceptive trade practices, against any person and/or entity, including IHEARTMEDIA.

VI. NO ADMISSION OF LIABILITY

18. Violations of Law. In stipulating to the entry of this Judgment, IHEARTMEDIA does not admit to or deny any violation of or liability arising from any state, federal, or local law.

19. Admissions of Fact. IHEARTMEDIA does not admit to or deny any fact alleged in the Complaint. Nothing contained in this Judgment shall be construed as an admission or concession of liability by IHEARTMEDIA, or create any third-party beneficiary rights or give rise to or support any right of action in favor of any consumer or group of consumers, or confer upon any person other than the parties hereto any rights or remedies. By entering into this Judgment, IHEARTMEDIA does not intend to create any legal or voluntary standard of care and expressly denies that any practices, policies, or procedures inconsistent with those set forth in this Judgment violate any applicable legal standard. This Judgment is not intended to be and shall not be construed as, deemed to be, represented as, or relied upon in any manner by any party in any civil, criminal, or administrative proceeding before any court, administrative agency, arbitration, or other tribunal as an admission, concession, or evidence that IHEARTMEDIA has violated any federal, state, or local law, or that IHEARTMEDIA's current or prior practices are or were not in accordance with any federal, state, or local law.

VII. GENERAL PROVISIONS

20. Nothing herein shall be construed to exonerate any failure to comply with any provision of this Judgment after the EFFECTIVE DATE, or to compromise the authority of the Massachusetts Attorney General's Office to initiate a proceeding for any failure to comply with this Judgment.

21. Nothing in this Judgment shall be construed to limit the authority or ability of the Massachusetts Attorney General's Office to protect the interests of the Commonwealth of Massachusetts or its people. This Judgment shall not bar the Massachusetts Attorney General's Office or any other governmental entity from enforcing laws, regulations, or rules against IHEARTMEDIA for conduct subsequent to or otherwise not covered by this Judgment. Further, nothing in this Judgment shall be construed to limit the ability of the Massachusetts Attorney General's Office to enforce the obligations that IHEARTMEDIA has under this Judgment.

22. Nothing in this Judgment shall be construed as relieving IHEARTMEDIA of the obligation to comply with all state and federal laws, regulations, and rules, nor shall any of the provisions of this Judgment be deemed to be permission to engage in any acts or practices prohibited by such laws, regulations, and rules.

23. IHEARTMEDIA shall not participate in any activity or form a separate entity or corporation for the purpose of engaging in acts or practices in whole or in part that are prohibited by this Judgment or for any other purpose that would otherwise circumvent any term of this Judgment. IHEARTMEDIA shall not knowingly cause, permit, or encourage any other persons or entities acting on its behalf, to engage in practices prohibited by this Judgment.

24. Severability. If any portion of this Judgment is held invalid or unenforceable, the remaining terms of this Judgment shall not be affected and shall remain in full force and effect.

25. Notice. All notices or other documents to be provided under this Judgment shall be sent by United States mail, certified mail return receipt requested, or other nationally recognized courier service that provides for tracking services and identification of the person signing for the notice or document, and shall be deemed to be sent upon mailing. Any party may update its designee or address by sending written notice to the other party informing them of the change. Whenever IHEARTMEDIA shall provide notice to the Massachusetts Attorney General's Office under this Judgment, that requirement shall be satisfied by sending notice to:

Massachusetts Attorney General's Office
c/o Mychii Snape
Consumer Protection Division
One Ashburton Place, 18th Floor
Boston, MA 02108

IHEARTMEDIA shall simultaneously provide a copy of each notice or other document by email to Mychii.Snape@mass.gov.

Any notices or other documents sent to IHEARTMEDIA pursuant to this Judgment shall be sent to the following address:

Donna Schneider
SVP & Associate General Counsel
iHeartMedia Legal Department
20880 Stone Oak Parkway
San Antonio, TX 78258

The Massachusetts Attorney General's Office may simultaneously provide a courtesy copy of each notice or other document by email to DonnaSchneider@iheartmedia.com.

26. IHEARTMEDIA waives any defect associated with service of the Plaintiff's Complaint and does not require issuance or service of process of a summons. Further, IHEARTMEDIA waives any statutorily required notice associated with the commencement of this action, including any requirement to seek injunctive relief.

27. Jurisdiction Retained. Jurisdiction is retained by the Court for the purpose of enabling any party to the Judgment to apply to the Court at any time for such further orders and directions as may be necessary or appropriate for the construction or the carrying out of this Judgment, for the modification of any of the injunctive provisions herein, for enforcement of compliance herewith, and for the punishment of violations hereof, if any.

28. Governing Law. The provisions of this Judgment shall be construed in accordance with the laws of the Commonwealth of Massachusetts.

29. IHEARTMEDIA relinquishes dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Judgment and may not seek the return of any assets.

30. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Massachusetts Attorney General's Office to

enforce its right to any payment pursuant to this Judgment, such as a nondischargeability complaint in any bankruptcy proceeding.

31. Notwithstanding Paragraph 19 of this Judgment, IHEARTMEDIA stipulates that the facts alleged in the Complaint establish all elements necessary to sustain an action by or on behalf of the Massachusetts Attorney General's Office pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and that this Judgment will have collateral estoppel effect for such purposes only.

32. Entire Agreement. This Judgment contains the complete agreement between the Massachusetts Attorney General's Office and IHEARTMEDIA. No promises, representations, or warranties other than those set forth in this Judgment have been made between the parties. This Judgment supersedes all prior communications, discussions, or understandings, if any, between the Massachusetts Attorney General's Office and IHEARTMEDIA, whether oral or in writing, concerning the matters alleged in the Complaint.

33. The Court has determined that there is no just reason for delay and, pursuant to Mass. R. Civ. P. 54(b), directs the clerk is ordered to enter this Judgment forthwith.

ORDERED AND ADJUDGED:

Justice of the Superior Court

Dated: _____