

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

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<i>In the Matter of</i>)	AGREEMENT CONTAINING
)	CONSENT ORDER
)	
Practice Fusion, Inc.)	FILE NO. 1423039
)	
)	
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)	
_____)	

The Federal Trade Commission (“Commission”) has conducted an investigation of certain acts and practices of Practice Fusion, Inc. (“proposed respondent”). Proposed respondent, having been represented by counsel, is 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 Practice Fusion, Inc., by its duly authorized officers, and counsel for the Federal Trade Commission that:

1. Proposed respondent Practice Fusion, Inc. (“Practice Fusion”) is a Delaware corporation with its principal office or place of business at 650 Townsend Street, Suite 500, San Francisco, CA 94103.
2. Proposed respondent neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in this order. Only for purposes of this action, proposed respondent admits the facts necessary to establish jurisdiction.
3. Proposed respondent waives:
 - A. any further procedural steps;
 - B. the requirement that the Commission’s decision contain a statement of findings of fact and conclusions of law; and
 - C. all rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.
4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of thirty (30) days and information about it publicly released. The Commission thereafter may either

withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. Proposed respondent agrees that service of the order may be effected by its publication on the Commission's website (ftc.gov), at which time the order will become final. *See* Rule 2.32(d). Proposed respondent waives any rights it may have to any other manner of service. *See* Rule 4.4. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

6. Proposed respondent has read the draft complaint and consent order. Proposed respondent understands that it may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

ORDER

Definitions

For purposes of this Order, the following definitions apply:

- A. "Covered information" means the following information obtained from an individual consumer: (a) a first and last name; (b) a physical address (c) an email address or other online contact information, such as an instant messaging user identifier or a screen name; (d) a telephone number; (e) a Social Security number; (f) a driver's license or other government-issued identification number; (g) a financial institution account number; (h) credit or debit card information; (i) a persistent identifier, such as a customer number held in a "cookie," a static Internet Protocol ("IP") address, a mobile device ID, or processor serial number that is combined with other available data that identifies an individual consumer; (j) health information, including demographic data, that relates to the individual's past, present, or future physical or mental health or condition, the provision of healthcare to the individual, or the past, present, or future payment for the provision of healthcare to the individual, and that identifies the individual or for which there is a reasonable basis to believe it can be used to identify the individual; or (k) any other information that is individually identifiable.
- B. "Healthcare provider review information" means feedback gathered by Respondent from consumers on Respondent's own behalf or on behalf of Respondent's healthcare provider customers regarding healthcare services provided by said healthcare provider customers

(or their agents, contractors, or assigns) in response to the healthcare satisfaction survey that Respondent emailed to consumers from either Practice Fusion or Patient Fusion domains from April 5, 2012 through April 8, 2013. “Healthcare provider review information” does not include information recorded or documented by one of Respondent’s healthcare provider customers (or their agents, contractors, or assigns) utilizing the services of Respondent.

- C. “Publicly available” means widely disseminated to the general public through a broadly accessible medium, such as wide dissemination on the Internet or in other printed, audio, visual, or digital media.
- D. “Respondent” means Practice Fusion, Inc. and its successors and assigns.
- E. “Commerce” means as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
- F. “Clearly and conspicuously” means that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:
 - 1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure is made in only one means.
 - 2. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
 - 3. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.
 - 4. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.
 - 5. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.
 - 6. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.

7. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.
8. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, “ordinary consumers” includes reasonable members of that group.

Provisions

I. Prohibition against Misrepresentations

IT IS ORDERED that Respondent and Respondent’s 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, in connection with any product or service must not misrepresent in any manner, expressly or by implication:

- A. the extent to which Respondent uses, maintains, and protects the privacy and confidentiality of any covered information, including: the extent to which covered information shall be made publicly available, including by posting on the Internet.

II. Notice and Affirmative Express Consent Provision

IT IS FURTHER ORDERED that Respondent and Respondent’s officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive notice of this Order, whether acting directly or indirectly, prior to making any consumer’s covered information publicly available, including by posting on the Internet, must:

- A. clearly and conspicuously disclose to the consumer, separate and apart from “privacy policy,” “terms of use” page, or similar document, that such information is being made publicly available, including by posting on the Internet; and
- B. obtain the consumer’s affirmative express consent.

III. Disposition of Healthcare Provider Review Information

IT IS FURTHER ORDERED that Respondent and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, website, or other device or affiliate owned or controlled by Respondent, in or affecting commerce, must not publicly display any healthcare provider review information, and must not maintain any healthcare provider review information, except for review and retrieval by its healthcare provider customers, or their respective agents, contractors, assigns, or as permitted to comply with applicable law, regulation, or legal process. Within sixty (60) days after the effective date of the Order, Respondent must provide a written statement to the Commission, sworn under penalty of perjury, confirming the foregoing.

IV. Acknowledgements of the Order

IT IS FURTHER ORDERED that Respondent obtains acknowledgments of receipt of this Order:

- A. Respondent, within 10 days after the effective date of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. Respondent must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives having direct supervisory responsibilities over the conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Provision titled Compliance Reports and Notices. Delivery must occur within 10 days after the effective date of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.
- C. From each individual or entity to which Respondent delivered a copy of this Order, Respondent must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

V. Compliance Reports and Notices

IT IS FURTHER ORDERED that Respondent make timely submissions to the Commission:

- A. Ninety (90) days after the effective date of this Order, Respondent must submit a compliance report, sworn under penalty of perjury, in which:
 - 1. Respondent must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission, may use to communicate with Respondent; (b) identify all of that Respondent's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the extent to which covered information is made publicly available; (d) describe in detail whether and how Respondent is in compliance with each Provision of this Order, including a discussion of all of the changes the Respondent made to comply with the Order; and (e) provide a copy of each Acknowledgments of the Order obtained pursuant to this Order, unless previously submitted to the Commission.
- B. Respondent must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:
 - 1. (a) any designated point of contact; or (b) the structure of any entity that Respondent has any ownership interest in or controls directly or indirectly that may affect

compliance obligations arising under this Order, 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 Order.

- C. Respondent must submit notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Respondent within 14 days of its filing.
- D. Any submission to the Commission required by this Order 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.
- E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: In re *Practice Fusion, Inc.*

VI. Recordkeeping

IT IS FURTHER ORDERED that Respondent must create certain records and retain each such record for 5 years. Specifically, Respondent must create and retain the following records:

- A. accounting records showing the revenues from all goods or services sold, the costs incurred in generating those revenues, and resulting net profit or loss;
- B. personnel records showing, for each person providing services in relation to any aspect of the Order, whether as an employee or otherwise, that person’s: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. copies or records of all consumer complaints concerning the subject matter of the Order, 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 Order, including all submissions to the Commission;
- E. all forms, websites, and other methods used by Respondent to obtain feedback from consumers on Respondent’s own behalf or on behalf of Respondent’s healthcare provider customers regarding healthcare services provided by said healthcare provider customer (or their agents, contractors, or assigns);
- F. a copy of each widely disseminated representation by Respondent that describes the

extent to which Respondent maintains or protects the privacy and confidentiality of any covered information, including any representation concerning a change in any website or other service controlled by Respondent that relates to the privacy and confidentiality of covered information; and

- G. for 5 years from the date created or received, all records, whether prepared by or on behalf of Respondent, that tend to show any lack of compliance by Respondent with this Order.

VII. Compliance Monitoring

IT IS FURTHER ORDERED that, for the purpose of monitoring Respondent's compliance with this Order:

- A. Within 10 days of receipt of a written request from a representative of the Commission, Respondent must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury, and produce records for inspection and copying.
- B. For matters concerning this Order, representatives of the Commission are authorized to communicate directly with Respondent. Respondent must permit representatives of the Commission to interview anyone affiliated with any Respondent who has agreed to such an interview. The interviewee may have counsel present.
- C. The Commission may use all other lawful means, including posing through its representatives as consumers, suppliers, or other individuals or entities, to Respondent or any individual or entity affiliated with Respondent, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

VIII. Order Effective Dates

IT IS FURTHER ORDERED that this Order is final and effective upon the date of its publication on the Commission's website (ftc.gov) as a final order. This Order will terminate 20 years from the date of its issuance (which is stated at the end of this Order, next to the Commission's seal), or 20 years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying settlement) in federal court alleging any violation of this Order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Provision in this Order that terminates in less than 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 Provision. If such complaint is dismissed or a federal court rules that the Respondent 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 Provision 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.

PRACTICE FUSION, INC.

Dated: _____

By: _____

RIYAD OMAR
General Counsel
Practice Fusion, Inc.

Dated: _____

By: _____

LYDIA PARNES
Counsel for Practice Fusion

Dated: _____

By: _____

ALLISON LEFRAK
Counsel for the Federal Trade Commission

Dated: _____

By: _____

RYAN MEHM
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