

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**
Case No. 0:16-cv-62186-WJZ

FEDERAL TRADE COMMISSION,
Plaintiff and Counter-Defendant,

v.

DOTAUTHORITY.COM, INC., *et al.*,
Defendants and Counter-Plaintiffs.

DEFENDANTS' COUNTERCLAIM

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COME NOW corporate Defendants **DOTAuthority.com, Inc. DOTfilings.com, Inc., Excelsior Enterprises International, Inc.,** and **JPL Enterprises International, Inc.** (all four cumulatively, the "Corporate Defendants"), and individual defendants **James P. Lamb,** and **Uliana Bogash** (the two "Individual Defendants," and all six collectively, "Defendants"), who through their undersigned counsel, respectfully bring this Counterclaim against the Plaintiff Federal Trade Commission ("FTC") in the above-styled matter and in support thereof state as follows:

NATURE OF THE ACTION

1. This is an action for declaratory and injunctive relief by Defendants against the FTC to correct false and misleading press releases, blog posts, scam alert listings, and public comments by the FTC and/or FTC's designated representatives, that are designed to cause injury, both reputational and pecuniary, to Individual Defendants and to Corporate Defendants, and are designed to interfere with Corporate Defendants' business relationships.

2. Since 2001, Defendants have been engaged in the business of offering permit renewal and compliance services that facilitate interstate common motor carriers with the process

of procuring various statutorily-required one-time and annual permits and registrations acting as the outsourced agent of these common carriers. In the past five years alone, Defendants have helped over 200,000 individuals and small businesses procure permits and registrations and otherwise comply with a wide array of motor carrier laws and regulations.

3. On September 15, 2016, the FTC obtained a sealed *ex parte* temporary restraining order (“TRO”) freezing Defendants’ assets, and obtained the appointment of a receiver to wrest control over all Corporate Defendants. The TRO has been attached hereto as Exhibit A.

4. On September 28, 2016, the United States District Court for the Southern District of Florida took witness testimony and heard arguments from the Defendants’ counsel (“9/28/16 Hearing”), alleging that: (i) the FTC’s *ex parte* request for an asset freeze and receivership was improvident; (ii) the FTC acted inappropriately by implying that exigent circumstances existed when, in fact, no emergency existed; and, (iii) the Defendants’ businesses were both legitimate and helpful to thousands of customers nationwide who relied on the Defendants for their annual interstate common carrier registrations. A copy of the transcript of the 9/28/16 Hearing is attached hereto as Exhibit B.

5. At the 9/28/16 Hearing, the Corporate Defendants argued (and have steadfastly maintained) that, at all material times, (i) their websites clearly disclosed that the Corporate Defendants were not a government agency, and (ii) DOTAuthority.com is a permit company that is duly registered with the Indiana Unified Carrier Registration administrators.

6. Defendants substantially prevailed at the 9/28/16 Hearing, and the asset freeze and receivership were lifted. The Court issued a greatly modified preliminary injunction on September 29, 2016 (“PI Order”). Notably, the restrictions of the PI Order were entirely acceptable to the Defendants and, in fact, were virtually identical to those restrictions that the Defendants voluntarily

offered to the FTC prior to the 9/28/16 Hearing. *See* Exhibit C at 3. The PI Order is attached hereto as Exhibit C.

7. Despite the fact that this Court reversed much—indeed, *most*—of the relief that the FTC sought on an *ex parte* basis, the FTC thereafter engaged in a twisted campaign to damage the Defendants’ business and personal reputations by, among other things, (1) publicly releasing a pre-trial press release on October 17, 2016 (“Press Release,” attached hereto as Exhibit D); (2) publicly releasing a pre-trial blog post on October 18, 2017 (“Blog Post,” attached hereto as Exhibit E); (3) adding the pre-trial Blog Post to the FTC’s public listing of online scam alerts (“Scam Alert Listing,” attached hereto as Exhibit F); and (4) explicitly and publicly encouraging readers of the Blog Post and Scam Alert Listing to further disseminate and share such publications by posting them to readers’ personal Facebook social media accounts (“FTC Public Comment,” attached hereto as Exhibit G).

8. The Blog Post and the Scam Alert Listing falsely characterized Defendants as “scammers” and “crooks,” inappropriately opined on and exaggerated Defendants’ culpability in the absence of a final judgment in an unabashed attempt to improperly damage the Defendants’ business relationships before trial, purposefully ignored and circumvented this Court’s most recent findings of facts and developments contained within the PI Order, and encouraged the public to re-distribute the Blog Post and Scam Alert Listing to their personal social media pages, via an online comment posted by FTC employee Bridget Small on February 6, 2017. *See* Exhibits A, C-G.

9. The Press Release, Blog Post, and Scam Alert Listing individually and collectively mischaracterize the substance of the PI Order, causing proximate and irreparable injury to Personal Defendants’ reputations and to Corporate Defendants’ professional reputations and revenues.

PARTIES

10. Plaintiff Federal Trade Commission is an independent agency of the Federal government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also enforces the Restore Online Shopper's Confidence Act ("ROSCA"), 15 U.S.C. §§ 8401 *et seq.*, which prohibits certain methods of negative option marketing on the Internet.

11. Defendant DOTAuthority.com, Inc. ("DOTAuthority") also doing business as James P. Lamb & Associates, is a Florida corporation with a registered business address of 515 E. Las Olas Boulevard, Suite 120 Fort Lauderdale, FL 33301. DOTAuthority transacts or has transacted business in this district and throughout the United States.

12. Defendant DOTfilings.com, Inc. ("DOTfilings") is a Florida corporation with a registered business address of 515 E. Las Olas Boulevard, Suite 120 Fort Lauderdale, FL 33301. DOTfilings transacts or has transacted business in this district and throughout the United States.

13. Defendant Excelsior Enterprises International, Inc. also doing business as DOTilings.com, UCR Registration and UCR Filings ("Excelsior Enterprises"), is a New Jersey corporation with a registered business address of 4 Lake Path 1, Sandyston New Jersey 07826. Excelsior Enterprises transacts or has transacted business in this district and throughout the United States.

14. Defendant JPL Enterprises International, Inc. also doing business as DOTAuthority.com, On-Line Registration and Registration Services, ("JPL Enterprises"), is a New York corporation with a registered address of 405 RXR Plaza, Uniondale, New York 11556.

. JPL Enterprises transacts or has transacted business in this district and throughout the United States.

15. Defendant James P. Lamb (“Lamb”) is an officer, manager, and owner of DOT Authority and JPL Enterprises. Lamb resides in this district and, in connection with the matters alleged in the above-styled case, transacts or has transacted business in this district and throughout the United States.

16. Defendant Uliana Bogash (“Bogash”) is an officer, manager, and owner of DOT Filings and Excelsior Enterprises. Bogash resides in this district and, in connection with the matters alleged in the above-styled case, transacts or has transacted business in this district and throughout the United States.

JURISDICTION AND VENUE

17. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b); and Section 5(a) of ROSCA, 15 U.S.C. § 8404(a).

18. Venue is proper in this district under 28 U.S.C. §§ 1391(b)(1), (b)(2), (c)(1), (c)(2), and (d), and 15 U.S.C. § 53(b).

19. The Administrative Procedure Act (“APA”) provides a waiver of sovereign immunity even if the APA is not being asserted as a cause of action. 5 U.S.C. §§ 702, 706.

20. This action arises under the following statutes: 5 U.S.C. § 702, 706, which enable "a person suffering legal wrong because of [government] agency action, or adversely affected or aggrieved by agency action," to seek relief other than money damages against the government; and, 15 U.S.C. § 46(f), which permits the FTC within certain limits to publish information "in the public interest"; and, 28 U.S.C. §§ 2201-02, which permit a party to seek, and this Court to grant,

"necessary or proper relief based on a declaratory judgment;" and, 28 U.S.C. § 1331(a), which grants this Court original jurisdiction of all civil actions arising "under the Constitution, laws, or treaties of the United States."

STANDING

21. The APA affords a right of review to a party who is "adversely affected or aggrieved by agency action." 5 U.S.C. § 702. The FTC's improper Internet-based publications adversely affected Defendants' businesses by, among other things, (1) causing irreparable harm to the personal reputation of Individual Defendants, (2) causing irreparable harm to the professional reputations of Corporate Defendants, and (3) characterizing Defendants as "crooks" and "scammers", and thus falls within the APA's standing provisions.

FACTUAL BACKGROUND COMMON TO ALL COUNTS

22. The allegations of Paragraphs 1-21 above are incorporated by reference as if fully re-stated herein.

23. Corporate Defendants are legitimate permit registration and renewal businesses in business for over 15 years. They are duly registered with the Indiana Unified Carrier Registration unit of Indiana's Department of Revenue.

24. In addition to lifting the asset freeze and terminating the receiver, the PI Order authorized Defendants to resume their permit renewal businesses, subject to various reporting and disclosure obligations. Exhibit C.

25. Within days after the PI Order was issued, Defendants immediately made minor changes to Corporate Defendants' websites to ensure that the sites fully complied with the PI Order.

The FTC's Press Release

26. On October 17, 2016, the FTC publicly released the Press Release at <https://www.ftc.gov/news-events/press-releases/2016/10/ftc-charges-operators-scheme-used-fake-government-affiliation>. Exhibit D.

27. The Press Release intentionally, deceptively, and misleadingly referenced the FTC's allegations in the Complaint, and failed to include a description of the outcome of the 9/28/16 Hearing, which included the lifting of the asset freeze and a significant modification to the initial *ex parte* injunction issued by this Court. Exhibit D.

28. The FTC not only misrepresented the nature of the Defendants' businesses in the Press Release, but also encouraged, facilitated, and orchestrated the public dissemination of those misrepresentations (*see e.g.*, Exhibit G, explicitly encouraging dissemination of the Blog Post and Scam Alert Listing).

The FTC's Blog Post

29. On October 18, 2016, the FTC publicly released the Blog Post at <https://www.consumer.ftc.gov/blog/government-imposters-target-commercial-truck-owners>. The Blog Post remains publicly available online as of the time of the filing of this Counterclaim. Exhibit E.

30. The Blog Post explicitly characterized Defendants as "scammers". Exhibit E.

31. The Blog Post stated that "DOT Authority **tricked** [consumers] into paying extra service fees for help filing their federal and state motor carrier registrations" (emphasis added).

32. The Blog Post stated that "[t]he **scheme**, which began as early as 2012, took in more than \$19 million from thousands of people throughout the U.S." (emphasis added).

33. The Blog Post stated that Defendants “**target**” people with their “**scam**,” implying that Defendants engaged in predatory and fraudulent practices. (Emphasis added). Exhibit F.

34. Within one week of the FTC’s publication of the Blog Post, various news outlets, law firms, and adversarial trade groups that compete with Defendants, began picking up the FTC’s version of events, which caused the further dissemination of the FTC’s false and misleading representations. The news outlets even included the FTC’s descriptions of “scam,” “fraud” and “scheme”, as illustrated at the following sites:

- <http://www.ttnews.com/articles/basetemplate.aspx?storyid=43650>
- <https://www.ttnews.com/articles/printopt.aspx?storyid=43715>
- <http://fltrucking.org/2016/10/ftc-groups-fraudulently-posed-dot-reps-scam-owner-ops-nearly-20m/>
- <http://www.ccjdigital.com/ftc-groups-fraudulently-posed-as-dot-reps-to-scam-owner-ops-out-of-nearly-20m/>
- <http://legalnewsline.com/stories/511046025-ftc-grants-preliminary-injunction-against-multiple-defendants-in-trucking-industry-fraud-case>
- <http://trucker.com/business/ftc-companies-tricked-small-carriers-registration-scam>
- <http://www.landlinemag.com/Story.aspx?StoryID=32171#.WKzNjvnyuUk>
- <http://www.overdriveonline.com/tag/james-lamb/>
- <http://www.livetrucking.com/ftc-dot-authority-scammed-truckers-out-of-19-million/>
- <https://boodlaw.com/2016/11/commercial-truck-owners-targeted-imposter-scam-dot-authority-alert/>
- <http://constantinecannon.com/whistleblower/ftc-fraud-actions/>

- <https://www.glostone.com/2017/02/28/dont-be-fooled-fmcsa-fraud-and-solicitations-running-rampant/>
- http://www.tianet.org/TIA/Advocacy/Key_Issues/Department_of_Transportation/TIANetOrg/Advocacy/Advocacy_Key_Issues/Department%20of%20Transportation.aspx?hkey=2836554e-d202-4848-befc-2994fc84518c

The FTC’s Scam Alert Listing

35. On October 18, 2016, the FTC added the Blog Post to its public online listing of “Scam Alerts,” viewable at <https://www.consumer.ftc.gov/scam-alerts>. The Scam Alert Listing remains publicly visible as of the time of this Counterclaim’s filing. Exhibit F.

36. The Scam Alert Listing mischaracterized Defendants as “crooks,” “scammers,” and “government imposters.” Exhibit F.

37. Through the Blog Post, the FTC intentionally mischaracterized Corporate Defendants as operating a scheme to defraud innocent victims to the public at large.

The FTC Public Comment

38. On February 7, 2017, FTC employee Bridget Small, a Consumer Education Specialist, replied to a reader’s online comment to the Blog Post by encouraging that the reader, and other visitors to the site, “copy the URL of this blog post and paste it into a Facebook status update to share it.”

39. Ms. Small gave visitors an additional option to disseminate the Blog Post, by recommending to visitors that they “can copy the information straight from the blog post and use it in an article or your own blog post.”

COUNT I – DEFAMATION

40. The allegations of Paragraphs 1-39 above are incorporated by reference as if fully re-stated herein.

41. The FTC's public comment to the Blog Post (the "Public Comment") was made by an FTC employee in her official capacity on or through the FTC's website.

42. The Public Comment was intended to more widely disseminate, and did encourage and cause the further dissemination of, the FTC's false and misleading representations about the Defendants.

43. The Blog Post, Scam Alert and Public Comment were all disseminated over the Internet and directed at the public at large.

44. The Press Release, Blog Post, Scam Alert and Public Comment were intentionally false or, at a minimum, materially misleading, because they characterized Corporate Defendants' legitimate, state-registered permit renewal businesses as a "scheme" which "defrauded" consumers out of \$19 million.

45. In light of its improper, unethical, and illegal behavior as described above, the FTC has exceeded its authority under 15 U.S.C. § 46(f).

46. The FTC's unlawful conduct described herein has caused, and continues to cause, substantial economic and reputational injury to Defendants. Defendants have no adequate remedy at law with respect to the FTC's continuing wrongful conduct.

47. The FTC's statements and assertions were intended to, and did, cause injury to Defendants' reputations by implicitly and explicitly stating that Defendants' had engaged in criminal and/or fraudulent acts to willfully deceive consumers.

48. The FTC's statements and assertions were intended to, and did, cause pecuniary harm to Corporate Defendants in the form of a marked decrease in revenue which occurred shortly after the FTC publicly released the Press Release, Blog Post, Scam Alert Listing.

49. The FTC's statements and assertions were intended to, and did, expose Defendants to public hatred, contempt, ridicule, shame, and disgrace.

50. The FTC acted knowingly, willfully, and with reckless disregard for the harm that its actions would cause to Defendants' reputations, livelihoods, careers, and abilities to earn a living.

51. As a direct and proximate result of the FTC's actions, Defendants have been irreparably, materially, and substantially harmed and damaged in an amount to be proven at trial.

COUNT II – TORTIOUS INTERFERENCE WITH BUSINESS RELATIONSHIPS

52. The allegations of Paragraphs 1- 51 are incorporated by reference as if fully restated herein.

53. For well over a year before the FTC rushed into this Court demanding an *ex parte* restraining order, the FTC was aware of Corporate Defendants' existing customers, business structure, strategies, contracts, and various revenue models.

54. On information and belief, from the outset of its investigation of this matter, the FTC knew that Defendants' permit renewal businesses were conducted exclusively over the Internet.

55. On information and belief, the FTC knew that Corporate Defendants' success was largely dependent upon Defendants' reputations and the good will associated with their brand.

56. On information and belief, the FTC understood that Defendants intended to continue operating Corporate Defendants' businesses and driving sales of Corporate Defendants' permit renewal services over the Internet.

57. On information and belief, the FTC was aware that its publication of false and misleading statements about Defendants would harm: (1) Defendants' personal and professional reputations; (2) Corporate Defendants' revenues; and, (3) Corporate Defendants' longstanding brand image by portraying Defendants as scammers operating an illegitimate business.

58. The FTC acted knowingly, willfully, and with reckless and negligent disregard of the truth of the circumstances at hand, and in total disregard of the harm that its publications and public solicitations would cause to Defendants' reputations, livelihoods, careers, and abilities earn a living, including Corporate Defendants' opportunity to enter into contracts for the sale of their permit renewal services.

59. The FTC acted with the intentional and malicious purpose of inflicting emotional distress and defaming Defendants to encourage and induce the Defendants to settle the instant matter with the FTC.

60. The FTC's intentional and malicious acts caused Defendant Lamb to suffer physical and mental anguish.

61. The FTC unreasonably interfered with Corporate Defendants' business operations and prospective contracts and opportunities by permitting the court-appointed receiver, Scott Dimond ("Receiver"), to intentionally disrupt Corporate Defendants' businesses during the term of the receivership, which disruption was the cause of at least one complaint to the Florida Attorney General.

62. On information and belief, as a result of the FTC's illegal behavior, Corporate Defendants have been terminated from their merchant processors, and have been confined to conducting low merchant processing volume that has adversely affected their ability to do normal business volume.

63. On information and belief, as a result of the FTC's illegal behavior, Defendants' bank accounts have been involuntarily closed by Bank of America resulting in disruption to Defendants' business.

64. On information and belief, as a result of the FTC's illegal behavior, Defendants' email service provider cancelled Defendants' service resulting in Defendants experiencing a significant loss of income.

65. The aforementioned acts of the FTC as alleged in this Count II constitute a tortious interference with Defendants' contractual relations.

66. As a direct and proximate result of the FTC's actions as alleged in Count II herein, Defendants have been irreparably, materially, and substantially damaged.

PRAYER FOR RELIEF

WHEREFORE, Defendants respectfully request that this Honorable Court enter judgment in their favor and as against the FTC granting the following relief:

- (a) Declaratory judgment that the FTC's press release intentionally misrepresents the September 29, 2016 Preliminary Injunction Order with the purpose of harming Defendants and therefore exceeds the FTC's authority under 15 U.S.C. § 46(f);
- (b) Declaratory judgment that the FTC's conduct as alleged herein is defamatory;

- (c) An injunctive Order requiring the FTC to refrain from continuing its unlawful conduct and tortious interference with Defendants' business opportunities and to undertake appropriate corrective measures to repair the injury to Defendants; and
- (d) Award Defendants such other relief as this Court deems just and proper.

Respectfully submitted this ____st day of March, 2017

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CERTIFICATE OF SERVICE

I hereby certify that on _____, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send a notice of electronic filing to:

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____s/ Bradley Gross____
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