

VT SUPERIOR COURT
WASHINGTON UNIT

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**STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT**

IN RE: LEGACY.COM, INC.

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CIVIL DIVISION

F427-7-16Wncv

ASSURANCE OF DISCONTINUANCE

Vermont Attorney General William H. Sorrell (“the Attorney General”) and Legacy.com, Inc. (“Respondent”) hereby agree to this Assurance of Discontinuance (“AOD”) pursuant to 9 V.S.A. §§ 2459.

SUMMARY

The Attorney General alleges Respondent enabled use of a plugin that directed consumers to a website which improperly used a charity’s name and logo without permission, thereby misleading consumers into believing such use was permitted or legitimate, in violation of the Vermont Consumer Protection Act, 9 V.S.A. Chapter 63.

REGULATORY FRAMEWORK

1. The Attorney General is authorized to enforce the provisions of the Consumer Protection Act, 9 V.S.A. Chapter 63.
2. Vermont’s Consumer Protection Act prohibits “[u]nfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce.” 9 V.S.A. § 2453.
3. The three elements of the Vermont Consumer Protection Act are: (1) the consumer is likely to be misled or has been misled; (2) the consumer’s interpretation of the representation is reasonable; and (3) the misleading misrepresentation is material. Jordan v. Nissan North America, Inc., 2004 VT 27, 176 Vt. 465, 853 A.2d 40.
4. The Attorney General is authorized to pursue enforcement and seek relief under 9 V.S.A. § 2458 for violations of the Consumer Protection Act, including injunctive relief, civil

penalties of up to \$10,000 for each violation, reimbursement for the reasonable value of its services and its expenses in investigating and prosecuting an action, and restitution for persons aggrieved by the violation.

BACKGROUND

5. Respondent Legacy.com is a for-profit corporation incorporated under the laws of Delaware, with its principal place of business located at 820 Davis Street, Evanston, Illinois 60201.

6. On August 20, 2014, Legacy.com entered into a contract with a for-profit corporation called Givalike.org, LLC ("the Contract"). The Contract permitted Givalike to use a "plugin" to automatically update obituaries on Legacy.com's website with links to Givalike's website (the "Givalike Plugin"). Specifically, the Givalike Plugin inserted a hyperlink to the Givalike website from the names of charities appearing in Legacy.com's obituaries, unless the obituary already contained a hyperlink to the charity. A consumer who clicked on the hyperlink was brought to a donation form on Givalike's website through which he or she could make a donation to a charity for a fee (the "Donation Form").

7. A donation made via the Donation Form required a fee of the donor ranging from 5% of the charitable donation, plus \$0.50, to 8.5% of the charitable donation, plus \$0.50.

8. Pursuant to the Contract, Legacy.com received 2.5% of any donation amount made using the Givalike Plugin placed in an obituary appearing on Legacy.com's website.

9. Legacy.com did not receive consent from any charity before inserting the Givalike Plugin. The State asserts that Givalike did not receive consent from any charity before inserting the Givalike Plugin, only informing them of its insertion after a donation was made.

10. The State represents that on Givalike's Donation Form, it used certain charities' names, trademarks, and/or logos without those charities' permission.
11. The State represents that from August 2013 to April 2015, over 200 Vermont consumers clicked on the Givalike Plugin at Legacy.com and other similar sites, made a donation via Givalike's Donation Form, and paid fees ranging from \$1 to \$40.50.
12. The State represents that from the date of the Contract, Vermont consumers donated \$15,332.12 to over 100 charities using Givalike's Donation Form. These donations ranged in size from \$10 to \$535.50.
13. The State represents that from the date of the Contract, Vermonters paid Givalike \$1,220.10 in fees.
14. Legacy.com is a foreign entity not registered to do business in Vermont.
15. Without admitting liability, Respondent admits to the truth of all facts set forth in the Background section.
16. The Attorney General alleges that the conduct described above demonstrates violations of the Vermont Consumer Protection Statute.

AGREEMENT

17. It is hereby AGREED that Respondent:
 - a. shall not accept donations on behalf of, or solicit for, any charity located in Vermont, unless it has the express, written permission from the charity after full disclosure of the fees that the Respondent will charge to process the donation;
 - b. shall not permit insertion of a plugin in an online obituary requesting donations be made to any charity located in Vermont without first obtaining the express,

- written permission of the charity after full disclosure of the fees that the consumer will be charged to process the donation;
- c. shall not permit insertion of a plugin in an online obituary of a Vermont resident requesting donations be made to any charity without first obtaining the express, written permission of the charity after full disclosure of the fees that the consumer will be charged to process the donation;
 - d. shall not permit insertion of a plugin which links to the name, emblem, trademark or logo of any charity without first obtaining that charity's consent;
 - e. shall not directly or indirectly represent that it is authorized, sanctioned, or permitted to accept donations for any charity located in Vermont, or otherwise is affiliated with any such charity, without first obtaining the express, written permission of the charity;
 - f. shall, whenever a charity located in Vermont requires use of a plugin on Respondent's site that does not direct the donor to the charity's own website, provide that information clearly and conspicuously in close proximity to the plugin (e.g. "powered by _____").

Monetary Relief

18. Within ten (10) days of all parties signing this AOD, Respondent shall pay fifteen thousand two hundred twenty dollars (\$15,220.00) to the State of Vermont. Payment shall be made either by wire transfer or in the form of a bank or cashier's check made out to the State of Vermont and delivered to Assistant Attorney General Charity R. Clark, Office of the Attorney General, 109 State Street, Montpelier, Vermont 05609.

OTHER TERMS

19. Respondent agrees that the terms of this AOD shall be binding on Respondent and its successors and assigns.
20. The Attorney General hereby releases and discharges any and all potential or actual claims arising under the Consumer Protection Act, 9 V.S.A. chapter 63, subchapters 1 and 2, and Consumer Protection Rule CP 119 that it may have against Respondent for the conduct described in the Background section up to April 2015.
21. The Superior Court of the State of Vermont, Washington Unit, shall have jurisdiction over this AOD and the parties hereto for the purpose of enabling the Attorney General to apply to this Court at any time for orders and directions as may be necessary or appropriate to enforce compliance with or to punish violations of this AOD.

STIPULATED PENALTIES

22. If the Superior Court of the State of Vermont, Washington Unit, enters an order finding Respondent to be in violation of this AOD, then the parties agree that penalties to be assessed by the Court shall be \$10,000.00 for each violation.
23. It is AGREED that the parties have hereby settled all potential claims regarding alleged violations of 9 V.S.A. §§2453 and 2475(e), described in the background section of this AOD, up to the date of execution of this AOD.

SIGNATURE

In lieu of instituting an action or proceeding against Respondent, the Office of the Attorney General, pursuant to 9 V.S.A. §§ 2459 and 2479, accepts this AOD. By signing below, Respondent voluntarily agrees with and submits to the terms of this AOD.

DATED at Evanston, IL, this 17th day of June, 2016.

Helene Donahue

Helene Donahue
Chief Financial Officer
Legacy.com

ACCEPTED on behalf of the Vermont Attorney General:

DATED at Burlington, Vermont this 11th day of July, 2016.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By:

Charity R. Clark

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