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craigslist, Inc.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CRAIGSLIST, INC., a Delaware corporation,  
  
Plaintiff,  
  
v.  
  
RADPAD, INC., a Delaware corporation, and  
DOES 1-10,  
  
Defendants.

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

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

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. Plaintiff craigslist, Inc. (“craigslist”) owns and operates the *craigslist.org* website, the access to, and use of which, is governed by craigslist’s Terms of Use.
2. craigslist’s Terms of Use prohibit, among other things, the use of “[r]obots, spiders, scripts, scrapers, crawlers” and the transmission of any “misleading, unsolicited, unlawful, and/or spam postings/email.”
3. craigslist’s Terms of Use further prohibit the collection of “users’ personal and/or contact information.”
4. craigslist’s Terms of Use are valid and enforceable against Defendant RadPad, Inc. (“Defendant”) and Defendant accepted and agreed to be bound by those terms.
5. craigslist is a provider of Internet access service as defined in 15 U.S.C. § 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.

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

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

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

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

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

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

## **I. Final Judgment**

Judgment is entered in favor of craigslist against Defendant in the amount of \$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

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

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

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

#### IV. Retention of Jurisdiction

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

PROPOSED BY:

Dated: April 11, 2017

LATHAM & WATKINS LLP

By:   
Perry J. Viscounty

Attorneys for Plaintiff  
CRAIGSLIST, INC.



1  
2 NO OBJECTION TO ENTRY OF ORDER:

3 Dated: <sup>April</sup> March 4, 2017

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

By: David B Shemano

David Shemano

Attorney for Assignee INSOLVENCY  
SERVICES GROUP, INC.

9 IT IS SO ORDERED.

10 Dated: April 13, 2017

Charles R. Breyer

Honorable Charles R. Breyer