

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street – 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Attorney for Division of Consumer Affairs

By: Glenn T. Graham
Deputy Attorney General
(973) 648-4846

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS

In the Matter of

Administrative Action

POINTROLL, INC.,

**ASSURANCE OF VOLUNTARY
COMPLIANCE**

Respondent.

This Assurance of Voluntary Compliance (“Assurance”) is voluntarily entered into between the Attorneys General¹ of Connecticut, Florida, Illinois, Maryland, New Jersey, and New York (hereinafter collectively referred to as the “States” or individually as a “State”) and Point Roll, Inc. (“PointRoll” or “Respondent”). This Assurance is intended to resolve the States’ investigation into whether Respondent, including its officers, directors, and employees, engaged in any unlawful or deceptive trade practices in violation of the State consumer protection statutes

¹ For ease of reference purposes, this entire group will be referred to collectively herein as the “States” or individually as a “State.” Such designations, however, as they pertain to Connecticut, shall refer to the Commissioner of Consumer Protection.

cited in the attached “Appendix A” (each a “Consumer Protection Act”) relating to Respondent’s placement of Cookies on Safari web browsers whose privacy settings were configured to “block cookies from third parties and advertisers” (with respect to Safari browsers on computers) or, alternatively, set to “accept cookies” “from visited” sites (with respect to Safari browsers on Apple iPhones and iPads), from December 13, 2011 through February 15, 2012.

The States have determined that it is in the public interest of their respective states to enter into this Assurance.

DEFINITIONS

For the purposes of this Assurance, the following definitions shall apply:

1. “Any” shall be construed as synonymous with “every” and “all” and shall be all-inclusive.
2. “Clearly and Conspicuously” and “Clear and Conspicuous,” when referring to a statement or disclosure, shall mean that such statement or disclosure is disclosed in such size, color, contrast, location, duration, and audibility that it is readily noticeable, readable, understandable, and capable of being heard. A statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies, explains, or clarifies other information with which it is presented, it must be presented in proximity to the information it modifies, in a manner that is likely to be noticed, readable, and understandable, and it must not be obscured in any manner. Audio disclosure shall be delivered in a volume and cadence sufficient for a consumer to hear and comprehend it. Visual disclosure shall be of a size and shade and appear on the screen for a duration sufficient for a consumer to read and comprehend it. In a print advertisement or promotional material, including, but without limitation, point of sale

display or brochure materials directed to consumers, the disclosure shall be in a type size and location sufficiently noticeable for a consumer to read and comprehend it, in a print that contrasts with the background against which it appears.

3. **“Consumer Information”** shall mean information that can be used to identify a particular User, including: (a) first and last name; (b) a physical address including street name and name of a city or town; (c) telephone number; (d) e-mail address or other online contact information, including but not limited to an instant messaging User identifier, or screen name; (e) social security number or other government issued identification number; (f) banking or financial institution account number or credit card number; (g) geolocation information that can be used to identify a particular User; (h) persistent identifier, such as a persistent Cookie or device ID; (i) a combination of a last name and photograph of the individual; or (j) any other information that, either on its own or, when combined with any of (a) through (i), reliably identifies an individual.

4. **“Cookie”** shall mean a file or string of characters sent in the HTTP Set-Cookie Header by a website or online service intended to be sent back by a User’s Web browser to the website or service in the Cookie Header.

5. **“Covered Conduct”** or **“Cookie Technique”** shall mean PointRoll’s placement of Cookies on Safari web browsers whose privacy settings were configured to “block cookies from third parties and advertisers” or “accept cookies” “from visited” from December 13, 2011 through February 15, 2012.

6. **“Effective Date”** shall mean the date on which this Assurance has been signed by both parties.

7. **“User”** shall be construed as encompassing any consumer that uses a device that is

capable of running a Web browser.

APPLICATION

8. The provisions of this Assurance apply to Respondent and its officers, employees, agents, successors, assignees, affiliates, merged or acquired entities, parent or controlling entities, wholly-owned subsidiaries and all other persons acting in concert or participation with Respondent.

9. The provisions of this Assurance apply to Respondent, in connection with its serving of digital advertisements to a State's consumers.

REQUIREMENTS

10. Respondent shall not, without a User's affirmative consent, take action to override an Internet browser's Cookie blocking settings configured by User choice or by default to "block cookies from third parties and advertisers" or "accept cookies" "from visited," or any other Internet browser's comparable cookie settings to decline all cookies or to accept cookies only from first parties, so that they may place an HTTP Cookie on such Internet browser through the Cookie Technique or other technologies. Nothing herein shall prevent Respondent from taking any of the foregoing actions for the purpose of detecting, preventing or otherwise addressing fraud, security or technical issues. As used herein, "technical issues" shall be defined as matters necessarily incident to the rendition of services requested by a User or to the protection of the rights or property of the provider of that service.

11. Respondent shall not misrepresent a material fact or make a material omission of fact regarding: (1) the purposes for which it collects and uses Consumer Information; or (2) the extent to which Users may exercise control over the collection, use, or disclosure of their Consumer Information.

12. Respondent shall provide, on any website owned or operated by PointRoll, for a period of no less than two (2) years from that date that is thirty (30) days after the Effective Date, a Clearly and Conspicuously displayed and titled section within PointRoll's Privacy Policy to provide information to Users about Cookies (the "Cookie Section"). The contents of the Cookie Section shall include information about:

- a. what Cookies are and how they are used;
- b. the general purposes for which PointRoll uses information derived from Cookies;
- c. the general purposes for which advertisers use information derived from the PointRoll Cookies, to the extent of PointRoll's knowledge; and
- d. how Users can manage Cookies or opt-out of PointRoll's Cookies.

13. Within six (6) months (unless a different timeframe is specifically noted herein) from the Effective Date of this Assurance, Respondent shall implement a privacy program (the "Privacy Program") to protect the privacy and confidentiality of User information consisting of:

- a. the delivery of this Assurance to Respondent's executive management within thirty (30) days of the Effective Date of this Assurance;
- b. the delivery of this Assurance to employees having supervisory responsibilities for implementation of the Privacy Program within thirty (30) days of the Effective Date of this Assurance;
- c. the designation of an employee or employees to coordinate and be responsible for the Privacy Program;
- d. employee training to at least annually inform employees about the importance of User privacy and their duty to help maintain it;
- e. taking reasonable steps to select and use third-party service providers, whose services involve Consumer Information, who agree

to comply with PointRoll's privacy policies and data security protocols, or are subject to policies and protocols that are at least equivalent to those of PointRoll with respect to protecting the privacy and security of PointRoll's Consumer Information;

- f. annual internal assessments of the effectiveness of the Privacy Program's controls and the implementation of updates to such controls based on those assessments; and
- g. the development and maintenance of policies and procedures for responding to identified events involving the unauthorized collection, use or disclosure of Consumer Information by PointRoll.

14. Respondent shall, for a period of five (5) years from the Effective Date of this Assurance, maintain the Privacy Program described in paragraph 13 above. Respondent shall deliver a copy of this Assurance to such future personnel prior to the assumption of responsibilities where practicable, or otherwise within five (5) business days after the assumption of responsibilities. Respondent shall, within ninety (90) days from the Effective Date of this Assurance, provide a written report describing Respondent's compliance with the requirements of paragraph 13 above. During those five (5) years, upon reasonable prior written notice, a State shall be permitted to inspect and copy all records as may be reasonably necessary to determine whether Respondent is in compliance with paragraph 13 above. This provision shall not be construed as limiting or restricting in any way a State's right to obtain information, documents or testimony from Respondent pursuant to any state or federal law, regulation, or rule.

15. Respondent agrees that it will not, through any contract with any advertisement publisher or otherwise, negligently or intentionally violate its online Privacy Policy or agree to violate such policy.

16. Respondent shall ensure that its servers are configured to instruct Safari web browsers to expire any Cookie placed by PointRoll using the Cookie Technique if those systems

encounter such a Cookie for two (2) years from the date of the Assurance; provided that this provision does not prohibit Cookies that do not use the Cookie Technique, and which are otherwise consistent with this Assurance.

17 Respondent shall, for a period of five (5) years from the Effective Date of this Assurance, cooperate with any reasonable further requests made by the States with respect to any business practices, documents, or information relating to Respondent or any third party that are reasonably related to the Covered Conduct. Respondent shall produce all such documents or information within thirty (30) days of receiving such request. This section shall in no way limit (1) any right of the States to obtain documents, records, testimony, or other information pursuant to any law, regulation or rule, or (2) the effect of any provision set forth elsewhere in this Assurance.

PAYMENT TO THE STATES

18. Within thirty (30) days of the Effective Date of this Assurance, Respondent shall pay a total of Seven Hundred Fifty Thousand and 00/100 Dollars (\$750,000.00) to the States in a manner consistent with the reasonable further instructions of the States (the "Settlement Payment"). The Settlement Payment may be used, to the extent permitted by law, for such purposes that may include, but are not limited to civil penalties, attorneys' fees, and other costs of investigation and litigation, or to be placed in, or applied to, the consumer protection law enforcement fund, including future consumer protection or privacy enforcement, consumer education, litigation or local consumer aid fund or revolving fund, used to defray the costs of the inquiry leading hereto, or for other uses permitted by state law, at the sole discretion of each State's Attorney General's Office.

RELEASE

19. Following full payment of the Settlement Payment, the States release and discharge Respondent from all civil claims, causes of action, damages, fines, costs or penalties that were asserted or which the States could have brought under the Consumer Protection Act of each of the States based on the Covered Conduct prior to the Effective Date of this Assurance. Nothing contained in this paragraph shall be construed to limit the ability of States to enforce the obligations that Respondent and its officers, directors, agents, and employees acting on their behalf, have under this Assurance. Further, nothing contained herein shall release any private cause of action that any citizen of any State may have against Respondent or any of its officers, directors, agents, and employees.

20. Notwithstanding the foregoing, a State may institute an action or proceeding to enforce the terms and provisions of this Assurance, and the States do not release any claim arising under any statute, law, or regulation, other than the States' Consumer Protection Acts and resulting from the Covered Conduct. Prior to seeking enforcement of this Assurance, the States shall contact PointRoll and provide a written notification of the alleged violations and shall provide PointRoll reasonable opportunity to attempt to address the States' concerns.

MODIFICATION

21. The parties may modify this Assurance by written agreement at any time.

22. Without limiting the generality of paragraph 21, any party may request to modify this Assurance for good cause shown based on a substantial change in law or fact occurring after the date this Assurance is entered, including substantial changes concerning fraud, security, or technical issues affecting Users of Respondent's services or products.

23. Without limiting the generality of paragraph 21, if the States determine that Respondent made any material misrepresentation or omission relevant to the resolution of this investigation, the States retain the right to seek modification of this Assurance.

GENERAL PROVISIONS

24. The parties agree that this Assurance constitutes a legally enforceable agreement. This Assurance and the rights and obligations of the parties hereunder shall be governed within each of the respective States by the laws of such State in which any enforcement of this Assurance or any action to determine the rights and obligations hereunder is attempted.

25. Nothing in this Assurance shall be construed as affecting Respondent's rights and obligations outside the signatory States. Nothing herein shall operate to restrict any State's ability to enforce its own laws regarding unfair or deceptive trade practices.

26. No Admissions. This Assurance is not intended to be and shall not in any event be construed or deemed to be, or represented or caused to be represented as, an admission or concession or evidence of any liability or wrongdoing whatsoever on the part of Respondent or its predecessors, successors, assigns, officers, employees or agents, or of any fact or any violation of any law, rule, or regulation. This Assurance is made without trial or adjudication of any alleged issue of fact or law and without any finding of liability of any kind.

27. Non-Admissibility. The settlement negotiations resulting in this Assurance have been undertaken by the parties in good faith and for settlement purposes only, and no evidence of negotiations or communications underlying this Assurance shall be offered or received in evidence in any action or proceeding for any purpose. Neither is it the intent of the parties that this Assurance nor any public discussion, statement, or comment with respect to this Assurance by the

parties be offered or received in evidence in any action or proceeding for any purpose other than in an action or proceeding between the parties arising under this Assurance.

28. Titles and Headers. The titles and headers in this Assurance are for convenience purposes only and are not intended by the parties to lend meaning to the actual provisions of the document.

29. Entire Agreement. This Assurance represents the full and complete terms of the settlement entered by the Parties hereto. This Assurance is entered into by the Parties freely and voluntarily and with full knowledge and understanding of the nature of the proceedings and the obligations and duties imposed by this Assurance. This Assurance sets forth the entire agreement between the parties. There are no representations, agreements, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this Assurance that are not fully expressed herein or attached hereto.

30. Modification or Amendment. To seek a modification of this Assurance for any reason, Respondent shall send a written request to the Attorney General of the State of New Jersey, who shall forward such request to the Attorneys General of the other States. The Attorneys General, after collecting information they deem necessary, shall decide as to whether to agree to the modification of this Assurance.

31. Mutually Drafted. All parties participated in the drafting of this Assurance and this Assurance shall not be construed against either party as the author thereof.

32. Enforceable by Parties Only. This Assurance may be enforced only by the parties hereto. Nothing in this Assurance shall provide any rights to or permit any person or entity not a party hereto, including any state or attorney general not a party hereto, to enforce any provision

of this Assurance. Nothing in this Assurance shall be construed to affect, limit, alter, or assist any private right of action that a consumer or other third party may hold against Respondent.

33. Enforcement. Respondent agrees that the States shall have the authority to enforce or seek sanctions for violations of the provisions of the Assurance in the duly constituted courts of the States.

34. Counterparts. This Assurance may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument. A facsimile or .pdf signature shall be deemed to be, and shall have the same force and effect, as an original signature.

35. All Notices under this Assurance shall be provided to the following address via Electronic and/or Overnight Mail:

For the States:

See Appendix B

For the Respondent:

Sidley Austin LLP
Attn: Alan Charles Raul
Edward McNicholas
1501 K Street, NW
Washington, D.C. 20005

36. Any failure by any party to this Assurance to insist upon the strict performance by any other party of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions of this Assurance, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Assurance. For the States, this shall be without prejudice to the imposition of any applicable

penalties, including but not limited to contempt, civil penalties as set forth in each State's Consumer Protection Act and/or the payment of attorneys' fees to the States, and any other remedies under any State's applicable state law.

37. Severability. If any clause, provision or section of this Assurance shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Assurance and this Assurance shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

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

39. The parties understand and agree that this Assurance shall not be construed as an approval or sanction by the States of Respondent's business practices, nor shall Respondent represent otherwise. The parties further understand and agree that any failure by any State to take any action in response to any information submitted pursuant to the Assurance shall not be construed as an approval, or sanction, of any representations, acts or practices indicated by such information, nor shall it preclude action thereon at a later date.

40. Respondent shall secure from each person designated pursuant to paragraph 13 a signed and dated statement acknowledging receipt of the Assurance. Respondent shall retain all such statements and make them available to the Signatory Attorney General within five (5) business days after a request.

41. Time. Time shall be of the essence with respect to each provision of this Assurance, including, but not limited to, those that require action to be taken by Defendants within a stated period or upon a specific date.

42. Respondent shall not knowingly participate, directly or indirectly, in any activity or form a separate entity or corporation for the purpose of engaging in acts or practices in whole or in part which are prohibited in this Assurance or for any other purpose which would otherwise circumvent any part of this Assurance. Respondent agrees not to cause third parties, nor knowingly permit third parties acting on its behalf, to engage in practices from which PointRoll has agreed to refrain by this Assurance.

43. This Assurance is entered into by the parties for settlement purposes only. Neither the fact of, nor any provision contained in this Assurance shall be construed as: (a) an approval action or authorization by any State, or any other governmental unit of the State of any act or practice of Respondent; (b) an admission by Respondent that any of its acts or practices described in or prohibited by this Assurance are unfair or deceptive or violate the Consumer Protection Act. It is the intent of the parties that neither the existence of, nor the terms of this Assurance be deemed to constitute evidence or precedent of any kind except in: (a) an action or proceeding involving a Released Claim to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense; and (b) any action by the States to enforce the terms of this Assurance.

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY


By: 

Glenn T. Graham
Elliott M. Siebers
Edward J. Mullins III
Deputy Attorneys General


Dated: 12/10/14

New Jersey Office of the Attorney General
Division of Law
124 Halsey Street – 5th Floor
Newark, New Jersey 07101
(973) 648-4846

POINTROLL, INC.

By: 
Alan Charles Raul, Esq.
Edward McNicholas, Esq.
Sidley Austin LLP
1501 K Street, NW
Washington, D.C. 2005
Counsel for Respondent

Dated: 12/3/14

By: 
Name: MARIO DIEZ.
Title: CEO, POINTROLL, INC.
3200 HORIZON DR, STE 120
KING OF PRUSSIA, PA 19406

Dated: 12-1-14