

Complaint

IN THE MATTER OF

DECUSOFT, LLCCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4630; File No. 172 3173**Complaint, November 20, 2017 – Decision, November 20, 2017*

This consent order addresses Decusoft, LLC's representations made to consumers concerning its participation in the Privacy Shield frameworks agreed upon by the U.S. and the European Union and the U.S. and Switzerland. The complaint alleges that Decusoft falsely represented that it was certified to participate in the Privacy Shield frameworks when, in fact, Decusoft never completed the necessary steps to finalize its applications, and thus, was not certified to participate in either the EU-U.S. Privacy Shield framework or the Swiss-U.S. Privacy Shield framework. The consent order prohibits Decusoft from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the EU-U.S. Privacy Shield framework and the Swiss-U.S. Safe Privacy Shield framework.

Participants

For the *Commission*: *Monique F. Einhorn.*

For the *Respondent*: *Mary Hildebrand, Lowenstein Sandler, LLP.*

COMPLAINT

The Federal Trade Commission ("FTC"), having reason to believe that Decusoft, LLC, a limited liability company, has violated the Federal Trade Commission Act ("FTC Act"), and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Decusoft, LLC is a New Jersey limited liability company with its principal office or place of business at 70 Hilltop Road, Suite 1003, Ramsey, New Jersey 07446.
2. Respondent develops software for use in human resources applications.

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3. The acts and practices of Respondent as alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act.

4. Respondent has set forth on its website, <http://www.decusoft.com/privacy-policy>, privacy policies and statements about its practices, including statements related to its participation in the Privacy Shield frameworks agreed upon by the U.S. government and the European Commission (“EU-U.S. Privacy Shield”) and the U.S. and Switzerland (“Swiss-U.S. Privacy Shield”).

5. In fact, Respondent has not been certified to participate in either the EU-U.S. Privacy Shield framework or the Swiss-U.S. Privacy Shield framework.

Privacy Shield

6. The EU-U.S. Privacy Shield framework (“Privacy Shield”) was designed by the U.S. Department of Commerce (“Commerce”) and the European Commission to provide companies on both sides of the Atlantic with a mechanism to comply with European Union (“EU”) data protection requirements when transferring personal data from the EU to the United States in support of transatlantic commerce.

7. Privacy Shield provides a mechanism for U.S. companies to transfer personal data outside of the EU that is consistent with the requirements of the European Union Directive on Data Protection. Enacted in 1995, the Directive sets forth EU requirements for privacy and the protection of personal data. Among other things, it requires EU Member States to implement legislation that prohibits the transfer of personal data outside the EU, with exceptions, unless the European Commission has made a determination that the recipient jurisdiction’s laws ensure the protection of such personal data. This determination is referred to commonly as meeting the EU’s “adequacy” standard.

8. To satisfy the EU adequacy standard for certain commercial transfers, Commerce and the European Commission negotiated the EU-U.S. Privacy Shield framework, which went into effect in July 2016. The EU-U.S. Privacy Shield framework

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allows companies to transfer personal data lawfully from the EU to the United States. To join the EU-U.S. Privacy Shield framework, a company must self-certify to Commerce that it complies with the Privacy Shield Principles and related requirements that have been deemed to meet the EU's adequacy standard.

9. Companies under the jurisdiction of the FTC, as well as the U.S. Department of Transportation, are eligible to join the EU-U.S. Privacy Shield framework. A company under the FTC's jurisdiction that claims it has self-certified to the Privacy Shield Principles, but failed to self-certify to Commerce, may be subject to an enforcement action based on the FTC's deception authority under Section 5 of the FTC Act.

10. The Swiss-U.S. Privacy Shield framework is identical to the EU-U.S. Privacy Shield framework and is consistent with the requirements of the Swiss Federal Act on Data Protection. The Swiss-U.S. Privacy Shield framework went into effect in April 2017.

11. Commerce maintains a public website, <https://www.privacyshield.gov/welcome>, where it posts the names of companies that have self-certified to the EU-U.S. and/or Swiss-U.S. Privacy Shield framework. The listing of companies, <https://www.privacyshield.gov/list>, indicates whether the company's self-certification is current.

Violations of Section 5 of the FTC Act

12. Respondent has disseminated or caused to be disseminated privacy policies and statements on the <http://www.decusoft.com/privacy-policy/> website, including, but not limited to, the following statements:

Decusoft participates in and has certified its compliance with the EU-U.S. Privacy Shield Framework and the Swiss-U.S. Privacy Shield Framework. We are committed to subjecting all personal data received from European Union (EU) member countries, in reliance on the Privacy Shield Framework, to the Framework's applicable

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Principles. To learn more about the Privacy Shield Framework, visit the U.S. Department of Commerce's Privacy Shield List, <https://www.privacyshield.gov/list>.

13. Through the means described in Paragraph 12, Respondent represents, expressly or by implication, that it is a participant in both the EU-U.S Privacy Shield framework and the Swiss-U.S Privacy Shield framework.

14. In truth and in fact, although Respondent initiated an application to Commerce for Privacy Shield certification, it did not complete the steps necessary to participate in either the EU-U.S or the Swiss-U.S Privacy Shield frameworks. Therefore, the representation set forth in Paragraph 13 is false and misleading.

15. The acts and practices of Respondent as alleged in this complaint constitute deceptive acts or practices, in or affecting commerce, in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this twentieth day of November, 2017, has issued this complaint against Respondent.

By the Commission.

DECISION

The Federal Trade Commission ("Commission") initiated an investigation of certain acts and practices of the Respondent named above in the caption. The Commission's Bureau of Consumer Protection ("BCP") prepared and furnished to Respondent a draft Complaint. BCP proposed to present the draft Complaint to the Commission for its consideration. If issued by the Commission, the draft Complaint would charge Respondent with violation of the Federal Trade Commission Act.

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Respondent and BCP thereafter executed an Agreement Containing Consent Order (“Consent Agreement”). The Consent Agreement includes: 1) statements by Respondent that it neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Decision and Order, and that only for purposes of this action, it admits the facts necessary to establish jurisdiction; and 2) waivers and other provisions as required by the Commission’s Rules.

The Commission considered the matter and determined that it had reason to believe that Respondent has violated the Federal Trade Commission Act, and that a Complaint should issue stating its charges in that respect. The Commission accepted the executed Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments. The Commission duly considered any comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure prescribed in Commission Rule 2.34, the Commission issues its Complaint, makes the following Findings, and issues the following Order:

Findings

1. Respondent Decusoft, LLC is a New Jersey limited liability company with its principal office or place of business at 70 Hilltop Road, Suite 1003, Ramsey New Jersey 07446.
2. The Commission has jurisdiction over the subject matter of this proceeding and over Respondent, and the proceeding is in the public interest.

ORDER

Definitions

For purposes of this Order, the following definitions apply:

- A. “Respondent” means Decusoft, LLC, a limited liability company and its successors and assigns.

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Provisions**I. Prohibition Against Misrepresentations About Participation in Privacy or Security Programs**

IT IS ORDERED that Respondent and its 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 the advertising, marketing, promotion, offering for sale, or sale of any product or service must not misrepresent in any manner, expressly or by implication, the extent to which Respondent is a member of, adheres to, complies with, is certified by, is endorsed by, or otherwise participates in any privacy or security program sponsored by a government or any self-regulatory or standard-setting organization, including but not limited to the EU-U.S. Privacy Shield framework and the Swiss-U.S. Privacy Shield framework.

II. Acknowledgments of the Order

IT IS FURTHER ORDERED that Respondent obtain 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.
- B. For twenty (20) years after the issuance date of this Order, 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 with responsibilities 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 Report and Notices. Delivery must occur within ten (10) days after the effective date of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

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- C. From each individual or entity to which Respondent delivered a copy of this Order, Respondent must obtain, within thirty (30) days, a signed and dated acknowledgment of receipt of this Order.

III. Compliance Report and Notices

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

- A. Sixty (60) days after the issuance date of this Order, Respondent must submit a compliance report, sworn under penalty of perjury, in which 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 Respondent's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses;
 - (c) describe the activities of each business;
 - (d) describe in detail whether and how Respondent is in compliance with each Provision of this Order; and
 - (e) provide a copy of each Acknowledgment 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) any designated point of contact; or (2) the structure of Respondent or 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

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proceeding by or against 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 of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The subject line must begin: In re *Decusoft, LLC*, FTC File No. 1723173.

IV. Recordkeeping

IT IS FURTHER ORDERED that Respondent must create certain records for twenty (20) years after the issuance date of the Order, and retain each such record for 5 (five) years. Specifically, Respondent must create and retain the following records:

- A. accounting records showing the revenues from all goods or services sold;
- B. personnel records showing, for each person providing services, 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. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and

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- D. a copy of each unique advertisement, promotional material, or other marketing material making any representation subject to this Order, and all materials that were relied upon in making the representation.

V. Compliance Monitoring

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

- A. Within ten (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 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.

VI. 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 on November 20, 2037, or twenty (20) years from the most recent date that the United States or the Commission files a complaint

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(with or without an accompanying settlement) in federal court alleging any violation of the 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 twenty (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 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 as to Respondent 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.

By the Commission.

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT**

The Federal Trade Commission ("FTC" or "Commission") has accepted, subject to final approval, a consent agreement applicable to Decusoft, LLC ("Decusoft").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again

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review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter concerns alleged false or misleading representations that Decusoft made to consumers concerning its participation in the Privacy Shield frameworks agreed upon by the U.S. and the European Union (“EU”) and the U.S. and Switzerland (collectively, “Privacy Shield frameworks”). The Privacy Shield frameworks allow U.S. companies to transfer data outside the EU and Switzerland consistent with EU and Swiss law. To join the Privacy Shield frameworks, a company must self-certify to the U.S. Department of Commerce (“Commerce”) that it complies with a set of principles and related requirements that have been deemed by the European Commission and Switzerland as providing “adequate” privacy protection. These principles include notice; choice; accountability for onward transfer; security; data integrity and purpose limitation; access; and recourse, enforcement, and liability. Commerce maintains a public website, <https://www.privacyshield.gov/list>, where it posts the names of companies that have self-certified to the Privacy Shield frameworks. The listing of companies indicates whether their self-certification is current. Companies are required to re-certify every year in order to retain their status as current members of the Privacy Shield frameworks.

Decusoft develops software for use in human resources applications. According to the Commission’s complaint, Decusoft has set forth on its website, www.decusoft.com/privacy-policy, privacy policies and statements about its practices, including statements related to its participation in the EU-U.S. and the Swiss-U.S. Privacy Shield frameworks.

The Commission’s complaint alleges that Decusoft falsely represented that it was certified to participate in the Privacy Shield frameworks when, in fact, Decusoft never completed the necessary steps to finalize its applications, and thus, was not certified to participate in either the EU-U.S. Privacy Shield framework or the Swiss-U.S. Privacy Shield framework.

Part I of the proposed order prohibits Decusoft from making misrepresentations about its membership in any privacy or

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security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the EU-U.S. Privacy Shield framework and the Swiss-U.S. Safe Privacy Shield framework.

Parts II through VI of the proposed order are reporting and compliance provisions. Part II requires acknowledgement of the order and dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part III ensures notification to the FTC of changes in corporate status and mandates that Decusoft submit an initial compliance report to the FTC. Part IV requires Decusoft to retain documents relating to its compliance with the order for a five-year period.

Part V mandates that Decusoft make available to the FTC information or subsequent compliance reports, as requested. Part VI is a provision “sunsetting” the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed complaint or order or to modify the order’s terms in any way.

Complaint

IN THE MATTER OF

**CSGOLOTTO, INC.,
TREVOR MARTIN
A/K/A TMARTN,
AND
THOMAS CASSELL
A/K/A
THESYNDCATEPROJECT, TOM SYNDICATE,
AND SYNDICATE**

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT, etc.]

Docket No. C-4632; File No. 162 3184

Complaint, November 28, 2017 – Decision, November 28, 2017

This consent order addresses CSGOLotto, Inc.'s advertising for their website, www.csgolotto.com, which offered consumers the opportunity to gamble using what is in effect a virtual currency. The complaint alleges that respondents violated Section 5(a) of the FTC Act by misrepresenting that videos of Martin, Cassell, and other influencers gambling on CSGO Lotto and their social media posts about CSGO Lotto reflected the independent opinions or experiences of impartial users of the service. The complaint further alleges that respondents deceptively failed to disclose that Martin and Cassell were owners and officers of the company operating CSGO Lotto and that other influencers received compensation, including monetary payment, to promote CSGO Lotto. The consent order prohibits respondents, in connection with the sale of any product or service, from misrepresenting that any endorser of such product or service is an independent user or ordinary consumer of the product or service.

Participants

For the *Commission*: Michael Ostheimer.

For the *Respondents*: Coleman Watson, Watson LLP; Alicia J. Batts, Squire Patton Boggs.

COMPLAINT

The Federal Trade Commission, having reason to believe that CSGOLotto, Inc., a corporation, and Trevor Martin and Thomas Cassell, individually and as officers of CSGOLotto, Inc.