

STATE OF TEXAS,
Plaintiff,

v.

TAGGED, INC.
Defendant.

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IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

200TH JUDICIAL DISTRICT

Filed in The District Court
of Travis County, Texas

JL NOV 09 2009

At 8:43 AM
Amalia Rodriguez-Mendoza, Clerk

AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION

On this date came for hearing the above-entitled and numbered cause in which the STATE OF TEXAS ("State" or "Plaintiff"), acting by and through Attorney General of Texas, GREG ABBOTT, is Plaintiff, and TAGGED, INC. is Defendant. Through their respective attorneys of record, Plaintiff and Defendant agree to the entry of this AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION.

1. STIPULATIONS

- 1.1 The parties agree to the entry of this Judgment and, at their request, the Court finds that:
 - A. It has jurisdiction over the subject matter of this action.
 - B. It has jurisdiction over the Defendant.
 - C. Venue is proper in Travis County, Texas.
 - D. The activities of Defendant constitute trade and/or commerce.
 - E. Entry of this judgment is in the public interest.
 - F. This judgment is non-appealable.
 - G. Nothing in this judgment in any way effects an individual's cause of action under the DTPA, or any other laws or regulations of this State.
 - H. The court shall have continuing jurisdiction to enforce this judgment.
 - I. Defendant acknowledges notice of this permanent injunction and acceptance

of the same; therefore no writ need be issued.

2. DEFINITIONS

2.1 For the purposes of this Agreed Final Judgment and Permanent Injunction, the following definitions shall apply:

A. "Email address book" means a consumer's email contact list, address book, or other list of email addresses saved or maintained as part of that consumer's use of a particular third-party email service (e.g. Hotmail, Gmail, Yahoo! Mail) and/or particular software (e.g. Outlook).

B. "Accessing" an Email address book means accessing, storing, maintaining, or otherwise viewing or using a consumer's Email address book.

C. "Clear and conspicuous" and "Clearly and conspicuously" mean that the required disclosure is in such size, color, contrast, location, duration, and audibility that it is readily noticeable, readable, and understandable. A statement may not contradict or be inconsistent with any other information with which it is presented. For print communications, the message shall be in a type size and location sufficiently noticeable for a consumer to read and comprehend it, in print that contrasts with the background against which it appears. In communications disseminated orally, the message shall be delivered in a volume and cadence sufficient for a consumer to comprehend it. In communications made through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online services, and software), the message shall be presented in the audio or visual portions of the communication so as reasonable for the viewer to understand it. In any communication presented solely through visual or audio means, the message must be made through the same means by which the

communication is presented. Any audio message shall be delivered in a volume and cadence sufficient for a consumer to hear and comprehend it. Any visual image shall be of a size and shade, with a degree of contrast to the background against which it appears, and shall appear on the screen for a duration and in a location sufficiently noticeable for a consumer to read and comprehend it. If a statement modifies, explains, or clarifies other information with which it is presented, it must be presented in close proximity to the information it modifies, in a manner that is readily noticeable, readable, and understandable, and it must not be obscured in any manner. For Internet modifications, explanations, or clarifications, information presented in a hyperlink, pop-up, or other web page is not considered in close proximity to the information it modifies. The message shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the message shall be used in any communication.

D. "Defendant" means Tagged, Inc., and its predecessors, successors, current and former assigns, and agents, representatives, employees and officers, but only in such persons' and entities' capacities as agents, representatives, employees and/or officers of Tagged, Inc. Except as otherwise specifically provided, the provisions of this Judgment are applicable to those persons, and to all persons acting in concert or participation with them or any of them in the conduct of the business of Defendant with actual or constructive notice of this Judgment. Nothing in this definition is meant to bind directors of Tagged simply by virtue of their being directors. Directors of Tagged are bound if and only when and to the extent that they are acting in a capacity as agents, employees and/or officers of Tagged.

E. "Electronic communication" includes both external emails, as well as welcome messages or other internal electronic messages.

3. INJUNCTION

3.1 **IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that Defendant shall be permanently enjoined, restrained, and prohibited from engaging in the following conduct:

A. Requiring a consumer to provide Defendant access to his/her Email address book as part of enrollment in Defendant's service, or as a prerequisite to any good or service offered by Defendant that does not involve the identification of or sending of electronic communications to contacts contained within a consumer's address book.

B. Accessing or attempting to access a consumer's Email address book without first:

1) Clearly and conspicuously disclosing to the consumer:

a. The specific information from the Email address book that will be accessed;

b. The specific ways in which Defendant is authorized to use such information;

c. Defendant's retention period¹ for such information;

d. The fact that all or a certain category of Defendant's employees or agents will have access to such information.

2) Providing a clear and conspicuous button, hyperlink, or other option to skip such step, or otherwise disallow the Defendant access to the consumer's Email address book, in close proximity to the consumer's entry of the consumer's

¹ Provided however, that any information that is retained through routine caching or is otherwise inaccessible by Defendant may be retained longer.

email password (if required), and which is clearly and conspicuously labeled “SKIP THIS STEP” or a phrase of similar meaning; provided, however, that if access to the consumer’s Email address book is a prerequisite to the good or service offered by Defendant, such button may be labeled “CANCEL” or a phrase of similar meaning. If the consumer selects the option to skip or disallow access, Defendant shall make no further attempts to access the consumer’s Email address book as part of such enrollment.

3) Obtaining the consumer’s express verifiable consent to accessing his/her Email address book. For purposes of this paragraph, “express verifiable consent” means a separate web page or pop-up, which on a single page discloses each of the required disclosures in Paragraph 3.1.B.1) above, and requires the consumer to affirmatively acknowledge receipt and acceptance of all of said disclosures by means of clicking a single “I accept,” or “Find friends,” (or similar words which indicate the consumer’s intent to allow Defendant to access his/her Email address book) button. Defendant shall record such consent in a manner associated with the specific user granting such consent, and shall retain such recording for a minimum of three years and provide a copy to the Attorney General upon request.

C. Sending or attempting to send electronic communications to contacts accessed or imported by Defendant from the consumer’s Email address book identifying the consumer in the from field or the sender field of such electronic communication without first:

- 1) Clearly and Conspicuously disclosing to the consumer:
 - a. The fact that such electronic communications will be sent;

b. The (1) number (if more than one) of contacts who will receive such electronic communications, (2) the maximum number of e-mail invitations and e-mail reminder messages that will be received by each contact and (3) the number of internal welcome messages that will be received by each contact in his or her Tagged account, but *only if* such welcome messages will identify the consumer in the from field or the sender field of such welcome message;

c. The fact that the consumer will be identified as the sender of such electronic communications.

2) Allowing the consumer to select or deselect any individual contacts from their imported or accessed Email address book who will receive such electronic communications, including an option to "select all" and the option to "clear all" or words of similar import. The "select all" and "clear all" options shall be clearly and conspicuously disclosed on the web page in which the consumer selects or deselects individual contacts from their imported or accessed Email address book, and shall be prominently placed both above the imported or accessed Email address book contact list as well as below the list;

3) On the same web page as the disclosures required by Paragraph 3.1.C.1) above, providing a clear and conspicuous hyperlink which allows the consumer to view a sample of each type of e-mail invitation and welcome message that will be received by each contact in their Tagged account, but *only if* such welcome message will identify the consumer in the from field or the sender field of such welcome message;

4) Obtaining the consumer's express verifiable consent to sending such electronic communications to contacts in the consumer's imported or accessed Email address book identifying the consumer as the sender and/or author of such electronic communication. For purposes of this paragraph, "express verifiable consent" means a separate web page or pop-up, which on a single page requires the consumer to affirmatively acknowledge his/her intent to send e-mail invitations to his/her contacts by means of clicking a single "I accept" (or similar words which indicate the consumer's intent to send electronic communications) button; provided, however, that in the event the consumer is choosing to send the electronic communications to a single contact in the consumer's imported or accessed Email address book, the consumer's "express verifiable consent" may be obtained by means of clicking a single "Invite" (or similar words which indicate the consumer's intent to send electronic communications) without displaying a separate web page or pop-up. Defendant shall record such consent in a manner associated with the specific user granting such consent, and shall retain such recording for a minimum of three years and provide a copy to the Attorney General upon request.

5) It is expressly acknowledged that this Paragraph 3.1.C. applies only to electronic communications facilitated by Tagged on behalf of the consumer (a) in connection with the initial membership enrollment process and (b) any other electronic communications that Tagged may offer to facilitate on behalf of consumers where consumers have not authored the content or expressly directed Tagged to send such electronic communication. Routine electronic

communications sent by the consumer while using the Tagged web site shall not be subject to the requirements of this Paragraph 3.1.C.

D. Misrepresenting the source, author, or sender of any electronic communication, including but not limited to failing to clearly and conspicuously identify Defendant in the from field or the sender field of any electronic communication created and sent by Defendant, or misrepresenting that an individual authored or sent such electronic communication; provided, however, that, for purposes of this Judgment, a user who has given his/her express verifiable consent to Defendant's accessing his/her imported Email address book and sending electronic communications to individuals stored therein as set forth in this Judgment, shall be considered the author and sender of such electronic communication.

E. Misrepresenting the content of any electronic communications, including but not limited to:

- 1) Misrepresenting any good or service, including the existence of any user's pictures or any invitation to view pictures;
- 2) Misrepresenting any requirement that the recipient respond to such electronic communication; and
- 3) Misrepresenting that the recipient's response or lack thereof will be communicated to any user if the lack of response will not be communicated to the user.

F. Failing to provide users of Defendant's social networking service:

- 1) A clear and conspicuous option to set the user's profile to "Private" or a setting of similar meaning, which will by default prevent users other than those

specifically authorized by the "Private" user, from viewing the "Private" user's profile, or any private information regarding such "Private" user other than the user's profile name, age, profile picture, and location, *provided however* that public comments, postings and other public communications made by a user may remain on Tagged's web sites;

2) A clear and conspicuous description of any privacy settings of the user's profile, including but not limited to a list of (a) the types of services the user will be able to use, (b) the services in which the user will remain enrolled as a potential participant as a condition of membership which could result in the public display of any private information regarding such user other than the user's profile name, age, profile picture, and location (including a clear and conspicuous option to opt-out of such participation) and (c) to what extent and in what manner other users will be able to search for, identify, and contact the user on Defendant's service; and

3) A clear and conspicuous option to revoke any previously granted access to a user's imported Email address book. When a consumer exercises this option, Defendant shall delete any information relating to that imported Email address book that it has stored or maintained.

3.2 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall engage in the following conduct:

A. Tagged shall designate a corporate level compliance representative who shall be responsible for overseeing compliance with the terms of this Judgment and Texas'

privacy protection laws. The compliance representative's duties shall include oversight of the following:

- 1) Responding to questions from Tagged employees regarding compliance with this Judgment or State Privacy Protection Laws;
- 2) Any modifications or changes to any Tagged good, service, operation, marketing, advertising, or other contact with consumers that provides consumers the option to grant Tagged access to their Email address book; and
- 3) Responding to consumer complaints or inquiries regarding unauthorized access to a consumer's Email address book, or more generally the consumer's privacy or privacy options with any Tagged good or service.

B. Tagged shall respond to consumer inquiries or complaints that allege any act, practice or omission, which, if true, would be a violation of this Judgment in a timely manner and no later than fourteen days after receipt. Tagged shall forward such inquiry or complaint to the corporate level employee designated in Paragraph 3.2.A. above, and such employee shall evaluate such complaint and any supporting information in his ongoing evaluation of Tagged's compliance with the terms of this Judgment. If such inquiry or complaint reveals an act, practice, or omission that is a violation of this Judgment, Tagged shall immediately take efforts to cure such violation.

C. Tagged shall create and implement a written electronic and paper document retention schedule for all personal information obtained by Tagged in connection with its goods or services. A summary of such retention schedule shall be clearly and conspicuously disclosed in Tagged's terms of use and privacy policies, and as part of a user's cancellation confirmation as described in Paragraph 3.2.D.

D. Tagged shall provide users with a clear and conspicuous method to cancel their account via a mailing address and email address or other online method. Such methods shall be clearly and conspicuously disclosed in any email sent to users; provided, however, that, for purposes of this Judgment, a clear and conspicuous “Unsubscribe” or “My Account” link which directs the user to a web page clearly and conspicuously disclosing such methods shall be deemed in compliance with this sentence. Tagged shall immediately remove the profile of a consumer cancelling their account with Tagged from public view on Tagged’s web sites. Tagged will ensure that users who have cancelled their accounts will not appear in browse or search results, and that any profile photo uploaded by a cancelling consumer will no longer be displayed on Tagged’s web sites; *provided however* that public comments, postings and other public communications made by a user may remain on Tagged’s web sites, although such comments, postings and/or communications will no longer be associated with the cancelling user’s profile name or profile picture. Notwithstanding the foregoing, any potential violation of this provision that, despite Defendants’ reasonable efforts, is due solely to normal caching and/or system latency shall not be deemed to be a violation of this provision or Judgment. Within seventy-two hours of cancelling the consumer’s account, Tagged shall send a confirmation email to the consumer, which clearly and conspicuously discloses:

- 1) that the user’s account has been cancelled;
- 2) that the user’s profile has been removed from any public view on Tagged web sites; and

- 3) Tagged's document retention schedule, including what information regarding that user will be retained, and for how long such information shall be retained.

4. PAYMENT TO THE STATE OF TEXAS

4.1 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Plaintiff shall have Judgment against Defendant in the amount of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000), to be allocated as follows:

- A. ONE HUNDRED FORTY FIVE THOUSAND DOLLARS (\$145,000) shall be paid to the State of Texas as a civil penalty in a matter actionable under Subchapter E, Chapter 17 of the TEXAS BUSINESS & COMMERCE CODE as that phrase is used in TEXAS GOVERNMENT CODE, Section 402.007(b) which requires such funds to be credited to the judicial fund for programs approved by the Texas Supreme Court that provide basic civil legal services to the indigent, and
- B. ONE HUNDRED FIVE THOUSAND DOLLARS (\$105,000) shall be paid for Plaintiff's attorneys' fees and investigative costs.

4.2 Defendant shall pay the total sum of the Judgment to the State of Texas in the following manner:

- A. SIXTY TWO THOUSAND FIVE HUNDRED DOLLARS (\$62,500) shall be paid towards Plaintiff's attorneys' fees and investigative costs pursuant to Paragraph 4.1.B. upon entry of this Judgment.
- B. FORTY TWO THOUSAND FIVE HUNDRED DOLLARS (\$42,500) shall be paid towards Plaintiff's attorneys' fees and investigative costs pursuant to Paragraph

4.1.B., and TWENTY THOUSAND DOLLARS (\$20,000) shall be paid towards civil penalties pursuant to Paragraph 4.1.A., both on or before March 1, 2010.

C. SIXTY TWO THOUSAND FIVE HUNDRED DOLLARS (\$62,500) shall be paid towards civil penalties pursuant to Paragraph 4.1.A. on or before July 1, 2010.

D. SIXTY TWO THOUSAND FIVE HUNDRED DOLLARS (\$62,500) shall be paid towards civil penalties pursuant to Paragraph 4.1.A. on or before November 1, 2010.

Defendant shall make such payments set out above by wire transfer, money order or certified check made payable to the Office of the Attorney General of Texas, bearing the Attorney General No. 093137164, and shall deliver the money order or certified check to the Office of the Attorney General, Consumer Protection and Public Health Division, 300 West 15th Street, William P. Clements Building, 9th Floor, Austin, Texas 78701.

5. MISCELLANEOUS

5.1 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the State of Texas shall have all writs of execution and other processes necessary to enforce this Agreed Final Judgment and Permanent Injunction. Defendant, by its signature below, hereby acknowledges notice of this permanent injunction and acceptance of same; therefore, no writ need be issued.

5.2 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that all costs of Court incurred in this case are taxed against the parties incurring same.

5.3 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant shall not represent to the public that this Judgment constitutes approval by Plaintiff or this Court of any of Defendant's actions or business activities.

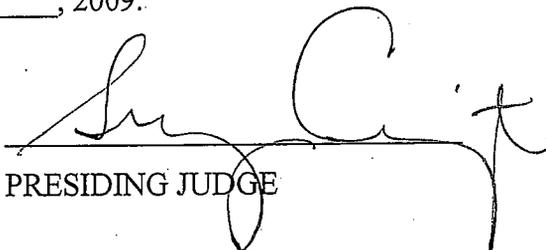
5.4 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that all recordings or documents required by this Judgment shall be maintained by Defendant for a minimum of three years, and shall be provided to the Office of the Texas Attorney General upon request.

5.5 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that if in the future any definition or provision in this Judgment is inconsistent with the laws of the State of Texas or any rules or regulations promulgated thereunder, then such laws and/or rules and regulations will prevail over the terms of this Judgment, provided that the remaining terms of the Judgment not affected by such laws, rules, or regulations will remain in full force and effect.

5.6 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Tagged shall adopt all of the practices and procedures required by, and will be in full compliance with Paragraphs 3.1 B. and F., and Paragraph 3.2, by no later than forty five (45) days following the entry date of this Judgment. Tagged shall be in full compliance with all other provisions of the Judgment at the time that the Judgment it is entered.

5.7 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that all relief not expressly granted herein is denied.

SIGNED this 9th day of November, 2009.


PRESIDING JUDGE

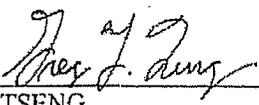
AGREED AS TO SUBSTANCE AND FORM AND ENTRY REQUESTED:

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Attorney General of Texas

C. ANDREW WEBER
First Assistant Attorney General

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