

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel. )  
DOUGLAS J. PETERSON, )  
ATTORNEY GENERAL, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
RUBY CORP., )  
RUBY LIFE, INC., also doing business as )  
ASHLEYMADISON.COM, and )  
ADL MEDIA INC., )  
 )  
Defendants. )

CI 16- 16-4398

CLERK OF THE  
DISTRICT COURT

2016 DEC 14 PM 4 10

LANCASTER COUNTY

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

COMES NOW the State of Nebraska, ex rel. Douglas J. Peterson, Attorney General, by and through the undersigned Assistant Attorneys General (“Plaintiff or “State”), and brings this action against Defendants Ruby Corp. f/k/a Avid Life Media Inc., Ruby Life, Inc., also doing business as AshleyMadison.com, and ADL Media Inc. (collectively “Defendants”) for violating the Consumer Protection Act, Neb. Rev. Stat. § 59-1601 et seq. (“Consumer Protection Act”) and the Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301 et seq. (“Uniform Deceptive Trade Practices Act”).



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## **I. Introduction**

1. The Plaintiff brings this suit under the Consumer Protection Act and Uniform Deceptive Trade Practices Act, to protect the public and pursuant to the Plaintiff's statutory and common law authority, powers, and duties. The Plaintiff has cause to believe that Defendants have violated the Consumer Protection Act and Uniform Deceptive Trade Practices Act and other relevant laws. The Plaintiff also has cause to believe that this action is in the public interest because Defendants have deceived, misled, and caused financial harm to many Nebraska consumers.

2. Upon information and belief, the State alleges as follows:

## **II. Parties, Jurisdiction and Related Matters**

3. Plaintiff is Douglas J. Peterson, the duly elected, qualified, and acting Attorney General of the State of Nebraska. The Nebraska Attorney General is responsible for the enforcement of Nebraska consumer protection laws, including, but not limited to, the Consumer Protection Act and the Uniform Deceptive Trade Practices Act. Pursuant to the Consumer Protection Act and the Uniform Deceptive Trade Practices Act, the Attorney General may initiate civil law enforcement proceedings in the name of the State of Nebraska to enjoin violations of the Consumer Protection Act and the Uniform Deceptive Trade Practices Act and to secure such equitable and other relief as may be appropriate in each case.

4. Defendant Ruby Corp. ("Ruby"), formerly known as Avid Life Media, Inc., is a privately-held corporation with its principal place of business at 20 Eglinton Avenue West, Toronto, Ontario M4R 1K8. At all times material to this Complaint, Ruby has acted as a holding company for a number of entities that operate dating websites. Ruby transacts or has transacted business in this state.

5. Defendant Ruby Life Inc. (“Ruby Life”), also doing business as AshleyMadison.com, and formerly known as Avid Dating Life Inc., is a Canadian corporation with its principal place of business at 20 Eglinton Avenue West, Toronto, Ontario M4R 1K8. At all times material to this Complaint, Ruby Life has owned and operated the Ashley Madison website. Ruby Life transacts or has transacted business in this state.

6. Defendant ADL Media Inc. (“ADL Media”) is a Delaware corporation with its principal place of business at 1209 Orange Street, Wilmington, Delaware 19801. At all times material to this Complaint, ADL Media has collected AshleyMadison.com’s U.S. revenue from various payment processors. ADL Media transacts or has transacted business in this district and throughout the United States.

7. The District Court of Lancaster County has jurisdiction over Defendants pursuant to Neb. Rev. Stat. §§ 59-1608 and 87-303.05(1) because Defendants transacted business within the State of Nebraska at all times relevant to this Complaint.

8. Venue for this action properly lies in this Court pursuant to Neb. Rev. Stat. §§ 59-1608.01 and 87-303.05(1) because Defendants transacted business in Lancaster County, Nebraska and throughout Nebraska and/or some of the transactions out of which this action arose occurred in Lancaster County, Nebraska and throughout Nebraska.

9. At all times relevant to this Complaint, Defendants did business in Nebraska, sold services and collected payments from Nebraska consumers.

### **III. Statutory Framework**

10. The Consumer Protection Act and the Uniform Deceptive Trade Practices Act prohibit unfair and deceptive acts and practices in trade or commerce.

11. The acts described below and summarized in paragraphs 12-32, constitute unfair and deceptive acts and practices in trade or commerce.

#### **IV. Facts**

##### *Background*

12. Ruby Corp. is a privately-held holding company for various wholly-owned subsidiaries, including Ruby Life and ADL Media that together operate a number of dating websites including AshleyMadison.com, CougarLife.com, EstablishedMen.com, and ManCrunch.com.

13. Defendants' most profitable website is AshleyMadison.com ("Ashley Madison"), which is an online dating website for married individuals or people in committed relationships interested in having affairs with other adults. In 2015, Defendants received an estimated \$47.4 million in U.S. revenue from AshleyMadison.com.

14. In July 2015, Defendants experienced a security breach that resulted in the theft of user information of millions of Ashley Madison's members.<sup>1</sup> The information included such things as photographs, usernames, email addresses, communications, and other profile information. Portions of this information were then published on the dark web. Not all categories of information were obtained by the attackers and/or published for every member.

15. In Nebraska, up to 47,550 consumers were members of Ashley Madison at the time of the security breach.

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<sup>1</sup> Ashley Madison members create profiles for the purpose of engaging with and communicating with other members. A single individual can create multiple profiles. Though this Complaint uses to "members" to refer to unique profiles, the number of members may be larger than the number of unique users.

16. In addition to the risk of identity theft, due to the nature of the Ashley Madison website, the publication of a consumer's information had an additional harm. The revelation of the fact that a consumer had a profile on Ashley Madison had the potential to cause significant harm to that consumer's reputation, relationships, and personal life.

*Security Practices and Representations*

17. Defendants' security framework had several deficiencies, including:

- a. Defendants failed to maintain documented information security policies or practices;
- b. Defendants failed to maintain a documented risk management process that included a documented schedule for periodic assessments of privacy threats and ongoing evaluation of security practices to ensure that they were appropriate and sufficient;
- c. Defendants failed to utilize multi-factor authentication to secure remote access; and
- d. Defendants failed to formally and adequately train their staff and management.

18. The Ashley Madison website and advertising materials made several misrepresentations regarding security, including:

- e. A "Trusted Security Award," which appears to have been made up by Defendants, and had not been awarded by any certification entity;
- f. Use of an emblem indicating "Certified Zero Risk <sup>TM</sup>," which had not been awarded by any certification entity;
- g. Indication that it was a "100% Discreet Service"; and
- h. Representations that Ashley Madison was "100% Secure."

Full Delete

19. The Ashley Madison website offered a “Full Delete” option to consumers, which promised for a fee to remove their profiles from search results and the site and delete all messages, site usage information, and photos from the site.

20. This “Full Delete” option was advertised to consumers in the following way: “Be Discreet, remove all traces of your usage for only \$19.00.”

21. The “Full Delete” option was the only option for consumers who wanted to permanently delete their account profiles.

22. An email sent to consumers who purchased the “Full Delete” option stated: “This notice confirms that Ad Profile number [X] has been successfully deleted from our system. Some information will be retained for 6-12 months due to legal and financial reasons after which it will be removed as well.”

23. Defendants had a policy to retain certain information of consumers who purchased the “Full Delete” option for up to twelve months in order to address requests for chargebacks.

24. The Ashley Madison website did not disclose that certain information would be retained for up to twelve months until after a consumer paid for the “Full Delete” option.

25. While some information was deleted, Defendants did not delete all consumer information from its system, even after twelve months. In particular, Defendants failed to delete users’ photographs and in some instances chat communications, nicknames, and sexual preferences. This failure may have been due to a technical problem.

26. Many users whose information was disclosed in the July 2015 security breach had purchased the “Full Delete,” in some cases more than twelve months prior to the security breach.

27. As many as 481 Nebraska consumers had purchased the “Full Delete” option at the time of the breach.

### Fake Profiles

28. Defendants created fake female profiles (which it called “engager profiles”) which they used to entice male users who were using Ashley Madison’s free services, to purchase credits to communicate with other members, including “members” with fake profiles.

29. In some instances, Defendants used portions of the profile photographs of actual users who had not had account activity within the previous year as the photographs in the fake profiles that it created. They cropped or otherwise hid the users’ faces but did not hide their bodies.

30. In their FAQs, in response to the question “How do I know the Ashley Madison website system and membership base are for real?” Ashley Madison responded: “While we can’t guarantee the authenticity of any profile on Ashley Madison, we endeavor to ensure that all Members signing up for our services agree to the Terms & Conditions that outline acceptable use of our system.”

31. Ashley Madison’s Terms of Use prohibited users from using the service “to transmit, distribute, post or submit any information concerning any other person or entity, including without limitation, photographs of others” or to “impersonate any person or entity.”

32. Defendants discontinued the practice of using fake profiles on Ashley Madison in the United States in 2014. After that time, in some, but not all, instances, Defendants refunded the price consumers spent on interactions with “members” with fake profiles.

### **Causes of Action: Unfair and Deceptive Trade Practices**

33. Plaintiff realleges and incorporates by reference herein each and every allegation contained in the preceding paragraphs 1 through 32.

34. Defendants engaged in unfair trade practices in commerce in violation of the § 59-1602 of the Consumer Protection Act and § 87-302 of the Uniform Deceptive Trade Practices Act, including:

- i. Failing to maintain reasonable data security;
- j. Failing to fully delete the profiles of users who paid for the “Full Delete” option;
- k. Creating fake profiles in order to lure male consumers into purchasing credits;  
and
- l. Using the profile photographs of actual users to create fake profiles.

35. Defendants engaged in deceptive trade practices in commerce in violation of § 59-1602 of the Consumer Protection Act and § 87-302 of the Uniform Deceptive Trade Practices Act by making deceptive statements which would likely lead consumers to believe the following:

- m. Misrepresenting to consumers that it would keep their data secure and exercise discretion;
- n. Creating and displaying fake security trustmarks on its website;
- o. Advertising a “Full Delete” option that it did not deliver; and
- p. Creating fake profiles in order to lure consumers to purchase subscriptions to Ashley Madison.

WHEREFORE Plaintiff requests judgment in its favor and the following relief:

A. Pursuant to the Consumer Protection Act and Uniform Deceptive Trade Practices Act, a permanent injunction prohibiting Defendants from engaging in any business activity in, into or from Nebraska that violates the Consumer Protection Act or Uniform Deceptive Trade Practices Act.

B. Pursuant to the Consumer Protection Act and Uniform Deceptive Trade Practices Act, equitable relief including restitution and disgorgement.



C. Pursuant to the Consumer Protection Act and Uniform Deceptive Trade Practices Act, civil penalties of up to \$2,000 for each violation of the Consumer Protection Act and Uniform Deceptive Trade Practices Act.

D. Pursuant to the Consumer Protection Act and Uniform Deceptive Trade Practices Act, an order directing the Defendants to pay all costs and attorneys fees for the prosecution and investigation of this action.


E. Such other relief as the Court deems appropriate.

Dated: December 4, 2016

Respectfully submitted,

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