

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO.

22-2684B

COMMONWEALTH OF MASSACHUSETTS,)
)
Plaintiff,)
)
v.)
)
GOOGLE LLC, and)
IHEARTMEDIA, INC.,)
)
Defendants.)
)
)

COMPLAINT

2022 NOV 28 A 9 16
 SUFFOLK SUPERIOR COURT
 CIVIL CLERK'S OFFICE
 MICHAEL JOSEPH DONOVAN
 CLERK / MAGISTRATE

I. INTRODUCTION

1. The Commonwealth of Massachusetts, through Attorney General Maura Healey, (the "Commonwealth") brings this enforcement action against Google LLC ("Google") and iHeartMedia, Inc. ("iHeartMedia," collectively, "Defendants") for violations of the Consumer Protection Act, G.L. c. 93A, § 2.

2. At Google's request, in 2019 iHeartMedia recorded and aired false endorsements of Google LLC's Pixel 4 smartphone. These deceptive advertisements aired more than 1,000 time in Massachusetts.

II. JURISDICTION AND VENUE

3. The Commonwealth is authorized to bring this action pursuant to her authority under G.L. c. 93A, § 4.

4. This Court has jurisdiction over the subject matter of this action pursuant to G.L. c. 93A, § 4.

5. Venue is proper in Suffolk County pursuant to G.L. c. 93A, § 4 and G.L. c. 223,

§ 5.

III. PARTIES

6. Plaintiff, the Commonwealth of Massachusetts, acting by and through the Office of Attorney General Maura Healey, brings this action in the public interest pursuant to G.L. c. 93A, § 4 and G.L. c. 12, § 10.

7. Defendant Google LLC Defendant Google LLC is a Delaware limited liability company with its principal office located at 1600 Amphitheatre Parkway, Mountain View, California 94043.

8. Defendant, iHeartMedia, Inc., is a Delaware corporation with its principal place of business located at 20880 Stone Oak Parkway, in San Antonio, Texas 78258. The Defendant does business in the Commonwealth of Massachusetts; it owns and operates radio stations in Massachusetts and offers Internet streaming services accessible to Massachusetts consumers.

IV. FACTUAL ALLEGATIONS

9. At all times relevant to this complaint, Defendants have been engaged in trade and commerce in Massachusetts.

10. Defendant Google is a products and technology company that manufactures, advertises, offers and sells various goods and services, including, among other things, Google's Pixel 4 smartphone (the "Pixel 4").

11. Google wrote scripts for and retained media companies, and their radio hosts and personalities, to record advertisements for the Pixel 4 and to broadcast those advertisements to reach consumers in various media markets across the United States, including in Massachusetts.

12. Defendant iHeartMedia is a for-profit, media corporation that owns more than 850 full-power AM and FM radio stations in the United States, including stations in Massachusetts. It

also streams its content over the Internet. The iHeartMedia radio network is known as iHeartRadio.

13. In Massachusetts and other media markets, iHeartMedia employs myriad on-air radio personalities and hosts (“Radio Personalities”). The Defendant gives select Radio Personalities the option to receive additional compensation by recording advertisements for specific iHeartMedia clients, which are played on iHeartRadio stations.

14. Through its media buying agent, in October 2019, Google LLC hired iHeartMedia to have its Radio Personalities record advertisements endorsing Google’s Pixel 4 smartphone and to disseminate those ads in ten markets in the United States, including the Boston, Massachusetts market.

15. In October 2019, Google provided iHeartMedia with scripts for Radio Personalities to use in recording advertisements endorsing the Pixel 4 smartphone.

16. The typical English-language script is:

The only thing I love more than taking the perfect photo? Taking the perfect photo at night. With Google Pixel 4 both are a cinch. It’s my favorite phone camera out there, especially in low light, thanks to Night Sight Mode. I’ve been taking studio-like photos of everything... my son’s football game... a meteor shower... a rare spotted owl that landed in my backyard. Pics or it didn’t happen, am I right? Pixel 4 is more than just great pics. It’s also great at helping me get stuff done, thanks to the new voice activated Google Assistant that can handle multiple tasks at once. I can read up on the latest health fads, ask for directions to the nearest goat yoga class (yes, that’s a thing), and text the location to mom hands-free....

17. An approximate translation of an excerpt from the typical Spanish-language script for the Pixel 4 radio advertisements is:

Pixel 4 is my favorite camera in low light. Its Night Sight mode opened up a galaxy of possibilities for my photos, like the Milky Way! No, really! I just point the camera at the sky and take Instagram-ready photos of the stars! It’s easy. I don’t have to learn

anything new or do any fancy editing to obtain studio-quality photos at any time and anywhere, like birthday parties, low-light concerts, my mom and dad's 50th birthdays. And with the continuous zoom feature, I didn't miss a second of my daughter's school play even though I was in the last row.

18. In October 2019, an iHeartMedia employee emailed Google's media buying agent to inform Google's agent that iHeartMedia wanted to have its Radio Personalities "customize certain parts of the script pending what's relevant to their personal lives (i.e.,] if they have kids, involved in certain activities/hobbies, etc[.])". Google's media buying agent approved this request.

19. Before the first advertisements were recorded by iHeartMedia's Radio Personalities, an iHeartMedia employee wrote an email to Google's media buying agent requesting Pixel 4s for the Radio Personalities, stating:

I know this has been something that we have brought up numerous times, but it's something that we really need to get to our voicing talent, especially if we want them to use their own first person tense when voicing. We ... cannot require talent to use "I" in voiced spots when they have not physically used the product.... For this reason, we may receive spots from stations that adjust the tense slightly to remove the personalization of "I."

20. The iHeartMedia employee also wrote that "a few markets" had raised concerns about the personalization without actually having the Pixel 4 smartphones. Google's media buying agent checked with Google and wrote back:

Just heard back from [Google] in regards to [sic] sending Pixels to your talent. Unfortunately, this is not feasible for [Google] at this time as the product is not on shelves yet. It would take over a week to ship all of these phones out resulting in a loss of airtime.

21. In October 2019, forty-three iHeartMedia Radio Personalities at different iHeartMedia radio stations, and fifty-four Radio Personalities at fifty-eight non-iHeartMedia radio stations, each recorded advertisements for the Pixel 4 smartphone using first-person

language identical or substantially similar to that in the scripts described in Paragraphs 13 and 14, above, which were aired in in ten markets (Atlanta, Boston, Chicago, Dallas/Ft. Worth, Denver/Boulder, Houston, Los Angeles, New York, Phoenix, and San Francisco/Bay area).

22. Nine of the Radio Personalities, including five iHeartMedia Radio Personalities, (the “Boston Radio Personalities”) recorded these ads for radio stations in the Boston media market.

23. The Boston Radio Personalities recorded advertisements for the Pixel 4 smartphone using first-person language identical or substantially similar to the script described in Paragraphs 13, above. Some personalized what they said they did with the Pixel 4 to better reflect their lifestyle and activities, thereby making the advertisements more realistic. However, the Boston Radio Personalities did not own or regularly use a Pixel 4 and had not used a Pixel 4 to take pictures at night.

24. The Pixel 4 endorsement ads recorded by the Boston Radio Personalities on Google’s behalf aired 1,892 times in Massachusetts between October and December 2019, including 1,294 ads aired on iHeartMedia radio stations in the Boston media market.

COUNT I

Unfair or Deceptive Acts and Practices in Violation of the Massachusetts Consumer Protection Act, G.L. c. 93A, § 2

25. Plaintiff re-alleges and incorporates by reference the allegations in Paragraphs 1 through 24.

26. The Defendants engaged in false and misleading advertisements, when they misrepresented or caused Radio Personalities, including iHeartMedia Radio Personalities, to misrepresent that they owned or regularly used a Pixel 4 smartphone and had experience using a Pixel 4 to take pictures at night or in other low light settings.

27. The Radio Personalities, including iHeartMedia Radio Personalities, who represented that they owned or regularly used a Pixel 4 smartphone did not own or regularly use one. Likewise, the Radio Personalities, including iHeartMedia Radio Personalities, who represented that they had experience using a Pixel 4 to take pictures at night had never done so.

28. Though Google knew the Radio Personalities did not have Pixel 4 phones, Google caused iHeartMedia and others to create and air the false endorsements for the Pixel 4 phones in the Boston media market.

29. Similarly, though iHeartMedia knew its Radio Personalities did not have Pixel 4 phones, iHeartMedia created and aired the false endorsements for the Pixel 4 phones in the Boston media market.

30. This conduct constitutes unfair and deceptive acts and practices that violate the Consumer Protection Act, G.L. c. 93A, §2, and regulations promulgated thereunder, including:

a. 940 C.M.R. 3.05(1), which prohibits making claims or representations which directly, or by implication, or by failure to adequately disclose additional relevant information, have the capacity or tendency or effect of deceiving buyers or prospective buyers in material respects; in this instance, concerning the Pixel 4 smartphone and whether the iHeartMedia Radio Personalities had experience using the smartphones (in order to evaluate their claims regarding the functionality of the smartphones).

b. 940 C.M.R. 3.16(2), which prohibits failing to disclose to buyers or prospective buyers any fact, the disclosure of which may have influenced the buyers or prospective buyers not to enter into the transaction.

c. 940 C.M.R. 3.16(4), which prohibits violating the Federal Trade Commission ("FTC") Act, 15 U.S.C. § 45(a)(1); in this instance by, *inter alia*,

recording and airing the false product endorsements described herein, or causing such false endorsements to be recorded and aired. *See* 16 C.F.R. Part 255.1.


PRAYER FOR RELIEF

WHEREFORE, the Commonwealth requests that this Court enter the proposed Final Judgments by Consent filed herewith or, in the alternative, after trial on the merits enter a judgment declaring that iHeartMedia and Google have violated the Consumer Protection Act, G.L. c. 93A, § 2, by engaging in the unlawful acts and practices alleged herein and ordering: civil penalties of up to \$5,000 for each violation, injunctive relief, attorney's fees and costs, and all other relief deemed just.

Respectfully submitted,

COMMONWEALTH
OF MASSACHUSETTS

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