

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

**COX AUTOMOTIVE, Inc.,
COX ENTERPRISES, Inc., and
COX FAMILY VOTING TRUST**

and

DEALERTRACK TECHNOLOGIES, Inc.

Defendants.

Case# 1:15-cv-01583

Judge: Thomas F. Hogan

Date Stamp:

UNITED STATES' CONSENT MOTION TO APPOINT MONITORING TRUSTEE

Plaintiff United States of America files this motion to appoint Ken Dreifach as the Monitoring Trustee with the responsibilities and authority set forth in Paragraph XI of the Proposed Final Judgment (“PFJ”) (ECF No. 4, Ex. A). The United States has informed Cox of its intent to file a motion to appoint Mr. Dreifach as the Monitoring Trustee, and counsel for Cox has informed the United States that it consents to his appointment.

The Court may approve this motion before making the public interest determination required by Paragraph XVI of the PFJ. Section IV.B of the Hold Separate Stipulation and Order (“Hold Separate Order”), entered by the Court on September 30, 2015, (ECF No. 4), provides that, while the PFJ is subject to comment and Court review under the Antitrust Procedures and Penalties Act (15 U.S.C. §§ 16(b)-(h)) (“APPA”), Defendants may proceed with the divestiture

of Dealertrack's IMS business and related assets in accordance with the terms of the PFJ.¹ On September 30, 2015, the United States approved the divestiture of Dealertrack's IMS business to DealerSocket, Inc.

The Hold Separate Order provides that during the pendency of the APPA review, Defendants shall abide by and comply with the provisions of the PFJ pending entry of the Final Judgment by the Court. Hold Separate Order at § IV.B. That section also provides that during the pendency of the APPA review, the United States shall have the full rights and enforcement powers in the PFJ, as if the PFJ were in full force and effect as the final order of the Court. *Id.*

Paragraph XI.A of the PFJ states that: "Upon application of the United States, the Court shall appoint a Monitoring Trustee selected by the United States and approved by the Court. PFJ at ¶ XI.A.

The United States has selected Ken Dreifach to serve as the Monitoring Trustee and, therefore, respectfully requests that the Court approve his selection. Mr. Dreifach is currently a shareholder in the New York City-based Internet and technology law firm ZwillGen PLLC, which specializes in counseling internet and technology companies. After starting his legal career at a large, national law firm, Mr. Dreifach served for six years as Chief of the Internet Bureau of the Office of the New York Attorney General. In that position, Mr. Dreifach played a key role in initiating and supervising Internet enforcement matters for the State of New York. Mr. Dreifach has also served as the Deputy General Counsel and as General Counsel and Chief Privacy Officer, respectively, at two different technology firms. His current practice includes advising clients on issues related to data and proprietary information, as well as regulatory

¹ As the APPA comment period has now expired, today the United States is also filing a motion to enter the Final Judgment in this case. Attached as Exhibit B to that motion is a *Certificate of Compliance with Provisions of the Antitrust Procedures and Penalties Act*, which, together with the motion, provide the Court with the basis for making its Public Interest Determination

compliance and laws applicable to the Internet. In addition, he has authored several articles on various topics involving data licensing, the online use of data for marketing, and data security and privacy. Mr. Dreifach's curriculum vitae is attached hereto as Exhibit A. Mr. Dreifach's experience in investigating and enforcing laws related to the Internet and technology, as well as his experience in regulatory, data, and proprietary information matters, make him particularly well suited to monitoring the Defendants' compliance with the Final Judgment and reporting the Defendants' compliance to the United States.

Accordingly, the United States respectfully requests that Ken Dreifach be appointed Monitoring Trustee in this matter at the Court's earliest convenience. A proposed order appointing Mr. Dreifach as the monitoring trustee is attached as Exhibit B.

Dated: January 8, 2016

Respectfully submitted,

_____/s/_____
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EXHIBIT A

KEN DREIFACH'S CURRICULUM VITAE



Ken Dreifach

Shareholder

Education

New York University
School of Law, J.D.

Wesleyan University, B.A.

Prior Experience

LiveRamp, Inc.

Linden Lab, Inc.

Sonnenschein Nath &
Rosenthal LLP

Office of New York
Attorney General —Chief,
Internet Bureau

Morrison & Foerster LLP

Admitted to Bar

New York

Ken has more than twenty years of experience in high-profile regulatory, in-house and private practice roles, addressing Internet law and privacy issues. His range of experience helps him provide clients with unique, creative perspectives in evaluating and mitigating legal and ecosystem risks, and has made him one of the nation's leading authorities on law relating to emerging technologies and online privacy.

Ken's current practices focus on four main areas:

- *Regulatory Response and Crisis Management.* Ken assists companies in responding to regulatory investigations, including matters before the FTC, state Attorneys General, and other state and federal agencies, as well as inquiries from Congressional committees and sub-committees.
- *Data Law.* Ken counsels clients on how to protect proprietary data, draft and negotiate data licensing agreements, and maintain and segment online and offline data in a manner compliant with laws and self-regulatory guidelines such as the NAI Code of Conduct. His expertise includes offline and online data law, behavioral advertising and tracking models, content personalization, re-targeting, and use of data for modeling, analytics and diagnostics.
- *Gaming Law.* Ken regularly advises companies that offer or support gaming activities on how to comply with applicable U.S. federal and state laws. Chambers USA noted that, as to Internet gambling, "he knows the compliance and regulatory landscape inside-out." He is also a former board member of a publicly-traded casino in New York.
- *Online Liability.* Ken advises clients on matters of online liability across disciplines, including the DMCA, the CDA and Section 230 immunity, libel and defamation, COPPA, the Electronic Communications Privacy Act ("ECPA"), the Wiretap Act, FERPA, California's Shine the Light law, and other state and federal privacy laws. Ken also helps established and emerging companies draft and revise appropriate Terms of Service, Privacy Policies and EULAs.

From 2000 to 2006, Ken was Chief of the Internet Bureau of the New York Attorney General's office. Under his leadership, that Bureau brought ground-breaking enforcement actions protecting Internet users from fraudulent and illegal practices. These included high-profile matters against spyware distributors, spammers, crammers, online gambling operators, and websites that might endanger children and minors.





Ken Dreifach Shareholder

Education

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School of Law, J.D.

Wesleyan University, B.A.

Prior Experience

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Linden Lab, Inc.

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Rosenthal LLP

Office of New York
Attorney General —Chief,
Internet Bureau

Morrison & Foerster LLP

Admitted to Bar

New York

Ken has significant in-house experience working with emerging technology companies. Most recently, Ken served as General Counsel and Chief Privacy Officer of LiveRamp (formerly Rapleaf), a leading consumer data company in the Bay Area that is a hub for online and offline data usage – including through its acquisition by data services company Acxiom, Inc. From 2007 to 2010, Ken was Deputy General Counsel of Linden Lab, operators of the Second Life virtual world and virtual currency platforms. In the gaming space, he has served as a Board Member of a publicly traded casino enterprise, helping it steer through regulatory matters.

Ken is a graduate of New York University School of Law, and Wesleyan University. He began his legal career as a judicial clerk for Judge Phyllis Kravitch of the U.S. Court of Appeals for the Eleventh Circuit. Ken is a former Chair of the New York City Bar Association's Committee on Information Technology. He has appeared on numerous national news programs to discuss online law and liability and been quoted widely, in news sources such as the New York Times, The Wall Street Journal, Advertising Age, and Wired.



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ORDER APPOINTING MONITORING TRUSTEE

Upon consideration of the United States' Consent Motion to Appoint Monitoring Trustee, and for good cause shown, it is hereby ordered:

Ken Dreifach is appointed as Monitoring Trustee effective immediately, with the responsibilities set forth in the Proposed Final Judgment, ECF No. 4, Ex. A.

SO ORDERED.

DATED: _____

HON. THOMAS F. HOGAN
United States District Judge