

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 18-61017-CIV-ALTONAGA/Seltzer

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

POINTBREAK MEDIA, LLC, et al.,

Defendants.

**DEFENDANTS MODERN SPOTLIGHT, LLC, MODERN SPOTLIGHT GROUP, LLC,
MODERN INTERNET MARKETING LLC, AND MICHAEL POCKER'S ANSWERS
AND AFFIRMATIVE DEFENSES TO THE FEDERAL TRADE COMMISSION'S FIRST
AMENDED COMPLAINT FOR PERMANENT INJUNCTION AND OTHER
EQUITABLE RELIEF**

Defendants, Modern Spotlight, LLC, Modern Spotlight Group, LLC, Modern Internet Marketing LLC, and Michael Pocker, individually, by and through their undersigned counsel files this Answer and Affirmative Defenses to the Federal Trade Commission's First Amended Complaint for Permanent Injunction and Other Equitable Relief and states as follows:

1. Admitted the Complaint is brought under the FTC Act; denied as to the remaining allegations.

JURISDICTION AND VENUE

2. Admitted

3. Admitted.

PLAINTIFF

4. Admitted.

5. Admitted.

DEFENDANTS

6. Unknown, therefore denied.
7. Unknown, therefore denied.
8. Admitted.
9. Admitted.
10. Unknown, therefore denied.
11. Admitted.
12. Unknown, therefore denied.
13. Unknown, therefore denied.
14. Unknown, therefore denied.
15. Unknown, therefore denied.
16. Unknown, therefore denied.
17. Unknown, therefore denied.
18. Unknown, therefore denied.
19. Unknown, therefore denied.
20. Admitted as to one of the owners and managers of Modern Spotlight and Modern Spotlight Group; denied as to the remaining allegations.
21. Unknown, therefore denied.
22. Unknown, therefore denied.
23. Unknown, therefore denied.

RELIEF DEFENDANTS

24. Unknown, therefore denied.
25. Unknown, therefore denied.

COMMON ENTERPRISE

- 26. Denied.
- 27. Denied.

COMMERCE

- 28. Denied.

DEFENDANT'S BUSINESS ACTIVITIES

Overview

- 29. Denied.
- 30. Denied.
- 31. Unknown, therefore denied.

Google My Business

- 32. Denied.
- 33. Denied.
- 34. Admitted

Defendants Target Consumers with Threatening Robocalls

- 35. Denied.
- 36. Denied.
- 37. Unknown, therefore denied.
- 38. Unknown, therefore denied.
- 39. Denied as to the term "Defendants"; admitted Defendant Modern Spotlight Group used the robocall in Paragraph 39.
- 40. Unknown, therefore denied.
- 41. Unknown, therefore denied.

- 42. Unknown regarding other Defendants' robocalls; denied as to Defendant Modern Spotlight, LLC, Modern Spotlight Group, LLC and Michael Pocker.
- 43. Denied.
- 44. Denied.
- 45. Denied.
- 46. Denied.

Defendants' Sales Agents Use False Statements to Sell Google Listing Services

- 47. Denied.
- 48. Denied.
- 49. Denied.

Defendants' Claims of Google Authorization or Affiliation

- 50. Denied.
- 51. Denied.
- 52. Unknown if a rogue employee stated the alleged statements and therefore denied.
- 53. Unknown if a rogue employee stated the alleged statements and therefore denied.
- 54. Unknown, therefore denied.
- 55. Unknown, therefore denied.
- 56. Unknown, therefore denied.
- 57. Unknown regarding other Defendants; denied as to Defendant Modern Spotlight, LLC, Modern Spotlight Group, LLC and Michael Pocker.
- 58. Denied. Google specifically contemplates for business owners to work with third party companies about Google My Business. For example, Google Support states "Google My Business gives you tools that can help your business succeed, but

sometimes running a business doesn't leave you enough time to establish and maintain a successful business listing. If you need a helping hand or want some expert advice, you may choose to work with a third party. There are many third parties to choose from, ranging from large companies that manage hundreds of customers to individual web consultants.”

Defendants' Threats of Removal from Google

59. Denied.
60. Unknown regarding other Defendants; admitted as to Defendant Modern Spotlight, LLC and Modern Spotlight Group, LLC.
61. Unknown regarding other Defendants; admitted that Defendant Modern Spotlight, LLC and Modern Spotlight Group, LLC helped claim and verify the consumers' Google business listing on the consumer's behalf; denied as to remaining allegations.
62. Unknown regarding other Defendants; denied as to Defendant Modern Spotlight, LLC and Modern Spotlight Group, LLC.
63. Unknown if a rogue employee stated the alleged statements and therefore denied.
64. Unknown, therefore denied.
65. Denied.
66. Denied.
67. Admitted.
68. Unknown regarding other Defendants; denied as to Defendant Modern Spotlight, LLC and Modern Spotlight Group, LLC.
69. Unknown to what Plaintiff is alleging, therefore denied.

Defendants' Promises of Unique Keywords Linked to the Consumer's Business

70. Denied.
71. Unknown, therefore denied.
72. Denied.
73. Unknown, therefore denied.
74. Unknown, therefore denied.
75. Unknown, therefore denied.
76. Denied.
77. Unknown regarding other Defendants; denied as to Defendants Modern Spotlight, LLC, Modern Spotlight Group, LLC and Michael Pocker.
78. Denied.
79. Denied.
80. Denied.
81. Unknown regarding other Defendants; denied as to Defendants Modern Spotlight, LLC, Modern Spotlight Group, LLC and Michael Pocker.
82. Unknown, therefore denied.
83. Denied.
84. Denied.
85. Unknown regarding other Defendants; denied as to Defendants Modern Spotlight, LLC, Modern Spotlight Group, LLC and Michael Pocker.

Defendants Upsell Consumers on a "Citation Program"

86. Denied.
87. Denied.

88. Denied.

89. Denied.

90. Denied.

91. Denied.

92. Denied.

93. Denied.

94. Denied.

95. Denied.

Defendants' Unauthorized Consumer Billing

96. Unknown, therefore denied.

97. Unknown, therefore denied.

98. Unknown, therefore denied.

**DEFENDANTS' COMMON ENTERPRISE AND SHIFTING CORPORATE
IDENTITIES**

99. Denied.

Pointbreak Media, LLC

100. Unknown, therefore denied.

101. Unknown, therefore denied.

102. Unknown, therefore denied.

103. Unknown, therefore denied.

104. Unknown, therefore denied.

105. Unknown, therefore denied.

106. Unknown, therefore denied.

107. Unknown, therefore denied.

108. Unknown, therefore denied.

109. Unknown, therefore denied.

110. Unknown, therefore denied.

111. Unknown, therefore denied.

112. Unknown, therefore denied.

113. Unknown, therefore denied.

114. Unknown, therefore denied.

115. Unknown, therefore denied.

116. Unknown, therefore denied.

117. Unknown, therefore denied.

118. Unknown, therefore denied.

119. Unknown, therefore denied.

120. Unknown, therefore denied.

121. Unknown, therefore denied.

122. Unknown, therefore denied.

123. Unknown, therefore denied.

124. Unknown, therefore denied.

DCP Marketing, LLC

125. Unknown, therefore denied.

126. Unknown, therefore denied.

127. Unknown, therefore denied.

128. Unknown, therefore denied.

129. Unknown, therefore denied.

130. Unknown, therefore denied.

131. Unknown, therefore denied.

132. Unknown, therefore denied.

133. Unknown, therefore denied.

134. Unknown, therefore denied.

135. Denied.

136. Unknown, therefore denied.

Modern Spotlight LLC and Modern Spotlight Group LLC

137. Admitted.

138. Admitted.

139. Admitted.

140. Admitted.

141. Admitted.

142. Defendants do not have access to accounting records therefore denied.

143. Defendants do not have access to accounting records therefore denied.

144. Defendants do not have access to accounting records therefore denied.

145. Admitted.

146. Admitted.

147. Admitted.

148. Admitted.

149. Admitted.

150. Admitted that the companies switched office space to better fit each business need at the time.
151. Denied.
152. Admitted.
153. Admitted. Modern Spotlight Group hired these employees when laid off by Point Break.
154. Unknown, therefore denied.
155. Unknown, therefore denied.
156. Unknown if a rogue employee stated the alleged statements and therefore denied. To Defendant Michael Pocker's knowledge, the employee was mistaken due to a switch in office locations, which was a surprise to Defendant Michael Pocker as well.
157. Admitted for business purposes and not collusion or common enterprise as suggested by the Complaint.
158. Admitted.
159. Unknown, therefore denied. Defendant, Michael Pocker's companies were taken from him on or about February 7, 2018 and therefore he dissolved the companies.
160. Unknown, therefore denied.
161. Unknown, therefore denied.

Modern Source Media, LLC

162. Unknown, therefore denied.
163. Unknown, therefore denied.
164. Unknown, therefore denied.

165. Unknown, therefore denied.

166. Unknown, therefore denied.

167. Unknown, therefore denied.

168. Unknown, therefore denied.

169. Unknown, therefore denied.

170. Unknown, therefore denied.

171. Unknown, therefore denied.

172. Unknown, therefore denied.

173. Unknown, therefore denied.

Perfect Image Online, LLC

174. Unknown, therefore denied.

175. Unknown, therefore denied.

176. Unknown, therefore denied.

177. Unknown, therefore denied.

178. Unknown, therefore denied.

179. Unknown, therefore denied.

Modern Internet Marketing LLC

180. Admitted.

181. Admitted.

182. Defendants do not have access to accounting records, therefore denied.

183. Admitted.

184. Defendants do not have access to accounting records, therefore denied.

Allstar Data, LLC

185. Unknown, therefore denied.

186. Unknown, therefore denied.

187. Unknown, therefore denied.

188. Unknown, therefore denied.

189. Unknown, therefore denied.

190. Unknown, therefore denied.

191. Unknown, therefore denied.

National Business Listings, LLC

192. Unknown, therefore denied.

193. Unknown, therefore denied.

194. Unknown, therefore denied.

195. Unknown, therefore denied.

196. Unknown, therefore denied.

197. Unknown, therefore denied.

Pinnacle Presence, LLC

198. Unknown, therefore denied.

199. Unknown, therefore denied.

200. Unknown, therefore denied.

201. Unknown, therefore denied.

202. Unknown, therefore denied.

203. Unknown, therefore denied.

204. Unknown, therefore denied.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

205. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a) speaks for itself.

206. Section 5(a) of the FTC Act speaks for itself.

207. Section 5 of the FTC Act speaks for itself.

COUNT I – Deceptive Representations

208. Unknown regarding other Defendants; denied as to Defendants Modern Spotlight, LLC, Modern Spotlight Group, LLC, Modern Internet Marketing, LLC and Michael Pocker.

209. Unknown regarding other Defendants; denied as to Defendants Modern Spotlight, LLC, Modern Spotlight Group, LLC, Modern Internet Marketing, LLC and Michael Pocker.

210. Unknown regarding other Defendants; denied as to Defendants Modern Spotlight, LLC, Modern Spotlight Group, LLC, Modern Internet Marketing, LLC and Michael Pocker.

COUNT II – Unfair Billing Practices

211. Unknown regarding other Defendants; denied as to Defendants Modern Spotlight, LLC, Modern Spotlight Group, LLC, Modern Internet Marketing, LLC and Michael Pocker.

212. Unknown regarding other Defendants; denied as to Defendants Modern Spotlight, LLC, Modern Spotlight Group, LLC, Modern Internet Marketing, LLC and Michael Pocker.

213. Unknown regarding other Defendants; denied as to Defendants Modern Spotlight, LLC, Modern Spotlight Group, LLC, Modern Internet Marketing, LLC and Michael Pocker.

VIOLATIONS OF THE TELEMARKETING SALES RULE

- 214. Admitted.
- 215. Admitted.
- 216. Admitted.
- 217. Admitted.
- 218. Admitted.
- 219. Admitted.
- 220. 16 C.F.R. § 310.4(b)(1)(v) speaks for itself.
- 221. 16 C.F.R. § 310.4(b)(1)(iii)(B)(1) speaks for itself.
- 222. Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), speak for themselves.
- 223. Unknown regarding other Defendants; denied as to Defendants Modern Spotlight, LLC, Modern Spotlight Group, LLC, Modern Internet Marketing, LLC and Michael Pocker.

COUNT III – Initiating or Causing the Initiation of Unlawful Prerecorded Messages

- 224. Unknown regarding other Defendants; denied as to Defendants Modern Spotlight, LLC, Modern Spotlight Group, LLC, Modern Internet Marketing, LLC and Michael Pocker.
- 225. Unknown regarding other Defendants; denied as to Defendants Modern Spotlight, LLC, Modern Spotlight Group, LLC, Modern Internet Marketing, LLC and Michael Pocker.

COUNT IV – Calls to Persons Registered on the National Do Not Call Registry

226. Unknown regarding other Defendants; denied as to Defendants Modern Spotlight, LLC, Modern Spotlight Group, LLC, Modern Internet Marketing, LLC and Michael Pocker.
227. Unknown regarding other Defendants; denied as to Defendants Modern Spotlight, LLC, Modern Spotlight Group, LLC, Modern Internet Marketing, LLC and Michael Pocker.

COUNT V – Relief Defendants

228. Unknown, therefore denied.
229. Unknown, therefore denied.
230. Unknown, therefore denied.

CONSUMER INJURY

231. Unknown regarding other Defendants; denied as to Defendants Modern Spotlight, LLC, Modern Spotlight Group, LLC, Modern Internet Marketing, LLC and Michael Pocker.

THIS COURT’S POWER TO GRANT RELIEF

232. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b) speaks for itself.

AFFIRMATIVE DEFENSES

1. Defendants, Modern Spotlight, LLC, Modern Spotlight Group, LLC, Modern Internet Marketing LLC, and Michael Pocker have not made any false or deceptive statement to any customer or potential customer regarding any of the services offered and as a result the Plaintiff is barred from any remedy.

2. Defendants, Modern Spotlight, LLC, Modern Spotlight Group, LLC, Modern Internet Marketing LLC, and Michael Pocker did not direct any employee to make false or deceptive statements to any customer or potential customer regarding any services offered and as a result the Plaintiff is barred from any remedy.
3. Defendants, Modern Spotlight, LLC, Modern Spotlight Group, LLC, Modern Internet Marketing LLC, and Michael Pocker allege that if any statements are showing to be false or deceptive no customer or potential customer relied to his or her detriment upon any false or deceptive statement and as a result the Plaintiff is barred from any remedy.
4. Defendants, Modern Spotlight, LLC, Modern Spotlight Group, LLC, Modern Internet Marketing LLC, and Michael Pocker state that the FTC fails to state a claim upon which relief can be granted under Section 5 of the FTC Act, 15 U.S.C. § 45, as the FTC has not demonstrated that well-qualified claims are false, have a tendency to deceive, or that adjudication is in the public interest, and, as a consequence thereof, the Plaintiff is barred from any remedy.
5. Defendants, Modern Spotlight, LLC, Modern Spotlight Group, LLC, Modern Internet Marketing LLC, and Michael Pocker affirmatively plead that the Complaint fails to state a claim upon which relief can be granted under Section 5 of the FTC Act, 15 U.S.C. § 45. The FTC has not demonstrated (and cannot demonstrate) that Defendants exerted the requisite control (or authority to control) over the Corporate Defendants, directly participated in the alleged wrongful acts, had knowledge of the alleged fraudulent conduct, and/or had and has responsibility to be individually liable.
6. Defendants, Modern Spotlight, LLC, Modern Spotlight Group, LLC, Modern Internet Marketing LLC, and Michael Pocker state that any relief the FTC impliedly may seek

was legally and proximately caused by other persons, entities, or forces, over which the above-named Defendants have no control and for which it had no responsibility. The above-referenced Defendants did not, does not, and cannot control how the Co-Defendants, individually or jointly, market and sell their services to the alleged victims in this cause of action, and, as a result, the Plaintiff is barred from any remedy.

7. Defendants, Modern Spotlight, LLC, Modern Spotlight Group, LLC, Modern Internet Marketing LLC, and Michael Pocker are no longer in the business which it has allegedly violated in FTC's complaint and has been out of the business since February 2018.
8. Defendants, Modern Spotlight, LLC, Modern Spotlight Group, LLC, Modern Internet Marketing LLC and Michael Pocker are not associated with the other Co-Defendants and were run as a separate business at all times.
9. Defendants, Modern Spotlight, LLC, Modern Spotlight Group, LLC, Modern Internet Marketing LLC and Michael Pocker plead that there is no danger of recurrence of alleged similar violations, and the FTC's requested relief is not reasonably related to above-referenced Defendants alleged violations. The FTC must demonstrate that a "cognizable danger of current violation" exists before an injunction may issue, and there is insufficient evidence that such danger exists.
10. Defendants, Modern Spotlight, LLC, Modern Spotlight Group, LLC, Modern Internet Marketing LLC and Michael Pocker plead that the FTC's allegations are predicated on arbitrary and capricious regulatory policies that are not based on substantial evidence. The FTC has no legal basis to conclude that the above-referenced Defendants are liable for the allegations set forth in the Complaint.

11. Defendants, Modern Spotlight, LLC, Modern Spotlight Group, LLC, Modern Internet Marketing LLC and Michael Pocker plead that they acted in good faith to comply with the FTC Act.
12. Defendants, Modern Spotlight, LLC, Modern Spotlight Group, LLC, Modern Internet Marketing LLC and Michael Pocker hereby gives notice that they intend to rely upon any other defense that may become available or appear during the course of continuing or ongoing investigation and discovery in this case.
13. Defendants, Modern Spotlight, LLC, Modern Spotlight Group, LLC, Modern Internet Marketing LLC and Michael Pocker hereby reserve the rough to assert other and related defenses, as may become available in the event of a determination that this action, or some part thereof, is governed by the substantive law of another state or jurisdiction.

WHEREFORE Defendants, Modern Spotlight, LLC, Modern Spotlight Group, LLC, Modern Internet Marketing LLC, and Michael Pocker the above Defendants demand the entry of a judgment against the Plaintiff as follows: (a) that the Plaintiff recover nothing, either by way of damages or other legal or equitable remedy and go henceforth without pay; (b) an award of reasonable attorney's fees and taxable costs to the above Defendants as the prevailing party in this litigation; (c) trial by jury on all factual issues as a matter of right and; (d) any such further relief this Court deems to be just and proper under the facts and circumstances of this case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 17, 2018, I electronically filed the foregoing Answer and Affirmative Defenses with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record in the manner specified, either via transmission of Notice of Electronic Filing generated by the CM/ECF or in some other

authorized manner for those counsel or parties who are not authorized to receive electronic Notices of Electronic Filing.

DATED: July 17, 2018.

Respectfully Submitted

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