

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

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

**FEDERAL TRADE COMMISSION,**

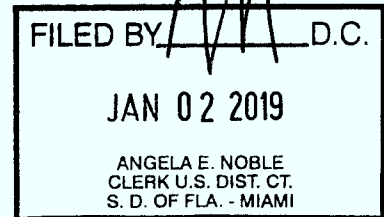
Plaintiff,

v.

**POINTBREAK MEDIA, LLC, et al.,**

Defendants.

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**DEFENDANTS RAMSEY AND PILLONATO OPPOSITION TO PLAINTIFFS MOTION  
FOR SUMMARY JUDGEMENT**

Defendants Ramsey and Pillonato dispute the Plaintiff's general assertion that there are undisputed facts. Defendants state the following:

**COMMON ENTERPRISE**

1. Defendants agree with Plaintiff's assertion regarding the legal standard for Summary Judgement. "To determine whether a common enterprise exists, courts consider, *inter alia*, whether the businesses share office spaces and employees, commingle funds, coordinate advertising efforts, and operate under common control." (Plaintiff's Motion for Summary Judgement, p<sup>1</sup>g 9 paragraph 1). The Declaration of Michael Pocker contradicts all of the factors that the Plaintiff relies on. We have attached a declaration to this opposition.

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<sup>1</sup> Defendants provided Plaintiff with the Pocker declaration on the same date that plaintiff filed their motion for summary judgement.

- a. Shared office space. Plaintiffs state that Pointbreak, Modern Spotlight & DCP Marketing shared office space. (MSJ Page 11) This is contradicted by the Pocker declaration. “There was absolutely no overlap in the two companies use of either business premise and employees, officers, members, agents, etc. of the two companies never shared business premises or conducted their mutual businesses out of the same business premises. (Pocker declaration: paragraph 7)
- b. Employees. Plaintiff state that the Pointbreak defendants shared employees. (MSJ Page 11) This is contradicted by the Pocker declaration. “Pointbreak Media LLC employed roughly 30 individuals between December 2016 and December 2017. To the best of my knowledge, understanding and belief, none of these individuals simultaneously provided services on behalf of Modern Spotlight LLC or Modern Spotlight Group LLC.... To the best of my knowledge, it was only after the termination of employment of these individuals by Pointbreak Media, LLC did any of these individuals provide services on behalf of Modern Spotlight Group LLC.” (Pocker declaration: paragraphs 8-9)
- c. Commingling Funds. Plaintiff state that the Pointbreak defendants commingled funds. (MSJ Page 11) This is contradicted by the Pocker declaration. “Modern Spotlight LLC maintained its bank accounts at Bank of America, then TD bank. Paul Decamera and I were the only authorized signatory on these accounts until Paul left the business at which point I was the only authorized signatory. Modern Spotlight Group LLC maintained its

bank accounts at Chase bank. Steffan Molina and I were the only authorized signatories on any accounts owned by Modern Spotlight LLC or Modern Spotlight Group LLC. Similarly, the funds in these accounts were never used to pay expenses or debts owed by any third party including, but not limited to, Modern Source Media LLC, Pointbreak Media LLC or Allstar Data LLC.”

(Pocker declaration: Paragraph 20)

- d. Coordinated Advertising Efforts. Plaintiff state that the Pointbreak defendants coordinated advertising efforts. (MSJ page 12) This is contradicted by the Pocker declaration. “Modern Spotlight LLC and Modern Spotlight Group LLC marketed its services through the telemarketing channel. All of its marketing efforts were conducted exclusively on their own behalf. It never jointly marketed its products or services with any third parties including, but not limited to, Modern Source Media LLC, Pointbreak Media LLC or Allstar Data LLC.” (Pocker Declaration: Paragraph 21)
- e. Common Control. Plaintiff states that Pointbreak Defendants were under common control. (MSJ Page 12) This is contradicted by the Pocker Declaration. “Neither Justin Ramsey nor Dustin Pillonato had any ownership interest in Modern Spotlight LLC or Modern Spotlight Group LLC. Neither Justin Ramsey nor Dustin Pillonato had any control or influence in the day-to-day business activities of Modern Spotlight LLC or Modern Spotlight Group LLC. Similarly, neither Justin Ramsey or Dustin Pillonato had served in any managerial or officer capacity in either Modern Spotlight LLC or Modern Spotlight Group LLC. I had no ownership interest in Modern Source Media or

Pointbreak Media LLC. I had no control or influence in the day-to-day business activities of Modern Source Media LLC or in Pointbreak Media LLC. Similarly, I did not serve in any managerial or officer capacity in either Modern Source Media LLC or Pointbreak Media LLC.” (Pocker declaration: paragraph 16-19)

2. There are genuine issues of material fact that are in dispute that warrant the denial of the Plaintiff’s Motion for Summary Judgement on this issue. Once the Plaintiff argument fails that a common enterprise exists, all of the blanket assertions in the motion for summary judgement fail as Plaintiff must demonstrate which entity or person is legally liable for the alleged violations. Plaintiff fails to do this.

### **PERSONAL LIABILITY**

3. Plaintiffs state that “Individual Defendants have “knowledge” of unlawful practices if they (1) had “actual knowledge of material misrepresentations” or other unlawful conduct. (2) were “reckless[ly] indifferen[t] to the truth of falsity or such misrepresentations.” Or (3) had an “awareness of a high probability of fraud” and intentionally avoided knowing the truth. See *FTC v. Wilcox*, 926 F. Supp. 1091 (S.D. Fla. 1995).” The deposition testimony of Beau Strickland contradicts that Ramsey & Pillonato were “reckless[ly] indifferen[t] to the truth of falsity of such misrepresentations.”

Q. Sometimes. Okay. Were there any repercussions to - - when you were running the sales floor, was there any repercussions to people that were deviating from the script or if they said something that you didn’t like or they referenced themselves? I think the FTC alleges that

Pointbreak led them to believe that they were going to be removed or that we acted as if we were Google.

A. Yes

Q. Were there repercussions for those sales reps?

A. Yes

Q. What were those?

A. They were terminated.

Q. And those directions came from?

A. Justin and Dustin. (Deposition transcript of Strickland, Page 183-184, Lines 11-25, 1-2)

Q. So it was never allowed by Pointbreak, Dustin and Justin that you could just go off a script and say whatever you wanted to say?

A. No, the frontiers, no, not while I was there, no. (Deposition Transcript of Strickland, Page 184, Lines 15-19)

Q. Was there ever a problem in your time at Pointbreak with people not saying that they were Pointbreak?

A. It could be, but Dustin was a real stickler for making the distinction between Pointbreak and Google that we were not Google. So he would want them to drive home that point. (Deposition Transcript of Strickland, Page 79, Lines 8-14)

4. There are genuine issues of fact and dispute regarding defendants Ramsey & Pillonato reckless indifference to the truth or falsity of any alleged misrepresentation therefore summary judgement should be denied.

#### **TELEMARKETING SALES RULE**

5. Plaintiff state the defendants violated the Telemarketing Sales Rule by initiated “millions of phone calls to phone numbers on the DNC registry.” (MSJ page 15) Plaintiff states that the TSR exempts “calls between a telemarketer and any business to induce the purchase of goods or services.” (MSJ Page 15) However, all calls were to sell business services. If a non-

business received calls such numbers were called in error likely due to the reassignment from a business line to a non-business line. There is currently no way to track such reassigned numbers.

**ORDER**

6. If this court rules in Plaintiffs favor, the proposed order requires defendants to turn over assets that are not in their possession. Specifically, Defendants Ramsey & Pillonato do not have possession of the following:

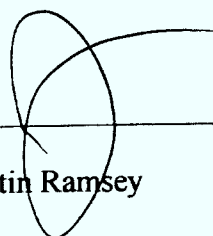
1. White Gold Diamond Tennis Bracelet, 14 kt, 13.10 DWT, approx. 6.3cts, 7.5 inches long;
2. Rolex 116333, Black Roman Numeral Dial;
3. Rolex 116334, #8N8M9651, Scramble Serial, Blue Dial;
4. Rolex 116523, #Y527218, 18kt, 99.80 DWT, Two Tone Rolex Dayton Gold Dial;
5. 3.25ct Diamond Bezel for DateJust II;
6. Hublot 45mm Unico Model 411.NM.1170.RX;
7. "Cartier Love Bracelet," 276 diamonds, 4.25 cts, 18k Yellow Gold;
8. 18k Rose Gold Rolex DayDate II;
9. Gold DayDate 2 Full Diamonds, approx 40cts;
10. Pavé "Love Bracelet" Rose Gold, 276 Diamonds, 5.5cts;
11. Diamond Cartier Nail Bracelet;
12. Matching His and Hers Rose Gold "Cartier" Style Nail Bracelets;
13. (2) Rose Gold DayDate II President Links;
14. (2) Diamond DayDate 2 Links;
15. Breitling A17364, #1395326, Breitling SuperOcean II;

16. Rolex 116244/116200 Oyster, #V764119, Rolex, Silver Dial, 2008;
17. Breitling for Bentley 6.75, White Dial;
18. Rolex 116200, #Z131385, Rolex DateJust, Black Roman Dial, 2006;
19. Gold Coins/Bullion: Canadian Gold Maple, 1ozt;
20. Gold Coins/Bullion: Gold Panda, 1ozt;
21. Gold Coins/Bullion: 1ozt 1980 Gold Maple Leaf;
22. Gold Coins/Bullion: 1 Gold Maple Leaf, 2 Gold Pandas, 1 AGE, 1 Krugg;
23. Breitling Super Avenger, Diamond Dial, Diamond Bezel, Diamond Lugs, 6ct total;
24. Rolex 116880, #Z9715053, Stainless Steel Rolex Yachtmaster II Model 116680;
25. TAG Heuer Ladies' Link, MOP Diamond Dial with Factory Diamond Bezel;
26. Breitling Super Avenger, #2167190; Breitling Super Avenger Stainless Steel with White Dial;
27. Gold Coins/Bullion: (7) 1 ozt Pamp Bars;
28. Cartier Roadster XL Chronograph;
29. Rolex 178274, #M323508, Mid Size 31mm DJ;
30. Rolex Deepsea Dweller, #M870981, with extra link;
31. Rolex 326935, #G95367T0, 18kt, 169.80 DWT, Rolex 18k Rose Gold Sky-Dweller;
32. Rolex 116244/116200, #V764119, Oyster, Silver Dial, 2008;
33. SS Yachtmaster II;
34. Panerai PAM000 #L0277/1000, Men's Panerai Pam000, Black Dial, Brown Leather Strap;
35. Rolex 116300, #Scramble, Rolex DateJust II, Black Diamond Dial with 3.25 ctw Bead Set Diamond Bezel Set in 18kwt;


36. Men's Two Tone 41mm Rolex DateJust Model 116333 G Serial, Slate Dial, with Green Roman Numerals;
37. (2) 18k Yellow Gold Dog Tag Pendants with 18kwtg Beaded Necklace, 40 inches long;
38. Hublot King Power Titanium, 48mm;
39. Audemars Piguet Royal Oak OffShore, 44mm Carbon Ceramic;
40. Rolex Yachtmaster II Two tone, Model 116618;
41. Rose Gold, DayDate President, Oyster Bracelet, Factory Diamond Dial, 36mm;
42. New Rolex Yacht-Master II, Two Tone, Rose;
43. Breitling A17364, #1395326, Breitling SuperOcean II;
44. 1.01ct E/SI1 GIA Certified Cushion Cut Diamond;
45. 14k White Gold Cushion shape diamond halo semi mount totaling .68cts for 1.01 ct GIA (6212749823) Cushion Cut Diamond;
46. Rolex 116810LV, #063E29Q7, Green Ceramic Submariner 116610LV, dated Nov. 2015;
47. Rolex 116610, X0239F623, Stainless Steel Rolex Submariner 116610, Black Dial/Black Bezel, with 3 extra links;
48. 18k Rose Gold Diamond Bezel for Rolex DayDate;
49. 18K White Gold Diamond Cartier Style Love Bracelet;
50. Complete AP ROO 42mm Navy;
51. Hublot King Power Bayern Munich FC;
52. Breitling with Diamond Bezel; and
53. All items that are or were possessed, owned, or held for the benefit of Defendants Pillionato or Ramsey, and that are or were contained in a safe.



7. For all of these reasons the Plaintiff's motion for summary judgement should be denied.



Justin Ramsey



Dustin Pillonato

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

**FEDERAL TRADE COMMISSION** )  
)  
**Plaintiff,** )  
)  
v. ) **Case No. 0:18-CV-61017-CMA**  
)  
**POINTBREAK MEDIA, LLC, ET AL.,** )  
)  
**Defendant.** )

**DECLARATION OF MICHAEL POCKER**

I, Michael Pocker, declare under penalty of perjury that the following is true and correct to the best of my knowledge and recollection:

1. I am over the age of eighteen (18) years and competent to testify.
2. I am a resident of the state of Florida, currently residing at 1047 Quantum Lakes Dr. Boynton Beach FL 33426.
3. From March 2017 through February 2018, I was an owner and manager of Modern Spotlight LLC and Modern Spotlight Group LLC. At all times material to the Plaintiff's First Amended Complaint, I formulated, directed and controlled the activities of Modern Spotlight LLC and Modern Spotlight Group LLC. Modern Spotlight LLC was in the business of claiming and verifying Google business listings, while Modern Spotlight Group LLC was in the business of claiming and verifying Google business listings.
4. From March 2017 through September 2017, Modern Spotlight LLC operated out of office space located at 550 Fairway Dr Deerfield Beach FL 33441.

5. From September 2017 through October 2017, Modern Spotlight Group, LLC operated out of office space located at 550 Fairway Dr Deerfield Beach FL 33441. From October 2017 through February 2018 Modern Spotlight Group, LLC operated out of office space located at 951 Broken Sound Parkway in Boca Raton, Florida.
6. I am aware of Modern Source Media LLC. The principals of Modern Source Media LLC were Justin Ramsey and Dustin Pillonato. Modern Source Media LLC was in the business of citations. It conducted this business out of premises located at 550 Fairway Drive Suite 104 Deerfield Beach, FL 33441.

#### Office Space

7. In order to better utilize office space, there came a time in 2017 when Modern Spotlight Group LLC took over Pointbreak Media LLC's business premises located at 951 Broken Sound Parkway in Boca Raton, Florida pursuant to a sublease agreement. Although this sublease agreement was never executed, the parties abided by its terms and conditions. A copy of this sublease agreement is attached hereto at Exhibit 1. As of the date of this sublease agreement, Pointbreak Media LLC ceased conducting business. As of the date of this sublease agreement, Modern Spotlight Group LLC ceased conducting business out of the premises located at 550 Fairway Drive Suite 104 Deerfield Beach, FL 33441 and commenced conducting business out of the premises located at 951 Broken Sound Pkwy Suite 188. There was absolutely no overlap in the two companies' use of either business premise and employees, officers, members, agents, etc. of the two companies never

shared business premises or conducted their mutual businesses out of the same business premises.

### **Employees**

8. Pointbreak Media LLC employed roughly 30 individuals between December 2016 and December 2017. To the best of my knowledge, understanding and belief, none of these individuals simultaneously provided services on behalf of Modern Spotlight LLC or Modern Spotlight Group LLC.
9. There came a time in 2017 when Pointbreak Media LLC terminated the employment of 30 individuals due to the company ceasing to do business. To the best of my knowledge, it was only after the termination of the employment of these individuals by Pointbreak Media, LLC did any of these individuals provide services on behalf of Modern Spotlight Group LLC.

### **Ownership and Control**

10. I am the owner of Modern Spotlight LLC.
11. The owners of Modern Spotlight Group LLC are Steffan Molina and I.
12. I am aware that the owners of Modern Source Media LLC are Justin Ramsey and Dustin Pillonato.
13. I am aware that the owner of Allstar Data LLC is Justin Ramsey.
14. I am aware that the owner of DCP Marketing LLC is Dustin Pillonato.
15. I am aware that the owners of Pointbreak Media LLC is Justin Ramsey and Dustin Pillonato.

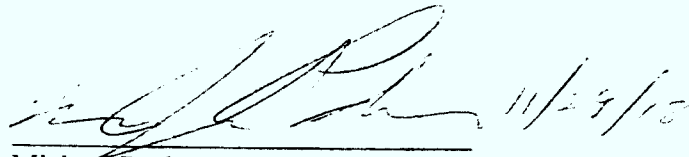
16. Neither Justin Ramsey nor Dustin Pillonato had any ownership interest in Modern Spotlight LLC or Modern Spotlight Group LLC.
17. Neither Justin Ramsey nor Dustin Pillonato had any control or influence in the day-to-day business activities of Modern Spotlight LLC or Modern Spotlight Group LLC. Similarly, neither Justin Ramsey or Dustin Pillonato had served in any managerial or officer capacity in either Modern Spotlight LLC or Modern Spotlight Group LLC
18. I had no ownership interest in Modern Source Media LLC or Pointbreak Media LLC.
19. I had no control or influence in the day-to-day business activities of Modern Source Media LLC or in Pointbreak Media LLC. Similarly, I did not serve in any managerial or officer capacity in either Modern Source Media LLC or Pointbreak Media LLC.

**Bank Accounts, Marketing and Advertising**

20. Modern Spotlight LLC maintained its bank accounts at Bank of America, then TD Bank. Paul DeCamera and I were the only authorized signatory on these accounts until Paul left the business at which point I was the only authorized signatory. Modern Spotlight Group LLC maintained its bank accounts at Chase Bank. Steffan Molina and I were the only authorized signatories on these accounts. Neither Justin Ramsey nor Dustin Pillonato were signatories on any accounts owned by Modern Spotlight LLC or Modern Spotlight Group LLC. Similarly, the funds in these accounts were never used to pay expenses or debts owed by any third party including, but not limited to, Modern Source Media LLC, Pointbreak Media LLC or Allstar Data LLC.
21. Modern Spotlight LLC and Modern Spotlight Group LLC marketed its services through the telemarketing channel. All of its marketing efforts were conducted exclusively on

their own behalf. It never jointly marketed its products or services with any third parties including, but not limited to, Modern Source Media LLC, Pointbreak Media LLC or Allstar Data LLC.

I declare under the penalty of perjury that the foregoing is true and correct.

  
Michael Pocker

Strickland

FTC v. PointBreak Media, et al.

11/8/2018

1 excessively is what Joe's saying.

2 Q. Zack -- do you know who Zack is?

3 A. Nelwitsky or something.

4 Q. Narowitz?

5 A. Could be.

6 Q. Okay. You can put Plaintiff's Exhibit 65  
7 aside.

8 Was there ever a problem in your time at  
9 Pointbreak with people not saying that they were  
10 Pointbreak?

11 A. It could be, but Dustin was a real  
12 stickler for making the distinction between  
13 Pointbreak and Google that we were not Google. So  
14 he would want them to drive home the point.

15 Q. Okay. And you said it could be. Are you  
16 saying it could be a problem or there were times  
17 when it was a problem?

18 A. There were times when it was a problem  
19 when openers just wouldn't say either way, they just  
20 wouldn't say, and so the closers needed to make sure  
21 that they knew that it wasn't Google, that it was  
22 Pointbreak.

23 Q. Okay. Earlier we talked about -- I think  
24 you mentioned that sales agents relayed to you and  
25 customers were complaining about getting -- getting

Strickland

FTC v. PointBreak Media, et al.

11/8/2018

1 Q. Are you familiar with David Deutsch?

2 A. Yes.

3 Q. Okay. Did he train any of the new hires  
4 that came in?

5 A. Yes.

6 Q. And Jimmy Valentino worked with the  
7 closers?

8 A. Yes.

9 Q. Okay. Not the new hires?

10 A. Sometimes.

11 Q. Sometimes. Okay.

12 Were there any repercussions to -- when  
13 you were running the sales floor, was there any  
14 repercussions to people that were deviating from the  
15 script or if they said something that you didn't  
16 like or they referenced themselves? I think the FTC  
17 alleges that Pointbreak led them to believe that  
18 they were going to be removed or that we acted as if  
19 we were Google.

20 A. Yes.

21 Q. Were there repercussions for those sales  
22 reps?

23 A. Yes.

24 Q. What were those?

25 A. They would be terminated.



Strickland

FTC v. PointBreak Media, et al.

11/8/2018

1 Q. And those directions came from?

2 A. Dustin and Justin.

3 Q. Okay. Did Pointbreak ever allow reps to  
4 go off a script or lead people to believe that they  
5 were Google or guarantee any type of placement for  
6 the business?

7 A. I don't know.

8 Q. Okay. So to the best of your knowledge,  
9 Pointbreak never allowed a sales rep, in so many  
10 words, to go rogue off the script?

11 A. No, they're supposed to follow the script.

12 Q. But there would be repercussions if they  
13 did?

14 A. Correct.

15 Q. So it was never allowed by Pointbreak,  
16 Dustin and Justin that you could just go off a  
17 script and say whatever you wanted to say?

18 A. No, the frontiers, no, not while I was  
19 there, no.

20 Q. Closers?

21 A. Closers didn't necessarily have a script  
22 that they had to follow.

23 Q. You said that when Justin Liles came down  
24 with Advice Local, do you remember who else was at  
25 that meeting?