

---

August 10, 2017

## **Recent Guilty Pleas for Price-Fixing Conspiracy Show Commitment to Scrutinizing Social Media and e-Commerce in Criminal Antitrust Prosecutions**

On August 7, 2017, the Department of Justice Antitrust Division announced that an e-commerce company, Zaappaaz Inc., and its president, Azim Makanojiya, agreed to plead guilty to conspiring to fix prices of customized promotional products (such as wristbands and lanyards) sold online to customers in the United States.<sup>1</sup> Zaappaaz, which does business under the names WB Promotions Inc., Wrist-Band.com and Customlanyard.net, has agreed to pay a \$1.9 million criminal fine. Whether Makanojiya will face imprisonment or a fine has not yet been determined. Both defendants have agreed to cooperate with the Antitrust Division's ongoing investigation and it is possible charges against other conspirators are forthcoming.

The case is particularly notable because the defendants are accused of **using social media platforms and encrypted messaging services, such as Facebook, Skype and Whatsapp, to implement and further their illegal agreements.** According to court documents, Zaappaaz and its co-conspirators communicated in person and through encrypted messaging services to coordinate pricing for their customized promotional products sold in the United States. This action is believed to be the first prosecution of an antitrust conspiracy that was furthered through the use of encrypted messaging services. Acting Assistant Attorney General Andrew Finch said the case shows “criminals cannot evade detection by conspiring online and using encrypted messaging.”<sup>2</sup>

On a broader level, this case also illustrates the Antitrust Division's increased focus on criminal prosecutions for violations involving e-commerce. The Division has espoused a commitment in recent years to seeking out and prosecuting collusion that affects internet sales, and the charges filed in the U.S. District Court for the Southern District of Texas in Houston specifically accuse Makanojiya and Zaappaaz of conspiring to impact the pricing of online sales of their products. Furthermore, Mr. Finch described

---

<sup>1</sup> Press Release, Department of Justice, “E-Commerce Company and Top Executive Agree to Plead Guilty to Price-Fixing Conspiracy for Customized Promotional Products,” August 7, 2017, available at <https://www.justice.gov/opa/pr/e-commerce-company-and-top-executive-agree-plead-guilty-price-fixing-conspiracy-customized>.

<sup>2</sup> *Supra* note 1.

---

the prosecutions as a sign that consumers' "right to a marketplace free of unlawful collusion" exists "whether they are shopping at retail stores or online."<sup>3</sup>

The Division investigated and prosecuted a similar price-fixing scheme in 2015 when it targeted e-commerce sellers of wall décor. Specifically, the Division alleged that third-party sellers on Amazon Marketplace were coding commercially available algorithm-based pricing software such that the software would coordinate the sellers' respective prices consistent with their anti-competitive agreement. As a result of that prosecution, David Topkins, a former executive of one of the e-commerce sellers, pled guilty to conspiring to fix the prices of posters sold through Amazon Marketplace in the United States. In addition to his plea, Mr. Topkins also agreed to cooperate in the Division's ongoing investigation and pay a \$20,000 criminal fine.<sup>4</sup>

### **Key Takeaways**

Companies who participate in e-commerce should be aware that online sales are subject to the same standards as more traditional sales, and that the Antitrust Division has shown a recent interest in rooting out and prosecuting price-fixing schemes affecting online markets that at first instance would seem nearly impossible to detect.

Companies should also be aware of the risk that employees may form and further conspiracies using encrypted messaging services that traditional compliance programs will not detect. Companies should ensure that their compliance programs include provisions that cover the use of text messaging and encrypted chat applications for business purposes.

\* \* \*

---

<sup>3</sup> *Supra* note 1.

<sup>4</sup> Press Release, Department of Justice, April 6, 2015, available at <https://www.justice.gov/opa/pr/former-e-commerce-executive-charged-price-fixing-antitrust-divisions-first-online-marketplace>.

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

Robert A. Atkins

+1-212-373-3183

[ratkins@paulweiss.com](mailto:ratkins@paulweiss.com)

Craig A. Benson

+1-202-223-7343

[cbenson@paulweiss.com](mailto:cbenson@paulweiss.com)

Joseph J. Bial

+1-202-223-7318

[jbial@paulweiss.com](mailto:jbial@paulweiss.com)

Andrew J. Forman

+1-202-223-7319

[aforman@paulweiss.com](mailto:aforman@paulweiss.com)

William B. Michael

+1-212-373-3648

[wmichael@paulweiss.com](mailto:wmichael@paulweiss.com)

Charles F. (Rick) Rule

+1-202-223-7320

[rrule@paulweiss.com](mailto:rrule@paulweiss.com)

Aidan Synnott

+1-212-373-3213

[asynnott@paulweiss.com](mailto:asynnott@paulweiss.com)

*Associates Patrick Greco and Eric Segal contributed to this Client Memorandum.*