

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Criminal Action No.

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. KBM GROUP, LLC,

Defendant.

INFORMATION

The United States charges:

COUNT ONE

1. Between no later than in or around January 2012 and continuing until in or around December 2018, in the State and District of Colorado and elsewhere, defendant

KBM GROUP, LLC

did knowingly combine, conspire, confederate, and agree with other persons, known and unknown to the United States, to commit mail fraud, in violation of Title 18, United States Code, Section 1341, and wire fraud, in violation of Title 18, United States Code, Section 1343.

GENERAL ALLEGATIONS

2. From approximately January, 2012 through December 2018 (“the Relevant Time Period”), KBM Group LLC (“KBM”) was a Delaware limited liability corporation.

3. KBM advertised itself as a “global leader in knowledge-based marketing solutions” that helped “businesses worldwide use their data to improve marketing performance, increase profits and ROI.” KBM collected consumer data and employed sophisticated data modeling to assist its clients with identifying new potential customers and obtaining new information about the clients’ existing customers. In particular, KBM’s “iBehavior” cooperative database used computer models that analyzed a client’s transactional data (*i.e.*, the records of clients’ interactions with consumers) along with the data of other clients to identify targeted lists of consumers likely to respond to the client’s marketing campaigns and solicitations. The iBehavior cooperative database contained data on more than 100 million households in the United States and served a client base of at least 2,500 clients at any given time.

4. During the Relevant Time Period, KBM was organized into several lines of business. The Merchant Services unit (“Merchant Services”) licensed consumer data from the iBehavior cooperative database to existing clients and also recruited new clients to join the database. Within Merchant Services there were several groups, including the Business Development group, which solicited new clients for Merchant Services, and the Solo-Continuity (“SOCO”) group, which focused on data licensing to clients that mailed consumers solicitations offering a single product or to clients engaged in continuity sales programs (like a monthly recurring subscription program).

MANNER AND MEANS

5. During the Relevant Time Period, clients of Merchant Services included a number of entities and individuals that sent mailings to consumers with deceptive solicitations (“Deceptive Clients”), including sweepstakes, astrology, auto-warranty, dietary-supplement, and government-grant offers. Consumers who responded to these deceptive solicitations frequently fell within the same demographic pool: elderly and vulnerable Americans.

6. During the Relevant Time Period, KBM employees working within the scope of their employment in Merchant Services arranged for KBM to license consumer data to more than a dozen Deceptive Clients they knew were engaged in fraud. The consumer data licensed to the Deceptive Clients came both from other Deceptive Clients and legitimate business, non-profit, and charitable-organization clients, including clients with many elderly customers.

7. Due to their interactions with the Deceptive Clients and/or their representatives, KBM employees were familiar with at least certain clients’ practices, as well as certain deceptive solicitations. For example, when KBM recruited a Deceptive Client (Client 1), an employee circulated samples of Client 1’s fraudulent solicitations to many other Merchant Services employees, including the General Manager. The sample solicitations, which Client 1 proposed to mail to thousands of consumers identified by KBM, included statements like “Our company has been tasked with closing out your account by paying out a certified check in your name. . .you are indeed the lucky recipient and the exact amount of the payment I am require (sic) to send you is really: 45,000.00 dollars by bank check in your name.” The General Manager of Merchant

Services responded to the email that included the sample solicitations, stating, “Who responds to this stuff?? Obviously we have those people.”

8. KBM employees worked to develop and increase business with the Deceptive Clients despite receiving notice that some of the Deceptive Clients and the perpetrators of similar schemes had been arrested, charged with crimes, convicted, and otherwise were subject to law enforcement actions for defrauding U.S. consumers. For example, a KBM employee emailed a group of colleagues about a major Department of Justice action focused on combatting mail fraud that targeted the elderly, exclaiming “We know some of these guys!” and specifically named Client 1 as being involved.

9. KBM employees engaged in this conduct, in part, to benefit KBM, to acquire valuable data from Deceptive Clients for KBM, and to enrich themselves through sales-based compensation. Merchant Services’ development of business relationships with Deceptive Clients and acquisition of their data enhanced KBM’s ability to model consumer data and thereby enable both Deceptive Clients and legitimate clients to solicit new consumers.

10. Many of the Deceptive Clients operated “astrology” schemes. The mail solicitations sent by these schemes promised that a “psychic” had an individualized vision about each mail recipient and offered purportedly personalized astrological services or unique, supernatural objects in exchange for a fee. In reality, the mailings were mass-produced, and victims submitting money in response to the mailings received nothing of material value in return.

11. Client 2 was an “astrology” Deceptive Client of Merchant Services.

a. Client 2 provided Merchant Services employees with sample solicitations to show what it intended to mail to thousands of consumers identified by KBM. These solicitations included statements like “My dear <FirstName>, I am going to send you, free of charge, the most POWERFUL GOOD LUCK TALISMAN you’re ever going to experience!. . . I learned that a non-profit organization was offering certain people the chance to receive and wear this Magnetor Magnetic Bracelet for 30 days. . . This is why you, <FirstName> have been selected – and why I am writing to you today so that you can participate in this independent study, for FREE. . . Also, <FirstName>, to prove your real desire to participate in this special and very serious research project (and to eliminate curiosity seekers), I am asking only for a small contribution towards the costs of research and publication: a symbolic contribution of only \$20.”

b. Despite the fraudulent nature of Client 2’s solicitations, KBM licensed lists containing the names and addresses of over 350,000 U.S. consumers to Client 2 over several years. Indeed, KBM stopped working with Client 2 only after a federal court enjoined Client 2 and numerous individuals from continuing to engage in mail fraud in November 2014. A KBM employee notified a KBM Vice President of the injunction, sending the Vice President a press article entitled “Did these mail-order ‘psychics’ see the Justice Department coming?” which included allegations that Client 2 had “defrauded tens of millions of dollars from thousands of vulnerable citizens.”

c. A few months later, KBM employees signed up another Deceptive Client despite the broker's acknowledgment that the new client was "another astrology type mailer similar to [Client 2] (who is no longer mailing)[.]"

12. Merchant Services also provided potential victim information to a number of mass-mailing fraud schemes that sent "sweepstakes" solicitations to thousands of consumers, stating that the consumers had won a large prize. The solicitations claimed that, to collect the promised prize, a recipient consumer needed to remit a small processing fee. In reality, victims who paid the fee received nothing of value and were subjected to a barrage of additional solicitations making similar false promises.

13. For example, Client 3 was a "sweepstakes" Deceptive Client of Merchant Services.

a. Client 3 provided KBM with sample solicitations to show what it intended to mail to thousands of consumers identified by KBM. These solicitations included statements like "CONGRATULATIONS! YOU ARE A GUARANTEED AWARD RECIPIENT. CHECK IN THE NAME OF [XXXFIRST AND LAST NAMEXXX] NOW AVAILABLE . . . You have definitely won a cash prize. CONGRATULATIONS! \$3,900,000.00 THREE MILLION NINE HUNDRED THOUSAND DOLLARS STANDS TO BE PAID AND YOU'RE HOLDING THE WIN OPPORTUNITY DOCUMENTS IN YOUR HANDS RIGHT NOW! Here's all you need to do to verify your claim. . . once you've verified your information, sign, date and send us the document with your one-time processing fee of \$20 in the envelope herewith."

b. During the recruitment process for Client 3, the KBM Finance Department conducted a due diligence review and found various red flags, including online consumer complaints about Client 3 being a scam. One KBM employee in the SOCO group stated, “they’re coming up as scams in google (not surprising)” and also noted, “They are scams and likely don’t have websites.” These red flags were elevated to the Finance Department Controller who subsequently did not approve extending a line of credit to Client 3, thereby inhibiting the licensing of data to Client 3. The General Manager of Merchant Services and a vice president persuaded the Finance Department Controller to approve Client 3. KBM began shipping consumer data to Client 3 shortly thereafter.

c. Despite the fraudulent nature of Client 3’s solicitations and the red flags identified during the Finance Department due diligence process, KBM licensed the names of more than a hundred thousand U.S. consumers to Client 3.

14. Throughout the Relevant Time Period, KBM lacked formal compliance policies that prohibited licensing data to clients with deceptive or fraudulent solicitations. At times, on a temporary and ad hoc basis, certain employees took it upon themselves to restrict data licensing to clients that had been the subject of law enforcement action. Nevertheless, KBM employees, including managers, knew about deceptive and fraudulent solicitations in the Solo-Continuity sector and resisted efforts to impose more stringent and consistent compliance and due diligence standards.

15. During the Relevant Time Period, KBM sold data associated with millions of U.S. consumers to clients engaged in fraudulent mass-mailing schemes.

All in violation of Title 18, United States Code, Section 1349.

FORFEITURE ALLEGATION

18 U.S.C. § 981(a)(1)(C), 28 U.S.C. § 2461(c)

16. Upon conviction of the offense alleged in Count One, defendant shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c), any property, real or personal, constituting, or derived from, proceeds obtained directly or indirectly as a result of such offense.

17. Because the property described above as being subject to forfeiture as a result of any act or omission of the defendant-

- (1) cannot be located upon the exercise of due diligence,
- (2) has been transferred or sold to, or deposited with, a third person,
- (3) has been placed beyond the jurisdiction of the Court,
- (4) has been substantially diminished in value, or
- (5) has been commingled with other property which cannot be subdivided without difficulty,

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28 United States Code Section 2461, to seek forfeiture of any other property of said defendant up to the value of said property listed above as being subject to forfeiture.

Dated: June 11, 2021

MATTHEW T. KIRSCH
Acting United States Attorney

GUSTAV W. EYLER
Director

Consumer Protection Branch
United States Department of Justice

By: s/ Rebecca S. Weber
Rebecca S. Weber
By: s/ Hetal Doshi
Hetal Doshi
Assistant United States Attorneys
United States Attorney's Office
1801 California Street, Suite 1600
Denver, Colorado 80202
(303) 454-0332 (Weber)
(303) 454-0103 (Doshi)
Rebecca.Weber@usdoj.gov
Hetal.Doshi@usdoj.gov
Attorneys for the United States

By: s/ J. Matt Williams
J. Matt Williams
Trial Attorney
Consumer Protection Branch
United States Department of Justice
450 5th Street, NW, Suite 6400
Washington, DC 20530
(202) 532-4521
Joseph.M.Williams@usdoj.gov
Attorney for the United States