

STATE OF WEST VIRGINIA  
OFFICE OF THE ATTORNEY GENERAL  
PATRICK MORRISEY  
CONSUMER PROTECTION DIVISION

**IN RE:       100 LLC**  
**d/b/a Dirty Girl Mud Run**

**ASSURANCE OF DISCONTINUANCE**

The State of West Virginia, by and through Attorney General Patrick Morrissey, and 100 LLC (d/b/a Dirty Girl Mud Run) (hereinafter “Respondent”) freely and voluntarily enter into this Assurance of Discontinuance relating to 100 LLC’s involvement in the cancelled 2014 Dirty Girl Mud Run in Charleston, West Virginia. Pursuant to West Virginia Code § 46A-7-107, Respondent 100 LLC hereby agrees to the following terms, conditions, and agreement in the conduct of its business and assures any and all future conduct will comply with the West Virginia Consumer Credit and Protection Act (W.Va. Code § 46A-1-1 *et seq.*) and other applicable law.

**BACKGROUND**

1.       100 LLC is a for-profit limited liability corporation organized under the laws of Wisconsin and whose headquarters is located at 405 Genesee Street, Delafield, Wisconsin.

2.       Respondent 100 LLC conducts business in multiple locations throughout the United States, including specifically the State of West Virginia, under the name Dirty Girl Mud Run. 100 LLC is registered with the West Virginia Secretary of State to conduct business in the State of West Virginia.

3. The Dirty Girl Mud Run is a themed 5K race in which participants run through a pre-designed course full of mud stations and obstacles. The run is intended only for females, and participants pay a fee ranging from \$40.00 to \$95.00, depending on the date of registration.

4. In April 2013, 100 LLC organized, conducted and sold tickets to consumers for a Dirty Girl Mud Run at Coonskin Park in Charleston, Kanawha County, West Virginia. The event happened as scheduled.

5. In October 2013, consumers who participated in the April 2013 Dirty Girl Mud Run in Charleston began receiving solicitations from Respondent to participate in the 2014 Dirty Girl Mud Run.

6. At the time, Respondent 100 LLC represented to consumers that this event would occur on or about June 21, 2014 somewhere in Charleston, West Virginia.

7. Respondent offered consumers who registered early for the 2014 event a discount on the \$95.00 registration fee. Early registrants paid fees directly to 100 LLC through the Dirty Girl website.

8. In February 2014, Respondent notified consumers who had registered early for the June 2014 Dirty Girl Mud Run that the event had been rescheduled to July 26, 2014 at Cato Park, Charleston, West Virginia.

9. Beginning in January of 2014, 100LLC contracted with Eventbrite, Inc. to serve as a third-party ticket service for the Dirty Girl Mud Runs across the country, including the scheduled July 26, 2014 event in Charleston.

10. As a third-party ticket service, consumers paid registration fees ranging from \$65.00 to \$95.00 through Eventbrite's website Eventbrite.com. In exchange for the payment

of the required registration fee, Eventbrite, Inc. created a “ticket” to the Dirty Girl Mud Run and generated a receipt for the event for participants.

11. Hence, depending on the date of registration, participants paid monies to either Eventbrite or 100LLC directly for the 2014 Charleston event.

12. On July 22, 2014, the 2014 Dirty Girl Mud Run in Charleston, West Virginia was canceled. An estimated 2,700 participants had registered and paid a registration fee.

13. On the same day, 100 LLC issued a statement that no refunds were going to be given for paid registration fees. Respondent’s no-refund position was premised upon the registration agreement signed by all participants, which stated in relevant part:

12. I acknowledge and agree that all entries are final with no refunds.  
WAIVER OF LIABILITY AND RELEASE 13. I acknowledge and agree that the Event officials reserve the right to cancel or change the Event if in their sole judgment such cancellation or change is necessary or prudent due to emergency, severe weather or local or national disaster, and that if there is a cancellation or change no refund of entry fees will be made.

(¶¶ 12 and 13 of participant agreement)

14. Following the announced cancellation and refusal to provide refunds of the paid registration fees, the affected participants began filing consumer complaints with the West Virginia Attorney General’s Consumer Protection Division for alleged violations of the West Virginia Consumer Credit and Protection Act (W.Va. Code § 46A-1-101 *et seq.*).

15. Within 24-hours, over 250 consumer complaints had been filed with the West Virginia Attorney General’s office, and continued to be filed in the subsequent days.

16. Having received numerous complaints, the Attorney General’s Consumer Protection Division opened an investigation into the Dirty Girl Mud Run and the circumstances surrounding the cancellation and the lack of refunds.

17. On July 25, 2014, Eventbrite, Inc. announced that it was going to provide full refunds to Charleston participants that registered through Eventbrite, and entered into a Refund Facilitation Agreement with the Attorney General's Office.

18. The Refund Facilitation Agreement, however, did not include refunds for those registering directly with Respondent 100 LLC, estimated to be about 700 individuals.

19. 100 LLC has fully cooperated with the Attorney General's office in its investigation of the cancellation of the 2014 Charleston Dirty Girl Mud Run, and is desirous of issuing refunds to any individual who did not register for the event through Eventbrite. This Assurance facilitates the refund process for the remaining individuals that have not yet been refunded their registration fees.

#### **ATTORNEY GENERAL ALLEGATIONS AND APPLICABLE LAW**

20. The Attorney General's Consumer Protection Division commenced an investigation of 100 LLC after receiving multiple complaints alleging that 100 LLC and other entities engaged in unfair or deceptive acts or practices with the sale of tickets to participants of the 2014 Charleston Dirty Girl Mud Run, and the cancellation thereof.

21. Complaints to the Attorney General's office generally alleged that Respondent 100 LLC, and/or its contracted partners Human Movement Management (HMM) and Eventbrite, Inc., unilaterally cancelled the event and then failed to provide refunds. It is further alleged that the cancellation was not a weather/safety related issue, but rather a financial decision by 100 LLC and/or HMM.

22. The West Virginia Consumer Credit and Protection Act (WVCCPA) prohibits, *inter alia*, an entity from engaging in unfair or deceptive acts or practices in their relation with a consumer. *See* W. Va. Code § 46A-6-104.

23. When an entity represents to the public that they are qualified and sufficiently capitalized to conduct an event, and solicits consumers to participate in that event for a fee, when they knew or should have known that they could not meet their obligations to conduct the event, or had no intention of doing so from the beginning, such conduct may constitute an unfair or deceptive acts or practices in violation of the WVCCPA. *See* W.Va. Code § 46A-6-102.

24. Further, when an entity requires a consumer to sign a “Waiver” document, which purports to relieve the entity from their obligations to make refunds under any circumstances, even when the event is cancelled by the entity’s own foreseeable inability to meet their financial obligations to conduct the event, and not circumstances beyond their control, the entity has engaged in conduct resulting in their unjust enrichment at the expense of innocent consumers. Such conduct may also constitute an unfair or deceptive act or practice in violation of the WVCCPA.

25. Additionally, by requiring participants to sign a “Waiver” that purportedly relieves an entity of all obligations to make refunds even when the event is cancelled by the entity’s own misconduct without any fault of the consumers, the entity may violate the public policy of West Virginia that requires fair dealings with consumers.

## AGREEMENT

26. In recognition of the numerous complaints that have been filed with the Attorney General's office and in an effort to fully comply with the West Virginia Consumer Credit and Protection Act, Respondent 100 LLC hereby agrees to take the following actions:

- a. Within ten (10) days, 100 LLC will compile a master listing of all 2014 Charleston Dirty Girl Mud Run participants that registered directly with 100 LLC and/or an entity other than Eventbrite, Inc.; and will share such list with the Attorney General's office, along with appropriate notations reflecting the amount paid and date of such payment.
- b. Upon submission of the master list, 100 LLC agrees to begin making reimbursement of the registration fees to the non-Eventbrite registrants, and agrees that such reimbursement will be completed within ninety (90) days of the date of execution of this Assurance.
- c. Following submission of the master list, 100 LLC shall provide to the Attorney General every ten (10) days thereafter an updated master list reflecting the amount refunded to each participant and the date upon each such occurrence.
- d. 100 LLC will work cooperatively with the Attorney General's Office to ensure full refunds to appropriate affected participants, and should any participant make a claim with the Attorney General's office that she was not given a refund or complete refund of her paid registration fees, 100 LLC will collaborate with the Attorney General's Office to resolve the issue.

27. 100 LLC, its employees, agents, servants, heirs, successors, and assigns, hereby promises and voluntarily assures the Attorney General that it will comply with the WVCCPA, and other applicable state and federal laws in its future business practices.

28. 100 LLC agrees to address all complaints that may be filed with the Attorney General, including complaints arising from transactions entered into prior to the date of this Assurance, and resolve such complaints in accordance with the applicable state and federal laws and the terms of this Assurance.

29. 100 LLC shall notify the Office of the Attorney General at least three (3) months prior to the organization and/or advertisement of any future event owned, produced and/or sponsored by 100 LLC in the State of West Virginia. That notification shall include, but not be limited to, the event refund policy and contractual terms that will be required of consumers.

30. 100 LLC further promises not to represent directly or indirectly, or in any manner whatsoever, that the Attorney General has sanctioned, condoned or approved, in any manner whatsoever, any part or aspect of its business operations, unless written authorization is obtained from the Attorney General, and then only to the extent of said written authorization.

31. It is further agreed and understood that, while the parties to this Assurance presently intend to cooperate in securing and obtaining compliance with the terms of this Assurance, the matters settled by the filing of this Assurance may be reopened by the Attorney General for the purpose of enforcing the specific terms of this Assurance.

32. It is understood and agreed that the refund being provided by 100 LLC to participants does not preclude or prohibit either 100 LLC and/or the State of West Virginia (including specifically the Attorney General's office) from seeking additional legal remedies and civil penalties from other entities, including specifically Human Movement Management, that may ultimately bear liability for damages to participants, consumers, and/or others arising out of the cancellation of the 2014 Charleston Dirty Girl Mud Run.

33. It is agreed and understood that this Assurance is and shall be public.

34. It is understood and agreed that upon the completion of the above-referenced tasks, the Attorney General's office shall execute a general release of 100LLC, and its individual owners related to the 2014 Charleston Dirty Girl Mud Run.

35. It is further understood and agreed that should 100 LLC declare bankruptcy prior to the completion of reimbursement to participants and of the above-referenced tasks, the individual owners of 100 LLC (Christopher McIntosh and Tim Abair), their assigns, heirs, and successors, shall be personally liable for the terms contained herein.

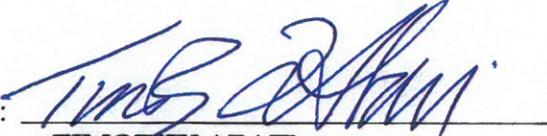
36. The Parties expressly understand and agree that this settlement is a compromise of disputed claims and that this Agreement shall not be construed as, or be deemed to be, an admission of liability or wrongdoing, a waiver of any legal rights, defenses, or claims, or evidence of an admission or concession of any fault or liability or damage whatsoever on the part of 100 LLC.

**IN WITNESS WHEREOF**, 100 LLC has caused this Assurance to be executed and represents that the person whose signature appears below is authorized to bind it to the terms and conditions set forth herein. The Attorney General of West Virginia or his designate has approved this Assurance.

AGREED TO BY:

100 LLC d/b/a DIRTY GIRL MUD RUN

By:



TIMOTHY ABAIR  
Chief Financial Officer, 100 LLC  
405 Genesee Street  
Delafield, Wisconsin

Date: August 11, 2014

STATE OF WISCONSIN,

COUNTY OF Waukesha, TO WIT:

I, Karla L. Lauersdorf, a Notary Public in and for the County and State aforesaid, do hereby certify that TIMOTHY ABAIR, individually and formally on behalf of 100 LLC d/b/a the Dirty Girl Mud Run, has this day acknowledged and signed the foregoing Assurance of Discontinuance before me in my said County and State.

My commission expires 01/31/2016.

  
NOTARY PUBLIC



APPROVED BY:

STATE OF WEST VIRGINIA, by and through  
PATRICK MORRISEY, Attorney General

By: \_\_\_\_\_

*Patrick Morrissey*

**PATRICK MORRISEY**  
Attorney General  
WV State Bar # 11777  
Office of Attorney General  
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Charleston, WV 25305

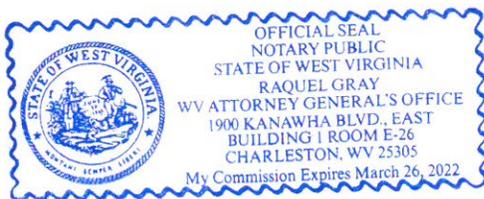
Date: August 11, 2014

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, TO WIT:

I, *Raquel Gray*, a Notary Public in and for the  
County and State aforesaid, do hereby certify that PATRICK MORRISEY on behalf of the  
State of West Virginia has this day acknowledged and signed the foregoing Assurance of  
Discontinuance before me in my said County and State.

My commission expires *March 26, 2022*.



*Raquel Gray*  
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NOTARY PUBLIC