

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CIVIL DIVISION

CAUSE No. 117 of 2019

BETWEEN:

MEDIA CORP ~~PTE LTD~~

Plaintiff

AND:

ROUNDUP MEDIA LLC

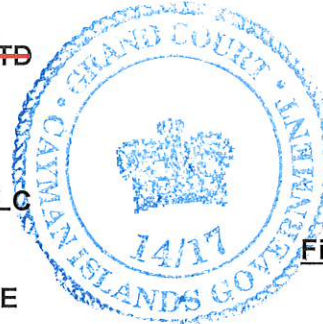
First Defendant

AARON DEBEVOISE

Second Defendant

ALLEN DEBEVOISE

Third Defendant



---

**AMENDED WRIT OF SUMMONS**

**(amended pursuant to Order 20, Rule 1 of the Grand Court Rules 1995 (Revised Edition))**

---

TO: Roundup Media LLC  
21 Little Falls Drive  
Wilmington, Delaware  
USA 19808

Allen Debevoise  
8855 St. Ives Drive,  
Los Angeles, California  
USA 90069

Aaron Debevoise  
407 Via De La Paz  
Pacific Palisades, California  
USA 90272

THIS AMENDED WRIT OF SUMMONS has been issued against you by the above-named Plaintiff c/o Ogier, 89 Nexus Way, Camana Bay, Grand Cayman KY1-9009, Cayman Islands in respect of the claim set out on the next page.

Within 14 days after the service of this Amended Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, PO Box 495 GT, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this ~~23<sup>rd</sup> day of July 2019~~ 9 August 2019

NOTE – This Amended Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the date of issue unless renewed by Order of the Court.

**IMPORTANT**

Directions for Acknowledgment of Service are given with the accompanying form.

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CIVIL DIVISION

CAUSE No. 117 of 2019

BETWEEN:

MEDIA CORP ~~PTE LTD~~

Plaintiff

AND:

ROUNDUP MEDIA LLC

First Defendant

AARON DEBEVOISE

Second Defendant

ALLEN DEBEVOISE

Third Defendant

---

**AMENDED STATEMENT OF CLAIM**

**(amended pursuant to Order 20, Rule 3 of the Grand Court Rules 1995 (Revised Edition))**

---

**Parties**

- 1 The Plaintiff, Media Corp ~~Pte Ltd~~ ("**Media Corp**") is and was at all material times an exempted company incorporated in the Cayman Islands on 28 November 2016 ~~10 April 2013~~, whose registered office is at 4<sup>th</sup> Floor, Harbour Place, 103 South Church Street, Grand Cayman, PO Box 10240, KY1-1002, Cayman Islands. Media Corp is an investor in intellectual property, as particularised below insofar as is material to these proceedings.
- 2 The First Defendant, Roundup Media, LLC d/b/a Network of One ("**RoundUp**") is and was at all material times, a limited liability company organised under the laws of the State of Delaware in the United States on 2 August 2013, whose registered office is at 21 Little Falls Drive, Wilmington, DE 19808, United States. RoundUp purports to offer online content marketing solutions through its proprietary software and data analytics technology.
- 3 The Second Defendant, Aaron Debevoise, is and was at all material times a natural person and resident of the State of California and a founder, the CEO and a director of RoundUp.
- 4 The Third Defendant, Allen Debevoise, is and was at all material times a natural person and resident of the State of California and a director of RoundUp.

## Introduction

5 The claims by the Plaintiff against the Defendants are set out in detail in this [Amended Statement of Claim](#). Without prejudice to that detailed case, and by way of summary, the general nature of the Plaintiff's claim against the Defendants is summarised below.

6 This is an action by Media Corp against the Defendants for:

- (a) breach of a Management Agreement entered into between Media Corp and RoundUp dated 9 December 2016 (the "**Management Agreement**");
- (b) breach of RoundUp's fiduciary duties owed to Media Corp arising under the Management Agreement;
- (c) negligence; and
- (d) enforcement of a Guaranty dated 9 December 2016 (the "**Guaranty**") given by Aaron Debevoise and Allen Debevoise (together, the "**Debevoises**").

7 The Management Agreement called for RoundUp to identify and acquire, on behalf of Media Corp, certain video content to be displayed on YouTube and other online platforms ("**Content**"), and then to manage and optimize the monetization of that Content, using, among other things, algorithm technology that RoundUp claimed to have created that would allow for such monetization to occur reliably (collectively the "**Services**").

8 The Management Agreement also provided for Media Corp to make available an acquisition facility of up to US\$30 million in cash (the "**Acquisition Facility**") on specified terms in order to fund specific Content purchases and to fund RoundUp's provision of the Services.

9 To induce Media Corp to provide the Acquisition Facility to RoundUp, both the Debevoises provided the Guaranty to Media Corp whereby they personally guaranteed, jointly and severally, US\$600,000 of payments made by Media Corp pursuant to certain terms of the Management Agreement.

10 It is Media Corp's position that throughout the parties' contractual relationship, RoundUp failed to adequately perform the Services, failed to discharge its fiduciary duties owed to Media Corp and was negligent in the provision of the Services under the Management Agreement. In particular, RoundUp failed to timely identify suitable Content for purchase, failed to purchase Content capable of performing as promised, and misled Media Corp regarding the profitability of the Content it had purchased and planned to purchase during the term of the Management Agreement.

11 As a result, on 14 July 2017, Media Corp terminated the Management Agreement. By then, Media Corp had paid just short of US\$2 million to fund Content purchases from the Acquisition Facility and paid US\$2.1 million to RoundUp as consideration (albeit repayable consideration under the terms of the Management Agreement) for the Services (guaranteed by the

Debevoises pursuant to the terms of the Guaranty) and to help fund RoundUp's ongoing operations.

- 12 RoundUp is also liable to Media Corp for US\$275,000 in costs, expenses and attorneys' fees associated with the Management Agreement. Further and/or in the alternative, RoundUp is liable to Media Corp for damages suffered as a result of RoundUp's breach of its fiduciary duties and/or negligence in performing the Management Agreement.
- 13 Further, it is Media Corp's position that the Debevoises are both jointly and severally liable, under the express terms of the Guaranty, to pay Media Corp US\$600,000.
- 14 Both the Management Agreement and the Guaranty also contain fee-shifting provisions that obligate the Defendants to pay Media Corp's costs and expenses associated with this claim.

### **Management Agreement**

- 15 In late 2016, Media Corp engaged in discussions with RoundUp with respect to the parties entering into an agreement whereby Media Corp would provide RoundUp with substantial capital in order to acquire the Content on Media Corp's behalf, with RoundUp then managing and optimizing the monetization of the Content for the benefit of Media Corp.
- 16 During those discussions, RoundUp made certain representations to Media Corp on which Media Corp relied. Firstly, RoundUp represented that it had developed an algorithm that would allow Media Corp to obtain a relatively quick return on its investment with respect to the purchased video Content. Secondly, RoundUp represented that it was able to accurately project how its Content purchases would perform and that it would do so with due care and skill (collectively the "**Initial Representations**")

### **Particulars**

- (a) The Initial Representations were partly oral and partly in writing. In so far as they were oral, they were made during numerous phone calls and meetings between the parties during the several months leading up to signing the Management Agreement. In so far as they were in writing, they were contained within emails exchanged between the parties during the same period.
- 17 During those conversations, RoundUp represented that it could achieve certain results — namely, that RoundUp would be able to purchase certain Content on YouTube, and that it could be monetized for specific returns. Based on these Initial Representations, the parties devised a formula, which is contained in clause 4(b) of the Management Agreement, called the Content Productivity Ratio ("**CPR**") with certain targets ("**CPR Targets**"). Using the Initial Representations made by RoundUp, the parties agreed upon fixed CPR thresholds. Had RoundUp's Initial Representations not been misleading, Media Corp would not have entered into the Management Agreement. Following those discussions, and the Initial Representations by RoundUp, on or about 9 December 2016, Media Corp and RoundUp entered into the Management Agreement. Pursuant to the terms of the Management Agreement, RoundUp, *inter alia*, agreed to provide certain services to Media Corp, including:

- (a) *"...identifying, qualifying and acquiring the Videos for Media Corp.,...the Acquisition price of which shall be paid using funds from the Acquisition Facility..."; and*
- (b) *"...exploiting, managing, optimizing, accounting and otherwise administering the Videos including in Media Corp.'s Video Catalog."*

(collectively the "**Services**").

18 Media Corp, in turn, agreed to fund the Acquisition Facility consisting of cash, "solely for the purposes of making Permitted Acquisitions of video content for Media Corp during the Investment Period" (clause 3(a)). The Investment Period was to run until the earliest of:

- (a) 31 December 2018; and/or
- (b) Media Corp's investment of a full \$30 million; and/or
- (c) termination of the Management Agreement (clause 2(b)(i)).

19 In consideration of RoundUp providing the Services to Media Corp under the Management Agreement, Media Corp agreed that:

- (a) it would pay RoundUp a fee consisting of 30% of all net revenues earned on the acquired videos under the Management Agreement in perpetuity ("**Services Fee**") (clause 6(b)); and
- (b) it would pay RoundUp (subject to the Management Agreement being terminated by Media Corp in accordance with its terms), by way of an advance against the Services Fee, a minimum of US\$300,000 per month ("**Guaranteed Payment Amount**") until the earlier of:
  - (i) the date the aggregate Guaranteed Payment Amount equalled US\$3 million; or
  - (ii) the 10 month anniversary of the Management Agreement (clause 6(b)(i)).

20 There were further relevant terms of the Management Agreement, namely:

- (a) Media Corp had the option to terminate the Management Agreement in its sole and unfettered discretion if at any time it was not satisfied with the operational condition or prospects of the business ("**Termination Clause**") (clause 13(b)(i)(E));
- (b) any fees, costs and expenses incurred by either RoundUp or Media Corp in connection with the enforcement of their respective rights under the Management Agreement were to be reimbursed and paid by the other party in addition to the Costs and Administrative Fee (clause 14(g)); and
- (c) the rights and obligations of the parties under the Management Agreement were to be governed by the laws of the Cayman Islands (clause 14(k)).

- 21 Further, the Management Agreement stated that should Media Corp terminate the Management Agreement pursuant to the Termination Clause, RoundUp was obligated to:
- (a) reimburse Media Corp for its out of pocket expenses incurred in connection with the negotiation, execution and delivery of the Management Agreement and transaction documents in an amount equal to US\$250,000 (the "**Costs**"), with the Costs becoming payable on the 60<sup>th</sup> day following the termination of the Management Agreement by Media Corp pursuant to the Termination Clause (clause 6(b)(iii)); and
  - (b) pay to Media Corp an additional "administrative fee" equivalent to 0.1 times the Costs in the amount of US\$25,000 (the "**Administrative Fee**") (clause 6(b)(iii)), with the Administrative Fee becoming payable on the 60<sup>th</sup> day following the termination of the Management Agreement by Media Corp pursuant to the Termination Clause.

### **Termination of Management Agreement**

- 22 Pursuant to the terms of the Management Agreement, Media Corp made available to RoundUp the Acquisition Facility from which RoundUp drew down the sum of US\$1,959,750.89 in order to make purchases of permitted Content. Media Corp also made payments to RoundUp with respect to the Guaranteed Payment Amounts totalling US\$2,100,000 (the "**Guaranteed Payments**").
- 23 Despite Media Corp making available the Acquisition Facility, as well as the Guaranteed Payments, Media Corp became concerned that the Content that RoundUp was purchasing on its behalf was not performing as promised, and that RoundUp's projections provided to Media Corp as to how its purchased Content would perform and RoundUp's ability to identify, purchase and monetize future Content were flawed and misleading.

### **Particulars**

- (a) Throughout the course of the relationship, RoundUp purchased Content that was incapable of generating a return on investment within four months as had been promised by RoundUp.
- (b) RoundUp failed to accurately report and project the performance of the purchased Content, failed to report poor performance results to Media Corp, withheld information from Media Corp and provided misleading and/or inaccurate performance summaries.
- (c) Despite the requirement that financial reports would be provided to Media Corp within 10 days of receipt by RoundUp, or upon request by Media Corp (clause 4(f)(i)), RoundUp frequently refused or ignored those requests, at times providing baseless excuses as to why this information was not available.
- (d) RoundUp failed to timely purchase Content, resulting in lost opportunities and the purchase of Content to the value of less than US\$2 million, despite the Management Agreement contemplating purchases of more than twice that amount.

(e) RoundUp failed to manage operating costs, which caused additional delays and related problems. Due to its failures, certain Content was unable to be monetized.

24 As a result of RoundUp's poor performance with respect to its provision of the Services, Media Corp elected to terminate the Management Agreement on 14 July 2017 pursuant to its rights under the Termination Clause (the "**Notice of Termination**"). A copy of the Notice of Termination is in the possession of the attorneys for the Plaintiff and may be inspected by prior appointment.

#### **Failure to make payment of the Costs and Administrative Fee**

25 By virtue of the facts pleaded above, upon termination of the Management Agreement by Media Corp pursuant to the Termination Clause, RoundUp was required upon 60 days following termination of the Management Agreement to pay Media Corp, among other amounts, the sum of US\$275,000 broken down as follows:

(a) US\$250,000 representing the Costs; and

(b) US\$25,000 representing the Administrative Fee.

26 RoundUp has failed to make payment of either the Costs and/or the Administrative Fee to Media Corp.

27 As a result of RoundUp's failure and/or refusal to make payment of the Costs and the Administrative Fee to Media Corp, RoundUp is in breach of the Management Agreement.

28 In the premises, RoundUp is indebted to Media Corp in the sum of US\$275,000, plus additional costs incurred in enforcing the terms of the Management Agreement, and interest from the date of termination.

29 Further and/or in the alternative, RoundUp is liable to Media Corp for damages for breach of contract in an amount not less than US\$275,000, plus interest and costs.

#### **Breach of fiduciary duties by RoundUp**

30 Further and/or in the alternative, by virtue of the facts pleaded above, and upon the parties entering into the Management Agreement, certain fiduciary duties arose on the part of RoundUp due to its position as a trusted agent of Media Corp with respect to RoundUp's control of the Acquisition Facility and management of Media Corp's online video content acquisition business.

31 RoundUp's fiduciary obligations included, but were not limited to:

(a) an obligation to act in the best interests of Media Corp;

(b) an obligation to use due care and skill in performing the Services; and

- (c) an obligation to properly account to Media Corp with respect to performance of the Content it purchased on its behalf and the projected performance of Content to be purchased.

(collectively the "**Fiduciary Duties**").

32 In breach of its Fiduciary Duties to Media Corp, RoundUp failed to:

- (a) accurately report results of the purchased Content with the result that Media Corp continued to fund new Content purchases;
- (b) provide financial reports to Media Corp within 10 days of receipt by RoundUp, or upon request by Media Corp, at times providing baseless excuses as to why this information was not available; and
- (c) adequately maintain the Content on behalf of Media Corp, including but not limited to, transferring Content into its own accounts without the knowledge of Media Corp, and then claiming ownership over that Content.

33 As a result of RoundUp's breach of its Fiduciary Duties, Media Corp has suffered loss and damage.

#### **Particulars**

- (a) Media Corp has suffered loss and damage in excess of US\$2,000,000, representing its total reliance loss with respect to the Management Agreement.

#### **Negligence**

34 Further and/or in the alternative, and by virtue of the facts pleaded above, RoundUp owed Media Corp a duty of care to ensure, among other things, that:

- (a) it did not make any statement and/or representation to Media Corp prior to entering into the Management Agreement which was false and/or misleading, and which was designed to induce Media Corp to enter into the Management Agreement; and
- (b) the Services that were provided to Media Corp under the Management Agreement were provided with a reasonable standard of care.

(collectively the "**Duties**").

#### **Particulars**

- (a) The Duties are imposed as a matter of common law, in that the damage which occurred to Media Corp was foreseeable, there was a sufficient proximate relationship between the parties and it is fair, just and reasonable in all the circumstances to impose the Duties.

35 In breach of its Duties to Media Corp, RoundUp made the Initial Representations inducing Media Corp to enter into the Management Agreement and failed to provide the Services with a reasonable standard of care.

**Particulars**

(a) Media Corp refers to and repeats the particulars subjoined to paragraphs 15 and 17 above.

36 As a direct result of RoundUp's negligence, Media Corp has suffered loss and damage.

**Particulars**

(a) Media Corp has suffered loss and damage in excess of US\$2,000,000, representing its total investment with respect to the Management Agreement.

**Guaranty**

37 There were relevant terms of the Guaranty, among others, that:

(a) The Debevoises' aggregate liability under the Guaranty was limited to US\$600,000 in total (clause 1); and

(b) The Debevoises' obligations under the Guaranty were irrevocable and remained enforceable, unless and until any of the following three conditions occurred:

(i) Payment by RoundUp in full of all amounts advanced under the Guaranteed Payment Amount (clause 2); and/or

(ii) RoundUp completing acquisitions under the Agreement with an aggregate acquisition price of at least US\$2,000,000 (clause 2); and/or

(iii) RoundUp terminating the Agreement pursuant to section 13(b)(i)(C)(clause 2).

(the "**Conditions**")

38 Further, the Guaranty provided that each of the Debevoises, jointly and severally, agree to pay any and all out of pocket expenses (including fees, costs of settlement and disbursements of counsel and allocated costs of internal counsel) in connection with the enforcement of or preservation of any rights under the Guaranty (clause 7).

**Failure to make payment under Guaranty**

39 As a result of RoundUp failing to satisfy any of the Conditions, the obligations of the Debevoises under the Guarantee remain enforceable.

40 The Debevoises have failed to pay to Media Corp the sum of US\$600,000 which is due and payable.

41 On 3 July 2019, Media Corp demanded payment, but no such payment was made by the Debevoises. As a result of the Debevoises failing to make payment under the Guaranty, the Debevoises are in breach of the Guaranty.

42 In the premises, the Debevoises are jointly and severally indebted to Media Corp in the sum of US\$600,000, as well as its costs and attorneys' fees with respect to bringing this claim, pursuant to the terms of the Guaranty.

**AND THEREFORE THE PLAINTIFF CLAIMS AGAINST THE FIRST DEFENDANT**

- (1) An order that the First Defendant is indebted to it in the amount of at least US\$2,275,000;
- (2) Interest;
- (3) Costs; and
- (4) Such other relief as this Court deems fit.

**AND THEREFORE THE PLAINTIFF CLAIMS AGAINST THE SECOND & THIRD DEFENDANTS**

- (1) An order that the Second and Third Defendants are jointly and severally indebted to it in the amount of US\$600,000;
- (2) Further and/or alternatively, damages in the amount of US\$600,000;
- (3) Interest;
- (4) Costs; and
- (5) Such other relief as this Court deems fit.

Dated this ~~23<sup>rd</sup>~~ day of July 2019 **9 August 2019**

  
\_\_\_\_\_  
**OGIER**  
Attorneys for the Plaintiff

**DIRECTIONS FOR ACKNOWLEDGMENT  
OF SERVICE OF WRIT OF SUMMONS**

- 1 The accompanying form of Acknowledgment of Service should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495GT, George Town, Grand Cayman.

- 2 A Defendant who states in his Acknowledgment of Service that he intends to contest the proceedings must also serve a defence on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

If the Defendant fails to serve his Defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

- 3 A Stay of Execution against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgment, but he must, within that time, issue a Summons for a stay of execution, supported by an Affidavit of his means. The Affidavit should state any offer which the Defendant desires to make for payment of the money by instalments or otherwise.

**See over for notes for guidance.**

**Please complete overleaf.**

## Notes for Guidance

- 4 Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.
- 5 For the purpose of calculating the period of 14 days for acknowledging service, a writ served on the Defendant personally is treated as having been served on the day it was delivered to him.
- 6 Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (the name stated on the Writ of Summons)".
- 7 Where the Defendant is a FIRM and an attorney is not instructed, the form must be completed by a PARTNER by name, with the addition of paragraph 1 of the description "Partner in the firm of (\_\_\_\_\_)" after his name.
- 8 Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description "trading as (\_\_\_\_\_)" after his name.
- 9 Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on his behalf.
- 10 Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian ad litem.
- 11 A Defendant acting in person may obtain help in completing the form at the Courts Office.

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CIVIL DIVISION

CAUSE No. 117 of 2019

BETWEEN:

MEDIA CORP ~~PTE LTD~~

Plaintiff

AND:

ROUNDUP MEDIA LLC

First Defendant

AARON DEBEVOISE

Second Defendant

ALLEN DEBEVOISE

Third Defendant

---

ACKNOWLEDGMENT OF SERVICE  
OF AMENDED WRIT OF SUMMONS

---

If you intend to instruct an Attorney to act for you, give him this form IMMEDIATELY.

Important: Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

1 State the full name of the Defendant by whom or on whose behalf the service of the Amended Writ of Summons is being acknowledged.

2 State whether the Defendant intends to contest or otherwise participate in the proceedings (tick appropriate box).

yes  no

3 If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (tick box).

yes

Service of the Amended Writ of Summons is acknowledged accordingly.

---

Attorney for the Defendant

Address for service:

**Please complete overleaf**

**Notes on address for service:**

Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

Defendant in person: where the Defendant is acting in person, he must give his post office box number and the physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited company, "residence" means its registered principal office.

Indorsement by Plaintiff's Attorney (or by Plaintiff if suing in person) of his name, address and reference, if any, in the box below.

**Ogier**

Attorneys-at-Law

89 Nexus Way

Camana Bay

Grand Cayman KY1-9009

Cayman Islands

(Ref: 426202.0001/MKS/GEL)

Indorsement by Defendant's Attorney (or by Defendant is suing in person) of his name, address and reference, if any, in the box below.