

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of

**ILLUSORY SYSTEMS, INC., a
corporation, also d/b/a NOMAD.**

FILE NO. 2323016

**AGREEMENT CONTAINING
CONSENT ORDER**

The Federal Trade Commission (“Commission”) has conducted an investigation of certain acts and practices of Illusory Systems, Inc. (“Proposed Respondent”). The Commission’s Bureau of Consumer Protection (“BCP”) has prepared a draft of an administrative Complaint (“draft Complaint”). BCP and Proposed Respondent through its duly authorized officers enter into this Agreement Containing Consent Order (“Consent Agreement”) to resolve the allegations in the attached draft Complaint through a proposed Decision and Order to present to the Commission, which is also attached and made a part of this Consent Agreement.

IT IS HEREBY AGREED by and between Proposed Respondent and BCP, that:

1. The Proposed Respondent is Illusory Systems, Inc., also doing business as Nomad, a Delaware corporation with its principal office or place of business at 331 W Parish Lane Suite 106-317, Centerville, Utah 84014.

2. Proposed Respondent neither admits nor denies any of the allegations in the Complaint, except as specifically stated in the Decision and Order. Only for purposes of this action, Proposed Respondent admits the facts necessary to establish jurisdiction.

3. Proposed Respondent waives:

- a. Any further procedural steps;
- b. The requirement that the Commission’s Decision contain a statement of findings of fact and conclusions of law; and
- c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Decision and Order issued pursuant to this Consent Agreement.

4. This Consent Agreement will not become part of the public record of the proceeding unless and until it is accepted by the Commission. If the Commission accepts this Consent Agreement, it, together with the draft Complaint, will be placed on the public record for 30 days and information about them publicly released. Acceptance does not constitute final approval, but it serves as the basis for further actions leading to final disposition of the matter. Thereafter, the Commission may either withdraw its acceptance of this Consent Agreement and

so notify Proposed Respondent, in which event the Commission will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and decision in disposition of the proceeding, which may include an Order. *See* Section 2.34 of the Commission's Rules, 16 C.F.R. § 2.34 ("Rule 2.34").

5. If this agreement is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to Rule 2.34, the Commission may, without further notice to Proposed Respondent: (1) issue its Complaint corresponding in form and substance with the attached draft Complaint and its Decision and Order; and (2) make information about them public. Proposed Respondent agrees that service of the Order may be effected by its publication on the Commission's website (ftc.gov), at which time the Order will become final. *See* Rule 2.32(d). Proposed Respondent waives any right it may have to any other manner of service. *See* Rule 4.4.

6. When final, the Decision and Order will have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other Commission orders.

7. The Complaint may be used in construing the terms of the Decision and Order. No agreement, understanding, representation, or interpretation not contained in the Decision and Order or in this Consent Agreement may be used to vary or contradict the terms of the Decision and Order.

8. Proposed Respondent agrees to comply with the terms of the proposed Decision and Order from the date that Proposed Respondent signs this Consent Agreement. Proposed Respondent understands that it may be liable for civil penalties and other relief for each violation of the Decision and Order after it becomes final.

ILLUSORY SYSTEMS, INC.

By: _____
Kimberly White
Chief Executive Officer

Date:

FEDERAL TRADE COMMISSION

By: _____
M. Hasan Ajaz
Julia Horwitz
Attorneys, Bureau of Consumer Protection

APPROVED:

By: _____
Christopher Mufarrige
Director
Bureau of Consumer Protection

Date

By: _____
Michelle Visser
Orrick, Herrington & Sutcliffe LLP
Attorney for Proposed Respondent

Date:

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Andrew N. Ferguson, Chairman**
Mark R. Meador

In the Matter of

**ILLUSORY SYSTEMS, INC., a
corporation, also d/b/a NOMAD.**

DECISION AND ORDER

DOCKET NO. C-

DECISION

The Federal Trade Commission (“Commission”) initiated an investigation of certain acts and practices of the Respondent named in the caption. The Commission’s Bureau of Consumer Protection (“BCP”) prepared and furnished to Respondent a draft Complaint. BCP proposed to present the draft Complaint to the Commission for its consideration. If issued by the Commission, the draft Complaint would charge the Respondent with violations of the Federal Trade Commission Act.

Respondent and BCP thereafter executed an Agreement Containing Consent Order (“Consent Agreement”). The Consent Agreement includes: 1) statements by Respondent that it neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Decision and Order, and that only for purposes of this action, it admits the facts necessary to establish jurisdiction; and 2) waivers and other provisions as required by the Commission’s Rules.

The Commission considered the matter and determined that it had reason to believe that Respondent has violated the Federal Trade Commission Act, and that a Complaint should issue stating its charges in that respect. The Commission accepted the executed Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments. The Commission duly considered any comments received from interested persons pursuant to Section 2.34 of its Rules, 16 C.F.R. § 2.34. Now, in further conformity with the procedure prescribed in Rule 2.34, the Commission issues its Complaint, makes the following Findings, and issues the following Order:

Findings

1. The Respondent is Illusory Systems, Inc., also doing business as Nomad, a Delaware corporation with its principal office or place of business at 331 W Parish Lane Suite 106317, Centerville, Utah 84014.

2. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondent, and the proceeding is in the public interest.

ORDER

Definitions

For purposes of this Order, the following definitions apply:

- A. **“Breach”** means the loss of Respondent’s consumers’ assets that occurred on or about August 1, 2022.
- B. **“Cross Chain Application”** means a technology that allows users to transfer financial assets back and forth.
- C. **“Respondent”** means Illusory Systems, Inc., a corporation, also doing business as Nomad, and its successors and assigns.

Provisions

I. Prohibition against Misrepresentations

IT IS ORDERED that Respondent, and Respondent’s officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with any product or service must not misrepresent in any manner, expressly or by implication:

- A. the extent to which they implement secure software development practices; or
- B. the extent to which they protect the security of consumers’ financial assets.

II. Mandated Information Security Program

IT IS FURTHER ORDERED that Respondent, in connection with operating a Cross Chain Application must, within thirty (30) days of issuance of this order, establish and implement, and thereafter maintain, a comprehensive information security program (“Information Security Program”) that is designed to protect consumers’ financial assets against loss from theft or other unauthorized access. To satisfy this requirement, Respondent must, at a minimum:

- A. Document in writing the content, implementation, and maintenance of the Information Security Program;

B. Provide the written program and any evaluations thereof or updates thereto to its board of directors or governing body or, if no such board or equivalent governing body exists, to a senior officer responsible for its Information Security Program at least once every twelve (12) months;

C. Designate an employee to coordinate and be responsible for the Information Security Program;

D. Assess and document, at least once every twelve (12) months, internal and external risks to the security of consumers' assets that could result in the misuse, loss, theft, or other compromise of consumers' assets;

E. Design, implement, maintain, and document safeguards that control for the internal and external risks to the security of consumers' assets identified in response to sub-Provision II.D. Each safeguard must be based on the volume of the assets that are at risk, and the likelihood that the risk could be realized and result in the misuse, loss, theft, or other compromise of such assets. Such safeguards must also include:

1. The implementation of secure software development and testing practices;

2. Regular security training programs, on at least an annual basis, that are updated, as applicable, to address internal or external risks identified by Respondent under Provision II.D of this Order, and that include, at a minimum, security awareness training for all employees on Respondent's security policies and procedures;

3. Technical measures to monitor all of Respondent's services related to the security of consumers' assets that are designed to identify anomalous activity and/or security events; and

4. For any systems that allow irrevocable actions such as the unrecoverable transfer of funds, a way to quickly pause or limit the functioning of the system if it exhibits unexpected behavior, such as the exploitation of a security vulnerability, until a remedy for the behavior can be deployed, unless technically infeasible, in which case the executive responsible for implementing Respondent's Mandated Information Security Program must provide a written statement to the Commission within ninety (90) days of entry of this order, sworn under penalty of perjury, certifying that such measures are technically infeasible and providing a detailed explanation for that determination. The written statement must be based on the personal knowledge of the executive or subject matter experts upon whom the executive reasonably relies in making the statement.

F. Assess, at least once every twelve (12) months, the sufficiency of any safeguards in place to address the internal and external risks to the security of consumers' assets, and modify the Information Security Program based on the results;

G. Test and monitor the effectiveness of the safeguards at least once every twelve (12) months, and modify the Information Security Program based on the results;

H. Select and retain service providers capable of safeguarding financial assets they interact with on behalf of Respondent and contractually require service providers to implement and maintain safeguards sufficient to address the internal and external risks to the security of consumers' assets; and

I. Evaluate and adjust the Information Security Program in light of any changes to Respondent's operations or business arrangements, new or more efficient technological or operational methods to control for the risks identified in Provision II.D of this Order, or any other circumstances that Respondent knows or has reason to know may have an impact on the effectiveness of the Information Security Program or any of its individual safeguards. At a minimum, Respondent must evaluate the Information Security Program at least once every twelve (12) months and modify the Information Security Program based on the results.

III. Information Security Assessments by a Third Party

IT IS FURTHER ORDERED that, in connection with compliance with Provision II of this Order titled Mandated Information Security Program, Respondent must obtain initial and biennial assessments ("Assessments"):

A. The Assessments must be obtained from a qualified, objective, independent third-party professional ("Assessor"), who: (1) uses procedures and standards generally accepted in the profession; (2) conducts an independent review of the Information Security Program; (3) retains all documents relevant to each Assessment for five (5) years after completion of such Assessment, and (4) will provide such documents to the Commission within ten (10) days of receipt of a written request from a representative of the Commission. No documents may be withheld on the basis of a claim of confidentiality, proprietary or trade secrets, work product protection, attorney-client privilege, statutory exemption, or any similar claim.

B. For each Assessment, Respondent must provide the Associate Director for Enforcement for the Bureau of Consumer Protection at the Federal Trade Commission with the name, affiliation, and qualifications of the proposed Assessor, whom the Associate Director has the authority to approve in her or his sole discretion.

C. The reporting period for the Assessments must cover: (1) the first 365 days after the issuance date of the Order for the initial Assessment; and (2) each 2-year period thereafter for ten (10) years after issuance of the Order for the biennial Assessments.

D. Each Assessment must, for the entire assessment period: (1) determine whether Respondent has implemented and maintained the Information Security Program required by Provision II of this Order, titled Mandated Information Security Program; (2) assess the effectiveness of Respondent's implementation and maintenance of Provisions II.A-I; (3) identify any gaps or weaknesses in, or instances of material noncompliance with, the Information Security Program; (4) address the status of gaps or weaknesses in, or instances of material noncompliance with, the Information Security Program that were identified in any prior Assessment required by this Order; and (5) identify specific evidence (including documents reviewed, sampling and testing performed, and interviews conducted) examined to make such

determinations, assessments, and identifications, and explain why the evidence that the Assessor examined is (a) appropriate for assessing an enterprise of Respondent's size, complexity, and risk profile; and (b) sufficient to justify the Assessor's findings. No finding of any Assessment may rely primarily on assertions or attestations by Respondent's management. The Assessment must be signed by the Assessor, state that the Assessor conducted an independent review of the Information Security Program and did not rely primarily on assertions or attestations by Respondent's management, and state the number of hours that each member of the assessment team worked on the Assessment. To the extent that Respondent revises, updates, or adds one or more safeguards required under Provision II of this Order during an Assessment period, the Assessment must assess the effectiveness of the revised, updated, or added safeguard(s) for the time period in which it was in effect, and provide a separate statement detailing the basis for each revised, updated, or additional safeguard.

E. Each Assessment must be completed within sixty (60) days after the end of the reporting period to which the Assessment applies. Unless otherwise directed by a Commission representative in writing, Respondent must submit the initial Assessment to the Commission within ten (10) days after the Assessment has been completed via email to DEbrief@ftc.gov or by overnight courier (not the U.S. Postal Service) to Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin, "In re Nomad, FTC File No. 2323016." All subsequent biennial Assessments must be retained by Respondent until the order is terminated and provided to the Associate Director for Enforcement within ten (10) days of request. The initial Assessment and any subsequent biennial Assessment provided to the Commission must be marked, in the upper right-hand corner of each page, with the words "DPIP Assessment" in red lettering.

IV. Cooperation with Third Party Information Security Assessor

IT IS FURTHER ORDERED that Respondent, whether acting directly or indirectly, in connection with any Assessment required by Provision III of this Order titled Information Security Assessments by a Third Party, must:

A. Provide or otherwise make available to the Assessor all information and material in its possession, custody, or control that is relevant to the Assessment for which there is no reasonable claim of privilege.

B. Provide or otherwise make available to the Assessor information about Respondent's network(s) and all of Respondent's IT assets, code, and code repositories related to the security of consumers' assets so that the Assessor can determine the scope of the Assessment, and visibility to those portions of the network(s) and IT assets, code and code repositories deemed in scope; and

C. Disclose all material facts to the Assessor, and not misrepresent in any manner, expressly or by implication, any fact material to the Assessor's: (1) determination of whether that Respondent has implemented and maintained the Information Security Program required by Provision II of this Order, titled Mandated Information Security Program; (2) assessment of the effectiveness of the implementation and maintenance of Provisions II.A-I; or (3) identification of

any gaps or weaknesses in, or instances of material noncompliance with, the Information Security Program.

V. Annual Certification

IT IS FURTHER ORDERED that Respondent must:

A. One year after the issuance date of this Order, and each year thereafter, provide the Commission with a certification from Respondent's Chief Executive Officer that: (1) that Respondent has established, implemented, and maintained the requirements of this Order; and (2) that Respondent is not aware of any material noncompliance that has not been (a) corrected or (b) disclosed to the Commission.

B. Unless otherwise directed by a Commission representative in writing, submit all annual certifications to the Commission pursuant to this Order via email to DEbrief@ftc.gov or by overnight courier (not the U.S. Postal Service) to Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin, "In re Nomad, FTC File No. 2323016."

VI. Return of Recovered Assets to Users

IT IS FURTHER ORDERED that Respondent shall:

A. To the extent not already distributed through the process described in Provision VI.A(1) and (2) prior to the entry of the order, make available the assets it recovered after the Breach for the benefit of consumers—approximately \$37,500,000 in nominal value as of the date of the Breach—or the liquidated value of such assets or asset equivalents, as follows:

- (1)** Pursuant to the "bridge hack bounty" process that Respondent established to incentivize the return of assets;
- (2)** Through the "recovery bridge" process that Respondent established on or about December 20, 2022, with any necessary adjustments to the process designed to facilitate the return of remaining assets to consumers; or
- (3)** Pursuant to any procedure set forth by court order.

B. For a period of eleven months after the effective date of this order, provide notice to consumers of the refund required by Provision VI.A. of this order. Such notice shall be clearly and prominently displayed on Respondent's website <https://nomad.xyz>.

C. Within one year after the effective date of this Order, or 30 days after the end of any litigation involving or relating to the Breach, whichever is later in time, Respondent must, where technically feasible, return any remaining assets recovered from the Breach as required by Provision VI.A. In the event Respondent determines that the return of certain assets is not technically feasible, Respondent must include a detailed explanation for that determination in the report required by Provision VI.D.

D. Respondent must report on their refund program under penalty of perjury:

1. Respondent must submit a report at the conclusion of the program summarizing its compliance, including the total number of transactions and value of assets returned.

2. If a representative of the Commission requests any information regarding the program, including any of the underlying customer data, Respondent must submit it within ten business days of the request. Upon request by Respondent, this ten-business-day period may be extended for a reasonable number of days by the Commission's requesting representative, and such extension shall not be unreasonably withheld.

3. Failure to provide required refunds or any requested information will be treated as a continuing failure to obey this Order.

VII. Acknowledgments of the Order

IT IS FURTHER ORDERED that Respondent obtain acknowledgments of receipt of this Order:

A. Respondent, within 10 days after the effective date of this Order, must submit to the Commission an acknowledgment of receipt of this Order.

B. Respondent must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees having managerial responsibilities for conduct related to the subject matter of the Order and all agents and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Provision titled Compliance Reports and Notices. Delivery must occur within 10 days after the effective date of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which Respondent delivered a copy of this Order, Respondent must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

VIII. Compliance Reports and Notices

IT IS FURTHER ORDERED that Respondent make timely submissions to the Commission:

A. One year after the issuance date of this Order, Respondent must submit a compliance report, sworn under penalty of perjury, in which Respondent must:

1. Identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission, may use to communicate with Respondent;

2. Identify all of Respondent's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses;

3. Describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales;

4. Describe in detail whether and how Respondent is in compliance with each Provision of this Order, including a discussion of all of the changes Respondent made to comply with the Order; and

5. Provide a copy of each Acknowledgment of the Order obtained pursuant to this Order, unless previously submitted to the Commission.

B. Respondent must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. any designated point of contact; or

2. the structure of Respondent or any entity that Respondent has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

C. Respondent must submit notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against Respondent within 14 days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____" and supplying the date, signatory's full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *In re Nomad*, 2323016.

IX. Recordkeeping

IT IS FURTHER ORDERED that Respondent must create certain records, and retain each such record for 5 years. Specifically, Respondent must create and retain the following records:

A. accounting records showing all revenues, the costs incurred in generating those revenues, and resulting net profit or loss;

B. personnel records showing, for each person providing services in relation to any aspect of the Order, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;

C. copies or records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;

D. a copy of each widely disseminated and materially different representation by Respondent that describes the extent to which Respondent implements secure software development practices or protects consumers' financial assets, including any representation concerning a change in any website or other service controlled by Respondent that relates to the security of consumers' financial assets;

E. for 5 years after the date of preparation of each Assessment required by this Order, all materials relied upon to prepare the Assessment, whether prepared by or on behalf of Respondent, including all plans, reports, studies, reviews, audits, audit trails, policies, training materials, and assessments, and any other materials concerning Respondent's compliance with related Provisions of this Order, for the compliance period covered by such Assessment;

F. for 5 years from the date received, copies of all subpoenas and other communications with law enforcement, if such communication relate to Respondent's compliance with this Order; and

G. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission.

X. Compliance Monitoring

IT IS FURTHER ORDERED that, for the purpose of monitoring Respondent's compliance with this Order:

A. Within 10 days of receipt of a written request from a representative of the Commission, Respondent must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury, and produce records for inspection and copying.

B. For matters concerning this Order, representatives of the Commission are authorized to communicate directly with Respondent. Respondent must permit representatives of the Commission to interview anyone affiliated with Respondent who has agreed to such an interview. The interviewee may have counsel present.

C. The Commission may use all other lawful means, including posing through its representatives as consumers, suppliers, or other individuals or entities, to Respondent or any individual or entity affiliated with Respondent, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

XI. Order Effective Dates

IT IS FURTHER ORDERED that this Order is final and effective upon the date of its publication on the Commission's website (ftc.gov) as a final order. This Order will terminate 10 years from the date of its issuance (which date may be stated at the end of this Order, near the Commission's seal), or 10 years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying settlement) in federal court alleging any violation of this Order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any provision in this Order that terminates in less than 10 years;
- B. This Order's application to any Respondent that is not named as a defendant in such complaint; and
- C. This Order if such complaint is filed after the Order has terminated pursuant to this provision.

Provided, further, that if such complaint is dismissed or a federal court rules that the Respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this provision as though the complaint had never been filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

April J. Tabor, Secretary

SEAL:
ISSUED