

**Richard R. Best  
Lara Shalov Mehraban  
Wendy B. Tepperman  
Pascale Guerrier  
William T. Conway III  
Teresa A. Rodriguez  
New York Regional Office  
Attorneys for Plaintiff  
SECURITIES AND EXCHANGE COMMISSION  
New York Regional Office  
200 Vesey Street, Suite 400  
New York, NY 10281-1022  
(212) 336-5473 (Guerrier)  
Email: [guerrierp@sec.gov](mailto:guerrierp@sec.gov)**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

	:	
<b>SECURITIES AND EXCHANGE COMMISSION,</b>	:	
	:	<b>Civil No.</b>
<b>Plaintiff,</b>	:	
	:	
<b>-against-</b>	:	
	:	
<b>CAROL E. COHEN and AUSTIN ROTTER,</b>	:	
	:	
<b>Defendants.</b>	:	
	:	

**COMPLAINT**

Plaintiff Securities and Exchange Commission (“Commission”), for its Complaint against Carol E. Cohen (“Cohen”) and Austin Rotter (“Rotter”) (collectively, “Defendants”), alleges as follows:

**SUMMARY OF ALLEGATIONS**

1. This action involves insider trading violations in connection with Cohen’s purchases of common stock shares of The Trade Desk, Inc. (“TTD”) on the basis of material,

non-public information (“MNPI”) she obtained from her son, Rotter, in advance of TTD’s positive second-quarter 2018 (“Q2 2018”) earnings announcement.

2. Rotter obtained MNPI about TTD through his employment at a public relations firm (“Company A”) that was retained by TTD between July 2017 and June 2019. During that time period, Rotter headed Company A’s team that serviced TTD. In that role, Rotter was provided with TTD’s earnings information in advance of the company’s public quarterly earnings announcements in order to assist TTD with public relations activities surrounding such announcements. Rotter was subject to confidentiality agreements that prohibited him from using or disclosing this information other than in connection with his employment.

3. In late July and early August 2018, Rotter obtained MNPI about TTD’s upcoming positive Q2 2018 earnings announcement, which he was aware TTD planned to announce post-market close on August 9, 2018. In breach of his duties of confidentiality, Rotter tipped his mother, Cohen, who then purchased a total of 1,000 shares of TTD common stock on August 3 and 6, 2018.

4. After the market closed on August 9, 2018, TTD publicly announced its positive earnings. The following day, TTD’s share price closed at \$127.93, which was \$34.64 or 37.13% higher than the previous day’s closing price of \$93.29. By trading ahead of the announcement, Cohen realized \$45,646.03 in illicit profits when she sold the shares a few days after the announcement.

### **VIOLATIONS**

5. By virtue of the conduct alleged herein, both of the Defendants, directly or indirectly, singly or in concert, violated Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

6. Unless the Defendants are permanently restrained and enjoined, they will again engage in the acts, practices, transactions, and courses of business set forth in this complaint and in acts, practices, transactions, and courses of business of similar type and object.

**NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT**

7. The Commission brings this action pursuant to the authority conferred upon it by Sections 21(d)(1) and 21A(a) of the Exchange Act [15 U.S.C. §§ 78u(d)(1) and 78u-1(a)].

8. The Commission seeks a final judgment: (a) to restrain and permanently enjoin the Defendants from violating the federal securities laws and rules this Complaint alleges the Defendants violated; (b) to order the Defendants to pay civil monetary penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]; and (c) to order any other and further relief the Court may deem just and proper.

**JURISDICTION AND VENUE**

9. This Court has jurisdiction over this action pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa].

10. Defendants, directly and indirectly, have made use of the means or instrumentalities of interstate commerce, or of the mails, in connection with the transactions, acts, practices, and courses of business alleged herein.

11. Venue lies within the Southern District of New York pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa] because certain of the acts, transactions and events constituting or giving rise to the alleged violations occurred in this district. For example, during the relevant period, TTD's common stock traded on the NASDAQ Stock Market, which was headquartered in New York, New York and Rotter worked out of Company A's office in New York, New York.

### **THE DEFENDANTS**

12. **Cohen**, age 68, resides in Middlesex County, New Jersey. Cohen is Rotter's mother and a retired school teacher.

13. **Rotter**, age 33, resides in Hudson County, New Jersey. Rotter has been employed by Company A since 2010. From July 2017 to June 2019, the period during which TTD retained Company A, Rotter served as Company A's lead account manager for TTD and headed Company A's team that provided public relations consulting services to TTD.

### **RELEVANT ENTITIES**

14. **TTD**, formed in 2009, is a Delaware corporation headquartered in Ventura, California. TTD's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is listed on the NASDAQ under the ticker "TTD." TTD is in the business of providing an advertising platform for digital ad buyers.

15. **Company A** is a public relations firm headquartered in New York, New York.

### **FACTUAL ALLEGATIONS**

#### **A. Rotter's Access to TTD's MNPI**

16. In or around August 2010, Rotter was hired by Company A, a public relations firm. Rotter's Employment Agreement with Company A, which he signed on August 23, 2010, contained confidentiality and non-disclosure provisions. Among other things, Rotter agreed in the Employment Agreement that any information he obtained from Company A or its clients in connection with his employment is considered to be confidential information that he is prohibited from disclosing or using for any purpose other than in connection with his employment at Company A.

17. In or around the first half of 2017, TTD sought proposals for an outside public relations firm, and Rotter participated in creating Company A's pitches for a proposal by Company A to TTD. TTD ultimately selected Company A, and on July 5, 2017, TTD entered into a consulting agreement with Company A to provide specified public relations and other services. Among other things, the consultancy agreement obligated Company A to keep "Confidential Information in trust and confidence" and not "copy, use or disclose" it. The consulting agreement explicitly defined financial statements and financial information as "Confidential Information."

18. Company A served as TTD's public relations firm from July 2017 to June 2019. At all times throughout this period, Rotter managed Company A's team that serviced TTD and was TTD's primary contact at Company A. Rotter's responsibilities included securing interviews for TTD executives after earnings calls and assisting with the preparation of "briefing books" for TTD executives to use to prepare for quarterly earnings calls. During this period, Rotter was also identified on a number of TTD's press releases as the media contact person.

19. During the relevant period, TTD typically shared the details of its upcoming Q2 2018 earnings results with Rotter and his team at Company A before they were publicly announced in order to assist Company A with its preparation of TTD's quarterly briefing books. Rotter understood that such information was to be kept strictly confidential. For example, in a May 9, 2018 email from a TTD employee to Rotter that attached TTD's briefing book, which contained the company's non-public first quarter 2018 earnings results, the TTD employee told Rotter to "keep the numbers super confidential," to which Rotter replied "of course – goes without saying."

**B. Rotter Tipped MNPI Regarding TTD's Q2 2018 Earnings Results to Cohen and Cohen Traded on the Basis of that MNPI**

20. On July 24, 2018, TTD publicly announced that it would release its financial results for Q2 2018 after market close on Thursday, August 9, 2018.

21. On July 25, 2018, Rotter participated in a meeting with an investor relations TTD employee and others to discuss earnings narratives. TTD asked Company A to draft 5-6 quotes for TTD that TTD's executives might use in media opportunities surrounding the upcoming earnings announcement. That evening, Rotter called Cohen and spoke to her for approximately 2 minutes.

22. On July 26, 2018, a TTD employee sent Rotter and another Company A employee an email, subject line "CONFIDENTIAL: For draft quotes," that attached a draft script for TTD's Q2 2018 earnings call. The email stated the draft script was being shared just with Rotter and the other Company A employee "as we need to be uber careful about sharing this," and that the draft earnings call script was being provided to help them draft quotes that TTD could use with media in connection with TTD's upcoming earnings announcement. The draft earnings call script included CEO remarks that highlighted, among other things, that TTD "had another outstanding quarter in Q2 of 2018" and that revenue was up 54% from the previous year period "to a record \$112.3 million, which again surpassed even our own expectations."

23. After Rotter's receipt of this email, Rotter called Cohen on the evening of July 26, 2018, and they spoke for approximately two minutes.

24. The next morning, on July 27, 2018, Cohen contacted the financial institution ("Financial Institution 1") at which she had previously closed her brokerage account approximately one month prior. Cohen informed Financial Institution 1 that she would like to open a new brokerage account with a \$100,000 wire transfer. That evening, Rotter and Cohen

each tried calling each other several times and eventually they spoke for approximately five minutes.

25. On July 28, 2018, Financial Institution 1 approved Cohen's application and opened a new brokerage account for her (the "Cohen Brokerage Account").

26. During the work week beginning on Monday, July 30, 2018, Rotter continued to participate in a number of communications and calls with TTD to assist with TTD's upcoming Q2 2018 earnings announcement scheduled for August 9, 2018, including to draft quotes for TTD's use in media opportunities surrounding the earnings announcement.

27. On July 30, 2018, Cohen initially funded the Cohen Brokerage Account with a \$40,000 wire transfer from a joint bank account Cohen held with Rotter ("Joint Account 1"). Rotter had online access to Joint Account 1 and monthly account statements were mailed to Rotter's residential address.

28. Also on July 30, 2018, Cohen withdrew \$60,000 from a different joint account that Cohen held with Rotter ("Joint Account 2"), and ultimately transferred such funds to the Cohen Brokerage Account as the funds became available for posting, with deposits of \$5,200 and \$54,800 on August 1 and August 6, 2018, respectively. On the evening of July 30, 2018, Cohen and Rotter spoke by phone for approximately 6 minutes.

29. On July 31, 2018, after Rotter participated in a call with TTD that day regarding TTD's upcoming 2Q 2018 earnings announcement, Cohen and Rotter spoke by phone that evening on two occasions for a total of approximately 16 minutes. Rotter and Cohen spoke again on August 1, 2018 twice and had a call lasting approximately 12 minutes on the evening of August 2, 2018.

30. During the phone calls between Cohen and Rotter that occurred between July 25, 2018 and August 2, 2018, upon information and belief, Rotter tipped Cohen with information regarding TTD's Q2 2018 earnings that constituted MNPI.

31. Rotter knew, or was reckless in not knowing, that TTD's Q2 2018 earnings information was MNPI, that he owed TTD a duty to keep MNPI confidential, and that he was prohibited from using that information to trade in TTD securities and from disclosing that MNPI to Cohen to trade in TTD securities based on that MNPI.

32. Rotter's tip to Cohen was a gift of confidential information to his trading relative. Rotter expected, knew, or recklessly disregarded that Cohen would trade in TTD securities on the basis of that MNPI.

33. Cohen knew, or was reckless in not knowing, that Rotter was breaching his duties he owed to his employer and TTD by giving her the information and that it was improper for her to trade in TTD securities on the basis of the MNPI that Rotter provided to her.

34. Nevertheless, on the morning of August 3, 2018, Cohen placed an order to purchase 500 TTD shares, which was executed at \$86.00 per share.

35. After Cohen placed the order on August 3, 2018, Rotter and Cohen each placed a number of calls that day to reach the other, and ultimately spoke at least three times. Cohen and Rotter also spoke by phone on August 4 and August 5, 2018.

36. On the morning of August 6, 2018, \$54,800 cleared into Cohen's Brokerage Account. These funds originated from the July 30, 2018 withdrawal that Cohen made from Joint Account 2. When these funds became available for posting in Cohen's Brokerage Account on August 6, 2018, Cohen placed an order to purchase an additional 500 TTD shares, which was



executed at \$86.00 per share. Cohen and Rotter spoke by phone that evening on August 6, 2018, and again on the evening of August 7, 2018.

37. On August 9, 2020, TTD's share price closed at \$93.29, and after market close TTD released its Q2 2018 earnings announcement. That announcement noted record revenue of \$112.3 million and a 54% year-over-year revenue increase – the same amounts that were included in the draft earnings script Rotter received in confidence on July 26, 2018.

38. At the close of the next trading day following TTD's Q2 2018 earnings announcement, TTD's share price closed at \$127.93, an increase of \$34.64, or 37.13%.

39. On August 14, 2018, Cohen placed an order to sell all of her 1,000 TTD shares, which was executed at a price of approximately \$131.64 per share. By purchasing TTD shares ahead of the Q2 2018 earnings announcement on the basis of MNPI tipped by Rotter, Cohen realized illicit profits of approximately \$45,646.03.

### **CLAIM FOR RELIEF**

#### **Violations of Section 10(b) of the Exchange Act and Rule 10b-5 (Both Defendants)**

40. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 39.

41. Defendants, directly or indirectly, singly or in concert, in connection with the purchase or sale of securities by the use of means or instrumentalities of interstate commerce, or by use of the mails or the facilities of a national securities exchange, knowingly or recklessly: (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of a material fact or omitted to state a material fact necessary in order to make the statement made, in light of the circumstances under which they were made, not misleading; and/or (c) engaged in acts, practices or courses of business which operated or would have operated as a fraud or deceit upon other

persons.

42. By reason of the foregoing, the Defendants, directly or indirectly, singly or in concert, have violated, and unless enjoined will again violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

**PRAYER FOR RELIEF**

**WHEREFORE**, the Commission respectfully requests a Final Judgment:

**I.**

Permanently restraining and enjoining the Defendants from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5];

**II.**

Ordering the Defendants to pay civil monetary penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]; and

**III.**

Granting such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
November 18, 2021

Respectfully submitted,

*Richard R. Best*

---

Richard R. Best  
Lara Shalov Mehraban  
Wendy B. Tepperman  
Pascale Guerrier  
William T. Conway III  
Teresa A. Rodriguez  
New York Regional Office  
Counsel for Plaintiff  
U.S. Securities and Exchange Commission  
New York Regional Office  
200 Vesey Street, Suite 400  
New York, NY 10281-1022  
(212) 336-5473 (Guerrier)  
Email: [guerrierp@sec.gov](mailto:guerrierp@sec.gov)