

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: Joseph J. Simons, Chairman
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter
Christine S. Wilson

In the Matter of

**EVERALBUM, INC., also d/b/a EVER
and PARAVISION, a corporation.**

DOCKET NO.

COMPLAINT

The Federal Trade Commission, having reason to believe that Everalbum, Inc., a corporation (“Respondent”), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Everalbum, Inc. (“Everalbum”), also doing business as Ever and Paravision, is a Delaware corporation with its principal office or place of business at 1160 Gorgas Ave., San Francisco, California 94129.
2. The acts and practices of Respondent alleged in this Complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

EVERALBUM’S BUSINESS PRACTICES

3. Since 2015, Everalbum has provided Ever, a photo storage and organization application, to consumers. Ever is available as both an iOS and Android mobile application (“app”), as well as in a web and desktop format. Globally, approximately 12 million consumers have installed Ever.
4. Ever allows consumers to upload photos and videos to Ever’s cloud servers from sources such as the user’s mobile device, computer, or accounts with social media services, such as Facebook or Instagram, or cloud-based storage services, such as Dropbox or One Drive. By storing photos and videos on Ever’s servers, consumers can free up storage space on their devices. Ever uses automated features to organize users’ photos and videos into albums by location and date.

The Ever App's Face Recognition Feature

5. In February 2017, Everalbum launched its “Friends” feature, which operates on both the iOS and Android versions of the Ever app. The Friends feature uses face recognition to group users’ photos by faces of the people who appear in the photos. The user can choose to apply “tags” to identify by name (e.g., “Jane”) or alias (e.g., “Mom”) the individuals who appear in their photos. These tags are not available to other Ever users. When Everalbum launched the Friends feature, it enabled face recognition by default for all users of the Ever mobile app. At that time, Everalbum did not provide users of the Ever mobile app an option to turn off or disable the feature.

6. Starting in May 2018, Everalbum rolled out a process through which Ever presented Ever mobile app users located in Texas, Illinois, Washington, or the European Union with a pop-up message that, as shown below, requests that those users choose whether they would like the Ever application to use face recognition. In so doing, Everalbum disabled the Friends feature and face recognition for those users unless and until they clicked “Yes” to turn on the Friends feature and face recognition. At the same time, Everalbum also introduced into the Ever mobile app a setting that allowed users located in Texas, Illinois, Washington, or the European Union to turn on or off the face recognition feature.



7. In April 2019, Everalbum rolled out to Ever mobile app users located outside of Texas, Illinois, Washington, and the European Union the pop-up message requesting that users choose whether they would like the Ever application to use face recognition. This functioned identically to the pop-up message previously provided to users located in Texas, Illinois, Washington, and the European Union. That is, Everalbum disabled the Friends feature and face recognition unless and until the users clicked “Yes” to turn on the Friends feature and face recognition. At this time, Everalbum also rolled out to all Ever mobile app users the setting that allows users to turn on or off face recognition.

8. Since Everalbum has presented Ever mobile app users with the pop-up message requesting that users choose whether they would like the Ever application to use face recognition, approximately 25% of the approximately 300,000 users who made a selection when presented with the pop-up message chose to turn face recognition off.

9. Since July 2018, Everalbum has posted in the “Help” section of its website, everalbum.com, an article entitled *What is Face Recognition?* That article includes the following statements:

When face recognition is enabled, the technology analyzes the photos and videos that you upload to create a string of numbers that we call a “face embedding” (emphasis added).

When face recognition is turned on, you are letting us know that it’s ok for us to use the face embeddings of the people in your photos and videos, including you, and that you have the approval of everyone featured in your photos and videos (emphasis added).

10. However, prior to April 2019, Ever mobile app users who were located anywhere other than Texas, Illinois, Washington, and the European Union did not need to, and indeed could not, take any affirmative action to “let[Everalbum] know” that it should apply face recognition to the users’ photos. In fact, for those users, face recognition was enabled by default and the users lacked the ability to disable it. Thus, the article was misleading for Ever mobile app users located outside of Texas, Illinois, Washington, and the European Union.

Everalbum’s Use of Ever Users’ Photos to Train Its Face Recognition Technology

11. Everalbum’s application of face recognition to photos uploaded by Ever mobile app users, in some cases without affirmative express consent, was not limited to providing the Friends feature. When Everalbum initially launched the Ever app’s Friends feature in February 2017, the company used publicly available face recognition technology to power the feature. However, the company quickly began developing its own face recognition technology, including, in four instances, by using images it extracted from Ever users’ photos to attempt to improve the technology.

12. Between September 2017 and August 2019, Everalbum combined millions of facial images that it extracted from Ever users’ photos with facial images that Everalbum obtained from publicly available datasets in order to create four new datasets to be used in the development of its face recognition technology. In each instance, Everalbum used computer scripts to identify and compile from Ever users’ photos images of faces that met certain criteria (i.e., not associated with a deactivated Ever account, not blurry, not too small, not a duplicate of another image, associated with a specified minimum number of images of the same tagged identity, and, in three of the four instances, not identified by Everalbum’s machines as being an image of someone under the age of thirteen).

13. When compiling the second dataset in April 2018, in addition to applying the criteria described in paragraph 12, Everalbum did not include any facial images extracted from the photos of Ever users Everalbum believed to be residents of either the United States or European Union based on the users' IP addresses.

14. After testing it, Everalbum discarded the face recognition technology that it developed in the Fall of 2017 and April 2018 using the first two datasets it had compiled by combining facial images it had extracted from Ever user' photos with facial images obtained from publicly available datasets.

15. When compiling the third dataset in June 2018, in addition to applying the criteria described in paragraph 12, Everalbum excluded facial images extracted from the photos of Ever users Everalbum believed to be residents of Illinois, Texas, Washington, or the European Union based on the users' IP addresses. In this instance, Everalbum submitted the resulting face recognition technology to the National Institute of Science and Technology for accuracy testing and comparison to competing face recognition technologies.

16. When compiling the fourth dataset in August 2019, in addition to applying the criteria described in paragraph 12, Everalbum excluded facial images extracted from the photos of Ever users who had not either turned on the setting, or clicked "Yes" on the pop-up message, described in paragraphs 6-7 above. Everalbum used the resulting face recognition technology both in the Ever app and to build the face recognition services offered by its enterprise brand, Paravision (formerly Ever AI). Paravision offers its face recognition technology to enterprise customers for purposes such as security, access control, and facilitating payments. Everalbum has not shared images from Ever users' photos or Ever users' photos, videos, or personal information with Paravision's customers.

Everalbum's Account Deactivation Process

17. Everalbum offers users who no longer wish to use Ever the ability to deactivate their Ever accounts. Since January 2017, approximately 36,000 Ever users have deactivated their accounts.

18. As shown below, when a user chooses to deactivate their Ever account, Everalbum displays a message that tells the user: "We're sorry to see you go! If you choose to deactivate your account, you will permanently lose access to [##] photos and [##] albums." (The message specifies the numbers of photos and albums stored in the user's Ever account.) The message includes a button for the user to click to deactivate their account.

We're sorry to see you go!

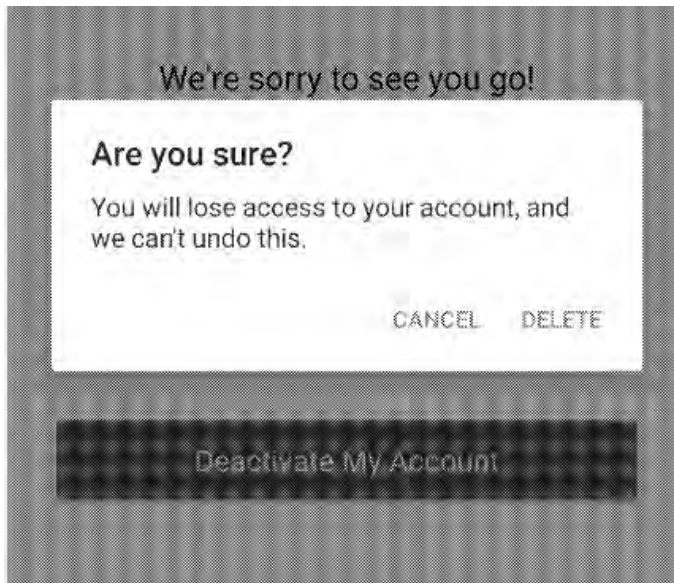
If you choose to deactivate your account, you will permanently lose access to:

337 photos

21 albums

Deactivate My Account

19. If the user clicks the “Deactivate My Account” button, as shown below, Everalbum then displays a second message stating: “Are you sure? You will lose access to your account and we can’t undo this.” That message includes buttons that present the user with the choice to “CANCEL” or “DELETE.”



20. In response to customer inquiries about deleting an Ever account, in multiple instances, Everalbum has stated: “[Y]ou can deactivate your account at any time by signing into our app, going to ‘Settings’ > ‘General Settings’ > ‘Deactivate’. *Please note that this will permanently delete all photos and videos stored on your account as well*” (emphasis added).

21. Everalbum’s Privacy Policy also states:

If you wish to deactivate your account or request that we no longer use your information to provide you any services or certain services, such as our Friends feature or our face recognition services, you can do that via your account settings, or you can email us at privacy@everalbum.com. Please understand that we may need to retain and use your information for a certain period of time to comply with our legal obligations, resolve disputes, and enforce our agreements. Consistent with these requirements, *we will try to delete your information as soon as possible upon request*. Please note, however, that there might be latency in deleting information from our servers and backed-up versions might exist after deletion (emphasis added).

22. Contrary to the statements Everalbum has made that account deactivation will result in Everalbum deleting the user's photos and videos, until at least October 2019, Everalbum did not, in fact, delete the photos or videos of any users who had deactivated their accounts and instead retained them indefinitely. Everalbum began implementing in October 2019 a practice of deleting all the photos and videos associated with Ever accounts that have been deactivated for more than three months.

Count I
Misrepresentation Regarding Ever Users' Ability to Control
the Ever App's Face Recognition Feature

23. As described in Paragraph 9, Respondent represented, directly or indirectly, expressly or by implication, that Everalbum was not using face recognition unless the user enabled it or turned it on.

24. In fact, as set forth in Paragraphs 5-8 and 10, until April 2019, Everalbum was using face recognition by default for all Ever mobile app users who were located anywhere other than Texas, Illinois, Washington, and the European Union and did not provide those users with a setting to use the app and turn off face recognition. Therefore, the representation set forth in Paragraph 9 is false or misleading.

Count II
Misrepresentation Regarding Deletion of
Ever Users' Photos Upon Account Deactivation

25. As described in Paragraphs 18-21, Respondent has represented, directly or indirectly, expressly or by implication, that Everalbum would delete Ever users' photos and videos upon users' deactivation of their accounts.

26. In fact, as set forth in Paragraph 22, until October 2019, Everalbum did not delete any Ever users' photos and videos upon account deactivation and instead stored them indefinitely. Therefore, the representation set forth in Paragraphs 18-21 is false or misleading.

Violations of Section 5

27. The acts and practices of Respondent as alleged in this Complaint constitute unfair or deceptive acts or practices, in or affecting commerce, in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this _____ day of _____, 20__, has issued this Complaint against Respondent.

By the Commission.

[April Tabor]
Acting Secretary

SEAL: