

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Robert Pitofsky, Chairman**
 Sheila F. Anthony
 Mozelle W. Thompson
 Orson Swindle

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In the Matter of)	DOCKET NO. C-3891
)	
LIBERTY FINANCIAL COMPANIES, INC.)	DECISION AND ORDER
a corporation.)	
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)	

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, and counsel for Federal Trade Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Liberty Financial Companies, Inc., is a Massachusetts corporation with its principal office or place of business at 600 Atlantic Avenue, Boston, Massachusetts.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. "Child" or "children" shall mean an individual under the age of thirteen (13).
2. "Parents" or "parental" shall mean a legal guardian, including, but not limited to, a biological or adoptive parent.
3. "Personal information" shall mean individually identifiable information about an individual collected online, including first and last name, home or other physical address including street name and name of a city or town, e-mail address, telephone number, Social Security number, or any information concerning the child or the parents of that child that the website collects online from the child and combines with an identifier described in this definition.
4. "Disclosure" shall mean, with respect to personal information, (a) the release of personal information collected from a child in identifiable form for any purpose, except where such information is provided to a person other than respondent who provides support for the internal operations of the website and does not disclose or use that information for any other purpose, and (b) making personal information collected from a child by a website directed to children or at any commercial website where respondent has actual knowledge that it is collecting personal information from a child, publicly available in identifiable form, by any means including, but not limited to, public posting through the Internet, or through a home page of a website, a pen pal service, an electronic mail service, a message board, or a chat room.
5. "Clear(ly) and prominent(ly)" shall mean in a type size and location that are not obscured by any distracting elements and are sufficiently noticeable for an ordinary consumer to read and comprehend, and in a typeface that contrasts with the background against which it appears.
6. "Electronically verifiable signature" shall mean a digital signature or other electronic means that ensures a valid consent by requiring: (1) authentication (guarantee that the message has come from the person who claims to have sent it); (2) integrity (proof that the message contents have not been altered, deliberately or accidentally, during transmission); and (3) non-repudiation (certainty that the sender of the message cannot later deny sending it).
7. "Verifiable parental consent" shall mean obtaining consent by any reasonable effort (taking into

consideration available technology), including a request for authorization for future collection, use, and disclosure described in the notice, to ensure that a parent of a child receives notice of the respondent's personal information collection, use, and disclosure practices, and authorizes the collection, use, and disclosure, as applicable, of personal information and the subsequent use of that information before that information is collected from that child. Such reasonable efforts may include any of the following means: (1) a signed statement transmitted by postal mail or facsimile; (2) authorizing a charge to a credit card via a secure server; (3) e-mail accompanied by an electronically verifiable signature; (4) a procedure that is specifically authorized by statute, regulation, or guide issued by the Commission; or (5) such other procedure that ensures verified parental consent and ensures the identity of the parent, such as the use of a reliable certifying authority.

8. "Website directed to children" shall mean a commercial website targeted to children, or that portion of a commercial website that is targeted to children. Provided however, that a commercial website or a portion of a commercial website shall not be deemed directed to children solely for referring or linking to a commercial website directed to children by using information location tools, including a directory, index, reference, pointer, or hypertext link.

9. Unless otherwise specified, "respondent" shall mean Liberty Financial Companies, Inc., its successors and assigns and its officers, agents, representatives, and employees.

10. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with any online collection of personal information from children and/or consumers age thirteen (13) through seventeen (17), in or affecting commerce, shall not make any misrepresentation, in any manner, expressly or by implication:

- A. That the information collected is maintained in an anonymous manner;
- B. That children and/or consumers age thirteen (13) through seventeen (17) who submit such information will receive an e-mail newsletter or any other represented product or service;
- C. That children and/or consumers age thirteen (13) through seventeen (17) who submit such information are eligible to win prizes in respondent's drawing or contest; or
- D. Regarding the collection or use of personal information from or about children and/or consumers age thirteen (13) through seventeen (17).

II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the online collection of personal information at a website directed to children, or at any commercial website where respondent has actual knowledge that it is collecting personal information from a child, in or affecting commerce, shall not collect personal information from any child if respondent has actual knowledge that such child does not have his or her parent's permission to provide the information to respondent. For purposes of Parts II, III, IV, and V of this order, respondent shall not be deemed to have actual knowledge if the child has falsely represented that (s)he is not a child and respondent does not knowingly possess information that such representation is false.

III.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the online collection of personal information from children, at a website directed to children, or at any commercial website where respondent has actual knowledge that it is collecting personal information from a child, in or affecting commerce, shall provide clear and prominent notice with respect to respondent's practices regarding its collection and use of personal information. Such notice shall include:

- A. what information is being collected (*e.g.*, "name," "home address," "e-mail address," "age," "interests");
- B. how respondent uses such information;
- C. respondent's disclosure practices for such information (*e.g.*, parties to whom it may be disclosed, such as "advertisers of consumer products," "mailing list companies," "the general public");
- D. a description of a means that is reasonable under the circumstances by which a parent whose child has provided personal information may obtain, upon request and upon proper identification, (i) a description of the specific types of personal information collected from the child by respondent, (ii) the opportunity at any time to refuse to permit the respondent's further use or maintenance in retrievable form, or future online collection, of personal information from that child, and (iii) any personal information collected from the child.

Such notice shall appear on the home page of respondent's website(s) directed to children, or at any commercial website where respondent has actual knowledge that it is collecting personal information

from a child, and at each location on the site(s) at which such information is collected.

Provided, however, that for purposes of this Part, compliance with all of the following shall be deemed adequate notice: (a) placement of a clear and prominent hyperlink or button labeled **PRIVACY NOTICE** on the home page(s), which directly links to the privacy notice screen(s); (b) placement of the information required in this Part clearly and prominently on the privacy notice screen(s), followed on the same screen(s) with a button that must be clicked on to make it disappear; and (c) at each location on the site at which any personal information is collected, placement of a clear and prominent hyperlink on the initial screen on which the collection takes place, which links directly to the privacy notice and which is accompanied by the following statement in bold typeface:

NOTICE: We collect personal information on this site. To learn more about how we use your information click here .

IV.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the online collection of personal information from children at a website directed to children, or at any commercial website where respondent has actual knowledge that it is collecting personal information from a child, in or affecting commerce, shall maintain a procedure by which it obtains verifiable parental consent for the collection, use or disclosure of such information from children.

V.

IT IS FURTHER ORDERED that respondent Liberty Financial Companies, Inc., and its successors and assigns, shall delete from its website(s) directed to children, and at any commercial website(s) where respondent has actual knowledge that it is collecting personal information from a child, all personal information collected from children prior to the date of service of the order.

VI.

IT IS FURTHER ORDERED that after the effective date of the Children's Online Privacy Protection Act of 1998 and any regulations or guides promulgated by the Commission pursuant to the Act, compliance with such statute, regulations, and guides shall be deemed to be compliance with the definition section of this order and Parts II, III and IV of this order.

VII.

IT IS FURTHER ORDERED that respondent Liberty Financial Companies, Inc., and its successors and assigns, shall maintain and upon request make available to the Federal Trade

Commission for inspection and copying the following:

- A. For five (5) years after the last date of dissemination of a notice required by this order, a print or electronic copy in HTML format of all documents relating to compliance with Parts III through V of this order, including, but not limited to, a sample copy of every information collection form, Web page, screen, or document containing any representation regarding respondent's information collection and use practices pertaining to children. Each Web page copy shall be accompanied by the URL of the Web page where the material was posted online. Electronic copies shall include all text and graphics files, audio scripts, and other computer files used in presenting information on the World Wide Web; and
- B. For five (5) years after the last collection of personal information from a child, all materials evidencing the verifiable parental consent given to respondent.

Provided, however, that after creation of any Web page or screen in compliance with this order, respondent shall not be required to retain a print or electronic copy of any amended Web page or screen to the extent that the amendment does not affect respondent's compliance obligations under this order.

VIII.

IT IS FURTHER ORDERED that respondent Liberty Financial Companies, Inc., and its successors and assigns, shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

IX.

IT IS FURTHER ORDERED that respondent Liberty Financial Companies, Inc., and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director,

Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

X.

IT IS FURTHER ORDERED that respondent Liberty Financial Companies, Inc., and its successors and assigns, shall, within sixty (60) days after service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

XI.

This order will terminate on August 12, 2019, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) 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 Part.

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 Part 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.

Benjamin I. Berman
Acting Secretary

ISSUED: August 12, 1999
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