

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Jon Leibowitz, Chairman**
 J. Thomas Rosch
 Edith Ramirez
 Julie Brill
 Maureen K. Ohlhausen

In the Matter of)
)
)
MYSPACE LLC, a limited liability)
company.)
_____)

DOCKET NO. C-4369

COMPLAINT

The Federal Trade Commission, having reason to believe that Myspace LLC has violated the provisions of the Federal Trade Commission Act (“FTC Act”), and it appearing to the Commission that this proceeding is in the public interest, alleges:

- 1. Respondent Myspace LLC (“Myspace” or “respondent”) is a Delaware limited liability company with its principal office or place of business at 407 North Maple Drive, Beverly Hills, CA 90210.
- 2. The acts and practices of respondent as alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act.

RESPONDENT’S BUSINESS PRACTICES

- 3. Myspace operates a social networking website, www.myspace.com, that, among other features, enables a consumer who uses the site (“user”) to create and customize a personal online profile. These profiles contain content about users, such as their name, the names of other users who are their “friends” on the site, photos and videos they upload, messages and comments they post or receive from their friends, and other personal information.
- 4. Myspace assigns a persistent unique numerical identifier, called a “Friend ID,” to each user profile created on Myspace.

5. Myspace has collected extensive personal information about its users, including, but not limited to:
 - a. registration information a user is required to provide in order to create a Myspace account, which consists of the user's full name, email address, date of birth, and gender;
 - b. optional information that is used to populate the user's personal profile, such as:
 - i. display name (*e.g.*, a nickname or pseudonym displayed on the user's profile);
 - ii. profile picture;
 - iii. relationship status;
 - iv. sexual orientation;
 - v. hobbies;
 - vi. interests; and
 - c. other information that is based on a user's activities on the site over time, such as:
 - i. a list of users with whom a user has become "friends" on the site;
 - ii. photos and videos; and
 - iii. messages that a user posts and comments made in response to other users' content.
6. Myspace has provided users with privacy settings which allow them to designate whether the information in their personal profiles will be available to anyone visiting the web site or only those Myspace users who are their "friends" on the site.
7. Myspace has designated a subset of personal information, which it refers to as "basic profile information," as outside of the scope of the privacy settings. Basic profile information consists of the user's profile picture, Friend ID, location, gender, age, display name, and full name. The only piece of this information that users can hide from public view is their full name. Myspace's default setting makes the full name public, but users can change this default through a setting separate from their privacy settings. As of July 2010, approximately 16% of users had changed the default setting and made their full name private.
8. The Friend ID is a component of the URL for each user's profile page, for example, inserting www.myspace.com/12345678 into the address bar of a web browser will bring up the Myspace profile page of the user who is assigned Friend ID 12345678. Therefore, the Friend ID can be used to access, at a minimum, the user's basic profile information, which as of July 2010 included the full name of approximately 84% of Myspace users. Additionally, for a user who has designated that his or her profile be available to anyone who visits the site, the Friend ID can be used to access all of the information in that user's profile.

9. Myspace obtains revenue by allowing third-party or affiliate advertising networks to serve advertisements (“ads”) directly on its site. When a Myspace page loads, Myspace sends a request to the advertising network (“ad call”), informing it to serve an ad on the Myspace page.
10. From January 2009 through June 2010, the majority of ads shown on the Myspace website were served through Fox Audience Network (“FAN”), an advertising network that was an affiliate of Myspace. In order to enable FAN to target ads to an individual user viewing a particular page, when Myspace made an ad call, it sent the Friend ID, age, and gender of the user who was viewing the page (“viewing user”) to FAN. From January 2009 through June 2010, this information was transmitted in plain text.
11. Since January 2009, Myspace has also shared the Friend ID, age, and gender of the viewing user with third-party advertisers as follows:
 - a. In numerous instances, from January 2009 through June 2010, when Myspace made an ad call to FAN, but FAN did not have an appropriate ad to serve, FAN would send the request to a third-party advertiser to serve the ad. In numerous instances, from January 2009 through June 2010, when sending these requests, FAN transmitted the Friend ID, age and gender of the viewing user to third-party advertisers in plain text.
 - b. Beginning in June 2010, Myspace encrypted the Friend ID, age, and gender of the viewing user and provided the encryption key to FAN, allowing FAN to decrypt this information and use it to target ads to the viewing user. Third-party advertisers serving ads through FAN did not receive the encryption key.
 - c. On October 29, 2010, FAN was purchased by the Rubicon Project, Inc. (“Rubicon”), an advertising technology company unaffiliated with Myspace. From October 29, 2010 until Myspace’s contract with Rubicon expired on October 28, 2011, Myspace provided Rubicon the ability to decrypt the Friend ID, age, and gender of the viewing user included in each ad call.
12. Many internet advertisers have the capability to track users’ viewing habits across different websites using tracking cookies. Cookies are small text files that are commonly used to store information about a consumer’s online activities, including information such as the content or ads that a consumer views or the pages a consumer visits within a particular website.
13. As a result of the conduct described in **Paragraph 11**, a third-party advertiser could take simple steps to get detailed information about individual users. For example, a third-party advertiser could use the Friend ID to:
 - a. visit the user’s personal profile on the Myspace website, to obtain his or her real name and other publicly available information; and

- b. combine the user's real name and other personal information with that advertiser's tracking cookie and the history of websites the user has visited that it contains.

RESPONDENT'S STATEMENTS

14. Since February 28, 2008, Myspace has disseminated or caused to be disseminated a privacy policy on the Myspace website, which includes, but is not limited to:

- a. the following statements regarding the notice and choice it gives to users before collecting or using their personally identifiable information ("PII"), defined as "full name, email address, mailing address, telephone number, or credit card number" (*See Exhibit 1, Page 1*):

When you voluntarily provide PII to MySpace, we will make sure you are being informed about who is collecting the information, how and why the information is being collected and the types of uses MySpace will make of the information to the extent it is being used in a manner that differs from what is allowed pursuant to this Privacy Policy. (*See Exhibit 1, Page 1*.)

At the time you provide your PII, MySpace will notify you of your options regarding our use of your PII . . . Except as described in this Privacy Policy, Myspace will not share your PII with third parties unless you have given Myspace permission to do so. (*See Exhibit 1, Page 1*.)

Except as described in this Privacy Policy, MySpace will get your permission before we use the PII you provide to us in a way that is inconsistent with the purpose for which it was submitted or share your PII with third parties that are not affiliated with MySpace. (*See Exhibit 1, Page 2*.)

- b. the following statements regarding Myspace's use of personal information to customize ads:

MySpace may use cookies and similar tools to customize the content and advertising you receive based on the Profile Information you have provided. Profile Information you provide in structured profile fields or questions . . . information you add to open-ended profile fields and questions . . . and other non-PII about you may also be used to customize the online ads you encounter to those we believe are aligned with your interests . . . The information used for this feature does not provide your PII or identify you as an individual to third parties. (*See Exhibit 1, Page 2*.)

- c. and the following statement regarding the information Myspace shares with advertisers:

Anonymous click stream, number of page views calculated by pixel tags, and aggregated demographic information may [also] be shared with MySpace's advertisers and business partners. (See Exhibit 1, Page 3.)

VIOLATIONS OF THE FTC ACT

Count I

15. As described in **Paragraph 14a**, Myspace represents, expressly or by implication, that it will not use or share a user's PII except as described in the privacy policy, including sharing that information with third parties, without first giving notice to and receiving permission from that user.
16. In truth and in fact, as described in **Paragraphs 7 through 13**, in numerous instances Myspace provided the Friend ID of the viewing user to third-party advertisers who are not affiliated with Myspace. The Friend ID gives access to, at a minimum, the user's basic profile information, which for most users includes their full name. This use was not described in the privacy policy and Myspace did not receive permission from those users for such sharing. These facts would be material to consumers in their enrollment in and use of the Myspace service. Therefore, the representations set forth in **Paragraph 15** were and are false or misleading and constitute a deceptive act or practice.

Count II

17. As described in **Paragraph 14b**, Myspace represents, expressly or by implication, that the means through which it customizes ads does not allow advertisers to access PII or individually identify users.
18. In truth and in fact, as described in **Paragraphs 7 through 13**, the means through which Myspace customized ads in numerous instances transmitted the Friend ID of the viewing user to third-party advertisers. Receiving a user's Friend ID gives advertisers access to, at a minimum, the user's basic profile information, which for most users included their full name. These facts would be material to consumers in their enrollment in and use of the Myspace service. Therefore, the representations set forth in **Paragraph 17** were and are false or misleading and constitute a deceptive act or practice.

Count III

19. As described in **Paragraph 14c**, Myspace represents, expressly or by implication, that users' web browsing activity shared with advertisers is anonymized.
20. In truth and in fact, as described in **Paragraphs 7 through 13**, Myspace shared the Friend ID of the viewing user with advertisers, which allows advertisers to tie a user's Friend ID, and the personal information to which it gives access, with tracking cookies. This allows advertisers to link web browsing activity with the personal information available in a user's Myspace profile. These facts would be material to consumers in their enrollment in and use of the Myspace service. Therefore, the representations set forth in **Paragraph 19**, were and are, false or misleading and constitute a deceptive act or practice.

Count IV

21. The U.S.-EU Safe Harbor Framework provides a method for U.S. companies to transfer personal data outside of the European Union ("EU") that is consistent with the requirements of the European Union Data Protection Directive ("Directive"). The Directive sets forth EU requirements for privacy and the protection of personal data. Among other things, it requires EU Member States to implement legislation that prohibits the transfer of personal data outside the EU, with exceptions, unless the European Commission ("EC") has made a determination that the recipient jurisdiction's laws ensure the protection of such personal data. This determination is commonly referred to as meeting the EU's "adequacy" standard.
22. To satisfy the EU's adequacy standard for certain commercial transfers, the U.S. Department of Commerce ("Commerce") and the EC negotiated the U.S.-EU Safe Harbor Framework, which went into effect in 2000. The Safe Harbor is a voluntary framework that allows U.S. companies to transfer personal data lawfully from the EU to the U.S. To join the Safe Harbor, a company must self-certify to Commerce that it complies with seven principles and related requirements that have been deemed to meet the EU's adequacy standard.
23. The Safe Harbor privacy principles, issued by Commerce on July 21, 2000, include the following:

NOTICE: An organization must inform individuals about the purposes for which it collects and uses information about them, how to contact the organization with any inquiries or complaints, the types of third parties to which it discloses the information, and the choices and means the organization offers individuals for limiting its use and disclosure. This notice must be provided in clear and conspicuous language when individuals are first asked to provide personal information to the organization or as soon

thereafter as is practicable, but in any event before the organization uses such information for a purpose other than that for which it was originally collected or processed by the transferring organization or discloses it for the first time to a third party.

CHOICE: An organization must offer individuals the opportunity to choose (opt out) whether their personal information is (a) to be disclosed to a third party or (b) to be used for a purpose that is incompatible with the purpose(s) for which it was originally collected or subsequently authorized by the individual. Individuals must be provided with clear and conspicuous, readily available, and affordable mechanisms to exercise choice.

24. From December 9, 2010 until the present, Myspace has maintained a current self-certification to Commerce and has appeared on the list of Safe Harbor companies on the Commerce website. During this time period, Myspace has collected, used, and retained data from users in Europe. Myspace's certification on the Commerce website states:

Personal Information Received from the EU/EEA and/or Switzerland:
Myspace is a free global social networking website designed to allow users to create profiles where they can discover content, make friends, and share information with others online, consistent with each user's personal preferences. In order to create a Myspace profile, a user must submit a name, gender, email address, a password, and date of birth. Myspace users have the additional option of providing details about themselves including interests, occupation, and hometown. Most of the information Myspace collects about its users is provided voluntarily by those users when they create or update their Myspace profile. All data collected by Myspace is hosted in the United States. (See Exhibit 2, Page 1.)

25. From approximately December 2010 until the present, Myspace made the following statements in its privacy policy regarding its participation in the U.S.-EU Safe Harbor Framework:

MySpace complies with the U.S.-EU Safe Harbor Framework and the U.S.-Swiss Safe Harbor Framework as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of personal information from EU member countries. MySpace has certified that it adheres to the Safe Harbor Privacy Principles of notice, choice, onward transfer, security, data integrity, access, and enforcement. To learn more about the Safe Harbor program, and to view our certification page, please visit <http://www.export.gov/safeharbor/>.

Privacy Complaints by EU Citizens: In compliance with the Safe Harbor Principles, MySpace commits to resolve complaints about your privacy and our collection or use of your personal information. EU citizens with inquiries or complaints regarding this privacy policy should first contact MySpace by visiting <http://faq.myspace.com> and submitting your question through the Contact MySpace form or by mail at Myspace LLC, Attn:

Customer Care - Privacy, 8391 Beverly Blvd, #349, Los Angeles, CA 90048.
(See Exhibit 3, Page 3.)

26. As described in **Paragraphs 24 and 25**, Myspace has represented, expressly or by implication, that it has complied with the U.S. Safe Harbor privacy principles, including the principles of Notice and Choice.
27. In truth and in fact, as described in **Paragraphs 7 through 13**, Myspace did not adhere to the U.S. Safe Harbor privacy principles of Notice and Choice. Therefore, the representations set forth in **Paragraph 26** were, and are, false or misleading and constitute a deceptive act or practice.
28. The acts and practices of Myspace, as alleged in this complaint, constitute 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 thirtieth day of August, 2012, has issued this complaint against respondent.

By the Commission, Commissioner Ohlhausen not participating.

Donald S. Clark
Secretary

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