

Analysis of Proposed Consent Order to Aid Public Comment
In the Matter of Sears Holdings Management Corporation, File No. 082-3099

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an agreement containing a consent order from Sears Holdings Management Corporation (“Respondent”).

The proposed consent order (“proposed order”) has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement’s proposed order.

This matter involves the advertising and dissemination from April 2007 through January 2008 of a software application (the “Application”) that tracked nearly all of the Internet activities that took place on the computers of consumers who installed it as part of Respondent’s “My SHC Community” market research program. According to the FTC complaint, Respondent represented, in the process of soliciting consumers to download and install the Application, that the Application would track consumers’ “online browsing.” The complaint alleges that this claim is deceptive because Respondent failed to disclose adequately that the Application, when installed, would do much more. Only in a lengthy user license agreement did Respondent disclose that the Application would: monitor nearly all of the Internet behavior that occurs on consumers’ computers, including information exchanged between consumers and websites other than those owned, operated, or affiliated with Respondent, information provided in secure sessions when interacting with third-party websites, shopping carts, and online accounts, and headers of web-based email; track certain non-Internet-related activities taking place on those computers; and transmit nearly all of the monitored information (excluding selected categories of filtered information) to Respondent’s remote computer servers.

The proposed order contains provisions designed to prevent Respondent from engaging in similar acts and practices in the future. The proposed consent order defines a “Tracking Application” as “any software program or application . . . that is capable of being installed on consumers’ computers and used by or on behalf of respondent to monitor, record, or transmit information about activities occurring on computers on which it is installed, or about data that is stored on, created on, transmitted from, or transmitted to the computers on which it is installed.” Part I requires that Respondent, in advertising or disseminating any Tracking Application, disclose certain information clearly and prominently, prior to the downloading or installing of the application, and on a separate screen from any final “end user license agreement” or similar document. That information would include all the types of data that the Tracking Application will monitor, record, or transmit; how the data may be used; and whether the data may be used by a third party. In describing the types of data, Respondent would be required specifically to disclose: whether the data may include information from the consumer’s interactions with a specific set of websites or from a broader range of Internet interaction; whether the data may include transactions or information exchanged between the consumer and third parties in secure sessions, interactions with shopping baskets, application forms, or online accounts; and whether

the information may include personal financial or health information. Respondent must also obtain express consent from consumers prior to downloading or installing a Tracking Application.

Part II of the proposed order requires Respondent to post a clear and prominent notice on the myshccommunity.com website advising consumers that the types of information the Application actually collected and transmitted to Sears and advising them how to uninstall the Application. It also requires Sears to provide prompt, toll-free, telephonic and email support to help affected consumers uninstall the Application.

Part III of the proposed order requires that Respondent, to the extent it has not already done so, cease collecting any data transmitted by any previously installed Tracking Application and to destroy any previously collected data.

Parts IV through VII of the proposed order require Respondent: to keep copies of relevant consumer complaints and inquiries, documents demonstrating order compliance, and advertisements and other documents relating to dissemination of any Tracking Application; to provide copies of the order to certain of their personnel; to notify the Commission of changes in corporate structure that might affect compliance obligations under the order; and to file compliance reports with the Commission. Part VIII provides that the order will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.