

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

**COMMISSIONERS: Jon Leibowitz, Chairman
 Pamela Jones Harbour
 William E. Kovacic
 J. Thomas Rosch**

In the Matter of)
)
)
SEARS HOLDINGS MANAGEMENT)
CORPORATION,)
a corporation.)
_____)

DOCKET NO. C-4264

DECISION AND ORDER

The Federal Trade Commission (“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 complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the Respondent with violation of the Federal Trade Commission Act, 15 U.S.C § 45 et seq.; and

The Respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order (“consent agreement”), an admission by the Respondent of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of said consent agreement is for settlement purposes only and does not constitute an admission by the Respondent that the law has been violated as alleged in the 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 has reason to believe that the Respondent has violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such consent agreement on the public record for a period of thirty (30) days, and having duly considered the comments filed thereafter by interested persons pursuant to

Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Sears Holdings Management Corporation is a Delaware corporation with its principal office or place of business at 3333 Beverly Road, Hoffman Estates, Illinois 60179.
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. Unless otherwise specified, “respondent” shall mean Sears Holdings Management Corporation, its successors and assigns, and its officers, agents, representatives, and employees.
2. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
3. “Computer” shall mean any desktop or laptop computer, handheld device, telephone, or other electronic product or device that has a platform on which to download, install, or run any software program, code, script, or other content and to play any digital audio, visual, or audiovisual content.
4. “Tracking Application” shall mean any software program or application disseminated by or on behalf of respondent, its subsidiaries or affiliated companies, 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.
5. “Affected Consumers” shall mean persons who, prior to the date of issuance of this order, downloaded and installed a Tracking Application on a computer in connection with the My SHC Community program or “on-line community.”

6. “Collected Information” shall mean any information or data transmitted from a computer by a Tracking Application, installed prior to the date of issuance of this order, to any computer server owned by, operated by, or operated for the benefit of, Sears Holdings Management Corporation, its subsidiaries, or affiliated companies.

7. “Clearly and prominently” shall mean:

- A. In textual communications (*e.g.*, printed publications or words displayed on the screen of a computer), the required disclosures are of a type, size, and location sufficiently noticeable for an ordinary consumer to read and comprehend them, in print that contrasts with the background on which they appear;
- B. In communications disseminated orally or through audible means (*e.g.*, radio or streaming audio), the required disclosures are delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend them;
- C. In communications disseminated through video means (*e.g.*, television or streaming video), the required disclosures are in writing in a form consistent with subparagraph (A) of this definition and shall appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend them, and in the same language as the predominant language that is used in the communication;
- D. In communications made through interactive media, such as the Internet, online services, and software, the required disclosures are unavoidable and presented in a form consistent with subparagraph (A) of this definition, in addition to any audio or video presentation of them; and
- E. In all instances, the required disclosures are presented in an understandable language and syntax, and with nothing contrary to, inconsistent with, or in mitigation of the disclosures used in any communication of them.

I.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or dissemination of any Tracking Application, in or affecting commerce, shall, prior to the consumer downloading or installing it:

- A. Clearly and prominently, and prior to the display of, and on a separate screen from, any final “end user license agreement,” “privacy policy,” “terms of use” page, or similar document, disclose: (1) all the types of data that the Tracking Application will monitor, record, or transmit, including but not limited to 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; (2) how the data may be used; and (3) whether the data may be used by a third party; and

- B. Obtain express consent from the consumer to the download or installation of the Tracking Application and the collection of data by having the consumer indicate assent to those processes by clicking on a button or link that is not pre-selected as the default option and that is clearly labeled or otherwise clearly represented to convey that it will initiate those processes, or by taking a substantially similar action.

II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, shall:

- A. Within thirty (30) days after the date of service of this order, notify Affected Consumers that they have installed respondent's Tracking Application on their computers, that the Tracking Application collects and transmits to respondent and others the data described in the My SHC Community "Privacy Statement & User License Agreement," and notify them how to uninstall the Tracking Application. Notification shall be by the following means:
 - 1. For two (2) years after the date of service of this order, posting of a clear and prominent notice on the www.myshccommunity.com website; and
 - 2. For three (3) years after the date of service of this order, informing Affected Consumers who complain or inquire about any Tracking Application; and
- B. Provide prompt, toll-free, telephonic and electronic mail support to help Affected Consumers uninstall any Tracking Application.

III.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, shall:

- A. Within three (3) days after the date of service of this order, cease collecting any data transmitted by any Tracking Application installed before the date of service of this Order; and
- B. Within five (5) days after the date of service of this order, destroy any Collected Information.

IV.

IT IS FURTHER ORDERED that respondent, Sears Holdings Management Corporation, and its successors and assigns, shall maintain, and upon request make available to the Federal Trade Commission for inspection and copying, a print or electronic copy of each document relating to compliance with the terms and provisions of this order, including but not limited to:

- A. For a period of four (4) years, any documents, whether prepared by or on behalf of respondent, that:
 - 1. Comprise or relate to complaints or inquiries, whether received directly, indirectly, or through any third party, concerning a Tracking Application, and any responses to those complaints or inquiries;
 - 2. Are reasonably necessary to demonstrate full compliance with each provision of this order, including but not limited to, all documents obtained, created, generated, or which in any way relate to the requirements, provisions, terms of this order, and all reports submitted to the Commission pursuant to this order; and
 - 3. Contradict, qualify, or call into question respondent's compliance with this order; and
- B. For a period of four (4) years after the last public dissemination thereof, all advertisements, terms of use, end-user license agreements, frequently asked questions, privacy policies, and similar documents relating to respondent's dissemination of any Tracking Application.

V.

IT IS FURTHER ORDERED that respondent, Sears Holdings Management Corporation, and its successors and assigns, shall deliver a copy of this order to all current and future principals, officers, directors, managers, employees, agents, and representatives having responsibilities with respect to the subject matter of this order. Respondent, Sears Holdings Management Corporation, and its successors and assigns, shall deliver this order to current

personnel within thirty (30) days after the date of service of the order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VI.

IT IS FURTHER ORDERED that respondent, Sears Holdings Management Corporation, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the entity 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 entity; 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 entity name or address. *Provided, however*, that with respect to any proposed change in the entity about which respondent, Sears Holdings Management Corporation, and its successors and assigns, learns less than thirty (30) days prior to the date such action is to take place, respondent, Sears Holdings Management Corporation, and its successors and assigns, 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, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580.

VII.

IT IS FURTHER ORDERED that respondent, Sears Holdings Management Corporation, 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 the manner and form in which respondent has complied with this order.

VIII.

This order will terminate on August 31, 2029, 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 of 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 a 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 this 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.

Donald S. Clark
Secretary

SEAL:
ISSUED: August 31, 2009