

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

In the Matter of)	AGREEMENT CONTAINING
CHITIKA, INC.,)	CONSENT ORDER
a corporation.)	FILE NO. 1023087
)	

The Federal Trade Commission has conducted an investigation of certain acts and practices of Chitika, Inc. (“proposed respondent”). Proposed respondent, having been represented by counsel, is willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

IT IS HEREBY AGREED by and between Chitika, Inc., by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. Proposed respondent Chitika, Inc. is a Delaware corporation with its principal office or place of business at 1800 West Park Drive, Westborough, Massachusetts, 01581.
2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint.
3. Proposed respondent waives:
 - A. Any further procedural steps;
 - B. The requirement that the Commission’s decision contain a statement of findings of fact and conclusions of law; and
 - C. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.
4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of thirty (30) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve

its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.
6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondent's address as stated in this agreement by any means specified in Section 4.4(a) of the Commission's Rules shall constitute service. Proposed respondent waives any right it may have to any other means of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.
7. Proposed respondent has read the draft complaint and consent order. Proposed respondent understands that it may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

ORDER

DEFINITIONS

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

1. Unless otherwise specified, "respondent" shall mean Chitika, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees.
2. "Clear(ly) and prominent(ly)" shall mean:
 - A. In textual communications (*e.g.*, printed publications or words displayed on the screen of a computer or mobile device), 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 highly 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; and
 - D. In all instances, the required disclosures: (1) are presented in an understandable language and syntax; and (2) include nothing contrary to, inconsistent with, or in mitigation of any other statements or disclosures provided by respondent.
3. “Commerce” shall be defined as it is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
 4. “Computer” or “device” shall mean any desktop or laptop computer, handheld device, telephone, or other product or device through which a consumer can access the Internet.
 5. “Collection of data” or “collecting data” shall mean the practice of receiving any information or data from a computer or device, whether transmitted by a web browser or otherwise, and retaining that information, whether on the user’s computer or on a server. “Data collected” shall mean any information or data received from a computer or device, whether transmitted by a web browser or otherwise, and retained, whether on the user’s computer or respondent’s server(s).
 6. “Chitika user” shall mean any consumer, computer, or device that respondent has uniquely identified.
 7. “Online behavioral advertising” shall mean the practice of tracking a consumer’s online activities in order to deliver advertising targeted to the individual consumer’s interests.

I.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, website, third party, or other means, in connection with the online advertising, marketing, promotion, offering for sale, sale, or dissemination of any product or service, in or affecting commerce, shall not misrepresent in any manner, expressly or by implication: (A) the

extent to which consumers may exercise control over the collection, use, disclosure, or sharing of data collected from or about them, their computers or devices, or their online activities, or (B) the extent to which data from or about a particular consumer, computer, or device is collected, used, disclosed, or shared.

II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, website, third party, or other means, in connection with the online advertising, marketing, promotion, offering for sale, sale, or dissemination of any product or service on websites other than respondent's, in or affecting commerce, shall:

- A. Within thirty (30) days after the date of service of the order, place a clear and prominent notice, including a hyperlink, on the homepage(s) of its website(s), which states, "We collect information about your activities on certain websites to send you targeted advertisements. To opt out of Chitika's targeted ads, click [here](#)." When selected, the hyperlink shall directly take consumers to the mechanism required by Part II.C. of the order;
- B. Within thirty (30) days after the date of service of the order, for a duration of twelve (12) months, include immediately after the notice required by Part II.A. of the order, the following statement: "If you opted out of our targeted ads before March 1, 2010, the opt-out has expired and you must opt out again to avoid targeted ads.";
- C. Within thirty (30) days after the date of service of the order, provide a mechanism, separate and apart from any preferences or controls offered by consumers' browsers, to enable Chitika users to prevent respondent from collecting data that can be associated with a Chitika user or a Chitika user's computer or device, or that contains any unique identifier, including Chitika user ID or Internet Protocol (IP) address; from redirecting Chitika users' browsers to third parties that collect data, absent a click or other affirmative action by such Chitika user; and from associating any previously collected data with any Chitika user's computer or device. This mechanism shall require no more than one additional click for consumers to exercise their choice(s), and shall remain in effect for a minimum time period of five (5) years, unless the consumer deletes his or her cookies or takes deliberate action to disable the mechanism. Within close proximity to the mechanism, respondent shall clearly and prominently disclose to consumers: (1) that Chitika collects information about consumers' activities on certain websites in order to deliver targeted advertisements; (2) that by opting out, Chitika will not collect this information for the purpose of delivering targeted advertisements; (3) the current status of their choice (i.e.,

“opted in” or “opted out” of collection); and (4) that their choice is specific to the browser they are using, and they need to implement the mechanism again if they use a different browser; and

- D. Within ninety (90) days after the date of service of the order, within any advertisement that respondent serves as part of online behavioral advertising, include a hyperlink that directly takes consumers to the mechanism required by Part II.C. of this order. The hyperlink text shall clearly and prominently state: “Opt out?” While a consumer’s cursor, or functional equivalent, hovers over the hyperlink, a box shall be visible in close proximity to the hyperlink, which clearly and prominently states, “Opt out of Chitika’s targeted ads.”

III.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, third party, or other entity, shall not use, disclose, sell, rent, lease, or transfer any information that can be associated with a Chitika user or a Chitika user’s computer or device that respondent obtained prior to March 1, 2010. Within sixty (60) days after the date of service of the order, respondent shall permanently delete or destroy: (1) all such information stored in Chitika users’ cookies; and (2) all IP addresses and unique identifiers, including any Chitika user identification numbers, in log files on respondent’s server(s) and in backup tapes, and shall provide a written statement to the Commission, sworn under penalty of perjury, confirming that all such information has been deleted or destroyed. *Provided that*, if respondent is prohibited from deleting or destroying such information by law, regulation, or court order, respondent shall provide a written statement to the Commission, sworn under penalty of perjury, identifying any information that has not been deleted or destroyed and the specific law, regulation, or court order that prohibits respondent from deleting or destroying such information. Unless otherwise directed by a representative of the Commission, all statements required by this Part shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, with the subject line FTC v. Chitika. Provided, however, that, in lieu of overnight courier, notices may be sent by first-class mail, but only if an electronic version of such notices is contemporaneously sent to the Commission at DEbrief@ftc.gov.

IV.

IT IS FURTHER ORDERED that respondent 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 five (5) years, any documents, whether prepared by or on behalf of respondent, that:
1. Comprise or relate to complaints or inquiries, whether received directly or indirectly, concerning: (a) any data collection by respondent; (b) the use, disclosure or sharing of such data; or (c) any mechanism to limit or prevent such collection of data or the use, disclosure, or sharing of data collected, as well as any responses to those complaints or inquiries;
 2. Are 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, or terms of this order, and all reports submitted to the Commission pursuant to this order; or
 3. Contradict, qualify, or call into question respondent's compliance with this order; and
- B. For a period of five (5) 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: (a) any data collection by respondent; (b) the use, disclosure or sharing of such data; or (c) any mechanism to limit or prevent such collection of data or use, disclosure, or sharing of data collected, as well as any responses to those complaints or inquiries.

V.

IT IS FURTHER ORDERED that Chitika, 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 the order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VI.

IT IS FURTHER ORDERED that Chitika, Inc., 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 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. Unless otherwise directed by a representative of the Commission, all notices required by this Part shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, with the subject line FTC v. Chitika. Provided, however, that, in lieu of overnight courier, notices may be sent by first-class mail, but only if an electronic version of such notices is contemporaneously sent to the Commission at DEbrief@ftc.gov.

VII.

IT IS FURTHER ORDERED that Chitika, Inc., and its successors and assigns, within sixty (60) days after service of the order, and at such other times as the Federal Trade Commission may require, shall file with the Commission a true and accurate report, in writing, setting forth the manner and form in which respondent has complied with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, Chitika, Inc. shall submit additional true and accurate written reports.

VIII.

This order will terminate twenty (20) years from the date of its issuance, 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.

Signed this _____ day of _____, 2011.

CHITIKA, INC.,

By:

VENKAT KOLLURI
Chitika, Inc.

SHANNON ZOLLO
Morse, Barnes-Brown, & Pendleton
Attorney for Respondent

FEDERAL TRADE COMMISSION

PEDER MAGEE
Counsel for the Federal Trade Commission

TRACY SHAPIRO
Counsel for the Federal Trade Commission

APPROVED:

MANEESHA MITHAL
Associate Director
Division of Privacy and Identity Protection

CHRISTOPHER N. OLSEN
Assistant Director
Division of Privacy and Identity Protection

DAVID C. VLADECK
Director
Bureau of Consumer Protection