

Complaint

IN THE MATTER OF

MYSPACE LLCCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket No. C-4369; File No. 102 3058
Complaint, August 30, 2012 – Decision, August 30, 2012

This consent order addresses Myspace LLC's claims regarding the collection and use of personal information on their website. The complaint alleges that Myspace violated Section 5(a) of the FTC Act, by misleading users about what information third-party advertisers received about them. The consent order prohibits Myspace from misrepresenting the privacy and confidentiality of any "covered information," as well as the company's compliance with any privacy, security, or other compliance program, including but not limited to the U.S.-EU Safe Harbor Framework.

Participants

For the *Commission: Amanda Koulousias and Katherine Race Brin.*

For the *Respondent: Ashlie Beringer, Scott Mellon, and Sean Royall, Gibson Dunn & Crutcher LLP.*

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.

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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;

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- 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

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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.

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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

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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.)

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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.

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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.

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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

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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.)

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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.

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Exhibit 1

Privacy Policy	
Effective February 28, 2008: MySpace, Inc. ("MySpace" or "we") operates MySpace.com. This Privacy Policy describes MySpace's use and sharing of personally identifiable information ("PII"-- your full name, email address, mailing address, telephone number, or credit card number) that Members voluntarily provide to MySpace when they register (also known as "Registration PII"). The Term "User" refers to a Visitor or a Member. This Privacy Policy applies to the services offered by MySpace, including any MySpace-branded URL (the "MySpace Website"), the MySpace instant messaging service, the MySpace application developer service and other features (for example, music and video embedded players), MySpace mobile services, and any other features, content, or applications offered from time to time by MySpace in connection with the MySpace Website (collectively, the "MySpace Services"). The MySpace Services are hosted in the United States. The MySpace Website is a general audience site and does not knowingly collect PII from children under 13 years of age. From time to time MySpace may modify this Privacy Policy to reflect industry initiatives or changes in the law, our PII collection and use practices, the features of the MySpace Services, or technology, and such modifications shall be effective upon posting by MySpace on the MySpace Website. Your continued use of the MySpace Services after MySpace posts a revised Privacy Policy signifies your acceptance of the revised Privacy Policy. It is therefore important that you review this Privacy Policy regularly to ensure you are updated as to any changes. If MySpace materially changes its practices regarding collection or use of your PII, your PII will continue to be governed by the Policy under which it was collected unless you have been provided notice of, and have not objected to, the change. COLLECTION AND SUBMISSION OF PII AND NON-PII ON MYSpace General. When MySpace collects PII from you it is because you are voluntarily submitting Registration PII to us in order to register as a Member of MySpace. MySpace may also collect PII from you if you choose to participate in MySpace Services activities like sweepstakes, contests, and surveys, because you want us to furnish you with products, services, newsletters, or information, or in connection with content or suggestions you submit to MySpace for review. In addition, MySpace collects other non-PII including IP address, aggregate user data, and browser type. This data is used to manage and improve the MySpace Services, track usage, and for security purposes. MySpace Members may also choose to provide or store non-PII information in their profiles, including but not limited to date of birth, interests, hobbies, lifestyle choices, groups with whom they are affiliated (schools, companies), videos and/or pictures, private messages, bulletins or personal statements (collectively "Profile Information"). The Profile Information in a Member's profile is provided at his or her sole discretion. MySpace Members can change their Registration PII and Profile Information at any time and can control how Visitors, other Members and MySpace communicate with them by controlling their account settings, available within the "Edit Profile" portion of their MySpace profile. Link to Privacy Settings. Cookies. Cookies are small bits of information that MySpace places on your computer. MySpace uses cookies to identify your Internet browser, store Users' preferences, and determine whether you have installed the enabling software needed to access certain material on the MySpace Services. Data in cookies may be read to authenticate user sessions or provide services. Third party advertisements displayed on MySpace Services may also contain cookies set by Internet advertising companies or advertisers (known as "third party cookies"). MySpace does not control these third party cookies and Users of the MySpace Services should check the privacy policy of the Internet advertising company or advertiser to see whether and how it uses cookies. See the "Notice" section below for more information on customized advertising on MySpace. A pixel tag is a tiny image inserted in a webpage and used to record the number and types of views for that page. MySpace may allow third party pixel tags to be present on MySpace Services for purposes of advertising, providing services or data and statistics collection. You can program your computer to warn you each time a cookie is being sent, block third party cookies or block all cookies. However, by blocking all cookies you may not have access to certain features on the MySpace Services. NOTICE: MYSpace WILL PROVIDE YOU WITH NOTICE ABOUT ITS PII COLLECTION PRACTICES When you voluntarily provide PII to MySpace, we will make sure you are 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. At the time you provide your PII, MySpace will notify you of your options regarding our use of your PII (See "Choice" below). 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 "Use" below).	

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MySpace Services may be linked to Internet sites operated by other companies. MySpace Services may also carry advertisements from other companies. MySpace is not responsible for the privacy practices of websites or other services operated by third parties that are linked to or integrated with the MySpace Services or for the privacy practices of third party Internet advertising companies. Once you leave MySpace Services via such a link, access a third party application (such as widgets) or click on an advertisement, you should check the applicable privacy policy of the third party or advertiser site to determine, among other things, how they will handle any PII they collect from you.

MySpace Services may also be linked to sites operated by companies affiliated with MySpace (i.e., that are part of the News America Group: "Affiliated Companies"). Although all Affiliated Companies adhere to the News America corporate Privacy Principles, Users who visit those Affiliated Company sites should still refer to their separate privacy policies and practices, which may differ in some respects from this Privacy Policy.

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 (multiple choice questions like "Marital Status," "Education" and "Children") ("Structured Profile Information"), information you add to open-ended profile fields and questions (essay questions like "About Me," "Interests" and "Movies") ("Non-Structured Profile Information") 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. For example, based on your music interests we might display an advertisement to make sure you are advised when your favorite band is coming to town. The information used for this feature does not provide your PII or identify you as an individual to third parties. If you would like to disable advertising customization for Non-Structured Profile Information, please log in and [click here](#).

Some of the advertisements that appear on MySpace Services may also be delivered to you by third party Internet advertising companies. These companies utilize certain technologies to deliver advertisements and marketing messages and to collect non-PII about your visit to or use of MySpace Services, including information about the ads they display, via a cookie placed on your computer that reads your IP address. To opt out of information collection by these companies, or to obtain information about the technologies they use or their own privacy policies, please [click here](#).

Third party applications (such as widgets) created by third party developers may also be available on the MySpace Services. Third party applications are small bits of software, often with interactivity, that can be installed into Members' profiles or shared with other Users. However, MySpace does not control the third party developers, and cannot dictate their actions. When a Member engages with a third party application, that Member is interacting with the third party developer, not with MySpace. MySpace encourages Members not to provide PII to the third party's application unless the Member knows the party with whom it is interacting.

CHOICE: MYSPACE WILL PROVIDE YOU WITH CHOICES ABOUT THE USE OF YOUR PII

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.

USE: MYSPACE'S USE OF PII

MySpace will only use the PII you provide under this Privacy Policy in a manner that is consistent with this Privacy Policy. If MySpace obtains PII from a third party, such as a business partner, our use of that information is also governed by this Privacy Policy.

In order to locate other MySpace Members that you may already know in the physical world, MySpace allows Users to search for Members using Registration PII (i.e., full name or email address). MySpace also allows Users to browse for certain Profile Information in order to help connect with Members (i.e., schools and/or companies where Users may have attended or worked). MySpace may also enable Members to publicly display some Registration PII as an element of their Profile Information if they choose to do so via a profile setting under "Edit Profile." Search engines may index the portion of a Member's profile (including the Profile Information it contains) that is publicly displayed.

If you have consented to receive promotional materials (e.g., newsletters) or notifications from MySpace, MySpace may periodically use your email address to send you such materials related to the MySpace Services, as applicable. If you want to stop receiving such materials from MySpace, you can change your profile settings under "Account Settings," or follow the unsubscribe instructions at the bottom of each email.

MySpace employees, agents and contractors must have a business reason to obtain access to your PII. MySpace may share your PII with those who help us manage or provide MySpace Services/ information activities (for example, message board administration, order fulfillment, statistical analyses, data processing), or with outside contractors, agents or sponsors who help us with the administration, judging and prize fulfillment aspects of contests, promotions and sweepstakes.

These outside contractors, agents or sponsors may temporarily store some information on their servers, but they may only use your PII to provide MySpace with a specific service and not for any other purpose. MySpace may also provide your PII to a third party in those instances where you have chosen to receive certain information and have been notified that the fulfillment of such a request requires the sharing of your PII. MySpace also may share your PII with Affiliated Companies if it has a business reason to do so.

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As described in "Notice" above, MySpace may customize the advertising and marketing messages you receive on the MySpace Website, or may work with outside companies to do so. Your non-PII and/or Profile Information may be shared with these companies so this customization can be accomplished. MySpace prohibits these companies from sharing your non-PII and/or Profile Information with any third party or from using it for any other purpose. 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.

There may be instances when MySpace may access or disclose PII, Profile Information or non-PII without providing you a choice in order to: (i) protect or defend the legal rights or property of MySpace, our Affiliated Companies or their employees, agents and contractors (including enforcement of our agreements); (ii) protect the safety and security of Users of the MySpace Services or members of the public including acting in urgent circumstances; (iii) protect against fraud or for risk management purposes; or (iv) comply with the law or legal process. In addition, if MySpace sells all or part of its business or makes a sale or transfer of all or a material part of its assets or is otherwise involved in a merger or transfer of all or a material part of its business, MySpace may transfer your PII to the party or parties involved in the transaction as part of that transaction.

When a Member who is located in the European Union chooses to post Profile Information that will be publicly disclosed, that Member is responsible for ensuring that such information conforms to all local data protection laws. MySpace is not responsible under the EU local data protection laws for Member-posted information.

SECURITY: MYSpace PROTECTS THE SECURITY OF PII

MySpace uses commercially reasonable administrative, technical, personnel and physical measures to safeguard PII and credit card information in its possession against loss, theft and unauthorized use, disclosure or modification. In addition, MySpace uses reasonable methods to make sure that PII is accurate, up-to-date and appropriately complete.

ACCESS, REMEDIES AND COMPLIANCE: HOW TO ACCESS, CORRECT OR CHANGE YOUR PREFERENCES REGARDING YOUR PII AND HOW TO CONTACT MYSpace ABOUT PRIVACY CONCERNS

Whenever possible, MySpace Members may review the Registration PII we maintain about them in our records. We will take reasonable steps to correct any PII a Member informs us is incorrect. If you are a Member, you can view and change your Registration PII, Member preferences and Profile Information by logging into your account and accessing features such as "Edit Profile" and "Account Settings."

If you ask MySpace to stop using your PII, MySpace will honor that request while retaining any record of your PII that is necessary to comply with applicable federal, state or local law.

If you would like to communicate with us about this Privacy Policy or MySpace's collection and use of your PII, please use the Contact MySpace form on our [Help site](#).

Mail:
8391 Beverly Blvd.
#349
Los Angeles, California 90048

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Exhibit 2**Organization Information:**

MySpace, LLC
407 North Maple Drive
Beverly Hills, California- 90210
Phone: 424-202-6001 x7208
Fax: 323-446-8437
www.myspace.com

Organization Contact:

Contact Office: Myspace – Customer Care
Name: Dominic Franceschi , Senior Manager of Support
Phone: 424-202-6001 x7060
Fax: 310-362-8854
Email: dfranceschi@myspace-inc.com

Corporate Officers:

Corporate Officer: Drew Bordages , General Counsel
Phone: 949-336-4859
Fax: 949-271-4047
Email: dbordages@specificmedia.com

Safe Harbor Information:

Original Certification: 12/9/2010
Next Certification: 12/9/2011

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.

Privacy Policy Effective: 2/28/2008

Location: <http://www.myspace.com/Help/Privacy>

Regulated By: Federal Trade Commission

Privacy Programs:
BBB EU Safe Harbor

Verification: In-house.

Dispute Resolution:
BBB EU Safe Harbor

Personal Data Covered: On-line data

Organization Human Resource Data Covered: No

Do You Agree to Cooperate and Comply with the EU and/or Swiss Data Protection Authorities? No

Relevant Countries from which Personal Information is Received:

Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom

Industry Sectors:
Information Services - (INF)

Certification Status: Not Current
Compliance Status:

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Exhibit 3

[Sign up](#)
[Login](#)
[Search People](#)
[Music](#)
[Video](#)
[Games](#)
[Browse People](#)

Privacy Policy

Last Revised December 7th, 2010.

Myspace, LLC ("Myspace" or "we") operates Myspace.com. This Privacy Policy describes Myspace's use and sharing of personally identifiable information ("PII" – your full name, email address, mailing address, telephone number, or credit card number) that Members voluntarily provide to Myspace when they register (also known as "Registration PII"). The Term "User" refers to a Visitor or a Member. This Privacy Policy applies to the services offered by Myspace, including any Myspace-branded URL (the "Myspace Website"), the Myspace instant messaging service, the Myspace application developer service and other features (for example, music and video embedded players), Myspace mobile services, and any other features, content, or applications offered from time to time by Myspace in connection with the Myspace Website (collectively the "Myspace Services"). The Myspace Services are hosted in the United States.

The Myspace Website is a general audience site and does not knowingly collect PII from children under 13 years of age.

From time to time Myspace may modify this Privacy Policy to reflect industry initiatives or changes in the law, our PII collection and use practices, the features of the Myspace Services, or technology, and such modifications shall be effective upon posting by Myspace on the Myspace Website. Your continued use of the Myspace Services after Myspace posts a revised Privacy Policy signifies your acceptance of the revised Privacy Policy. It is therefore important that you review this Privacy Policy regularly to ensure you are updated as to any changes. If Myspace materially changes its practices regarding collection or use of your PII, your PII will continue to be governed by the Policy under which it was collected unless you have been provided notice of, and have not objected to, the change.

COLLECTION AND SUBMISSION OF PII AND NON-PII ON MYSPACE

General. When Myspace collects PII from you it is because you are voluntarily submitting Registration PII to us in order to register as a Member of Myspace. Myspace may also collect PII from you if you choose to participate in Myspace Services activities like sweepstakes, contests, and surveys, because you want us to furnish you with products, services, newsletters, or information, or in connection with content or suggestions you submit to Myspace for review.

In addition, Myspace collects other non-PII including IP address, aggregate user data, and browser type. This data is used to manage and improve the Myspace Services, track usage, and for security purposes.

Myspace Members may also choose to provide or store non-PII information in their profiles, including but not limited to date of birth, interests, hobbies, lifestyle choices, groups with whom they are affiliated (schools, companies), videos and/or pictures, private messages, bulletin or personal statements (collectively "Profile Information"). The Profile Information in a Member's profile is provided at his or her sole discretion.

Myspace Members can change their Registration PII and Profile Information at any time and can control how Visitors, other Members and Myspace communicate with them by controlling their account settings, available within the "Edit Profile" portion of their Myspace profile. [Link to Privacy Settings.](#)

Cookies. Cookies are small bits of information that Myspace places on your computer. Myspace uses cookies to identify your Internet browser, store Users' preferences, and determine whether you have installed the enabling software needed to access certain material on the Myspace Services. Data in cookies may be read to authenticate user sessions or provide services.

Third party advertisements displayed on Myspace Services may also contain cookies set by Internet advertising companies or advertisers (known as "third party cookies"). Myspace does not control these third party cookies and Users of the Myspace Services should check the privacy policy of the Internet advertising company or advertiser to see whether and how it uses cookies. See the "Notice" section below for more information on customized advertising on Myspace. A pixel tag is a tiny image inserted in a webpage and used to record the number and types of views for that page. Myspace may allow third party pixel tags to be present on Myspace Services for purposes of advertising, providing services or data and statistics collection.

You can program your computer to warn you each time a cookie is being sent, block third party cookies or block all cookies. However, by blocking all cookies you may not have access to certain features on the Myspace Services.

NOTICE: MYSPACE WILL PROVIDE YOU WITH NOTICE ABOUT ITS PII COLLECTION PRACTICES

When you voluntarily provide PII to Myspace, we will make sure you are 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.

At the time you provide your PII, Myspace will notify you of your options regarding our use of your PII (See "Choice" below). 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 "Use" below).

Myspace Services may be linked to Internet sites operated by other companies. Myspace Services may also carry advertisements from other companies. Myspace is not responsible for the privacy practices of websites or other services operated by third parties that are linked to or integrated with the Myspace Services or for the privacy practices of third party Internet advertising companies. Once you leave Myspace Services via such a link, access a third party application (such as widgets) or click on an advertisement, you should check the applicable privacy policy of the third party or advertiser site to determine, among other things, how they will handle any PII they collect from you.

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Complaint

Myspace Services may also be linked to sites operated by companies affiliated with Myspace, Inc., that are part of the News America Group. ("Linked Sites") Affiliated Internet Companies adhere to the News America Group's Privacy Policy. Users who visit those Affiliated Company sites should still refer to their separate privacy policies and practices, which may differ in some respects from this Privacy Policy.

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 (multiple choice questions like "Marital Status," "Education" and "Children") ("Structured Profile Information"), information you add to open-ended profile fields and questions (essay questions like "About Me," "Interests" and "Movies") ("Non-Structured Profile Information") 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. For example, based on your music interests we might display an advertisement to make sure you are advised when your favorite band is coming to town. The information used for this feature does not provide your PI or identify you as an individual to third parties. If you would like to disable advertising customization for Non-Structured Profile Information, please log in and click here.

Some of the advertisements that appear on Myspace Services may also be delivered to you by third party Internet advertising companies. These companies utilize certain technologies to deliver advertisements and marketing messages and to collect non-PII about your visit to or use of Myspace Services, including information about the ads they display, via a cookie placed on your computer that reads your IP address. To opt out of information collection by these companies, or to obtain information about the technologies they use or their own privacy policies, please click here.

Third party applications (such as widgets) created by third party developers may also be available on the Myspace Services. Third party applications are small bits of software, often with interactivity, that can be installed via Members' profiles or shared with other Users. However, Myspace does not control the third party developers, and cannot dictate their actions. When a Member engages with a third party application, that Member is interacting with the third party developer, not with Myspace. Myspace encourages Members not to provide PII to the third party's application unless the Member knows the party with whom it is interacting.

CHOICE: MYSPACE WILL PROVIDE YOU WITH CHOICES ABOUT THE USE OF YOUR PII

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.

USE: MYSPACE'S USE OF PII

Myspace will only use the PII you provide under this Privacy Policy in a manner that is consistent with this Privacy Policy. If Myspace obtains PII from a third party, such as a business partner, our use of that information is also governed by this Privacy Policy.

In order to locate other Myspace Members that you may already know in the physical world, Myspace allows Users to search for Members using Registration PII (i.e., full name or email address). Myspace also allows Users to browse for certain Profile Information in order to help connect with Members (i.e., schools and/or companies where Users may have attended or worked). Myspace may also enable Members to publicly display some Registration PII as an element of their Profile Information if they choose to do so via a profile setting under "Edit Profile." Search engines may index the portion of a Member's profile (including the Profile Information it contains) that is publicly displayed.

If you have consented to receive promotional materials (e.g., newsletters) or notifications from Myspace, Myspace may periodically use your email address to send you such materials related to the Myspace Services, as applicable. If you want to stop receiving such materials from Myspace, you can change your profile settings under "Account Settings," or follow the unsubscribe instructions at the bottom of each email.

Myspace employees, agents and contractors must have a business reason to obtain access to your PII. Myspace may share your PII with those who help us manage or provide Myspace Services' information activities (for example, message board administration, order fulfillment, statistical analyses, data processing) or with outside contractors, agents or sponsors who help us with the administration, judging and prize fulfillment aspects of contests, promotions and sweepstakes.

These outside contractors, agents or sponsors may temporarily store some information on their servers, but they may only use your PII to provide Myspace with a specific service and not for any other purpose. Myspace may also provide your PII to a third party in those instances where you have chosen to receive certain information and have been notified that the fulfillment of such a request requires the sharing of your PII. Myspace also may share your PII with Affiliated Companies if it has a business reason to do so.

As described in "Notice" above, Myspace may customize the advertising and marketing messages you receive on the Myspace Website, or may work with outside companies to do so. Your non-PII and/or Profile Information may be shared with these companies so this customization can be accomplished. Myspace prohibits these companies from sharing your non-PII and/or Profile Information with any third party or from using it for any other purpose. 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.

There may be instances when Myspace may access or disclose PII, Profile Information or non-PII without providing you a choice in order to: (i) protect or defend the legal rights or property of Myspace, our Affiliated Companies or their employees, agents and contractors (including enforcement of our agreements); (ii) protect the safety and security of Users of the Myspace Services or members of the public including acting in urgent circumstances; (iii) protect against fraud or for risk management purposes; or (iv) comply with the law or legal process. In addition, if Myspace seeks all or part of its business or makes a sale or transfer of all or a material part of its assets or is otherwise involved in a merger or transfer of all or a material part of its business, Myspace may transfer your PII to the party or parties involved in the transaction as part of such transaction.

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Complaint

When a Member who is located in the European Union chooses to post Profile information that will be publicly disclosed, that Member is responsible for ensuring that such information conforms to all local data protection laws. Myspace.com is not responsible under the EU local data protection laws for Member-posted information.

Sign Up

Log In

Forgot Password

Mobile View

Help

Privacy Policy

Terms of Service

Browser People

SECURITY: MYSPACE PROTECTS THE SECURITY OF PI

Myspace uses commercially reasonable administrative, technical, personnel and physical measures to safeguard PI and credit card information in its possession against loss, theft and unauthorized use, disclosure or modification. In addition, Myspace uses reasonable methods to make sure that PI is accurate, up-to-date and appropriately complete.

SAFE HARBOR

Safe Harbor. 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.esport.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.

Myspace has further committed to refer unresolved privacy complaints under the Safe Harbor Principles to an independent dispute resolution mechanism, the BBB EU Safe Harbor, operated by the Council of Better Business Bureaus. If you do not receive timely acknowledgment of your complaint, or if your complaint is not satisfactorily addressed by Myspace, you may contact:

<http://www.bbb.org/us/safe-harbor/complaints>

ACCESS, REMEDIES AND COMPLIANCE: HOW TO ACCESS, CORRECT OR CHANGE YOUR PREFERENCES REGARDING YOUR PI AND HOW TO CONTACT MYSPACE ABOUT PRIVACY CONCERNS

Wherever possible, Myspace Members may review the Registration PI we maintain about them in our records. We will take reasonable steps to correct any PI a Member informs us is incorrect. If you are a Member, you can view and change your Registration PI, Member preferences and Profile information by logging into your account and accessing features such as "Edit Profile" and "Account Settings."

If you ask Myspace to stop using your PI, Myspace will honor that request while retaining any record of your PI that is necessary to comply with applicable federal, state or local law.

If you would like to communicate with us about this Privacy Policy or Myspace's collection and use of your PI, please use the Contact Myspace form on our Help site.

Mail:
8391 Beverly Blvd.
#349
Los Angeles, California 90048

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Around Myspace

Music

Video

Movies

Television

Celebrity

Events

Also on Myspace

IM

Mobile

Themes

Sync

Join Myspace

Sign up

Developers

Tenra

Privacy Policy

About us

What's Trending

Bieber Suit Dropped

Sexy Bradley Cooper

Muppets Spoof Twilight

Twilight Red Carpet

Timberlake Attends B&B

Spider-Man on SNL

Grid Pitt Quitting

MJ's Drug Use

IGN

Video Games

Game Reviews

Video Game Cheats

Game Videos

Download Video Games

Get Help

Help & FAQs

Safety Tips

Steamap

Privacy Settings

Privacy Policy

Learn more

Advertisers

Press Room

Report Abuse | **Change Country:** United States (English)

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Exhibit 3

3

Decision and Order

DECISION AND ORDER

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 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 Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 *et seq.*;

The Respondent, its attorney, and counsel for the Commission having thereafter executed an Agreement Containing 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 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 has reason to believe that the Respondent has violated the Federal Trade Commission 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 for the receipt and consideration of public comments, and having carefully considered the comments filed by interested persons, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and enters the following Order:

1. Myspace is a Delaware limited liability company with its principal office or place of business at 407 North Maple Drive, Beverly Hills, CA 90210.

Decision and Order

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

ORDER DEFINITIONS

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

- A. Unless otherwise specified, “respondent” shall mean: Myspace and its successors and assigns.
- B. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
- C. “Covered information” shall mean information from or about an individual consumer including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) an Internet Protocol (“IP”) address, User ID, device ID, or other persistent identifier; (g) list of contacts; or (h) physical location.

I.

IT IS ORDERED that respondent, and its officers, agents, representatives and employees, acting directly or through any corporation, subsidiary, division, website, or other device, in connection with the offering of any product or service, in or affecting commerce, shall not misrepresent in any manner, expressly or by implication:

- A. the extent to which respondent maintains and protects the privacy and confidentiality of any covered information, including, but not limited to: (1) the purposes for which it collects and discloses covered information, and (2) the extent to which it makes or

Decision and Order

has made covered information accessible to third parties.

- B. the extent to which respondent is a member of, adheres to, complies with, is certified by, is endorsed by, or otherwise participates in any privacy, security, or any other compliance program sponsored by the government or any other entity, including, but not limited to, the U.S.-EU Safe Harbor Framework.

II.

IT IS FURTHER ORDERED that respondent shall, no later than the date of service of this order, establish and implement, and thereafter maintain, a comprehensive privacy program that is reasonably designed to: (1) address privacy risks related to the development and management of new and existing products and services for consumers, and (2) protect the privacy and confidentiality of covered information. Such program, the content and implementation of which must be documented in writing, shall contain privacy controls and procedures appropriate to respondent's size and complexity, the nature and scope of respondent's activities, and the sensitivity of the covered information, including:

- A. the designation of an employee or employees to coordinate and be responsible for the privacy program.
- B. the identification of reasonably foreseeable, material risks, both internal and external, that could result in respondent's unauthorized collection, use, or disclosure of covered information, and an evaluation of the sufficiency of any safeguards in place to control these risks. At a minimum, this privacy risk evaluation should include consideration of risks in each area of relevant operation, including, but not limited to: (1) employee training and management, including training on the requirements of this order, and (2) product design, development, and research.
- C. the design and implementation of reasonable privacy controls and procedures to address the risks identified

Decision and Order

through the privacy risk evaluation, and regular testing or monitoring of the effectiveness of those privacy controls and procedures.

- D. the development and use of reasonable steps to select and retain service providers capable of appropriately protecting the privacy of covered information they receive from respondent, and requiring service providers by contract to implement and maintain appropriate privacy protections.
- E. the evaluation and adjustment of respondent's privacy program in light of the results of the testing and monitoring required by subpart C, any material changes to respondent's operations or business arrangements, or any other circumstances that respondent knows or has reason to know may have a material impact on the effectiveness of its privacy program.

III.

IT IS FURTHER ORDERED that, in connection with its compliance with Part II of this order, respondent shall obtain initial and biennial assessments and reports ("Assessments") from a qualified, objective, independent third-party professional, who uses procedures and standards generally accepted in the profession. A person qualified to prepare such Assessments shall have a minimum of three (3) years of experience in the field of privacy and data protection. All persons selected to conduct such Assessments and prepare such reports shall be approved by the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, in his or her sole discretion. Any decision not to approve a person selected to conduct such Assessments shall be accompanied by a writing setting forth in detail the reasons for denying such approval. The reporting period for the Assessments shall cover: (1) the first one hundred and eighty (180) days after service of the order for the initial Assessment, and (2) each two (2) year period thereafter for twenty (20) years after service of the order for the biennial Assessments. Each Assessment shall:

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- A. set forth the specific privacy controls that respondent has implemented and maintained during the reporting period;
- B. explain how such privacy controls are appropriate to respondent's size and complexity, the nature and scope of respondent's activities, and the sensitivity of the covered information;
- C. explain how the privacy controls that have been implemented meet or exceed the protections required by Part II of this order; and
- D. certify that the privacy controls are operating with sufficient effectiveness to provide reasonable assurance to protect the privacy of covered information and that the controls have so operated throughout the reporting period.

Each Assessment shall be prepared and completed within sixty (60) days after the end of the reporting period to which the Assessment applies. Respondent shall provide the initial Assessment to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, within ten (10) days after the Assessment has been prepared. All subsequent biennial Assessments shall be retained by respondent until the order is terminated and provided to the Associate Director of Enforcement within ten (10) days of request.

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:

- A. for a period of five (5) years from the date of preparation or dissemination, whichever is later, all widely disseminated statements by respondent or its officers, agents, representatives and employees, that describe the extent to which respondent maintains and

Decision and Order

protects the privacy, security and confidentiality of any covered information, including, but not limited to, any statement related to a change in any website or service controlled by respondent that relates to the privacy, security, and confidentiality of covered information, with all materials relied upon in making or disseminating such statements;

- B. for a period of five (5) years from the date received, all consumer complaints directed at respondent, or forwarded to respondent by a third party, that relate to the conduct prohibited by this order and any responses to such complaints;
- C. for a period of five (5) years from the date received, copies of all subpoenas and other communications with law enforcement entities or personnel, if such communications raise issues that relate to respondent's compliance with the provisions of this order;
- D. for a period of five (5) years from the date received, any documents, whether prepared by or on behalf of respondent, that contradict, qualify, or call into question respondent's compliance with this order; and
- E. for a period of five (5) years after the date of preparation of each Assessment required under Part III of this order, all materials relied upon to prepare the Assessment, whether prepared by or on behalf of respondent, including but not limited to all plans, reports, studies, reviews, audits, audit trails, policies, training materials, and assessments, for the compliance period covered by such Assessment.

V.

IT IS FURTHER ORDERED that respondent shall deliver a copy of this order to (1) all current and future principals, officers, directors, and managers, (2) all current and future employees, agents, and representatives having supervisory responsibilities relating to the subject matter of this order, and (3) any business entity resulting from any change in structure set forth in Part VI.

Decision and Order

Respondent shall deliver this order to such current personnel within thirty (30) days after service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities. For any business entity resulting from any change in structure set forth in Part VI, delivery shall be at least ten (10) days prior to the change in structure.

VI.

IT IS FURTHER ORDERED that respondent 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 either 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. Unless otherwise directed by a representative of the Commission, all notices required by this Part shall be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, with the subject line *In the Matter of Myspace LLC*, Docket No. C-4369.

VII.

IT IS FURTHER ORDERED that respondent shall, within sixty (60) days after the date of service of this order file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form in which respondent has complied with this order. Within ten days of receipt of written notice from a representative of the Commission, respondent shall submit additional true and accurate written reports.

Analysis to Aid Public Comment

VIII.

This order will terminate on August 30, 2032, or twenty (20) years from the most recent date that the United States or the 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 fewer than twenty (20) years;
- B. 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 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, Commission Ohlhausen not participating.

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted, subject to final approval, a consent agreement from Myspace LLC (“Myspace”).

The proposed consent 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

Analysis to Aid Public Comment

decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

Myspace operates a social networking website, www.myspace.com, that, among other features, enables a consumer who uses the site 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. Myspace assigns a persistent unique numerical identifier, called a "Friend ID," to each user profile created on Myspace. 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. The Friend ID can be used to access information about the user, including the user's profile picture, location, gender, age, display name (*e.g.*, a nickname or pseudonym displayed on the user's profile), and, in many cases, the user's full name.

Myspace obtains revenue by allowing third-party or affiliate advertising networks to serve advertisements directly on its site. The FTC complaint alleges that Myspace made numerous promises to its users regarding the extent to which it shared consumers' personal information with third-party advertisers. The complaint alleges that Myspace promised that: (1) it would not use or share a user's personally identifiable information, defined as full name, email address, mailing address, telephone number, or credit card number, without first giving notice to and receiving permission from users; (2) the means through which it customized ads did not allow advertisers to access personally identifiable information or individually identify users; (3) the information shared with advertisers regarding web browsing activity was anonymized; and (4) it complied with the U.S.-EU Safe Harbor Framework.

The Commission's complaint alleges that Myspace violated Section 5(a) of the FTC Act, by misleading users about what information third-party advertisers received about them. According to the FTC complaint, from January 2009 through June 2010, and again from October 29, 2010 through October 28, 2011,

Analysis to Aid Public Comment

when Myspace displayed advertisements on its website from certain unaffiliated third-party advertisers, Myspace and/or its affiliate provided those advertisers with the Friend ID of the user who was viewing the page. With this information, 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 visit the user's personal profile on the Myspace website to obtain personal information, including, for most users, their full name. A third-party advertiser could also combine the user's real name and other personal information with additional information contained in the advertiser's tracking cookie, a small text file placed on a user's browser that may include information about the user's online browsing history.

The proposed order contains provisions designed to prevent Myspace from engaging in future practices similar to those alleged in the complaint.

Part I of the proposed order prohibits Myspace from misrepresenting the privacy and confidentiality of any "covered information," as well as the company's compliance with any privacy, security, or other compliance program, including but not limited to the U.S.-EU Safe Harbor Framework. "Covered information" is defined broadly to include an individual's: (a) first and last name; (b) home or other physical address, including street name and city or town; (c) email address or other online contact information, such as an instant messaging user identifier or screen name; (d) mobile or other telephone number; (e) photos and videos; (f) Internet Protocol ("IP") address, User ID, device ID, or other persistent identifier; (g) list of contacts; or (h) physical location.

Part II of the proposed order requires Myspace to establish and maintain a comprehensive privacy program that is reasonably designed to: (1) address privacy risks related to the development and management of new and existing products and services, and (2) protect the privacy and confidentiality of covered information. The privacy program must be documented in writing and must contain privacy controls and procedures appropriate to Myspace's size and complexity, the nature and scope of its activities, and the sensitivity of covered information. Specifically, the order requires Myspace to:

Analysis to Aid Public Comment

- designate an employee or employees to coordinate and be responsible for the privacy program;
- identify reasonably-foreseeable, material risks, both internal and external, that could result in the unauthorized collection, use, or disclosure of covered information and assess the sufficiency of any safeguards in place to control these risks;
- design and implement reasonable privacy controls and procedures to control the risks identified through the privacy risk assessment and regularly test or monitor the effectiveness of the safeguards' key controls and procedures;
- develop and use reasonable steps to select and retain service providers capable of appropriately protecting the privacy of covered information they receive from respondent, and require service providers by contract to implement and maintain appropriate privacy protections; and
- evaluate and adjust its privacy program in light of the results of the testing and monitoring, any material changes to its operations or business arrangements, or any other circumstances that it knows or has reason to know may have a material impact on the effectiveness of its privacy program.

Part III of the proposed order requires that Myspace obtain within 180 days, and on a biennial basis thereafter for twenty (20) years, an assessment and report from a qualified, objective, independent third-party professional, certifying, among other things, that: it has in place a privacy program that provides protections that meet or exceed the protections required by Part II of the proposed order; and its privacy controls are operating with sufficient effectiveness to provide reasonable assurance that the privacy of covered information is protected.

Parts IV through VIII of the proposed order are reporting and compliance provisions. Part IV requires that Myspace retain for a period of five (5) years: (a) all "widely disseminated statements"

Analysis to Aid Public Comment

that describe the extent to which respondent maintains and protects the privacy and confidentiality of any covered information, along with all materials relied upon in making or disseminating such statements; (b) all consumer complaints directed at Myspace, or forwarded to Myspace by a third party, that allege unauthorized collection, use, or disclosure of covered information and any responses to such complaints; (c) all subpoenas and other communications with law enforcement entities or personnel that relate to its compliance with the proposed order; (d) documents that contradict, qualify, or call into question its compliance with the proposed order. Part IV additionally requires that Myspace retain all materials relied upon to prepare the third-party assessments for a period of five (5) years after the date that each assessment is prepared.

Part V requires dissemination of the order now and in the future to principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having supervisory responsibilities relating to the subject matter of the order. Part VI ensures notification to the FTC of changes in corporate status. Part VII mandates that Myspace submit an initial compliance report to the FTC and make available to the FTC subsequent reports. Part VIII is a provision “sunsetting” the order after twenty (20) years, with certain exceptions.

The purpose of the analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.

Complaint

IN THE MATTER OF

NOVARTIS AGCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT

Docket No. C-4364; File No. 121 0144
Complaint, July 13, 2012 – Decision, September 4, 2012

This consent order addresses the \$1.525 billion acquisition by Novartis AG of certain assets of Fougere Holdings Inc. The complaint alleges that the acquisition, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act by substantially lessening competition in the U.S. markets for generic calcipotriene topical solution, generic lidocaine-prilocaine cream, generic metronidazole topical gel, and diclofenac sodium gel. The consent order requires Novartis to: (1) terminate Novartis's marketing agreement with Tolmar, Inc. with respect to the currently marketed products generic calcipotriene topical solution, generic lidocaine-prilocaine cream, and generic metronidazole topical gel ("Marketed Divestiture Products") and return all of Novartis's rights to distribute, market, and sell the Marketed Divestiture Products to Tolmar; and (2) return all rights to develop, distribute, market, and sell the development product generic diclofenac sodium gel to Tolmar.

Participants

For the *Commission*: Christine Tasso and David Von Nirschl.

For the *Respondent*: Claudia Higgins and Saul Morgenstern,
Kaye Scholar LLP.

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade Commission ("Commission"), having reason to believe that Respondent Novartis AG ("Novartis"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Fougere Holdings Inc. ("Fougere"), a corporation subject to the jurisdiction of the Commission, in violation of Section 5 of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. § 45, that such acquisition, if consummated, would violate Section 7 of the of the Clayton Act, as amended, 15 U.S.C. § 18,