

Complaint

IN THE MATTER OF

**BOSLEY, INC,
ADERANS AMERICA HOLDINGS, INC.
AND
ADERANS CO., LTD.**

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

*Docket No. C-4404; File No. 121 0184
Complaint, May 30, 2013 – Decision, May 30, 2013*

This consent order addresses allegations that Bosley, Inc. illegally exchanged competitively sensitive, nonpublic information about its business practices with one of its competitors, HC (USA), Inc. (“Hair Club”), in violation of Section 5 of the Federal Trade Commission Act. According to the complaint, the CEOs of Bosley and Hair Club exchanged information regarding future product offerings, surgical hair transplantation price floors and discounts, plans for business expansion and contraction, and current business operations and performance for at least four years. These communications predated discussions between the respondents regarding the acquisition of Hair Club by Bosley’s parent entity, Aderans Co., Ltd. The consent order bars Bosley from communicating competitively sensitive, nonpublic information directly to any hair transplantation competitor. It also bars Bosley from requesting, encouraging, or facilitating the communication of any such information from any of its competitors. Additionally, the consent order requires Bosley to institute a program to ensure that it complies with federal antitrust laws in the future and to submit periodic compliance reports to the Commission.

Participants

For the *Commission*: *Rebecca P. Dick, Mara M. Grobins, Marc S. Lanoue, Ashley Masters, Justin Stewart-Teitelbaum, and Michelle A. Wyant.*

For the *Respondents*: *Rebecca A.D. Nelson and Daniel Schwartz, Bryan Cave LLP.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41, et seq., and by virtue of the authority vested in it by said Act, the Federal Trade Commission

Complaint

(“Commission”), having reason to believe that Bosley, Inc. and HC (USA), Inc. have violated the provisions of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint stating its charges as follows:

NATURE OF THE CASE

1. Bosley, Inc. (“Bosley”) and HC (USA), Inc. (“Hair Club”) specialize in the management of medical/surgical hair restoration practices, including providing input on pricing. Bosley and Hair Club have national brand recognition and nationwide geographic footprints. Over a period of several years, Bosley and Hair Club executive officers repeatedly exchanged competitively sensitive, nonpublic information about their respective organizations. These discussions facilitated coordination and endangered competition between the companies in violation of Section 5 of the Federal Trade Commission Act.

PRELIMINARY ALLEGATIONS

2. Respondent Bosley is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware. Its corporate headquarters are located at 9100 Wilshire Blvd., East Penthouse, Beverly Hills, California 90212. Bosley is a wholly-owned subsidiary of Aderans America Holdings, Inc.

3. Respondent Aderans America Holdings, Inc. (“Aderans America”) is a corporation organized, existing, and doing business under and by virtue of the laws of the state of New York. Its corporate headquarters are located at 9100 Wilshire Blvd., East Penthouse, Beverly Hills, California 90212. Aderans America is a wholly-owned subsidiary of Aderans Co., Ltd.

4. Respondent Aderans Co., Ltd. (“Aderans”) is a corporation organized, existing, and doing business under and by virtue of the laws of Japan. Its corporate headquarters are located at 13-4 Araki-cho, Shinjuku-ku, Tokyo 160-0007, Japan.

5. Hair Club is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware.

Complaint

Its corporate headquarters are located at 1515 South Federal Highway, Suite 401, Boca Raton, Florida 33432. Currently, Hair Club is a subsidiary of Regis Corporation (“Regis”), a corporation organized, existing, and doing business under and by virtue of the laws of the state of Minnesota. Regis’s corporate headquarters are located at 7201 Metro Blvd., Minneapolis, Minnesota 55439.

6. Pursuant to a Stock Purchase Agreement dated July 13, 2012, Aderans proposes to acquire all of Hair Club’s common stock from Regis for \$163.5 million.

7. The primary business of Bosley is the management of medical/surgical hair restoration practices, including providing input on pricing, and the provision of certain non-prescription hair therapy products.

8. The primary business of Hair Club is treatment for hair loss. Hair Club provides non-surgical hair restoration and hair therapy products. Hair Club manages medical/surgical hair restoration practices, including providing input on pricing.

JURISDICTION

9. At all times relevant herein, Respondents Bosley, Aderans America, and Aderans, have been, and they now are, corporations as defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

10. The acts and practices of Respondents, including the acts and practices alleged herein, are in commerce and affect commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

LINE OF COMMERCE

11. Bosley is the largest manager of medical/surgical hair transplantation practices in the United States. Bosley and Hair Club are managers of medical/surgical hair transplantation with nationwide geographic footprints and national brand recognition.

Complaint

EXCHANGES OF COMPETITIVELY SENSITIVE NON-PUBLIC INFORMATION

12. For at least four years, Bosley's and Hair Club's chief executive officers ("CEOs") repeatedly exchanged competitively sensitive, nonpublic information regarding aspects of their firms' surgical hair transplantation business.

13. Bosley's and Hair Club's CEOs directly exchanged detailed information about future product offerings, surgical hair transplantation price floors, discounting, forward-looking expansion and contraction plans, and operations and performance.

14. Bosley and Hair Club's tacit understanding to exchange information of the nature alleged herein had the purpose, tendency, and capacity to facilitate coordination and served no legitimate business purpose for Bosley, Aderans America, or Hair Club.

15. The exchanges of information, alleged herein, had the effect of reducing Bosley's and Hair Club's uncertainty about a competitor's product offerings, current discounting, geographic expansion and contraction, marketing plans, and operating strategies. The reduction of uncertainty facilitated coordination and endangered competition.

16. Information exchanges were not strictly limited to Bosley and Hair Club. Bosley viewed these information exchanges as business as usual, and indicated that it had similar communications with other competitors.

VIOLATIONS ALLEGED

17. As set forth in Paragraphs 12 through 16 above, Respondent Bosley solicited, exchanged, and obtained competitively sensitive information with and about its competitors. By facilitating coordination and endangering competition, these information exchanges violated Section 5 of the Federal Trade Commission Act, as amended.

Decision and Order

18. The acts and practices of Respondents, as alleged herein, constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended. Such acts and practices of Respondents will continue or recur in the absence of appropriate relief.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission, on this thirtieth day of May, 2013, issues its complaint against Respondents.

By the Commission, Commissioner Wright recused.

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of certain acts and practices of Bosley, Inc., (“Bosley”) a subsidiary of Aderans America Holdings, Inc. (“Aderans America”) and Aderans Co., Ltd. (“Aderans”) (collectively, “Respondents”), and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondents 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 Respondents 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

Decision and Order

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Act and that a Complaint should issue stating its charges in that respect, and having 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, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Bosley is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware. Its corporate headquarters are located at 9100 Wilshire Blvd., East Penthouse, Beverly Hills, California 90212. Bosley is a wholly owned subsidiary of Aderans America Holdings, Inc.
2. Respondent Aderans America Holdings, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the state of New York. Its corporate headquarters are located at 9100 Wilshire Boulevard, East Penthouse, Beverly Hills, California 90212. Aderans America is a wholly owned subsidiary of Aderans Co., Ltd.
3. Respondent Aderans Co., Ltd. is a corporation organized, existing, and doing business under and by virtue of the laws of Japan. Its corporate headquarters are located at 13-4 Araki-cho, Shinjyuku-ku, Tokyo 160-0007, Japan.
4. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of Respondents, and this proceeding is in the public interest.

Decision and Order

ORDER**I.**

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Bosley” means Bosley, Inc., its directors, officers, employees, agents, attorneys, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Bosley; and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each; provided, however, that Bosley shall not include the physicians, individually or through his/her professional corporations, under independent contractor agreements with the various Bosley Medical Groups, or the various Bosley Medical Groups operating under management contracts with Bosley.
- B. “Aderans America” means Aderans America Holdings, Inc., its directors, officers, employees, agents, attorneys, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Aderans America; and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.
- C. “Aderans” means Aderans Co., Ltd., its directors, officers, employees, agents, attorneys, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Aderans America; and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each. After the acquisition of HC (USA), Inc. (“Hair Club”), Aderans includes Hair Club.

Decision and Order

- D. “Respondents” means Respondent Bosley, Respondent Aderans America and Respondent Aderans, individually and collectively.
- E. “Commission” means the Federal Trade Commission.
- F. “Antitrust Compliance Program” means the program to ensure compliance with this Order and with the Antitrust Laws, as required by Paragraph III of this Order.
- G. “Antitrust Laws” means the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 et. seq., the Sherman Act, 15 U.S.C. § 1 et. seq., and the Clayton Act, 15 U.S.C. § 12 et. seq.
- H. “Communicate,” “Communicating,” and “Communication” means any transfer or dissemination of information, whether directly or indirectly, and regardless of the means by which it is accomplished, including without limitation orally or by printed or electronic materials.
- I. “Competitor” means any Person engaged in the business of managing or offering for sale medical/surgical hair transplantation services in the United States; provided, however, that Competitor does not include the physicians, individually or through his/her professional corporations, under independent contractor agreements with the various Bosley Medical Groups, or the various Bosley Medical Groups operating under management contracts with Bosley.
- J. “Competitively Sensitive, Non-Public Information” means any competitively sensitive, non-public business information of Respondents or any of their Competitors relating to medical/surgical hair transplantation services in the United States, including without limitation non-public information relating to pricing or pricing strategies, costs, revenues, profits,

Decision and Order

margins, output, business or strategic plans, marketing, advertising, promotion, or research and development;

Provided, however, that “Competitively Sensitive, Non-Public Information” does not include:

1. Information that has been Communicated publicly to current or prospective customers or investors through widely accessible methods, including websites, analyst conference calls, press releases, and other methods of advertising, such as print, television, signage, direct mail or online media;
 2. Information that has been Communicated publicly as required by the Federal Securities Laws.
- K. “Federal Securities Laws” means the securities laws as that term is defined in §3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. §78c(a)(47), and any regulation or order of the Securities and Exchange Commission issued under such laws.
- L. “Person” means both natural persons and artificial persons, including, but not limited to, corporations, partnerships, and unincorporated entities.

II.

IT IS FURTHER ORDERED that in connection with the business of managing medical/surgical hair transplantation services in or affecting commerce, as “commerce” is defined by the Federal Trade Commission Act, Respondents shall cease and desist from, either directly or indirectly, or through any corporate or other device:

- A. Communicating any Competitively Sensitive, Non-Public Information to any Competitor; or
- B. Requesting, encouraging, or facilitating the Communication of Competitively Sensitive, Non-Public Information from any Competitor.

Decision and Order

Provided, however, that it shall not, of itself, constitute a violation of Paragraph II of this Order for Respondents: (1) to Communicate or request Competitively Sensitive, Non-Public Information to or with a Competitor where such conduct is reasonably related to a lawful joint venture or as part of legally supervised due diligence for a potential transaction, and reasonably necessary to achieve the procompetitive benefits of such a relationship; (2) to Communicate to any Person who Respondents reasonably believe is an actual or prospective customer Respondents' rates or other terms of service and/or that Respondents are willing to lower their rates in response to a Competitor's rate; (3) to Communicate to any Person who Respondents reasonably believe is affiliated with a market research firm Respondents' rates; (4) to Communicate, provide, or request information as part of the ordinary and customary participation in trade associations or medical societies; (5) to Communicate with Respondents' vendors and independent contractors in an ordinary and customary manner; or (6) without knowingly disclosing his/her affiliation with Respondents, and while taking steps reasonably calculated to conceal his/her affiliation with Respondents, and for the purpose of legitimate market research (such as secret shopping), to request or receive from a Competitor information, including but not limited to, its pricing terms.

III.**IT IS FURTHER ORDERED** that:

- A. Within sixty (60) days after the date on which this Order becomes final, Respondents shall design, maintain and operate for the duration of this Order an Antitrust Compliance Program to assure ongoing compliance with this Order and with the Antitrust Laws. This Antitrust Compliance Program shall include, but not be limited to:
 - 1. Respondents' designation of an officer or director to supervise the design, maintenance, and operation of the Antitrust Compliance Program;

Decision and Order

2. Antitrust compliance training for (a) all officers of Respondents, and (b) all other executives, managers, employees and agents of Respondents whose positions entail contacts with Competitors or who have sales, marketing, or pricing responsibilities with respect to the business of managing medical/surgical hair transplantation services in the United States;
 3. Distributing Respondents' Antitrust Compliance Program (including any updates thereof, as applicable) to all those Persons identified in Paragraph III.A.2 above;
 4. Making available ongoing legal support to respond to any questions on the Antitrust Compliance Program or the Antitrust Laws in a timely manner; and
 5. Annual training on the requirements of this Order and the Antitrust Laws for all the Persons identified in Paragraph III.A.2 above.
- B. Within thirty (30) days after the date on which this Order becomes final, Respondents shall provide to each of Respondents' officers and directors a copy of this Order and the Complaint. For a period of four (4) years from the date this Order becomes final, Respondents shall provide a copy of this Order and the Complaint to any Person who becomes an officer or director of any Respondent, and shall provide such copies within thirty (30) days of the commencement of such Person's term as an officer or director;
- C. Respondents shall require each person to whom a copy of this Order is furnished pursuant to Paragraph III.B above to sign and submit to Respondents within thirty (30) days of the receipt thereof a statement that (1) represents that the undersigned has read and understands the Order, and (2) acknowledges that the undersigned has been advised and understands that

Decision and Order

non-compliance with the Order may subject Respondents to penalties for violation of the Order; and

- D. Respondents shall retain documents and records sufficient to record Respondents' compliance with their obligations under Paragraph III of this Order.

IV.

IT IS FURTHER ORDERED that Respondents shall file verified written reports within sixty (60) days from the date this Order becomes final, annually thereafter for four (4) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may by written notice require. Each report shall include, among other information that may be necessary:

- A. A detailed description of the manner and form in which Respondents have complied and are complying with this Order;
- B. The name, title, business address, email address, and business phone number of the officer or director designated by Respondents to supervise Respondents' Antitrust Compliance Program;
- C. The name, title, business address, email address and business phone number of each Person who received training on the requirements of this Order and the Antitrust Laws pursuant to Paragraph III of this Order, and information sufficient to show the date, location, and manner in which each Person was trained;
- D. A description of the Antitrust Compliance Program; and
- E. A copy of the acknowledgements required by Paragraph III.C of this Order.

Decision and Order

V.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of such Respondent;
- B. Any proposed acquisition, merger, or consolidation of such Respondent; and
- C. Any other change in such Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this Order.

VI.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to the applicable Respondent made to its principal United States offices, registered office of its United States subsidiaries, or headquarters addresses, such Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of such Respondent and in the presence of counsel, to all United States facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of such Respondent related to compliance with this Order, which copying services shall be provided by such Respondent at the request of the authorized representative(s) of the Commission and at the expense of such Respondent; and
- B. The opportunity to interview officers, directors, or employees of such Respondent, who may have counsel present, related to compliance with this Order.

Analysis to Aid Public Comment

VII.

IT IS FURTHER ORDERED that this Order shall terminate on May 30, 2033.

By the Commission, Commissioner Wright recused.

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT**

The Federal Trade Commission (“Commission”) has accepted for public comment, subject to final approval, an Agreement Containing Consent Order (“Consent Agreement”) from Bosley, Inc. (“Bosley”), and its corporate parents, Aderans America Holdings, Inc. (“Aderans America”) and Aderans Co., Ltd. (“Aderans”) (collectively, “Respondents”). Bosley is the largest manager of medical/surgical hair transplantation practices in the United States. The Commission’s Complaint alleges that Bosley facilitated coordination and endangered competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, by exchanging competitively sensitive, nonpublic information with HC (USA), Inc. (“Hair Club”). Bosley indicated that it exchanged similar information with other medical/surgical hair transplantation practitioners.

The proposed Consent Agreement would resolve competitive concerns by requiring Bosley: (1) not to communicate competitively sensitive, nonpublic information with any competitor; (2) not to request, encourage, or facilitate communication of competitively sensitive, nonpublic information from any competitor; and (3) to institute an antitrust compliance program to assure ongoing compliance with the proposed Decision and Order (“Order”) and with U.S. antitrust laws.

Analysis to Aid Public Comment

The proposed Consent Agreement has been placed on the public record for thirty (30) days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the Consent Agreement, modify it, or make final the proposed Order.

The sole purpose of this analysis is to facilitate public comment on the Consent Agreement. The analysis does not constitute an official interpretation of the Consent Agreement or the proposed Order, nor does the analysis modify their terms in any way. Further, the Consent Agreement has been entered into for settlement purposes only, and does not constitute an admission by Respondents that they violated the law or that the facts alleged in the Complaint (other than jurisdictional facts) are true.

I. The Complaint

The allegations of the Complaint are summarized below.

Bosley and Hair Club are managers of medical/surgical hair transplantation with nationwide geographic presence and national brand recognition. Bosley is the largest such manager in the United States. For at least four years, the chief executive officers (“CEOs”) of Bosley and Hair Club repeatedly exchanged competitively sensitive, nonpublic information about their companies’ medical/surgical hair transplantation practices. The information exchanged included details about future product offerings, surgical hair transplantation price floors and discounts, plans for expansion and contraction, and business operations and performance. At the time the CEOs exchanged the information, it was not publicly available.

Bosley considered the information exchanges to be business as usual, and as alleged in the Complaint, Bosley indicated that it had similar communications with other competitors.

Analysis to Aid Public Comment

II. Analysis

Competition may be unreasonably restrained whenever a competitor directly communicates, solicits, or facilitates exchange of competitively sensitive information with its rivals, particularly where such information is highly detailed, disaggregated, and forward-looking. The risks posed by such communications are three-fold. First, a discussion of competitively sensitive prices, output, or strategy may mutate into a conspiracy to restrict competition. Second, an information exchange may facilitate coordination among rivals that harms competition, even in the absence of any explicit agreement regarding future conduct. Third, knowledge of a competitor's plans reduces uncertainty and enables rivals to restrict their own competitive efforts, even in the absence of actual coordination.

According to the Commission's Complaint, by directly and repeatedly exchanging competitively sensitive, nonpublic information with Hair Club and other rivals, Bosley engaged in unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act. The Commission's Complaint alleges that Bosley and Hair Club exchanged information on competitively sensitive subjects, including future plans to close existing facilities and current strategies regarding price discounting. Bosley and Hair Club's alleged tacit understanding to exchange the information could facilitate coordination or endanger competition by reducing uncertainty about a rival's product offerings, prices, and strategic plans. For example, the information exchanges could lead a competitor to determine not to open facilities or market services in a particular location. Alternatively, a competitor might avoid granting additional discounts to maintain existing price levels for surgical hair transplantation services. Any or all of these decisions could result in consumer harm in the form of reduced choice or artificially inflated transaction prices. The potential for harm increases to the extent that Bosley engaged in similar communications with additional rivals.

The Commission must weigh the potential for competitive harm from direct and repeated exchanges of competitively sensitive, nonpublic information against the prospect of legitimate efficiency benefits. The Commission's Complaint alleges that the

Analysis to Aid Public Comment

information exchanges between Bosley and Hair Club served no legitimate business purpose. Specifically, the Commission alleges that in this instance – considering the types of information involved, the level of detail, the direct nature of the communication, and the absence of any related pro-competitive impact – the exchanges were potentially anticompetitive and lacked a legitimate business justification.

III. The Proposed Consent Order

The Consent Agreement signed by Respondents contains a proposed Order resolving the allegations in the Commission's Complaint. First among its provisions, Paragraph II. of the proposed Order enjoins Respondents from communicating competitively sensitive, nonpublic information directly to any hair transplantation competitor. Paragraph II. further prohibits Respondents from requesting, encouraging, or facilitating communication of competitively sensitive, nonpublic information from any competitor.

Paragraph II. of the proposed Order would not interfere with Respondents' ability to compete or prevent participation in legitimate industry practices, such as ordinary trade association or medical society activity. Specifically, the proposed Order excludes from its prohibitions certain communications including: (1) where the information is reasonably necessary to achieve pro-competitive benefits related to a lawful joint venture or as part of legally supervised due diligence; (2) provision of rates to market research firms or Respondents' own vendors or independent contractors; (3) provision of rates or competitive offers to actual or prospective customers; and (4) receipt of information from competitors for the purpose of legitimate market research where the information is not knowingly conveyed to Respondents or their representatives (e.g., competitive intelligence).

In addition, Paragraph III. of the proposed Order requires Respondents to institute programs to ensure compliance with the proposed Order and U.S. antitrust laws. Paragraph III. requires: (1) annual antitrust compliance training for all Bosley officers, executives, employees, and agents whose positions entail contact with competitors or who have sales, marketing, or pricing

Analysis to Aid Public Comment

responsibility for Respondents' management of medical/surgical hair transplantation practice; (2) the provision of legal support to respond to any questions regarding antitrust compliance or U.S. antitrust laws; and (3) document retention sufficient to record compliance with Respondents' obligations under the proposed Order.

Paragraph IV. requires Respondents to submit periodic compliance reports to the Commission. Respondents must provide an initial compliance report within sixty (60) days from the date the Order becomes final and annually thereafter for the next four (4) years or upon written notice by the Commission.

Pursuant to Paragraph V. of the proposed Order, Respondents must also provide notice to the Commission thirty (30) days prior to any planned dissolution, acquisition, or other change that may affect compliance obligations arising from the proposed Order.

Paragraph VI. gives the Commission access, upon five (5) days written notice, to Respondents' U.S. facilities, records, and employees to ensure on-going compliance.

Paragraph VII. of the proposed Order provides that the proposed Order will expire in twenty (20) years.

Complaint

IN THE MATTER OF

HTC AMERICA INC.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5(A) OF THE FEDERAL TRADE COMMISSION ACT

Docket No. C-4406; File No. 122 3049
Complaint, June 25, 2013 – Decision, June 25, 2013

The consent order addresses allegations that HTC America failed to take reasonable steps to secure the software it developed for its smartphones and tablet computers, in violation of Section 5(a) of the FTC Act. According to the complaint, HTC America failed to provide its engineering staff with adequate security training, failed to review or test the software on its mobile devices for potential security vulnerabilities, failed to follow well-known and commonly accepted secure coding practices, and failed to establish a process for receiving and addressing vulnerability reports from third parties. As a result of HTC America's failure to implement reasonable security measures, malware was permitted to be placed on millions of consumers' devices without their permission. This malware could be used to record and transmit information entered into or stored on the device, including, for example, financial account numbers and related access codes, geolocation information, or medical information such as text messages received from healthcare providers and calendar entries concerning doctor's appointments. The complaint further alleges that the user manuals for HTC America's Android-based devices contained deceptive representations. The consent order requires HTC America to develop and release software patches to repair the vulnerabilities in its devices. The consent order further requires HTC America to establish a comprehensive security program designed to address security risks during the development of its devices and to undergo independent security assessments every other year for the next 20 years.

Participants

For the *Commission*: *Nithan Sannappa* and *Jonathan Zimmerman*.

For the *Respondent*: *Susan Lu Lyon, Cooley LLP*.

COMPLAINT

The Federal Trade Commission, having reason to believe that HTC America, Inc. ("respondent") has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges: