

Complaint

IN THE MATTER OF

VICTORY MEDIA, INC.

D/B/A

G.I. JOBS AND MILITARY FRIENDLYCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4640; File No. 162 3210**Complaint, January 11, 2018 – Decision, January 11, 2018*

This consent order addresses Victory Media, Inc.’s operation of the search tool School Matchmaker at gijobs.com to help service members find educational institutions in their fields of interest. The complaint alleges that the respondent made claims that its Matchmaker tool searched schools that met respondent’s “military friendly” criteria. The complaint further alleges that the respondent, in certain of its articles, emails, and social media posts, misrepresented that its endorsements were independent and not paid advertising, and failed to adequately disclose that the content recommended schools that paid the respondent specifically to be promoted therein. The consent order prohibits the respondent from making any misrepresentations regarding the scope of any search tool, including whether the tool only searches “military friendly” schools, material connections between it and any schools, and that paid commercial advertising is independent content.

Participants

For the *Commission*: *Stephanie Cox* and *Nikhil Singhvi*.

For the *Respondent*: *Spencer Elg*, *Ilunga Kalala*, *William MacLeod*, and *Sharon Schiavetti, Kelley Drye & Warren LLP*.

COMPLAINT

The Federal Trade Commission, having reason to believe that Victory Media, Inc., d/b/a Jobs and also d/b/a Military Friendly, 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:

1. Respondent Victory Media, Inc. (“Victory Media”), also doing business as G.I. Jobs, also doing business as Military Friendly, is a Pennsylvania corporation with its principal place of

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business at 420 Rouser Road, Suite 101, Moon Township, PA 15108.

2. Victory Media offers nationally recognized media brands, survey and ratings programs, reporting services and training.

3. Respondent creates and prepares advertising, marketing, and promotional content for educational institutions. Respondent disseminates this content to consumers through a variety of mediums, including the magazines *G.I. Jobs* (published monthly), the *Guide to Military Friendly Schools* (published annually), and *Military Spouse* (published monthly). According to Victory Media's website, "Since 2001, G.I. Jobs® has been the premier brand and resource in military recruitment, offering articles, tips and online tools to help military transitioners and veterans explore different employment, education and entrepreneurship opportunities. We give specific, 'how-to advice' on everything from choosing a college to writing a resume to interviewing to industry and career highlights."

4. These magazines typically contain articles on topics related to employment and education, as well as features on specific post-secondary schools and advertisements for educational institutions. Respondent places these magazines on military bases, in military hospitals, and in centers where the military's Transitional Assistance Programs ("TAP") are being held. TAP is a mandatory program that all service members who are separating from the military must attend. Respondent's monthly magazines have a combined print circulation of over 145,000.

5. Respondent also owns and operates several websites directed at military consumers, including militaryfriendly.com, militaryspouse.com, and gijobs.com. As part of its education outreach, Respondent often posts articles, lists, and other information on educational topics and about educational institutions on these websites. Respondent also maintains active profiles on social media platforms, including Facebook, Twitter, LinkedIn, and YouTube, on which it posts information about educational topics and educational institutions.

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6. Respondent has described itself as an advisor to military consumers. For example, on the G.I. Jobs Facebook page, <https://www.facebook.com/pg/GIJobsMagazine/about/>, Respondent describes itself as “the number one choice of service members for advice on career and education opportunities,” explaining that “new veterans look to us for advice and tools to help them find the right jobs, education, and vocational training during and after leaving the military.”

7. The acts and practices of Respondent alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

The Matchmaker Search Tool

8. Respondent’s School Matchmaker tool (“Matchmaker”) has been a search function on Respondent’s gijobs.com website that consumers could use to search for post-secondary schools based on name, location, or subject area of study.

9. Respondent has represented to military consumers that the Matchmaker searches through schools that are “military friendly” – a designation Respondent created based on publicly available data and a voluntary survey it sends to schools with questions related to the educational needs and interests of military students. For example, the following advertisement for the Matchmaker tool appeared in Respondent’s G.I. Jobs magazine, representing that the tool searches “military friendly” schools.

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**MAXIMIZE YOUR
GI BILL MONEY
WITH THE
#1
COLLEGE TOOL
FOR VETERANS**

It's a big decision ... and an important one. We understand. With so much to consider, where do you even begin your search for the perfect school? The answer is simple: with the **G.I. Jobs School Matchmaker!**

With a few simple clicks you can quickly search hundreds of Military Friendly® Schools that have the exact degree you're looking for, provide the most credit hours for your military service and give you the highest BAH!

It's never been easier to find the perfect school that meets your post-military needs, exceeds your expectations and makes your transition from service member to student that much easier.

GI JOBS

Visit the G.I. Jobs School Matchmaker today and take the guesswork out of finding the perfect school:

GIJOBS.COM/SCHOOLS

10. Similarly, Respondent has represented:

- “To help ease your stress, we publish an annual Military Friendly Schools list that’s augmented by the digital School Matchmaker tool at GIJobs.com.” (*G.I. Jobs*, February 2016)

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- “School Matchmaker. Find the best Military Friendly Schools.” (*G.I. Jobs*, May 2016)
- “Check out our new School Matchmaker – tell us what you’re looking for in post- military education and we’ll match you with a Military Friendly School that exceeds your expectations.” (www.gijobs.com)
- “For a full list of military friendly schools, check out the G.I. Jobs School Matchmaker.” (www.militaryspouse.com)

11. Beginning in mid-2015, Respondent has included schools as possible search results for its Matchmaker tool only if the schools paid Respondent to be included, and regardless of whether Respondent has designated them as “military friendly” under Respondent’s criteria. Indeed, schools that Respondent’s internal documents state did not receive a high enough score on Respondent’s survey to be designated as “military friendly” have been included in the Matchmaker search if they paid to be included.

Articles, Emails, And Posts Promoting Paying Schools

12. Respondent has endorsed individual schools in certain articles, emails, and social media posts it creates discussing educational opportunities. Unbeknownst to consumers, in many cases, these schools have paid Respondent to be endorsed in those specific materials.

13. For example, Respondent has annually created and posted an article designated as “Hot Degrees” on its website gijobs.com. These articles list college degrees or certifications that Respondent asserts are in high demand. For each listed degree or certification, the articles then list, under the heading, “Find Your School,” schools that offer the degree or certification and that specifically paid to be promoted in such articles.

14. Respondent has created and included a list identifying specific schools Respondent recommended to be considered in an article on its website gijobs.com in May 2016 entitled “2016 Hot

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Jobs, Cool Degrees.” The following is a screenshot of a portion of one page of the article:



Unbeknownst to consumers, the schools listed in this article are only those that have paid Respondent to be featured in such articles.

15. Indeed, Respondent’s sales documents solicit schools to pay for advertising in the Hot Degrees articles. The following is a screenshot of one such document:

16. The document shows that Respondent specifically places “Advertisers” under the “Find Your School” heading at the end of these articles. The document also encourages schools to purchase this promotion by saying, “Make sure you don’t miss the opportunity to advertise your programs in this issue.”

[illegible]

Hey, G.I. Jobs team here.

After talking among ourselves we realized that, while you're looking for a job or looking to go back to school, you need up-to-date information on the best jobs and schools available.

We've got what you need to know, right here:

Schools:

1. [Borough of Manhattan Community College](#)
 - Borough of Manhattan Community College is a vibrant, pluralistic learning community, offering more than 40 academic programs, committed to the intellectual and personal growth of students. —> [Click Here](#)

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Unbeknownst to consumers, all schools listed in this email have paid Respondent to be featured.

18. Since at least May 2016, all schools promoted in “Incoming Email” have paid to be included. Beginning in August 2016, the following disclaimer, which consumers could reach only by scrolling down through several screens, has appeared at the bottom of such emails in smaller, dense print:

Disclaimer

Our email communication may contain advertising and sponsorships from time to time. Advertisers and sponsors are responsible for ensuring that material submitted for inclusion in our email is accurate and complies with applicable laws. We are not responsible for the illegality or any error, inaccuracy or problem in the advertiser's or sponsor's materials.

THE INCLUSION OF THIRD PARTY ADVERTISEMENTS DOES NOT CONSTITUTE AN ENDORSEMENT, GUARANTEE, WARRANTY, OR RECOMMENDATION BY VICTORY MEDIA, INC. BRANDS AND WE MAKE NO REPRESENTATIONS OR WARRANTIES ABOUT ANY INSTITUTION, EMPLOYER, PRODUCT OR SERVICE CONTAINED THEREIN.

You should always perform proper due diligence when making important decisions.

The disclaimer does not disclose clearly and prominently to consumers that the specific schools promoted in the email have, in fact, paid Respondent for that promotion.

19. Respondent's sales documents solicit schools to pay to be included as endorsed schools in these emails Respondent sends to consumers. The following is an excerpt of one such document:



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Count I Misrepresentations About Matchmaker

20. Through the means described in Paragraphs 8 through 11, Respondent has represented, directly or indirectly, expressly or by implication, that the School Matchmaker tool searches schools Respondent has designated as “military friendly” to find the right educational choice for the consumer.

21. In fact, in numerous instances in which Respondent has made the representations set forth in Paragraph 20 of this Complaint, it included schools that the Respondent had not designated as military friendly, and only included schools that paid to be included. Therefore, the representations set forth in Paragraph 20 are false or misleading.

Count II**Misrepresentations About Independence Of Endorsements**

22. Through the means described in Paragraphs 12 through 19, Respondent has represented, directly or indirectly, expressly or by implication, that specific endorsements in content it prepared promoting post-secondary schools were independent sources of information regarding those schools and not paid advertising.

23. In fact, in many instances, the specific endorsements described in Paragraph 22 were not independent sources of information and were paid advertising. Therefore, the representation set forth in Paragraph 22 of this complaint is false or misleading.

Count III**Deceptive Failure To Disclose Material Connections**

24. Through the means described in Paragraphs 12 through 19, Respondent has represented, directly or indirectly, expressly or by implication, that it recommends specific post-secondary schools for consumers in specific articles, social media posts, and emails it prepared.

25. In many instances in which Respondent has made the representation set forth in Paragraph 24 of this Complaint,

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Respondent has failed to disclose or disclose adequately that many of the specific post-secondary schools paid Respondent to be recommended. This fact would be material to consumers in evaluating Respondent's claims concerning these schools as well as in considering whether to consult additional sources of information about these and other schools.

26. Respondent's failure to disclose or disclose adequately the material information described in Paragraph 25, in light of the representation made in Paragraph 24, is a deceptive act or practice.

THEREFORE, the Federal Trade Commission this eleventh day of January, 2018, has issued this Complaint against Respondent.

By the Commission.

DECISION

The Federal Trade Commission ("Commission") initiated an investigation of certain acts and practices of the Respondent named in the caption. The Commission's Bureau of Consumer Protection ("BCP") prepared and furnished to Respondent a draft Complaint. BCP proposed to present the draft Complaint to the Commission for its consideration. If issued by the Commission, the draft Complaint would charge the Respondent with violation of the Federal Trade Commission Act.

Respondent and BCP thereafter executed an Agreement Containing Consent Order ("Consent Agreement"). The Consent Agreement includes: 1) a statement by Respondent that Respondent neither admits nor denies any of the allegations in the draft Complaint, except as specifically stated in this Decision and Order, and that only for purposes of this action, they admit the

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facts necessary to establish jurisdiction; and 2) waivers and other provisions as required by the Commission's Rules.

The Commission considered the matter and determined that it had reason to believe that Respondent has violated the Federal Trade Commission Act, and that a Complaint should issue stating its charges in that respect. The Commission accepted the executed Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments. The Commission duly considered any comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure prescribed in Commission Rule 2.34, the Commission issues its Complaint, makes the following Findings, and issues the following Order:

Findings

1. Respondent Victory Media, Inc. is a Pennsylvania corporation, also doing business as G.I. Jobs, also doing business as Military Friendly, with its principal office or place of business at 420 Rouser Road, Building 3, Suite 101, Moon Township, Pennsylvania 15108.
2. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondent, and the proceeding is in the public interest.

ORDER**Definitions**

For purposes of this Order, the following definitions apply:

- A. Unless otherwise specified, "Respondent" shall mean Victory Media, Inc., a corporation, also doing business as G.I. Jobs, and also doing business as Military Friendly, its successors and assigns (including but not limited to Neptune Holdings, Inc. and M2V, Inc.), and its officers, agents, representatives, and employees.

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- B. “Clearly and conspicuously” means that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:
1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure (“triggering representation”) is made through only one means.
 2. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
 3. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.
 4. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.
 5. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the triggering representation appears.
 6. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.

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7. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.
 8. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, “ordinary consumers” includes reasonable members of that group.
- C. “Close proximity” means that the disclosure is very near the triggering endorsement or representation. In an interactive electronic medium (such as a mobile app or other computer program), a visual disclosure that cannot be viewed at the same time and in the same viewable area as the triggering endorsement or representation, on the technology used by ordinary consumers, is not in close proximity. A disclosure made through a hyperlink, pop-up, interstitial, or other similar technique is not in close proximity to the triggering endorsement or representation. A disclosure made on a different printed page than the triggering endorsement or representation is not in close proximity.
- D. “Material Connection” means any relationship that materially affects the weight or credibility of any endorsement and that would not be reasonably expected by consumers.
- E. “Post-Secondary School[s]” means an academic, vocational, technical, home study, business, professional, or other school, college, or university, or other organization or person, offering educational credentials or offering instruction or educational services (primarily to persons who have completed or terminated their secondary education or who are beyond the age of compulsory school attendance) for attainment of educational, professional, or vocational objectives.

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Provisions**I. Prohibited Misleading Representations Regarding Paid Promotional Content**

IT IS ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with paid promotional content regarding post-secondary schools, must not make, or assist others in making, any misrepresentation, expressly or by implication:

- A. Regarding the scope of the search conducted by any search tool, including, but not limited to whether any such tool searches only through schools Respondent or others have designated as military friendly;
- B. Regarding any material connection between Respondent and any school; or
- C. That paid commercial advertising is independent content.

II. Required Disclosure Regarding Paid Endorsements

IT IS FURTHER ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with an endorsement of any post-secondary school that Respondent makes, or a third-party endorsement of any post-secondary school that Respondent prepares, must disclose, clearly and conspicuously, and in close proximity to that representation, all material connections between Respondent or the other endorser and the school. *Provided that*, for the purposes of this Provision, an “endorsement” means “any advertising message (including verbal statements, demonstrations, or depictions of the name, signature, likeness, or other identifying personal characteristics of an individual or the name or seal of an organization) that consumers are likely to believe reflects the opinions, beliefs, findings, or experiences of a party other than the school, even if the views expressed by that party are identical to those of the school.”

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III. Acknowledgments of the Order

IT IS FURTHER ORDERED that Respondent obtains acknowledgments of receipt of this Order:

- A. Respondent, within 10 days after the effective date of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For 5 years after the issuance date of this Order, Respondent, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in paid promotion of Post-Secondary Schools; and (3) any business entity resulting from any change in structure as set forth in the Provision titled Compliance Reports and Notices. Delivery must occur within 10 days after the effective date of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.
- C. From each individual or entity to which Respondent delivered a copy of this Order, that Respondent must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

IV. Compliance Reports and Notices

IT IS FURTHER ORDERED that Respondent make timely submissions to the Commission:

- A. One year after the issuance date of this Order, Respondent must submit a compliance report, sworn under penalty of perjury, in which Respondent must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission, may use to communicate with Respondent; (b) identify all of Respondent's businesses by all of their names;

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- (c) describe the activities of each business; (d) describe in detail whether and how Respondent is in compliance with each Provision of this Order, including a discussion of all of the changes the Respondent made to comply with the Order; and (e) provide a copy of each Acknowledgment of the Order obtained pursuant to this Order, unless previously submitted to the Commission.
- B. For ten years after the issuance date of this Order, Respondent must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:
1. Respondent must submit notice of any change in:
(a) any designated point of contact; or (b) the structure of Respondent or any entity that Respondent has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.
- C. Respondent must submit notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Respondent within 14 days of its filing.
- D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.
- E. Unless otherwise directed by a Commission representative in writing, all submissions to the

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Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: In re Victory Media, Inc.

V. Recordkeeping

IT IS FURTHER ORDERED that Respondent must create certain records for 10 years after the issuance date of the Order, and retain each such record for 5 years. Specifically, Respondent must create and retain the following records:

- A. accounting records showing the revenues from all goods or services sold, the costs incurred in generating those revenues, and resulting net profit or loss;
- B. personnel records showing, for each person providing services in relation to any aspect of the Order, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. records of all consumer complaints concerning the subject matter of the order, whether received directly or indirectly, such as through a third party, and any response;
- D. a copy of each unique advertisement or other marketing material making a representation subject to this Order; and
- E. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission.

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VI. Compliance Monitoring

IT IS FURTHER ORDERED that, for the purpose of monitoring Respondent's compliance with this Order:

- A. Within 10 days of receipt of a written request from a representative of the Commission, Respondent must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury, and produce records for inspection and copying.
- B. For matters concerning this Order, representatives of the Commission are authorized to communicate directly with Respondent. Respondent must permit representatives of the Commission to interview anyone affiliated with Respondent who has agreed to such an interview. The interviewee may have counsel present.
- C. The Commission may use all other lawful means, including posing through its representatives as consumers, suppliers, or other individuals or entities, to Respondent or any individual or entity affiliated with Respondent, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

VII. Order Effective Dates

IT IS FURTHER ORDERED that this Order is final and effective upon the date of its publication on the Commission's website (ftc.gov) as a final order. This Order will terminate on January 11, 2038, or 20 years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying settlement) in federal court alleging any violation of this Order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

Analysis to Aid Public Comment

- A. Any Provision in this Order that terminates in less than 20 years; and
- B. This Order if such complaint is filed after the Order has terminated pursuant to this Provision.

Provided, further, that if such complaint is dismissed or a federal court rules that the Respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this Provision 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.

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an agreement containing a consent order from Victory Media, Inc. 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 FTC will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final agreement’s proposed order.

The respondent publishes print and online magazines and guides for servicemembers transitioning from military service to the civilian workforce. The respondent does business under the names G.I. Jobs and Military Friendly. Its websites include gijobs.com, militaryfriendly.com, and militaryspouse.com.

Analysis to Aid Public Comment

Victory Media also maintains active social media accounts, including on Twitter, Facebook, YouTube, and LinkedIn, under handles such as “Military Friendly” or “G.I. Jobs” that attract military consumers.

The respondent operates a search tool, School Matchmaker, at gijobs.com to help servicemembers find educational institutions in their fields of interest. The proposed complaint in this matter alleges that the respondent made claims that its Matchmaker tool searched schools that met respondent’s “military friendly” criteria. In fact, the tool searches only schools that pay to be included, whether respondent has designated them as “military friendly” or not. Thus, several schools not designated by the respondent as “military friendly” are included in the Matchmaker search results. The proposed complaint alleges that the respondent’s misrepresentations regarding the scope of the Matchmaker search tool constitute a deceptive act or practice under Section 5 of the FTC Act.

Additionally, the FTC complaint alleges that the respondent, in certain of its articles, emails, and social media posts, misrepresented that its endorsements were independent and not paid advertising, and failed to adequately disclose that the content recommended schools that paid the respondent specifically to be promoted therein. The proposed complaint alleges that those misrepresentations and undisclosed paid recommendations constitute deceptive acts or practices under Section 5 of the FTC Act.

The proposed order is designed to prevent the respondent from engaging in similar deceptive practices in the future.

Part I prohibits the respondent from making any misrepresentations regarding the scope of any search tool, including whether the tool only searches “military friendly” schools. Part I further prohibits the respondent from making any misrepresentations about material connections between it and any schools, and from making any misrepresentations that paid commercial advertising is independent content.

Analysis to Aid Public Comment

Part II requires the respondent, when endorsing schools (or preparing third-party endorsements of schools), to clearly and conspicuously disclose, in close proximity to the endorsement, any payments or other material connections between the respondent or the other endorser and the school. This disclosure requirement applies where consumers are likely to believe that such endorsements reflect the beliefs of the respondent or other endorser (and not the schools themselves).

Parts III through VII of the proposed order are reporting and compliance provisions. Part III is an order distribution provision. Part IV requires the respondent to submit a compliance report one year after the issuance of the order, and to notify the Commission of corporate changes that may affect compliance obligations. Part V requires the respondent to create, for 10 years, accounting, personnel, complaint, and advertising records, and to maintain each of those records for 5 years. Part VI requires the respondent to submit additional compliance reports within 10 business days of a written request by the Commission, and to permit voluntary interviews with persons affiliated with the respondent. Part VII “sunsets” the order after twenty years, with certain exceptions.

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

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IN THE MATTER OF

BECTON, DICKINSON AND COMPANY
AND
C. R. BARD, INC.CONSENT 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-4637 File No. 171 0140
Complaint, December 22, 2017 – Decision, January 19, 2018

This consent order addresses the \$24 billion acquisition by Becton, Dickinson and Company (“BD”) of certain assets of C. R. Bard, Inc. The complaint alleges that the proposed 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 tunneled home drainage catheter systems and soft tissue core needle biopsy devices. The consent order requires the respondents to divest all rights and assets related to Bard’s tunneled home drainage catheter business and BD’s soft tissue core needle biopsy device business to Merit Medical Systems, Inc.

Participants

For the *Commission*: *Kenneth A. Libby*.

For the *Respondents*: *Michael Sheerin, Lindsey Strang, and Steve Sunshine, Skadden; Nelson Fitts, Wachtell*.

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act (“FTC Act”), and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Becton, Dickinson and Company (“BD”), a corporation subject to the jurisdiction of the Commission, has agreed to acquire all of the issued and outstanding shares of Respondent C. R. Bard, Inc. (“Bard”) by means of a merger, that such acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, 15 U.S.C. § 45, and it appearing to the Commission that