

Interlocutory Orders, Etc.

IN THE MATTER OF

1-800 CONTACTS, INC.

Docket No. 9372. Order, February 26, 2018

Order scheduling oral arguments on appeal.

ORDER SCHEDULING ORAL ARGUMENT

The Respondent has filed its Appeal Brief perfecting its appeal from the Initial Decision in this matter; Counsel for the Complaint have filed their Answering Brief; and the Respondent has filed its Reply Brief. Commission Rule 3.52(b)(2) provides that the Commission ordinarily will schedule an Oral Argument within fifteen days after the date on which the Reply Brief is filed. Commission Rule 3.51(a) provides that the Commission may extend for good cause any of the time periods relating to an appeal of an Initial Decision. The Commission recognizes that a number of new Commissioners likely will be confirmed in the near future. Thus, the Commission has determined to conduct the Oral Argument in this matter on May 1, 2018, at 2 p.m. in Hearing Room 532 of the Headquarters Building of the Federal Trade Commission, located at 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

Each side will be allotted forty-five minutes to present its argument. Respondents will have the opportunity to open the argument and will be permitted to reserve time for rebuttal. If either side wishes to provide the Commission with a short written or electronic compilation of material to facilitate its presentation during the Oral Argument, any such compilation may contain only public information that is already in the record of the proceeding, and copies must be filed with the Secretary of the Commission and provided to opposing counsel no later than April 24, 2018 at 2 p.m.

By the Commission.

Interlocutory Orders, Etc.

IN THE MATTER OF

**SEARS HOLDINGS MANAGEMENT
CORPORATION**

Docket No. C-4264. Order, February 27, 2018

Order granting respondent's petition to reopen and modify the Order by changing the definition of "Tracking Application" to exclude software applications that only engage in consumer-expected types of tracking.

ORDER REOPENING AND MODIFYING ORDER

On October 31, 2017, Sears Holdings Management Corporation ("Sears") filed a petition pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b), and Section 2.51 of the Commission's Rules of Practice, 16 C.F.R. § 2.51, asking the Commission to reopen and modify the Order in Docket No. C-4264 ("Order"), issued by the Commission on August 31, 2009.

The Order requires Sears, among other things, to provide clear and prominent notice of the types of information it collects through any tracking software it distributes—defined as a "Tracking Application"—and get consumers' express consent before they download or install the software. In its petition, Sears requests that the Commission modify the definition of Tracking Application as it relates to Sears's mobile applications.

Sears bases its petition on changed conditions of fact that it claims are sufficient to warrant reopening and modifying the Order. Sears asserts that neither it nor the Commission staff who negotiated the Order could have anticipated the tremendous growth of mobile applications, the consolidation in that market to very few platforms, or the importance to retailers such as Sears of being able to interact with customers through mobile applications. Sears argues that these changes have made the Order obsolete because of the significant control the platforms exercise over privacy and disclosures for mobile applications. Sears also argues that modifying the Order would be in the public interest because the current Order puts Sears at a competitive disadvantage in the mobile application market. Sears further contends that the