

Complaint

IN THE MATTER OF

VENPATH, INC.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE FEDERAL
TRADE COMMISSION ACT*Docket No. C-4664; File No. 182 3144**Complaint, November 15, 2018 – Decision, November 15, 2018*

This consent order addresses VenPath, Inc.’s representations concerning its participation in the Privacy Shield framework agreed upon by the U.S. and the European Union. The complaint alleges that the company has set forth on its website, <https://www.venpath.net>, privacy policies and statements about its practices, including statements related to the status of its participation in the EU-U.S. Privacy Shield framework. The consent order prohibits the company from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the EU-U.S. Privacy Shield framework and the Swiss-U.S. Privacy Shield framework.

Participants

For the *Commission*: Ruth Yodaiken.

For the *Respondent*: Barry M. Benjamin, Kilpatrick Townsend & Stockton LLP.

COMPLAINT

The Federal Trade Commission (“FTC”), having reason to believe that VenPath Inc., a corporation, has violated 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 VenPath, Inc. is a Delaware corporation with its principal office or place of business at 228 Park Ave S #37362, New York, New York 10003.
2. Respondent offers data analytics services related to mobile apps.
3. 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 FTC Act.
4. Respondent has set forth on its website, <https://www.venpath.net>, privacy policies and statements about its practices, including statements related to its participation in the EU-U.S. Privacy Shield framework agreed upon by the U.S. government and the European Commission.

Privacy Shield

5. The EU-U.S. Privacy Shield framework (“Privacy Shield”) was designed by the U.S. Department of Commerce (“Commerce”) and the European Commission to provide a mechanism for U.S. companies to transfer personal data outside of the EU that is consistent with the requirements of the European Union Directive on Data Protection. Enacted in 1995, the

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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 has made a determination that the recipient jurisdiction's laws ensure the protection of such personal data. This determination is referred to commonly as meeting the EU's "adequacy" standard.

6. To satisfy the EU adequacy standard for certain commercial transfers, Commerce and the European Commission negotiated the EU-U.S. Privacy Shield framework, which went into effect in July 2016. The EU-U.S. Privacy Shield framework allows companies to transfer personal data lawfully from the EU to the United States. To join the EU-U.S. Privacy Shield framework, a company must self-certify to Commerce that it complies with the Privacy Shield Principles and related requirements that have been deemed to meet the EU's adequacy standard. Any company that voluntarily withdraws or lets its self-certifications lapse must take steps to affirm to Commerce that it is continuing to protect the personal information it received while it participated in the program.

7. Companies under the jurisdiction of the FTC, as well as the U.S. Department of Transportation, are eligible to join the EU-U.S. Privacy Shield framework. A company under the FTC's jurisdiction that claims it has self-certified to the Privacy Shield Principles, but failed to self-certify to Commerce, may be subject to an enforcement action based on the FTC's deception authority under Section 5 of the FTC Act.

8. Commerce maintains a public website, <https://www.privacyshield.gov/welcome>, where it posts the names of companies that have self-certified to the EU-U.S. Privacy Shield framework. The listing of companies, <https://www.privacyshield.gov/list>, indicates whether the company's self-certification is current.

9. Through at least June 2018, Respondent has disseminated or caused to be disseminated privacy policies and statements on the <https://www.venpath.net/legal/privacy-policy/> website, including, but not limited to, the following statements in its September 2016 privacy policy:

VenPath participates in and has certified its compliance with the EU-U.S. Privacy Shield Framework. VenPath is committed to subjecting all personal data received from European Union (EU) member countries, in reliance on the Privacy Shield Framework, to the Framework's applicable Principles. To learn more about the Privacy Shield Framework, visit the U.S. Department of Commerce's Privacy Shield List at <https://www.privacyshield.gov/list>.

VenPath is responsible for the processing of personal data it receives, under the Privacy Shield Framework, and subsequently transfers to a third party acting as an agent on its behalf. VenPath complies with the Privacy Shield Principles for all onward transfers of personal data from the EU, including the onward transfer liability provisions.

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With respect to personal data received or transferred pursuant to the Privacy Shield Framework, VenPath is subject to the regulatory enforcement powers of the U.S. Federal Trade Commission.

10. Although Respondent obtained Privacy Shield certification in October 2016, it did not complete the steps necessary to renew its participation in the EU-U.S. Privacy Shield framework after that certification expired in October 2017, nor did it withdraw and affirm its commitment to protect any personal information it had acquired while in the program. After allowing its certification to lapse Respondent has continued to claim, as indicated in paragraph 9, that it participates in the Privacy Shield framework.

Count 1 – Privacy Misrepresentation

11. As described in Paragraph 9, Respondent represents, directly or indirectly, expressly or by implication, that it is a current participant in the EU-U.S. Privacy Shield framework.

12. In fact, as described in Paragraph 10, Respondent is not a current participant in the EU-U.S. Privacy Shield framework. Therefore, the representation set forth in Paragraph 11 is false or misleading.

Count 2 – Misrepresentation Regarding Continuing Obligations

13. As described in Paragraph 9, Respondent represented that it would abide by the EU-U.S. Privacy Shield framework principles. These principles include a requirement that if a company ceases to participate in the EU-U.S. Privacy Shield framework, it must affirm to Commerce that it will continue to apply the principles to personal information that it received during the time it participated in the program.

14. In fact, as described in paragraph 10, Respondent has not affirmed to Commerce that it will continue to apply the principles to personal information that it received during the time it participated in the program. Therefore, the representation set forth in Paragraph 13 is false or misleading.

Violations of Section 5 of the FTC Act

15. The acts and practices of Respondent 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 fifteenth day of November 2018, has issued this complaint against Respondent.

By the Commission, Commissioner Wilson not participating.

Decision and Order

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 Respondent with violations of the Federal Trade Commission Act.

Respondent and BCP thereafter executed an Agreement Containing Consent Order (“Consent Agreement”). The Consent Agreement includes: 1) statements by Respondent that it neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Decision and Order, and that only for purposes of this action, it admits the 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 thirty (30) days for the receipt and consideration of public comments. Now, in further conformity with the procedure prescribed in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission issues its Complaint, makes the following Findings, and issues the following Order:

Findings

1. Respondent VenPath Inc. is a Delaware corporation with its principal office or place of business at 228 Park Ave S #37362, New York, New York 10003.
2. The Commission has jurisdiction over the subject matter of this proceeding and over Respondent, and the proceeding is in the public interest.

ORDER

Definitions

For purposes of this Order, the following definition applies:

1. “Respondent” means VenPath Inc., a corporation, and its successors and assigns.

Provisions

I. Prohibition against Misrepresentations about Participation in Privacy or Security Programs

IT IS ORDERED that Respondent and its officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual

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notice of this Order, whether acting directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, or sale of any product or service must not misrepresent in any manner, expressly or by implication, 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 or security program sponsored by a government or any self-regulatory or standard-setting organization, including but not limited to the EU-U.S. Privacy Shield framework and the Swiss-U.S. Privacy Shield framework.

II. Requirement to Meet Continuing Obligations Under Privacy Shield

IT IS ORDERED that Respondent and its officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, or sale of any product or service, must:

- A. affirm to the Department of Commerce, within ten (10) days after the effective date of this Order and on an annual basis thereafter for as long as it retains such information, that it will
 - 1. continue to apply the EU-U.S. Privacy Shield framework principles to the personal information it received while it participated in the Privacy Shield; or
 - 2. protect the information by another means authorized under EU (for the EU-U.S. Privacy Shield framework) or Swiss (for the Swiss-U.S. Privacy Shield framework) law, including by using a binding corporate rule or a contract that fully reflects the requirements of the relevant standard contractual clauses adopted by the European Commission; or
- B. return or delete the information within ten (10) days after the effective date of this Order.

III. Acknowledgments of the Order

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

- A. Respondent, within ten (10) days after the effective date of this Order, must submit to the Commission an acknowledgment of receipt of this Order.
- B. For five (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 having managerial responsibilities for conduct related to the subject matter of the Order ; and (3) any business entity resulting from any change in structure as set forth in the Provision titled Compliance Report and Notices. Delivery must occur within ten (10) days

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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, Respondent must obtain, within sixty (60) days, a signed and dated acknowledgment of receipt of this Order.

IV. Compliance Report and Notices

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

- A. Sixty (60) days 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, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business; (d) describe in detail whether and how Respondent is in compliance with each Provision of this Order; and (e) provide a copy of each Acknowledgment of the Order obtained pursuant to this Order, unless previously submitted to the Commission.
- B. Respondent must submit a compliance notice, sworn under penalty of perjury, within fourteen (14) days of any change in the following: (1) any designated point of contact; or (2) 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 Respondent within fourteen (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 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 of Enforcement, Bureau of Consumer Protection, Federal

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Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.
The subject line must begin: *In re VenPath Inc., FTC File No. 1823144.*

V. Recordkeeping

IT IS FURTHER ORDERED that Respondent must create certain records for twenty (20) years after the issuance date of the Order, and retain each such record for five (5) years. Specifically, Respondent must create and retain the following records:

- A. accounting records showing the revenues from all goods or services sold;
- B. personnel records showing, for each person providing services, 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. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and
- D. a copy of each unique advertisement or other marketing material making a representation subject to this Order, and all materials that were relied upon in making the representation.

VI. Compliance Monitoring

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

- A. Within ten (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.

Analysis to Aid Public Comment

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 November 15, 2038, or twenty (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 the Order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. any Provision in this Order that terminates in less than twenty (20) years;
- B. this Order’s application to any respondent that is not named as a defendant in such complaint; and
- C. 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 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, Commissioner Wilson not participating.

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, a consent agreement applicable to VenPath, Inc. (“VenPath” or “the company”).

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 days, the Commission 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 the agreement’s proposed order.

This matter concerns alleged false or misleading representations that VenPath made to consumers concerning its participation in the Privacy Shield framework agreed upon by the U.S. and the European Union (“EU”). The Privacy Shield framework allows U.S. companies to transfer data outside the EU consistent with EU law. To join the EU-U.S. Privacy Shield

Analysis to Aid Public Comment

framework, a company must self-certify to the U.S. Department of Commerce (“Commerce”) that it complies with a set of principles and related requirements that have been deemed by the European Commission as providing “adequate” privacy protection. The principles include notice; choice; accountability for onward transfer; security; data integrity and purpose limitation; access; and recourse, enforcement, and liability. The related requirements include, for example, securing an independent recourse mechanism to handle any disputes about how the company handles information about EU citizens. Commerce reviews these applications for self-certification and maintains a public website, <https://www.privacyshield.gov/list>, where it posts the names of companies that have self-certified to the EU-U.S. Privacy Shield framework and completed the requirements for certification. The listing of companies indicates whether their self-certification is current. Companies are required to re-certify every year in order to retain their status as current members of the EU-U.S. Privacy Shield framework.

VenPath offers data analytics services related to mobile apps. According to the Commission’s complaint, the company has set forth on its website, <https://www.venpath.net>, privacy policies and statements about its practices, including statements related to the status of its participation in the EU-U.S. Privacy Shield framework.

The Commission’s complaint alleges that VenPath deceptively represented that it was a current participant in the EU-U.S. Privacy Shield framework when, in fact, it was not. The complaint also alleges that the company deceptively represented that it would abide by the EU-U.S. Privacy Shield framework principles, but did not do so. The principles include a requirement that if a company ceases to participate in the EU-U.S. Privacy Shield framework, it must affirm to Commerce that it will continue to apply the principles to personal information that it received during the time it participated in the program, but according to the complaint, VenPath did not make such an affirmation.

Part I of the proposed order prohibits the company from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the EU-U.S. Privacy Shield framework and the Swiss-U.S. Privacy Shield framework. Because the company had a certification that had lapsed, Part II requires the company to comply with the Privacy Shield requirement to continue to protect, on a going forward basis, personal information it had received while in the program, or return or delete the information.

Parts III through VII of the proposed order are reporting and compliance provisions. Part

III requires acknowledgement of the order and dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part IV ensures notification to the FTC of changes in corporate status and mandates that the company submit an initial compliance report to the FTC. Part V requires the company to retain documents relating to its compliance with the order for a five-year period.

Part VI mandates that the company make available to the FTC information or subsequent compliance reports, as requested. Part VII is a provision “sunsetting” the order after twenty (20) years, with certain exceptions.

Analysis to Aid Public Comment

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

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IN THE MATTER OF

IDMISSION LLCCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE FEDERAL
TRADE COMMISSION ACT*Docket No. C-4665; File No. 182 3150**Complaint, November 15, 2018 – Decision, November 15, 2018*

This consent order addresses IDmission LLC’s representations concerning its participation in the Privacy Shield framework agreed upon by the U.S. and the European Union. The complaint alleges that the company has set forth on its website, <http://www.idmission.com/>, privacy policies and statements about its practices, including statements related to the status of its participation in the EU-U.S. Privacy Shield framework. The consent order prohibits the company from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the EU-U.S. Privacy Shield framework and the Swiss-U.S. Privacy Shield framework.

Participants

For the *Commission*: Ruth Yodaiken.

For the *Respondent*: Elizabeth Harding, Polsinelli PC, Polsinelli LLP.

COMPLAINT

The Federal Trade Commission (“FTC”), having reason to believe that IDmission LLC, a corporation, has violated 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 IDmission LLC is a Delaware corporation with its principal office or place of business at 8445 Baseline Road, Boulder, CO 80303.
2. Respondent offers a cloud-based technology platform to help business clients engage with their customers.
3. 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 FTC Act.
4. Respondent has set forth on its website, <http://www.idmission.com>, privacy policies and statements about its practices, including statements related to its participation in the EU-U.S. Privacy Shield framework agreed upon by the U.S. government and the European Commission.

Privacy Shield

5. The EU-U.S. Privacy Shield framework (“Privacy Shield”) was designed by the U.S. Department of Commerce (“Commerce”) and the European Commission to provide a