

secure sessions, completing online application forms, checking online accounts, and, through select header information, use of web-based email and instant messaging services.

5. SHMC, during the relevant time period, presented fifteen out of every hundred visitors to the sears.com and kmart.com websites with a “My SHC Community” pop-up box (Exhibit A) that said:

Ever wish you could talk directly

To become a member of My SHC Community, we simply ask you to complete the registration process which includes providing us with your contact information as well as answering a series of profile questions that will help us get to know you better. You'll also be asked to take a few minutes to download software that is powered by (VoiceFive). This research software will confidentially track your online browsing. This will help us better understand you and your needs, enabling us to create more relevant future offerings for you, other community members, and eventually all shoppers. You can uninstall the software at any time through the Add/Remove program utility on your computer. During the registration process, you'll learn more about this application software and you'll always have the opportunity to ask any and every question you may have.

Once you're a member of My SHC Community, you'll regularly interact with My SHC Community members as well as employees of Sears Holdings Corporation through special online engagements, surveys, chats and other fun and informative online techniques. We'll ask you to journal your shopping and purchasing behavior. Again, this will be when you want and how you want to record it – always on your terms and always by your choice. We'll also collect information on your internet usage. Community engagements are always fun and always voluntary!

The email invitation message then described what consumers would receive in exchange for becoming a member of the My SHC Community, including a \$10 payment for joining the “online community,” contingent upon the consumer retaining the Application on his or her computer for at least one month. Consumers who wished to proceed further would need to click a button, at the bottom, center portion of the invitation email, that said “Join Today!”

7. Consumers who clicked on the “Join Today!” button in the email invitation were directed to a landing page (Exhibit C) that restated many of the aforementioned representations about the potential interactions between members and the “community” and about the putative benefits of membership. The landing page did not mention the Application.

8. Consumers who clicked on the “Join Today” button in the landing page were directed to a registration page (Exhibit D). To complete registration, consumers needed to enter information, including their name, address, age, and email address. Below the fields for entering information, the registration page presented a “Privacy Statement and User License Agreement” (“PSULA”) in a “scroll box” that displayed ten lines of the multi-page document at a time (“Printable version” attached as Exhibit E). A description of the Application’s specific functions begins on approximately the 75th line down in the scroll box:

Computer hardware, software, and other configuration information: Our application may collect certain basic hardware, software, computer configuration and application usage information about the computer on which you install our application, including such data as the speed of the computer processor, its memory capacities and Internet connection speed. In addition, our application may report on devices connected to your computer, such as the type of printer or router you may be using.

Internet usage information: Once you install our application, it monitors all of the Internet behavior that occurs on the computer on which you install the application, including both your normal web browsing and the activity that you undertake during secure sessions, such as filling a shopping basket, completing an application form or checking your online accounts, which may include personal financial or health information. We may use the information that we monitor, such as name and address, for the purpose of better understanding your household demographics; however we make comm

all computer users to the terms and conditions of the Privacy Statement and User License Agreement.” To continue with the registration process, consumers needed to check the box and click the “Next” button at the bottom of the registration page.

10. Consumers who completed the required information, checked the box, and clicked the “Next” button on the registration page, were directed to an installation page (Exhibit F) that

THEREFORE, the Federal Trade Commission this thirty-first day of August, 2009, has issued this complaint against respondent.

By the Commission.

Donald S. Clark
Secretary