

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman  
Edith Ramirez  
Julie Brill  
Maureen K. Ohlhausen  
Joshua D. Wright

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In the Matter of )  
 )  
 )  
COMPETE, INC., )  
a corporation. ) DOCKET NO. C-4384  
\_\_\_\_\_)

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft Complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 et seq.;

The respondent, its attorney and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), an admission by the respondent 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 respondent that the law has been violated or alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waives and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it has reason to believe that the respondent has violated the Federal Trade Commission Act, and that a Complaint should be stating its charges in that respect, and having thereupon 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, and having carefully considered the comments filed by interested persons, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and enters the following Order:

1. Compete, Inc., is a Delaware corporation with its principal place of business at 501 Boylston Street, Suite 6101, Boston, Massachusetts.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of respondent, and the proceeding is in the public interest.

## ORDER

### DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. "Affected Consumers" shall mean persons who, prior to the date of issuance of this order, downloaded and installed any Data Collection Agent, including but not limited to the Compete Toolbar and Consumer Input Panel software.
2. "Clearly and prominently" shall mean as follows:
  - A. In textual communications (*e.g.*, printed publications or words displayed on the screen of a computer or a mobile device), the required disclosures are of a type, size, and location sufficiently noticeable for an ordinary consumer to read and comprehend them, in print that contrasts highly with the background on which they appear;
  - B. In communications disseminated orally or through audible means (*e.g.*, radio or streaming audio), the required disclosures are delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend them;
  - C. In communications disseminated through video means (*e.g.*, television or streaming video), the required disclosures are in writing in a form consistent with subparagraph (A) of this definition and shall appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend them;
  - D. In communications made through interactive media, such as the Internet, online services, and software, the required disclosures are unavoidable and presented in a form consistent with subparagraph (A) of this definition, in addition to any audio or video presentation of them; and
  - E. In all instances, the required disclosures are presented in an understandable language and syntax; in the same language as the predominant language that is used in the communication; and with nothing contrary to, inconsistent with, or in mitigation of the disclosures used in any communication of them.

3. "Collected information" shall mean any information transmitted, on or ~~to~~ the date of issuance of this order, from a computer by a Data Collection Agent to any computer server owned by, operated by, or operated f

9. Unless otherwise indicated, "respondent" shall mean Competent, and its successors and assigns, and its officers, agents, representatives, and employees.

I.

IT IS ORDERED that respondent, directly or indirectly, including through any contract, agreement, license, sale, or arrangement with any Third Party, is prohibited from:

- A. Collecting any information from any Data Collection Agent made available to consumers directly by respondent after the date of service of this order, unless prior to such collection respondent has:
  - 1. Disclosed to the consumer clearly and prominently and prior to the display of and on a separate screen from, any "end user license agreement," "privacy policy," "terms of use" page, or similar document:
    - a) all the types of information that will be collected, including, but not limited to, if applicable, a statement that the information includes consumer transactions (both completed and incomplete) or communications in forms, online accounts, web-based email accounts, or search engine pages, and whether the information includes personal, financial or health information; and
    - b) how the information is to be used, including if it is shared with any Third Party and
  - 2. Obtained express affirmative consent from the consumer to the collection, use or sharing of the information.
- B. Collecting any information from any Data Collection Agent made available to consumers by a Third Party after the date of service of this order, unless prior to such collection respondent has provided the disclosure and obtained the consent described in subpart A(1-2), or has both required the Third Party by contract to do so, and monitored compliance with such contractual provisions.
- C. Collecting any information from any Data Collection Agent that was made available to consumers before the date of service of this order, unless it has made the disclosure and obtained the express affirmative consent described in subpart A(1-2) or:
  - 1. It has made the disclosure required by Part I(A)(3); and
  - 2. It does not use information collected from an Affected Consumer by a Data Collection Agent, except in an aggregate and/or anonymous form

that does not disclose, report, or otherwise share any individually identifiable information.

- D. Using any Collected Information gathered on or after February 1, 2010, unless it has obtained express affirmative consent from the consumer to the use of the Collected Information, or
1. It does not use the Collected Information, except in aggregate and/or anonymous form that does not disclose, report, or otherwise share any individually identifiable information; and
  2. It does not otherwise access any Affected Consumers' personal information that was collected by a Data Collection Agent.
- E. Making any material change from stated practices about collection, use or sharing of such information, unless it has obtained express affirmative consent from the consumer.

*Provided, however,* this Part will not apply to the collection, use or sharing of information as reasonably necessary 1) to comply with applicable law, regulation, or legal process; 2) to enforce respondent's terms of use; 3) to detect, prevent, or mitigate fraud or security vulnerabilities; 4) for configuration of the software program or application itself; or 5) to determine whether the program is functioning as intended.

## II.

IT IS FURTHER ORDERED that Compete, Inc., and its successors and assigns, shall:

- A. Notify Affected Consumers: 1) that they have or had a Data Collection Agent installed on their Computers, and that this software collected and transmitted information to or on behalf of respondent, listing the categories of personal information that was, or could have been, transmitted by a Data Collection Agent; and 2) how to permanently disable and/or uninstall the Data Collection Agent. Notification shall be by each of the following means
1. On or before thirty (30) days after the date of service of this order and for two (2) years after the date of service of this order, posting of a clear and prominent notice on the websites of Compete, Inc., and its successors and assigns;
  2. On or before thirty (30) days after the date of service of this order and for three (3) years after the date of service of this order, informing Affected Consumers who complain or inquire about the privacy or security of a Data Collection Agent; and

3. Beginning only once notification described in both subparts (A)(1) and (2) above have commenced, and completed on or before sixty (60) days after the date of service of this order, providing clear and prominent notice to consumers via Affected Consumers' computers on which a Data



VI.

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VII.

IT IS FURTHER ORDERED that ~~Compe~~te, Inc., and its successors and assigns, shall, within fourteen (14) days after the date of service of this order, ~~de~~te or ~~de~~stroy, Collected Information in ~~re~~spondent's custody or control that ~~wa~~s collected prior to February 1, 2010, unless otherwise ~~directed~~ by a representative of the Commission.

VIII.

IT IS FURTHER ORDERED that ~~Compe~~te, Inc., and its successors and assigns, shall, for a period of five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Commission for inspection and copying:

- A. dissemination of any ~~in~~formation

IX.

IT IS FURTHER ORDERED that Complete, Inc., and its successors and assigns, shall deliver a copy of this order to: (1) all current and future principals, officers, and directors; and (2) all current and future managers who have responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order with any electronic signatures complying with the requirements of the E-Sign Act, 15 U.S.C. § 7001 *et seq.* Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of the order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

X.

IT IS FURTHER ORDERED that Complete, Inc., and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in respondent that may affect compliance obligations arising under this order, including but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor company, the creation or dissolution of a subsidiary (including an LLC), parent, or affiliate that engages in any acts or practices subject to this order; the proposing of a bankruptcy petition; or a change in respondent's name or address. *Provided, however, that with respect to any proposed change about which responde*

XII.

This order will terminate on February 20, 2033, or twenty (20) years from the most recent date tha