

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Maureen K. Ohlhausen
Terrell McSweeney

In the Matter of

DOCKET NO. C-4591

PRACTICE FUSION, INC.

DECISION AND ORDER

The Federal Trade Commission ("Commission") issued by the Commission, would charge Respondent with Commission Act ("FTC Act"), 15 U.S.C. § 45 et seq.

The Respondent, its attorney, and counsel for the Commission having thereafter entered into an Agreement Containing Consent Order ("Consent Agreement"), which includes: a statement by Respondent that it neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in the Consent Agreement, and, only for purposes of this action, admits the facts necessary to establish jurisdiction; and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason

ORDER

Definitions

For purposes of this Order, the following definitions apply:

- A. “Covered information” means the following information obtained from an individual consumer: (a) a first and last name; (b) a physical address (c) an email address or other online contact information, such as an instant messaging user identifier or a screen name; (d) a telephone number; (e) a Social Security number; (f) a driver’s license or government issued identification number; (g) a financial institution account number; (h) credit or debit card information; (i) a persistent identifier, such as a customer number held in a “cookie,” a static Internet Protocol (“IP”) address, a mobile device ID, or processor serial number, when combined with other available data that identifies an individual consumer; (j) health information, including demographic data, that relates to the individual’s past, present, or future physical or mental health or condition, the provision of healthcare to the individual, or the past, present, or future payment for the provision of healthcare to the individual, and that identifies the individual or for which there is a reasonable basis to believe it can be used to identify the individual; or (k) any other information that is individually identifiable
- B. “Healthcare provider review information” means feedback gathered by Respondent from consumers on Respondent’s own behalf or on behalf of Respondent’s healthcare provider customers regarding healthcare services provided by said healthcare provider customers (or their agents, contractors, or assigns) in response to the healthcare satisfaction survey that Respondent emailed to consumers from either Practice Fusion or Patient Fusion domains from April 5, 2012 through April 8, 2013. “Healthcare provider review information” does not include information recorded or documented by one of Respondent’s healthcare provider customers (or their agents, contractors, or assigns) using the services of Respondent.
- C. “Publicly available” means widely disseminated to the general public through a broadly accessible medium, such as wide dissemination on the Internet or in other printed, audio, visual, or digital media
- D. “Respondent” means Practice Fusion, Inc. and its successors and assigns.
- E. “Commerce” means as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

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 is made in 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 representation that requires the disclosure 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.
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.

Provisions

I. Prohibition against Misrepresentations

II. Notice and Affirmative Express Consent Provision

IT IS FURTHER ORDERED that Respondent and Respondent's officers, agents, employees, and attorneys, and all other persons in receipt or participation with any of them, who receive notice of this Order, whether acting directly or indirectly, making any consumer's covered information publicly available, including by posting on the Internet, must:

- A. clearly and conspicuously disclose to the consumer, separate and apart from "privacy policy," "terms of use" page, or similar document, that such information is being made publicly available including by posting on the Internet, and
- B. obtain the consumer's affirmative express consent.

III. Disposition of Healthcare Provider Review Information

IT IS FURTHER ORDERED that Respondent and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, website, or other device or affiliate owned or controlled by Respondent, in or affecting commerce, must not publicly display any healthcare provider review information, and must not maintain any healthcare provider review information, except for review and retrieval by its healthcare provider customers, or their respective agents, contractors, assigns, or as permitted by applicable law, regulation, or legal process. Within sixty (60) days after the effective date of the Order, Respondent must provide a written statement to the Commission, under penalty of perjury, confirming the foregoing.

IV. Acknowledgements of the Order

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

- A. Respondent, within 10 days after the effective date of this Order, must submit to the

V.

VI. Recordkeeping

IT IS FURTHER ORDERED that Respondent must create certain records 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; title or position; dates of service; and (if applicable) the reason for termination;
- C. copies or 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. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission;
- E. all forms, websites, and other methods used by Respondent to obtain feedback from consumers on Respondent's ow

B.