

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Rebecca Kelly Slaughter Acting Chair  
Noah Joshua Phillips  
Rohit Chopra  
Christine S. Wilson

In the Matter of

EVERALBUM, INC., also d/b/a EVER  
and PARAVISION, a corporation.

DOCKET NO. C-4743

COMPLAINT

The Federal Trade Commission, having reason to believe that Everalbum, Inc., a corporation ("Respondent") has violated section 5 (m) 8 (i) 4 (t) of the FTC Act, 15 U.S.C. § 57 (e) 1 (v) 5 (i) 5 (m) 8 (i) 4 (t)

**The Ever App's Face Recognition Feature**

5. In February 2017, Everalbum launched its “Friends” feature, which operates on both the iOS and Android versions of the Ever app. The Friends feature uses face recognition to group users’ photos by faces of the people who appear in the photos. The user can choose to apply “tags” to identify by name (e.g., “Jane”) or alias (e.g., “Mom”) the individuals who appear in their photos. These tags are not available to other Ever users. When Everalbum launched the Friends feature, it enabled face recognition by default for all users of the Ever mobile app. At that time, Everalbum did not provide users of the Ever mobile app an option to turn off or disable the feature.

8. Since Everalbum has presented Ever mobile app users with the pop-up message requesting that users choose whether they would like the Ever application to use face recognition, approximately 25% of the approximately 300,000 users who made a selection when presented with the pop-up message chose to turn face recognition off.

9. Since July 2018, Everalbum has posted in the “Help” section of its website, everalbum.com, an article entitled *What is Face Recognition?* That article includes the following statements:

*When face recognition is enabled, the technology analyzes the photos and videos that you upload to create a string of numbers that we call a “face embedding” (emphasis added).*

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*When face recognition is turned on, you are letting us know that it’s ok for us to use the face embeddings of the people in your photos and videos, including you, and that you have the approval of everyone featured in your photos and videos (emphasis added).*

10. However, prior to April 2019, Ever mobile app users who were located anywhere other than Texas, Illinois, Washington, and the European Union did not need to, and indeed could not, take any affirmative action to “let[ Everalbum] know” that it should apply face recognition to the users’ photos. In fact, for those users, face recognition was enabled by default and the users lacked the ability to disable it. Thus, the article was misleading for Ever mobile app users located outside of Texas, Illinois, Washington, and the European Union.

### **Everalbum’s Use of Ever Users’ Photos to Train Its Face Recognition Technology**

11. Everalbum’s application of face recognition to photos uploaded by Ever mobile app users, in some cases without affirmative express consent, was not limited to providing the Friends feature. When Everalbum initially launched the Ever app’s Friends feature in February 2017, the company used publicly available face recognition technology to power the feature. However, the company quickly began developing its own face recognition technology, including, in four instances, by using images it extracted from Ever users’ photos to attempt to improve the technology.

12. Between September 2017 and August 2019, Everalbum combined millions of facial images that it extracted from Ever users’ photos with facial images that Everalbum obtained from publicly available datasets in order to create four new datasets to be used in the development of its face recognition technology. In each instance, Everalbum used computer scripts to identify and compile from Ever users’ photos images of faces that met certain criteria

13. When compiling the second dataset in April 2018, in addition to applying the criteria described in paragraph 12, Everalbum did not include any facial images extracted from the photos of Ever users Everalbum believed to be residents of either the United States or European Union based on the users' IP addresses.

14. After testing it, Everalbum discarded the face recognition technology that it developed in the Fall of 2017 and April 2018 using the first two datasets it had compiled by combining facial images it had extracted from Ever user' photos with facial images obt1 (te)2n.9 (a)-1 41 (ia)546w -2 (

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Everalbum has sta ed: “[  
19.ta ing: “

If you wish to deactivate your account or request that we no longer use your information to provide you any services or certain services, such as our Friends feature or our face recognition services, you can do that via your account settings, or you can email us at [privacy@everalbum.com](mailto:privacy@everalbum.com). Please understand that we may need to retain and use your information for a certain period of time to comply with our legal obligations, resolve disputes, and enforce our agreements. Consistent with these requirements, we will try to delete your information as soon as possible upon request. Please note, however, that there might be latency in deleting information from our servers and backed-up versions might exist after deletion (emphasis added).

22. Contrary to the statements Everalbum has made that account deactivation will result in Everalbum deleting the user's photos and videos, until at least October 2019, Everalbum did not, in fact, delete the photos or videos of any users who had deactivated their accounts and instead retained them indefinitely. Everalbum began implementing in October 2019 a practice of deleting all the photos and videos associated with Ever accounts that have been deactivated for more than three months.

Violations of Section 5

27. The acts and practices of Respondents alleged in this Complaint constitute unfair or deceptive acts or practices.