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**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.**

DECISION AND ORDER

DOCKET NO. C-4743

Findings

1. The Respondent is Everalbum, Inc., also d/b/a Ever and Paravision, a Delaware corporation with its principal office or place of business at 1160 Gorgas ~~San~~ Francisco, California 94129.
2. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondent, and the proceeding is in the public interest.

ORDER

Definitions

For purposes of this Order, the following definitions apply:

- A. "Affected Work Product" means any models or algorithms developed in whole or in part using Biometric Information Respondent collected from ~~Users~~ "Ever" mobile application.
- B. "Biometric Information" means data that depicts or describes the physical or biological traits of an identified or identifiable person, including depictions (including images), descriptions, recordings, or copies of an individual's facial or other physical features (e.g., iris/retina scans), finger or ~~hand~~ prints, voice, genetics, or characteristic movements or gestures (e.g., gait or typing pattern).
- C. "Clearly and Conspicuously" means that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, ~~including~~ in all of the following ways:
 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 ("triggering representation") is made through ~~only~~ 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.

A.

- B. Within ninety (90) days after the issuance of this Order, delete or destroy all Face Embeddings derived from Biometric Information Respondent collected from Users who have not, by that date, provided express affirmative consent for the creation of the Face Embeddings, and provide a written statement to the Commission, sworn under penalty of perjury, confirming that all such information has been deleted or destroyed; and
- C. Within ninety (90) days after the issuance of this Order, delete or destroy any Affected Work Product, and provide a written statement to the Commission, sworn under penalty of perjury, confirming such deletion or destruction.

Provided, however, that any photos, videos, Face Embeddings, Affected Work Product, or other matter that Respondent is otherwise required to delete or destroy pursuant to this provision may be retained, and may be disclosed, as required by a government agency or otherwise required by law, regulation, court order, or other legal obligation, including as required by rules applicable to the safeguarding of evidence in pending litigation. In each written statement to the Commission required by this provision, Respondent shall describe in detail any relevant information that Respondent retains on any of these bases and the specific government agency, law, regulation, court order, or other legal obligation that prohibits Respondent from deleting or destroying such information. Within thirty (30) days after the obligation to retain the information has ended, Respondent shall provide an additional written statement to the Commission, sworn under penalty of perjury, confirming that Respondent has deleted or destroyed such information.

IV. Acknowledgments of the Order

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

- A. Respondent, within ten (10) days after issuance date of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For ten (10) years after the issuance date of this Order Respondent must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managed 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 Provisional Compliance Reports and Notices.

Commission:

- A. One year 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 the Respondent's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, what Covered Information is collected, and the means of advertising, marketing, and sales; (d) describe in detail whether and how Respondent is in compliance with each Provision of this Order including a discussion of all of the changes the Respondent made to comply with the 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: (a) any designated point of contact or (b) 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)

- 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, the person's name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. Copies or records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
- D. A copy of each widely disseminated representation by Respondent that describes the extent to which Respondent maintains or protects the privacy, security, availability, confidentiality, or integrity of any Covered Information, including any representation concerning a change in any websiliatio(i)-2 j(a)m[b(b)5 (i)-2 (e(e)-1 (m)8 (pp-2 (o()-1 (r)-2 (w)2 (

