Analysis of Proposed Consent Order to Aid Public Comment
In the Matter of MoviePass, Inc., a corporation, Helios and Matheson Analytics, Inc., a corporation, Mitchell Lowe, individually and as an officer of MoviePass, Inc., and Theodore Farnsworth, individually and as an officer of Helios and Matheson Analytics, Inc.
File No. 192 3000

The Federal Trade Commission ("FTC" or "Commission") has accepted, subject to final approval, an agreement containing a proposed consent order ("Proposed Order") from MoviePass, Inc., a corporation, Helios and Matheson Analytics, Inc. ("Helios"), a corporation, Mitchell Lowe, individually and as an officer of MoviePass, Inc., and Theodore Farnsworth, individually and as an officer of Helios ("Respondents"). The Proposed Order has been placed on the public record for 30 days to receive comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's Proposed Order.

This matter involves Respondents' advertising, promotion and sale of the movie-viewing subscription service "MoviePass," which offered consumers access to one movie per day at their local movie theaters for a monthly subscription price. The FTC complaint challenges two aspects of Respondents' marketing of MoviePass:

First, the complaint alleges that Respondents' offer of one movie per day was deceptive due to several measures Respondents took to prevent consumers from using the service as promised—measures that included invalidating certain consumers' passwords, adding a difficult and defective ticket verification procedure to view movies, and placing undisclosed usage caps on frequent users.

The complaint alleges that this conduct violated two laws the FTC enforces. First, the FTC alleges the conduct to be a "deceptive act[] or practice[]" that violates Section 5(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45(a). The conduct described above was deceptive because Respondents engaged in it to prevent consumers from using MoviePass once per day as advertised. Second, the FTC alleges that Respondents violated the Restore Online Shoppers' Confidence Act ("ROSCA"), 15 U.S.C. § 8403, through the same conduct by failing to disclose the steps that they took to prevent consumers from using MoviePass once per day. This failure violated ROSCA in two ways—by failing to disclose all material terms of the transaction as required by 15 U.S.C. § 8403(1) and by failing to secure consumers' express informed consent to the transaction before charging their financial accounts as required by 15 U.S.C. § 8403(2).

In addition to the deceptive marketing of MoviePass's "one movie per day" service, the complaint further alleges that Respondents MoviePass, Inc., Helios, and Lowe misrepresented the data security measures they took to protect consumers' personal information against unauthorized access. The complaint alleges that Respondents' actions constitute unfair or deceptive acts or practices and the making of false advertisements, in violation of Section 5(a) of the FTC Act.

The Proposed Order is designed to prevent Respondents from engaging in similar acts or practices in the future. It includes injunctive relief to address these alleged violations and to prohibit similar and related conduct:

- Part I prohibits Respondents from future misrepresentations similar to those at issue in the complaint by prohibiting them from misrepresenting that:
  - A service will allow consumers to view one movie per day at their local theaters;
  - A service will allow consumers to view any movie, in any theater, at any time; and
  - Respondents will take reasonable administrative, technical, physical, or managerial measures to protect consumers' personal information from unauthorized access.
- Part I also features ancillary relief relating to the challenged conduct by prohibiting misrepresentations relating to (1) the total costs to purchase, receive, or use, and the quantity of, any good or service, (2) any material restrictions, limitations, or conditions to purchase, receive, or use the product or service, (3) the extent to which Respondents otherwise protect the privacy, security, availability, confidentiality, or integrity of consumers' personal information, and (4) any other material fact.
- Parts II—VI provide ancillary relief relating to the data security practices of MoviePass, Inc., Helios, and Lowe. The provisions thus only apply to businesses these three respondents operate.
  - Part II requires a comprehensive information security program for any enterprise that collects consumers' personal information, requiring among other things:

    That the information security program contain safeguards that are based on the volume and sensitivity of the personal information at risk;
    That testing and monitoring of the safeguards are conducted regularly but no less often than once a year; and
    That the information security program be documented, evaluated, and adjusted in light of any changes to business operations or new technological advancements.
  - Parts III and IV respectively require the three respondents (1) to obtain an initial and then biennial third-party information security assessments and (2) to cooperate with the third parties conducting the assessments.
  - Part V requires the three respondents to report to the Commission any event involving consumers' personal information that constitutes a reportable event to any U.S. federal, state, or local government authority.

- Part VI mandates that the three respondents submit an annual certification regarding their compliance with the Proposed Order's data security requirements.

Parts VII through XI are reporting and compliance provisions. Part VII mandates that all Respondents acknowledge receipt of the Proposed Order and, for 20 years, distribute the Proposed Order to certain employees and agents and secure acknowledgments from recipients of the Proposed Order. Part VIII requires that Respondents submit compliance reports to the FTC one year after the order's issuance and submit additional reports when certain events occur. Part IX requires that, for 20 years, Respondents create certain records and retain them for at least 5 years. Part X provides for the FTC's continued compliance monitoring of Respondents' activity during the Proposed Order's effective dates. Part XI is a provision "sunsetting" the Proposed Order after 20 years, with certain exceptions. Respondents MoviePass, Inc. and Helios are exempt from Sections II—X of the Proposed Order until their bankruptcy cases are closed, and these bankruptcies led the FTC to not seek a monetary judgment in this matter.

The purpose of this analysis is to facilitate public comment on the Proposed Order. It is not intended to constitute an official interpretation of the complaint or Proposed Order, or to modify in any way the Proposed Order's terms.