

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONER OF THE FEDERAL TRADE COMMISSION (1) 0 (m)-30(on(E(I)s1 (S),)5 2l)h6 (I)air-rE Fman(E(I))-5.2-PF060Tw -18

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Analytica, LLC,
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OPINION OF THE COMMISSION

Commissioner Noah Joshua Phillips, for the Commission:

Independent Cambridge Analytica, LLC (“Cambridge Analytica”), a data analytics and company, is charged with violating the Federal Trade Commission Act (“FTC Act”) using false and deceptive tactics to harvest personal information from tens of millions of users through a Facebook application titled the “GSRApp” also known as the “DigitalLife” app. As discussed below, Complaint Counsel moves for summary decision. Cambridge Analytica has neither opposed Complaint Counsel’s motion nor answered Complaint Counsel’s administrative complaint, we decide this motion based on the undisputed facts of Complaint Counsel’s motion and alleged in the Complaint.

Complaint alleges that Cambridge Analytica, along with Alexander James Nix (“Nix”), its Chief Executive Officer, and Aleksandr Kogan (“Kogan”), an independent contractor and developer who worked with the company, used the GSRApp to obtain Facebook profile data from approximately 250,000–270,000 Facebook users who directly interacted with the “App Users”, as well as from 50–65 million of the “friends” in those users’ social networks. Complaint charges Cambridge Analytica with obtaining App Users’ consent to collect Facebook profile data by falsely representing that the GSRApp did not collect identifiable information from Facebook users who interacted with it, such as their user ID. Cambridge Analytica then used the information collected through the

Facebook GRSAApp for voter profiling and targeted advertising purposes.

The Complaint also charges Cambridge Analytica with deceptive acts and practices related to its participation in the European Union-U.S. Privacy Shield framework ("Privacy Shield"). The Complaint alleges that Cambridge Analytica via its website disseminated statements that falsely claimed it was a participant in Privacy Shield at a time when it had allowed its certification to lapse and that it represented that it adhered to Privacy Shield principles despite failing to affirm to the U.S. Department of Commerce that it would continue to apply Privacy Shield protections to personal information collected while it participated in the program.

In May 2018, Cambridge Analytica filed for Chapter 7 bankruptcy, and its proceedings are ongoing. On July 24, 2019, the Commission issued its Complaint which, together with a notice order, was served on both Cambridge Analytica and its corporate headquarters at 1315 Connecticut Avenue, North West, Washington, DC 20004. On July 24, 2019, the Commission also issued a subpoena for records from Cambridge Analytica and its corporate headquarters at 1315 Connecticut Avenue, North West, Washington, DC 20004, and for records from Facebook, Inc., 1601 Willow Road, Menlo Park, CA 94025, and for records from the U.S. Department of Commerce, 14th Street, NE, Washington, DC 20003.

false or misleading representations violation of Section 5 of the FTC Act:

- to Facebook users who authorized the GSRApp that it did not collect their personally identifiable information (Count I);
- that it was a participant in

Kingdom. Until April 30, 2018, Nix was the Chief Executive Officer of Cambridge Analytica and a director of SCL Elections. Nix currently resides in London, England, and in connection with the matters alleged herein, transacts or has transacted business throughout the United States. Compl. ¶ 5 Kogan is an American citizen currently residing in New York. Until September 2018, Kogan was a Senior Research Associate and Lecturer at the Department of Psychology at the University of Cambridge in the United Kingdom, where he established and led the Cambridge Prosociality and Well-Being Lab ("CPW Lab"). Kogan was also an owner and co-founder of the now-defunct U.K. corporation, Global Science Research, Ltd. ("GSR"). Compl. ¶ 4.⁵

A. The Agreement to Harvest Facebook User Profile Data for Commercial Purposes

In late 2013 or early 2014, Cambridge Analytica, along with Nix and SCL Elections, became aware of research by individuals at the Psychometrics Centre, University of Cambridge, that found that Facebook profile information could be used to successfully predict

users and their “friends” through Facebook’s developer tool, Graph API (v.1). CCCSUF ¶ 14; Compl. ¶ 11. Facebook’s Graph API (v.1) allowed developers to collect Facebook profile data from users who directly installed or otherwise interacted with the developer’s application or website through a Facebook Login, as well as from these users’ Facebook “friends (Affected Friends)” CCCSUF ¶ 5; Compl. ¶ 12. Facebook allowed this data collection even though the Affected Friends did not have any direct interaction with the app or website CCCSUF ¶ 15; Compl. ¶ 12. While Facebook had announced in April 2014 that it was introducing a new version of the Graph API—v.2—that would allow developers to collect profile data from the App Users themselves and not from Affected Friends, existing apps had one year before these limitations went into effect, whereas new apps would automatically be limited CCCSUF ¶ 15; Compl. ¶ 12. Thus, Kogan’s app was “grandfathered” into the more permissive data collection allowable under Graph API (v.1), making Kogan an appealing partner for Cambridge Analytica, Nix, and SCL Elections CCCSUF ¶ 15; Compl. ¶ 12.

On May 29, 2014, Kogan incorporated a now-defunct U.K. corporation, Global Science Research, Ltd., to carry out the Project, separate and apart from his duties at the University of Cambridge CCCSUF ¶ 16; Compl. ¶ 13. Kogan was a founder and Chief Executive Officer of GSR, and worked on all aspects of GSR’s products and services before it was dissolved in October 2017. CCCSUF ¶ 16; Compl. ¶ 13. On June 4, 2014, GSR and SCL Elections entered into the GS Data and Technology Subscription Agreement (the “June 2014 Agreement”) Nix signed this agreement for SCL Elections CCCSUF ¶ 17; Compl. ¶ 14. Under this agreement, GSR agreed to harvest Facebook profile data from App Users and Affected Friends in 11 U.S. states, generate personality scores for these individuals, and then match these profiles to U.S. vo(plo 5 T(o)-10d0 (m)-t)-2 (7r2b((7r2b((7t)-2 (7O)2 (n J)-11 (u)10 b)4 (nd T)1 (e)-6 (cC04 Tw 2 (-3 ()

political party, and views on particular controversial issues. Survey participants who completed the survey and authorized the GSRApp to harvest their Facebook profile information were paid a nominal fee of a few dollars for participating in the survey. CCCSUF ¶ 33; Comp ¶ 22.

At the point in every survey in which the GSRApp asked U.S. consumers to authorize the app to collect their Facebook data, the GSRApp made the following representation:

In this part, we would like to download some of your Facebook data using our Facebook app. We want you to know that we will NOT download your name or any other identifiable information—we are interested in your demographics and likes.

CCCSUF ¶ 34; Comp ¶ 23 Cambridge Analytica, Nix, and Kogan included this representation after finding that half of the survey participants initially refused to grant the GSRApp permission to collect their Facebook profile data. CCCSUF ¶ 35; Compl. ¶ 24.

Contrary to this representation, the GSRApp collected the Facebook User ID of those App Users who authorized it. CCCSUF ¶ 35; Compl. ¶ 24. A Facebook User ID is a persistent, unique identifier that connects individuals to their Facebook profiles. CCCSUF ¶ 35; Compl. ¶ 24.

Cambridge Analytica, Nix, and Kogan harvested a significant amount of Facebook profile data from App Users and the Affected Friends located in the U.S. through the GSRApp. Specifically, they harvested the following Facebook profile data from App Users: Facebook User ID; gender; birthdate; location (“current city”); friends list; and “likes” of public Facebook pages. They harvested from Affected Friends their Facebook User ID; name; gender; birthdate; location (“current city”); and “likes” of public Facebook pages. CCCSUF ¶ 37; Compl ¶ 25. Over the course of the Project, Cambridge Analytica, Nix, and Kogan harvested Facebook profile data from approximately 250,000–270,000 App Users located in the U.S., and harvested profile data from approximately 50–65 million Affected Friends, including (nds)-;[i0 (F)6 (r)3 (i)-2 (e)4 (nds)-;

¶ 47; Compl. ¶ 32.

2. Cambridge Analytica's Claims Regarding its Participation in Privacy Shield

On May 11, 2017, Cambridge Analytica joined Privacy Shield. CCCSUF ¶ 50; IComp ¶ 35. While the Facebook data harvested through the GSRApp predated its participation in Privacy Shield and is therefore not subject to its protections, Cambridge Analytica continued to collect Facebook and other data from or about U.S. and European consumers after it joined PrivacyShield CCCSUF ¶ 50; Compl. ¶ 35.

Until at least November 27, 2018, Cambridge Analytica disseminated or caused to be disseminated privacy policies and statements on its website at <https://cambridgeanalytica.org>.--5(a)4 (

II. LEGAL STANDARDS

A. Standard for Summary Decision

We review Complaint Counsel's Motion for Summary Decision pursuant to Rule 3.24 of

that is likely to mislead consumers acting reasonably under the circumstances, and (3) the representation, omission, or practice is material. *FTC v. Commerce Planet, Inc.*, 78 F. Supp. 2d 1048, 1063 (C.D. Cal. 2012) (citing *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1095 (9th Cir. 1994)), *aff'd in part, vacated in part, and remanded*, 815 F.3d 593 (Cir. 2016); accord *FTC v. Transnet Wireless Corp.*, 506 F. Supp. 2d 1247, 1266 (S.D. Fla. 2007), *aff'd*, *FTC v. Tashman*, 318 F.3d 1273, 1277 (11th Cir. 2003)); FTC Policy Statement on Deception, appended to *Cliffdale Assocs., Inc.*, 103 F.T.C. 110 (1984) (Deception Statement). Thus, in determining whether a representation is deceptive, we conduct a three-step inquiry, determining (1) what claims are conveyed (2) whether those claims are false, misleading, or unsubstantiated (3) and (4) whether the claims are material. See *ECM BioFilms, Inc. v. FTC*, 851 F.3d 599, 609 (6th Cir. 2017) (finding website content deceptive); *Fanning*, 821 F.3d at 170 (same); *POM Wonderful v. FTC*, 777 F. 3d 478, 490 (D.C. Cir. 2015) (finding advertising deceptive).

A representation is considered material if it “inv (o)2d223invba maisi mate -2 (i)f,n0.00 (s)1 (id)2

the Privacy Shield program and adhered to the Privacy Shield principles. CCCSUF ¶ 51.
¶ 36. For example, Cambridge Analytica displayed the following statement on its website:

IS CAMBRIDGE ANALYTICA PART OF THE PRIVACY SHIELD
FRAMEWORK?

Yes: Cambridge Analytica adheres to the Privacy Shield Principles for the transfer of EU data we use to provide our services, including the onward transfer liability provisions. With respect to personal data received or transferred pursuant to the Privacy Shield Framework, Cambridge Analytica is subject to the regulatory enforcement powers of the U.S. Federal Trade Commission. More information on the principles are available at the Privacy Shield website: <https://www.privacyshield.gov/>.

CCCSUF ¶ 51; Comp ¶ 36. We find that, from May 2017 until at least November 27, 2018, Cambridge Analytica made the claim that it was a participant in Privacy Shield.

The undisputed facts further establish that Cambridge Analytica did not complete the steps necessary to renew its participation in Privacy Shield after its certification expired on or about May 11, 2018. CCCSUF ¶ 52; Comp ¶ 37. We find that Cambridge Analytica's continued representation that it was participating in Privacy Shield from May to November 2018, when it had in fact allowed its Privacy Shield certification to lapse, was a false and misleading claim. Cambridge Analytica has not rebutted the legal presumption that this express claim was material.

We conclude that Cambridge Analytica's express representation that it remained a participant in the Privacy Shield framework after its certification had lapsed was false and material, and hence deceptive. Accordingly, we grant Complaint Counsel's Motion for Summary Decision on Count I.

C. Count III: Deceptive Claim by Cambridge Analytica Concerning Its

protections to the personal information it had collected for as long as it retained this data. T claim was false and misleading because Cambridge Analytica, in fact, failed to make the required affirmation to Commerce after its Privacy Shield certification lapsed. 18 C.C.S.U.F. ¶ 54; Compl. ¶ 37.⁹ Cambridge Analytica has not rebutted the legal presumption that this express claim was material.

We therefore conclude that Cambridge Analytica's representation that it was in compliance with Privacy Shield principles was false and material and hence deceptive. We grant Complaint Counsel's Motion for Summary Decision on Count I.

IV. REMEDY

The FTC Act authorizes the Commission to issue an order that requires the Respondent to cease and desist in deceptive acts or practices. 15 U.S.C. § 45(b); see also *FTC v. Nat'l Lead Co.*, 352 U.S. 419, 428 (1957). Moreover, "[t]he Commission is not limited to prohibiting the illegal practice in the precise form in which it is found to have existed in the past." *FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 395 (1965), quoting *FTC v. Ruberoid*, 343 U.S. 470, 473 (1952). The Commission may "frame its order broadly enough to prevent respondents from engaging in similarly illegal practices in [the] future." *Id.* at 395.

The Complaint in this matter attached a notice of the form of order that might issue if the facts were found to be as alleged. We have already found to be established the facts as set forth in Complaint Counsel's Motion for Summary Decision and as alleged in the Complaint. Complaint Counsel observe that Rule 3.12 (c) authorizes the Commission to enter an order consistent with the notice order attached to the Complaint sua sponte propose several minor

the changes Complaint Counsel propose are appropriate.

At the outset, we underscore that all of the prohibitions and requirements of Final Order are binding on the “Respondent,” which by definition includes Cambridge Analytica and its successors and assigns, and also that the requirements of Paragraph 6 of the Final Order expressly apply to Respondent’s officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of the Final Order. That said, for simplification, we refer only to “Respondent” in our discussion of the Final Order’s provisions.

Paragraph 1 of the Final Order prohibits Respondent from making misrepresentations regarding the extent to which it protects the privacy and confidentiality of Covered Information as defined in the Final Order, including (1) the extent to which it collects, uses, shares, or sells any Covered Information; and (2) the purpose for which it collects, uses, shares, or sells any Covered Information.

requires Respondent to return or delete such personal information within specified time periods.

Paragraph IV of the Final Order relates to the deletion or destruction of Covered Information collected from consumers through the GSR App, and any information or work product, including any algorithms or equations derived in whole or in part from such Covered Information. Paragraph V permanently enjoins Respondent from disclosing, using, selling, or receiving any benefit from any Covered Information or any information that derived in whole or in part from it. Paragraph VI imposes access and monitoring requirements, and Paragraph VII provides that the Final Order will remain in effect for twenty years.

V. CONCLUSION

For the foregoing reasons, the Commission concludes that Cambridge Analytica violated Section 5 of the FTC Act, 15 U.S.C.