

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Joseph J. Simons, Chairman  
Noah Joshua Phillips  
Rohit Chopra  
Rebecca Kelly Slaughter  
Christine S. Wilson

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In the Matter of

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

DOCKET NO.

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COMPLAINT

The Federal Trade Commission and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Everalbum, Inc. ("Everalbum"), also doing business as Ever and Paravision, is a Delaware corporation with its principal office or place of business at 1160 Gorgas Ave., San Francisco, California 94129.
2. The acts and practices of Respondent alleged in this Complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

EVERALBUM'S BUSINESS PRACTICES

3. Since

## 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.

6. Starting in May 2018, Everalbum rolled out a process through which Ever presented Ever mobile app users located in Texas, Illinois, Washington, or the European Union with a pop-up message that, as shown below, requests that those users choose whether they would like the Ever application to use face recognition. In so doing, Everalbum disabled the Friends feature and face recognition for those users unless and until they clicked “Yes” to turn on the Friends feature and face recognition. At the same time, Everalbum also introduced into the Ever mobile app a setting that allowed users located in Texas, Illinois, Washington, or the European Union to turn on or off the face recognition feature.

7. In April 2019, Everalbum rolled out to Ever mobile app users located outside of Texas, Illinois, Washington, and the European Union the pop-up message requesting that users choose whether they would like the Ever application to use face recognition. This functioned identically to the pop-up message previously provided to users located in Texas, Illinois, Washington, and the European Union.

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:

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 obtained from publicly available datasets.

15. When compiling the third dataset in June 2018, in addition to applying the criteria described in paragraph 12, Everalbum excluded facial images extracted from the photos of Ever users Everalbum believed to be residents of Illinois, Texas, Washington, or the European Union based on the users' IP addresses. In this instance, Everalbum submitted the resulting face recognition technology to the National Institute of Science and Technology for accuracy testing and comparison to competing face recognition technologies.

16. When compiling the fourth dataset in August 2019, in addition to applying the criteria described in paragraph 12, Everalbum excluded facial images extracted from the photos of Ever users who had not either turned on the setting, or clicked "Yes" on the ~~pop~~ message, described in paragraphs 6-7 above. Everalbum used the resulting face recognition technology both in the Ever app and to build the face recognition services offered by its enterprise brand, Paravision (formerly Ever AI). Paravision offers its face recognition technology to enterprise customers for purposes such as security, access control, and facilitating payments. Everalbum has not shared images from Ever users' photos or Ever users' photos, videos, or personal information with Paravision's customers.

#### Everalbum's Account Deactivation Process

17. Everalbum offers users who no longer wish to use Ever the ability to deactivate their Ever accounts. Since January 2017, approximately 36,000 Ever users have deactivated their accounts.

18. As shown below, when a user chooses to deactivate their Ever account, Everalbum displays a message that tells the user: "We're sorry to see you go! If you choose to deactivate your account, you will permanently lose access to [##] photos and [##] albums." (The message specifies the numbers of photos and albums stored in the user's Ever account.) The message includes a button for the user to click to deactivate their account.

19. If the user clicks the “Deactivate My Account” button, as shown below, Everalbum then displays a second message stating “Are you sure? You will lose access to your account and we can’t undo this” That message includes buttons that present the user with the choice to “CANCEL” or “DELETE.”

20. In response to customer inquiries about deleting an Ever account, in multiple instances, Everalbum has stated: “You can deactivate your account at any time by signing into our app, going to ‘Settings’ > ‘General Settings’ > ‘Deactivate’. Please note that this will permanently delete all photos and videos stored on your account as well (emphasis added).”

21. Everalbum’s Privacy Policy also states:

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.

Count I  
Misrepresentation Regarding Ever Users' Ability to Control  
the Ever App's Face Recognition Feature

23.

Violations of Section 5

27. The acts and practices of Respondent as alleged in this Complaint constitute unfair or deceptive acts or practices, in or affecting commerce, in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, has issued this Complaint against Respondent.