

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

In the Matter of
FLO HEALTH, INC.

DOCKET NO.

COMPLAINT

The Federal Trade Commission (“FTC”), having reason to believe that Flo Health, Inc., a corporation (“Respondent”), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Flo Health, Inc. (“Flo Health”) is a Delaware corporation with its principal office or place of business at 1013 Centre Road, Suite 403-B, Wilmington, Delaware 19805.
2. Respondent has developed, advertised, offered for sale, sold, and distributed the Flo Period & Ovulation Tracker, a mobile application (“app”) powered by artificial intelligence that functions as an ovulation calendar, period tracker, and pregnancy guide (“Flo App”).
3. Millions of women use the Flo App, giving Respondent details of their menstruations and gynecological health on the promise that the app will help predict ovulation and aid in pregnancy and childbirth. These users trust Respondent with intimate details of their reproductive health because Respondent repeatedly promised to protect the information and keep it secret. Indeed, Respondent’ sprivacy policies stated, time and again, that Respondent would not share users’

5. Respondent shared women's personal health information with these third parties for years, while at the same time promising them privacy. It was not until February 2019, when the Wall Street Journal revealed the practice, that Respondent halted sharing the data. Indeed, Respondent stopped sharing users' health information with Facebook the day after the exposé.

6. Upon learning that Respondent had turned some data related to their menstruations, pregnancies, and childbirths over to these third parties, hundreds of users wrote to Respondent,

Respondent's Repeated Deceptive Statements to Flo App Users About Health Data

13. Between 2017 and 2019, Respondent repeatedly promised users that the Flo App would keep their health data private, and that Respondent would only use Flo App users' data to

32. To join the EU-U.S. and/or Swiss-U.S. Privacy Shield Framework, a company must self-certify to Commerce that it complies with the Privacy Shield Principles, and to related requirements that have been deemed to meet the European Union's Adequacy Standard. Participating companies must annually re-certify their compliance.

33. The Privacy Shield expressly provides that, while decisions by organizations to "enter the Privacy Shield are entirely voluntary, effective compliance is compulsory:2 (s)-1 (ort4dk, a)gizations to "t,-0.00

Facebook, and Fabric. Therefore, the representations set forth in Paragraph 53 are false or misleading.

Count III

Privacy Misrepresentation – Failure to Limit Third-Party Use

55. As described in Paragraphs 14-15, Respondent represented, directly or indirectly, expressly or by implication, that third parties could not use Flo App users' personal information "for any other purpose except to provide services in connection with the App."

56. In fact, as set forth in Paragraph 22, third parties could use Flo App users' personal information for purposes other than providing services in connection with the app. Respondent entered into agreements with third parties Facebook, Google, AppsFlyer, and Fabric that permitted them to use Flo App users' personal information for the third parties' own purposes, including for advertising and product improvement. Furthermore, as set forth in Paragraph 23, from June 2016 to February 2019, at least one third party (Facebook, Google, AppsFlyer, and Fabric) used Flo App users' personal information for purposes other than providing services in connection with the app. (Exhibits 1-4, 6-7, 9-10, 12-13, 15-16, 18-19, 21-22, 24-25, 27-28, 30-31, 33-34, 36-37, 39-40, 42-43, 45-46, 48-49, 51-52, 54-55, 57-58, 60-61, 63-64, 66-67, 69-70, 72-73, 75-76, 78-79, 81-82, 84-85, 87-88, 90-91, 93-94, 96-97, 99-100, 102-103, 105-106, 108-109, 111-112, 114-115, 117-118, 120-121, 123-124, 126-127, 129-130, 132-133, 135-136, 138-139, 141-142, 144-145, 147-148, 150-151, 153-154, 156-157, 159-160, 162-163, 165-166, 168-169, 171-172, 174-175, 177-178, 180-181, 183-184, 186-187, 189-190, 192-193, 195-196, 198-199, 201-202, 204-205, 207-208, 210-211, 213-214, 216-217, 219-220, 222-223, 225-226, 228-229, 231-232, 234-235, 237-238, 240-241, 243-244, 246-247, 249-250, 252-253, 255-256, 258-259, 261-262, 264-265, 267-268, 270-271, 273-274, 276-277, 279-280, 282-283, 285-286, 288-289, 291-292, 294-295, 297-298, 300-301, 303-304, 306-307, 309-310, 312-313, 315-316, 318-319, 321-322, 324-325, 327-328, 330-331, 333-334, 336-337, 339-340, 342-343, 345-346, 348-349, 351-352, 354-355, 357-358, 360-361, 363-364, 366-367, 369-370, 372-373, 375-376, 378-379, 381-382, 384-385, 387-388, 390-391, 393-394, 396-397, 399-400, 402-403, 405-406, 408-409, 411-412, 414-415, 417-418, 420-421, 423-424, 426-427, 429-430, 432-433, 435-436, 438-439, 441-442, 444-445, 447-448, 450-451, 453-454, 456-457, 459-460, 462-463, 465-466, 468-469, 471-472, 474-475, 477-478, 480-481, 483-484, 486-487, 489-490, 492-493, 495-496, 498-499, 501-502, 504-505, 507-508, 510-511, 513-514, 516-517, 519-520, 522-523, 525-526, 528-529, 531-532, 534-535, 537-538, 540-541, 543-544, 546-547, 549-550, 552-553, 555-556, 558-559, 561-562, 564-565, 567-568, 570-571, 573-574, 576-577, 579-580, 582-583, 585-586, 588-589, 591-592, 594-595, 597-598, 600-601, 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62. In fact, as described in Paragraphs 45-48, Respondent did not adhere to the Privacy Shield Principle of Accountability for Onward Transfers. Therefore, the representation set forth in Paragraph 61 is false or misleading.

Count VII
Misrepresentation Regarding Data Integrity and Purpose Limitation

63. As described in Paragraph 27, Respondent has represented, directly or indirectly, expressly or by implication, that it adheres to the Privacy Shield Framework Principles, including the principle of Data Integrity and Purpose Limitation.

64. In fact, as described in Paragraph 50, Respondent did not adhere to the Privacy Shield Principle of Data Integrity and Purpose Limitation. Therefore, the representation set forth in Paragraph 63 is false or misleading.

Violations of Section 5

65. 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 _____ 2020, has issued this complaint against Respondent.

By the Commission.

April J. Tabor
Acting Secretary

SEAL: