

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Jon Leibowitz, Chairman**
 William E. Kovacic
 J. Thomas Rosch
 Edith Ramirez
 Julie Brill

In the Matter of

CHITIKA, INC.,
a corporation.

DOCKET NO.

COMPLAINT

The Federal Trade Commission, having reason to believe that Chitika, Inc. 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 Chitika, Inc. (“Chitika” or “respondent”) is a Delaware corporation with its principal office or place of business at 1800 West Park Drive, Westborough, Massachusetts, 01581.
2. The acts and practices of respondent as alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

RESPONDENT’S BUSINESS PRACTICES

3. Respondent is in the business of online behavioral advertising, which is the practice of tracking a consumer’s online activities in order to deliver advertising targeted to the individual consumer’s interests. Specifically, respondent tracks the searches a consumer has conducted, the web pages visited, and the content viewed in order to deliver or “serve” advertising targeted to the individual consumer’s interests.
4. Respondent offers an online behavioral advertising service that it markets as “Chitika Ads for Online Advertising.” As part of this service, respondent acts as an intermediary between website publishers (“publishers”) and advertisers that wish to have their advertisements placed on websites. Respondent purchases advertising space on

publishers' websites and contracts with advertisers to place their advertisements on the websites. Respondent refers to the network of publishers from which it purchases advertising space as the "Chitika network."

5. When a consumer visits a website within the Chitika network, respondent sets a new cookie or automatically receives a cookie it has previously set in the consumer's browser (the "Chitika tracking cookie"). Cookies are small text files that are commonly used to store information about a consumer's online activities, including information such as the content or advertisements that a consumer views or the pages a consumer visits within a particular website. Respondent facilitates the setting or receiving of Chitika tracking cookies by providing code to publishers that redirects a consumer's browser to respondent's server with an instruction to request a new cookie or send a cookie previously set by respondent. The communication between the browser and respondent's server occurs almost instantaneously in the background and is not visible to the consumer, unless the consumer uses sophisticated web diagnostics tools.
6. The Chitika tracking cookie contains a unique identification number that allows respondent to recognize the particular consumer or computer and correlate it to online activity. When respondent sets a new Chitika tracking cookie or receives a previously-set Chitika tracking cookie, respondent adds information about the consumer's web browsing activities to the cookie, including, in some instances, the consumer's search terms. Respondent uses this cookie to serve advertisements to the consumer that are targeted to his or her interests.
7. As long as a consumer visits a website in the Chitika network from the same web browser on the same computer at least once a year, the consumer will indefinitely retain the Chitika tracking cookie in his browser.
8. Respondent stores data contained in Chitika tracking cookies in log files on its servers for up to two years.

RESPONDENT'S STATEMENTS & OPT-OUT

9. From at least May 2008 to the present, respondent disseminated or caused to be disseminated a privacy policy on respondent's website, including, but not limited to, the following statements regarding respondent's collection and use of consumer information:

When users visit a page in the Chitika network, one or more cookies - a small file containing a string of characters - are set to the computer that uniquely identifies the users (sic) browser. Chitika uses cookies to improve the quality of the targeting service by storing anonymous activity data and tracking user trends, such as how people search and browse. Users can reset their browsers to refuse all cookies or to indicate when a cookie is being sent. . . .

Chitika encourages and promotes business practices that protect and honor the privacy of users.
You can opt-out of receiving Chitika cookies by using the button below.

10. Directly following the above statement is a button labeled “Opt-Out,” with an adjacent statement that “You are currently not opted out.” (Exhibit A) When a consumer clicks the “Opt-Out” button, the message adjacent to the button changes to, “You are currently opted out.” (Exhibit B)
11. When a consumer selects respondent’s opt-out, respondent sets an “opt-out cookie” in the consumer’s browser. When the consumer subsequently visits a website in the Chitika network, the consumer’s browser automatically sends the opt-out cookie to respondent’s servers. When respondent receives the opt-out cookie, it does not set any additional cookies in the consumer’s browser. It also does not add any information to a previously-set Chitika tracking cookie or use the data from the cookie to target advertisements to the consumer.
12. From at least May 2008 to February 28, 2010, respondent delivered opt-out cookies that it set to expire after 10 days. Consequently, 10 days after consumers selected respondent’s opt-out, the opt-out cookies automatically expired and disappeared from consumers’ browsers. When consumers then visited websites in the Chitika network, respondent: (1) set new Chitika tracking cookies in consumers’ browsers that did not have a Chitika tracking cookie; or (2) automatically received Chitika tracking cookies that it set before consumers selected the opt-out. In both instances, respondent added information to the Chitika tracking cookies in order to track consumers’ online activities and serve targeted advertisements to them. Respondent did not inform consumers that the opt-out cookie would expire after 10 days.
13. As of March 1, 2010, after being contacted by FTC staff, respondent modified the expiration date of its opt-out cookies, so that any future opt-out cookies it delivers will expire after 10 years. Respondent’s modification of its opt-out cookies does not affect any opt-out cookies delivered before March 1, 2010.

VIOLATION OF THE FTC ACT

14. Through the means described in Paragraphs 9 and 10, respondent represents, expressly or by implication, that when consumers opt out of targeted advertising by Chitika, such opt-out will last for a reasonable period of time.
15. In truth and in fact, when consumers opted out of targeted advertising by Chitika, such opt-out did not last for a reasonable period of time. Therefore, the representations set forth in Paragraphs 9 and 10 were false or misleading.

16. The acts and practices of respondent, as alleged in this complaint, constitute 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 _____, 2011, has issued this complaint against respondent.

By the Commission.

Donald S. Clark
Secretary