

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Maureen K. Ohlhausen, Acting Chairman  
Terrell McSweeney

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<i>In the Matter of</i>	)	<b>DECISION AND ORDER</b>
	)	
<b>TURN INC.,</b>	)	<b>DOCKET NO. C-4612</b>
<b>a corporation.</b>	)	
	)	
_____	)	

**DECISION**

The Federal Trade Commission (“Commission”) initiated an investigation of certain acts and practices of the Respondent named above in the caption. The Commission’s Bureau of Consumer Protection (“BCP”) prepared and furnished to Respondent a draft Complaint. BCP proposed to present the draft Complaint to the Commission for its consideration. If issued by the Commission, the draft Complaint would charge the Respondent with violation of the Federal Trade Commission Act.

Respondent and BCP thereafter executed an Agreement Containing Consent Order (“Consent Agreement”). The Consent Agreement includes: 1) statements by Respondent that it neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Decision and Order, and that only for purposes of this action, it admits the facts necessary to establish jurisdiction; and 2) waivers and other provisions as required by the Commission’s Rules.

The Commission considered the matter and determined that it had reason to believe that Respondent has violated the Federal Trade Commission Act, and that a Complaint should issue stating its charges in that respect. The Commission accepted the executed Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments. The Commission duly considered the comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure prescribed in Rule 2.34, the Commission issues its Complaint, makes the following Findings, and issues the following Order:

**Findings**

1. Respondent Turn Inc., is a Delaware corporation with its principal office or place of business at 901 Marshall Street, Ste. 200, Redwood City, CA 94063.
2. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondent, and the proceeding is in the public interest.

## ORDER

### Definitions

For purposes of this Order, the following definitions shall apply:

1. “Clear[ly] and Conspicuous[ly]” means that a required disclosure is difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:
  - a. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented.
  - b. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure is made through only one means.
  - c. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
  - d. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.
  - e. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.
  - f. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.
  - g. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.
  - h. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.
  - i. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, “ordinary consumers” includes reasonable members of that group.

2. “Computer” or “Device” means any desktop or laptop computer, handheld device, telephone, tablet, or other product or device, through which consumers access the Internet.
3. “Covered Information” means information from or about an individual consumer, Computer, or Device, including, but not limited to, (a) an email address or other online contact information, such as a user name; (b) a persistent identifier, such as a unique ID held in an HTTP cookie, an Internet Protocol (“IP”) address, a Device Advertising Identifier, a mobile device ID, a MAC address, processor serial number, or Verizon Wireless’s X-UIDH header; (c) browsing history or other data about websites and applications that a device has accessed; (d) precise geolocation data of an individual or mobile device, including GPS-based, WiFi-based, or cell-based location information; or (e) an authentication credential such as a login ID or password.
4. “Device Advertising Identifier” means a persistent identifier created by a Mobile Operating System to uniquely identify a device user for purposes of advertising, such as the iOS Identifier for Advertisers or Google advertising ID.
5. “Mobile Operating System” means an operating system designed to run a mobile device such as a smartphone or tablet. A web browser shall not be considered a Mobile Operating System.
6. “Respondent” means Turn Inc., a corporation, and its successors and assigns.
7. “Targeted Advertising” means the practice of using data about a user’s interests in order to deliver online advertising targeted to the user’s interests. Contextual advertising targeted to the content of a particular webpage or application shall not be considered Targeted Advertising for the purposes of this Order.
8. “Verizon Wireless’s X-UIDH headers” means the unique HTTP headers appended to web requests from Verizon Wireless customers that were observable by all servers receiving web requests from Verizon Wireless.

## **Provisions**

### **I. Prohibition Against Misrepresentations about Privacy of Covered Information**

**IT IS ORDERED** that Respondent, and 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 this Order, whether acting directly or indirectly, in connection with the online advertising, marketing, promotion, offering for sale, sale, or dissemination of any product or service, must not misrepresent, in any manner, expressly or by implication:

- A. The extent to which Respondent collects, uses, discloses, retains, or shares Covered Information; and
- B. The extent to which consumers can limit, control, or prevent Respondent's collection, use, disclosure, retention, or sharing of Covered Information.

## **II. Required Disclosure and Opt-Out Mechanism**

**IT IS FURTHER ORDERED** that, for so long as Respondent engages in Targeted Advertising, Respondent, directly or through any entity, in connection with the online advertising, marketing, promotion, offering for sale, sale, or dissemination of any product or service on websites and in mobile applications other than Respondent's, shall, within 30 days after the date of service of this order:

- A. Place a Clear and Conspicuous hyperlink on the homepage of the Turn website that states "Consumer Opt Out of Targeted Advertising." When selected, the hyperlink shall take consumers directly to the mechanism required by Part II.B of the order;
- B. On the webpage linked from the hyperlink described in II.A, provide a Clear and Conspicuous disclosure that explains what information is collected and used for Targeted Advertising, accompanied by a Clear and Conspicuous mechanism that enables users to opt out of such Targeted Advertising; and
- C. Describe the technologies and methods used for Targeted Advertising on its website.

## **III. Requirement to Honor Consumer Controls**

**IT IS FURTHER ORDERED** that Respondent, whether acting directly or indirectly, in connection with the online advertising, marketing, promotion, offering for sale, sale, or dissemination of any product or service, must honor a signal it receives that indicates the activation of a Mobile Operating System control to opt out of or otherwise control or limit Targeted Advertising when:

- A. Respondent knows or reasonably should know that it is receiving such a signal; and
- B. Respondent knows or reasonably should know that such signal indicates the activation of a Mobile Operating System control to opt out of or otherwise control or limit Targeted Advertising.

#### **IV. Acknowledgments of the Order**

**IT IS FURTHER ORDERED** that Respondent obtains acknowledgments of receipt of this Order:

- A. Respondent, within 10 days after the effective date of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For 10 years after the issuance date of this Order, Respondent must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives having managerial responsibilities for conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Provision titled Compliance Reporting. Delivery must occur within 10 days after the effective date of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.
- C. From each individual or entity to which Respondent delivered a copy of this Order, Respondent must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

#### **V. Compliance Reporting and Notices**

**IT IS FURTHER ORDERED** that Respondent make timely submissions to the Commission:

- A. One year after the issuance date of this Order, Respondent must submit a compliance report, sworn under penalty of perjury, in which Respondent must: (1) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission, may use to communicate with Respondent; (2) identify all of Respondent's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (3) describe the activities of each business; (4) describe in detail whether and how Respondent is in compliance with each Provision of this Order; and (5) provide a copy of each Acknowledgments of the Order obtained pursuant to this Order, unless previously submitted to the Commission.
- B. Respondent must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following: (1) any designated point of contact; or (2) the structure of Respondent or any entity that Respondent has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.
- C. Respondent must submit notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against Respondent within 14 days of its filing.

- D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: \_\_\_\_\_” and supplying the date, signatory’s full name, title (if applicable), and signature.
- E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: In re Turn Inc., FTC File No. 1523099.

## **VI. Recordkeeping**

**IT IS FURTHER ORDERED** that Respondent must create certain records for 10 years after the issuance date of the Order, and retain each such record for 5 years. Specifically, Respondent must create and retain the following records:

- A. Accounting records showing the revenues from all goods or services sold;
- B. Personnel records showing, for each person providing services in relation to any aspect of the Order, whether as an employee or otherwise, that person’s: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. Copies or records of all consumer complaints or inquiries, whether received directly or indirectly, such as through a third party, concerning: (1) any collection of Covered Information by Respondent; (2) the use, disclosure, or sharing of such Covered Information by Respondent; or (3) opt-out practices or any other mechanism to limit or prevent such collection of Covered Information or the use, disclosure, or sharing of Covered Information collected by Respondent, as well as any responses to such complaints or inquiries;
- D. A copy of each publicly disseminated representation by Respondent that describes the extent to which Respondent collects, uses, discloses, retains, or shares Covered Information, including any representation concerning a change in any website or other service controlled by Respondent that relates Respondent’s collection, use, disclosure, retention, or sharing of Covered Information; and
- E. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission.

## VII. Compliance Monitoring

**IT IS FURTHER ORDERED** that, for the purpose of monitoring Respondent's compliance with this Order:

- A. Within 10 days of receipt of a written request from a representative of the Commission, Respondent must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury, and produce records for inspection and copying;
- B. For matters concerning this Order, representatives of the Commission are authorized to communicate directly with Respondent. Respondent must permit representatives of the Commission to interview anyone affiliated with Respondent who has agreed to such an interview. The interviewee may have counsel present; and
- C. The Commission may use all other lawful means, including posing through its representatives as consumers, suppliers, or other individuals or entities, to Respondent or any individual or entity affiliated with Respondent, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

## VIII. Order Effective Dates

**IT IS FURTHER ORDERED** that this Order is final and effective upon the date of its publication on the Commission's website (ftc.gov) as a final order. This Order will terminate on April 6, 2037, or 20 years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying settlement) in federal court alleging any violation of this Order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Provision in this Order that terminates in less than 20 years;
- B. This Order's application to any Respondent that is not named as a defendant in such complaint; and

- C. This Order if such complaint is filed after the Order has terminated pursuant to this Provision. If such complaint is dismissed or a federal court rules that the Respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this Provision as though the complaint had never been filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Donald S. Clark  
Secretary

SEAL:

ISSUED: April 6, 2017