



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Office of the Secretary

May 6, 2021

David Valentine  
State of Florida

Re: *In the Matter of Everalbum, Inc.*  
FTC File No. 1923172

Dear Mr. Valentine:

Thank you for your comment regarding the Federal Trade Commission's ("FTC's") proposed consent agreement with Everalbum, Inc. ("Everalbum"). The Commission appreciates your feedback.

The two-count complaint in this matter alleges that Everalbum violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), by misrepresenting the company's practices with respect to photos and videos (collectively, "content") that users of the company's "Ever" application ("app") uploaded to the company's cloud servers. Count one alleges that Everalbum misrepresented the circumstances under which it would apply face recognition to the content of the photo storage and organization app's users. Count two alleges that Everalbum misrepresented that the company would delete the content of Ever app users who deactivated their Ever accounts.

The proposed order contains provisions to address Everalbum's conduct and prevent the company from engaging in the same or similar acts or practices in the future. It prohibits Everalbum from making misrepresentations related to the privacy, security, availability, confidentiality, or integrity of information from or about an individual consumer. It requires Everalbum to clearly and conspicuously disclose, and obtain consumers' affirmative express consent for, all purposes for which the company will use or share biometric information before using the information to create data needed for face recognition analysis or to develop face recognition models or algorithms. The proposed order further requires Everalbum to delete, and provide sworn statements confirming deletion of, (a) photos and videos of Ever app users who requested deactivation of their accounts, (b) face recognition data that it created without obtaining users' affirmative express consent, and (c) models and algorithms it developed in whole or in part using images from users' photos. It also includes provisions requiring Everalbum to keep certain records and submit to the Commission a compliance report and other documents to enable the Commission to monitor compliance with the order.

Your comment generally supports the proposed order. At the same time, however, you state that the proposed order treats consumers outside the United States (“U.S.”) unfairly because it does not require Everalbum to comply with the notice and affirmative express consent provision in connection with products or services that the company offers only to users outside the U.S. The Commission believes that the proposed order will appropriately protect both U.S. and non-U.S. consumers when it comes to notice and consent regarding the company’s use of biometric information to develop face recognition models or algorithms. Indeed, the proposed order is just one source of Everalbum’s notice and consent obligations. First, where Everalbum offers a consumer-facing product or service to both U.S. and non-U.S. consumers, it will be required to comply with the proposed order’s notice and affirmative express consent provision as to all consumers—including those located outside of the U.S.—and with the privacy and data protection-focused laws applicable in the jurisdictions where it offers the product. If Everalbum offers a consumer-facing product or service exclusively in non-U.S. jurisdictions, it will have to comply with those jurisdictions’ privacy and data protection laws, some of which might be more stringent than the notice and affirmative consent provision in the proposed order. Moreover, as a U.S.-based company, Everalbum must still comply with Section 5 of the FTC Act’s prohibition against deceptive and unfair trade practices.

The Commission has placed your comment on the public record pursuant to rule 4.9(b)(6)(ii) of the Commission’s Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). Having considered all the facts of this case and all the comments submitted in response to the proposed Order, the Commission has now determined that the public interest would best be served by issuing the Complaint and Decision and Order in final form without further modifications. The final Decision and Order and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. The Commission thanks you again for your comment.

Sincerely,



April J. Tabor  
Secretary