

Parties

4. Plaintiff the Electronic Privacy Information Center (“EPIC”) is a public interest research organization incorporated as a not-for-profit corporation in Washington, D.C. EPIC was established in 1994 to focus public attention on emerging civil liberties issues and to protect privacy, the First Amendment, and other Constitutional values.

5. Defendant United States Federal Trade Commission (“FTC”) is an independent commission established in the Executive Branch of the United States Government. The FTC is an agency within the meaning of 5 U.S.C. § 701(b)(1).

Facts

6. This action arises from Google, Inc.’s imminent violation of a consent order with the FTC.

7. An October 13, 2011 consent order bars Google from misrepresenting the company’s privacy practices, requires the company to obtain users’ consent before disclosing personal data, and requires the company to develop and comply with a comprehensive privacy program.

8. The FTC consent order arises from a complaint filed by EPIC with the Commission on February 6, 2010.

9. In January 2012, Google announced that it would change its terms of service for current users of Google services and consolidate users’ personal information across more than 60 Google services in clear violation of its prior commitments to the Federal Trade Commission.

10. The change will become effective on March 1, 2012.

11. The Federal Trade Commission has a non-discretionary obligation to enforce a final order.

12. The FTC has thus far failed to take any action regarding this matter, placing the privacy interests of literally hundreds of millions Internet users at grave risk.

13. EPIC brings this Administration Procedure Act suit to require the Commission to enforce the consent order.

Google Engaged in Unfair and Deceptive Trade Practices that Disclosed Consumers' Personal Information Without Consent

14. On Tuesday, February 9, 2010, Google attempted to launch a social networking service, Google Buzz.

15. As part of this attempt, Google took information that users provided for Google electronic mail service Gmail and used it to populate Buzz, a separate and discrete social network service.

16. Google transferred the data of the users of Gmail even in those circumstances where users purposefully chose not to sign up for the social network services.

17. Google did not adequately communicate that, as a result of these action, Google would make public certain private information by default; options for controlling this information, as the Federal Trade Commission subsequently determined, were "confusing and difficult to find."

18. With the attempted introduction of Buzz, Google disclosed personal information, such as email addresses, without consumers' permission.

19. In some cases, Google's disclosure made public lists of followers and people to follow that included abusive ex-husbands, clients of mental health professionals or attorneys, and others.

20. As the Federal Trade Commission subsequently determined, these practices were unfair and deceptive.

21. Google's terms of service stated that Google would use information given by Gmail users only for to provide email services.

22. Instead, Google used this information in Buzz.

23. Google also deceptively claimed that it would seek the consent of users before using their information for a purpose other than that for which it was collected.

24. Google misrepresented the ability of users to exercise control over their information.

25. Google misrepresented the extent of its compliance with the U.S.-EU Safe Harbor Framework by claiming that the company complied with the framework while violating the principles of Notice and Choice.

EPIC's Initial Complaint with the Federal Trade Commission Gave Rise to the Subsequent Investigation and Final Consent Order with Google

26. On February 16, 2010, within a week of the introduction of Buzz, EPIC filed a complaint with the Federal Trade Commission urging the Commission to investigate the launch of Google Buzz and to determine whether the company had engaged in unfair and deceptive trade practices, in violation of Section 5 of the FTC Act.

27. Complainant EPIC explained that Google automatically enrolled Gmail users in Buzz, and subsequently disclosed users' email contacts in violation of the terms of service.

28. There was no clear way for a user to opt out of Buzz or make information non-public.

29. Furthermore, Google violated Gmail's privacy policy, which clearly stated that Google would only use contact lists and other related personal data to provide Gmail services.

30. EPIC alleged that Google harmed users by violating their expectation of privacy in their emails, with particularly severe effects for professionals, such as lawyers, journalists,

and healthcare providers, who promise confidentiality.

31. EPIC's complaint urged the FTC to "enjoin [Google's] unfair and deceptive business practices and require Google to protect the privacy of Gmail users."

32. Specifically, complainant EPIC urged that the FTC (1) compel Google to make Google Buzz a fully opt-in service for Gmail users; (2) compel Google to cease using Gmail users' private address book contacts to compile social networking lists; (3) compel Google to give Google Buzz users more control over their information by allowing users to accept or reject followers from the outset; and (4) provide such other relief as the Commission found necessary and appropriate.

Subsequent to the filing of the Complaint by EPIC, the Federal Trade Commission Undertook an Investigation and Entered a Final Order Against Google

33. On March 30, 2011, the FTC released a Complaint and announced a proposed Consent Order with Google.

34. The Commission found that Google had launched Buzz through Gmail, and that "options for declining or leaving the social network were ineffective."

35. Controls for limiting the disclosure of personal information were "confusing and difficult to find"

36. Google also "failed to disclose adequately that consumers' frequent email contacts would become public by default."

37. The FTC found that Google violated the U.S.-EU Safe Harbor Framework by "fail[ing] to give consumers notice and choice before using their information for a purpose different from that for which it was collected."

38. In announcing the Consent Order, Jon Leibowitz, Chairman of the FTC, said, "when companies make privacy pledges, they need to honor them."

39. The FTC acknowledged the significance of EPIC’s complaint in the agency’s action: “Google’s data practices in connection with its launch of Google Buzz were the subject of a complaint filed with the FTC by the Electronic Privacy Information Center shortly after the service was launched.”

40. The Federal Trade Commission opened the proposed Consent Order for public comment.

41. The FTC issued the final Consent Order on October 13, 2011.

42. The Commission vote approving the final settlement was 4-0.

43. The Consent Order contains nine parts.

44. Part I prohibits Google from misrepresenting (a) the extent to which it “maintains and protects the privacy and confidentiality” of personal information, and (b) the extent to which it complies with the U.S.-EU Safe Harbor Framework.

45. Part II requires Google to obtain “express affirmative consent” before “any new or additional sharing by [Google] of the Google user’s identified information with any third party”

46. Part III requires Google to implement a “comprehensive privacy program” that is designed to address privacy risks and protect the privacy and confidentiality of personal information.

47. Part IV requires Google to submit to independent, biennial privacy assessments, which are then to be provided to the FTC.

48. Finally, Parts V-IX require Google to make copies of certain privacy-related documents available to the FTC, to deliver the Consent Order to all officers and directors, to notify the FTC thirty days before any major change in corporate structure or status that might

affect compliance, and to file a report with the FTC in 90 days describing compliance Google with the Agreement.

Google Recently Announced Changes in Business Practices that Would Violate the Consent Order; the Changes will take Effect March 1, 2012

49. On January 24, 2012, Google announced that, effective March 1, the company will change its terms of service, and use the personal information obtained from user in ways inconsistent with the original collection.

50. Rather than keeping personal information about a user of a given Google service separate from information gathered from other Google services, Google will consolidate user data from across its services and create a single merged profile for each user.

51. Users will no longer be able to keep the personal information they provided to use the Google email service for simply that service; Google will be able to combine the user information provided for email with other Google services, including the Google social network service.

52. Google stated: “Our new Privacy Policy makes clear that, if you’re signed in, we may combine information you've provided from one service with information from other services. In short, we’ll treat you as a single user across all our products”

53. These changes violate the Consent Order between Google and the FTC.

54. Google violated Part I(a) of the Consent Order by misrepresenting the extent to which it maintains and protects the privacy and confidentiality of covered information.

55. Google also violated Part I(b) of the Consent Order by misrepresenting the extent to which it complies with the U.S.-EU Safe Harbor Framework.

56. Google violated Part II of the Consent Order by failing to obtain affirmative consent from users prior to sharing their information with third parties.

57. Google violated Part III of the Consent Order by failing to comply with the requirements of a comprehensive privacy program.

The FTC Has not Enforced the Consent Order

58. To date, the FTC has failed to take any action with respect to Google's imminent changes in privacy practices.

59. The Commission has not filed a lawsuit pursuant to the Federal Trade Commission Act, which states that the FTC "*shall*" obtain injunctive relief and recover civil penalties against companies that violate consent orders. 15 U.S.C. § 45(l) (emphasis added).

Count I

Violation of the Administrative Procedure Act: Agency Action Unlawfully Withheld

60. Paragraphs 1-59 above are hereby incorporated by reference as if set forth fully herein.

61. The FTC has failed to act to enforce the October 13, 2011 consent order in the matter captioned *In the Matter of Google, Inc.*, FTC File No. 102 3136.

62. The FTC's failure to Act constitutes a final agency action.

63. The FTC has a mandatory, nondiscretionary duty to enforce the consent order.

64. EPIC has suffered a legal wrong and has been adversely affected and aggrieved by the FTC's failure to act.

65. EPIC is entitled to injunctive relief compelling the FTC to enforce the consent order.

Requested Relief

WHEREFORE, plaintiff prays that this Court:

A. order defendant to take all steps within the Commission's authority to enforce the October 13, 2011 consent order in the matter captioned *In the Matter of Google, Inc.*,

- FTC File No. 102 3136 within five days of the date of the Court's Order in this matter;
- B. order defendant that such steps shall include, *inter alia*, commencing a civil action against Google, Inc. in a US district court to recover the maximum allowable civil penalty pursuant to 15 U.S.C. § 45;
- C. award plaintiff its costs and reasonable attorneys' fees incurred in this action pursuant to 28 U.S.C. § 2412; and
- D. grant such other relief as the Court may deem just and proper.

Respectfully submitted,

By:

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Dated: February 8, 2012

* Ms. Barnes is a member of the bar of the State of Maryland.

** Mr. Jacobs' application to the bar of the State of New York is pending.

*** Ms. Stepanovich is a member of the bar of the State of New York. Her application to the bar of the District of Columbia is pending.