

Before the
FEDERAL TRADE COMMISSION
Washington, DC 20580

In the Matter of _____)
)
Snapchat, Inc.)
)
)
)

Complaint, Request for Investigation, Injunction, and Other Relief

Submitted by

The Electronic Privacy Information Center

I. Introduction

1. This complaint concerns the deceptive business practices of Snapchat, Inc., the publisher of a widely used mobile application that encourages users to share intimate photos and video. Despite promising to its users that photos and videos sent via Snapchat will “disappear forever,” Snapchat photos and videos remain available to others even after users are informed that the photos and videos have been deleted.
2. These representations violate Section 5 of the Federal Trade Commission Act and are actionable by the Commission.
3. This business practices also implicates the need to ensure the development of genuine Privacy Enhancing Techniques that minimize or eliminate the collection of personally identifiable information. The Commission has already endorsed “reasonable collection limits [and] sound retention practices.”¹

II. Parties

4. The Electronic Privacy Information Center (“EPIC”) is a public interest research center located in Washington, D.C. EPIC focuses on emerging privacy and civil liberties issues and is a leading consumer advocate before the FTC. EPIC has a particular interest in protecting consumer privacy, and has played a leading role in developing the authority of the FTC to address emerging privacy issues and to safeguard the privacy rights of consumers.² EPIC’s 2010 complaint concerning Google Buzz provided the basis for the

¹ FED. TRADE COMM’N, PROTECTING CONSUMER PRIVACY IN AN ERA OF RAPID CHANGE 22-35 (2012), <http://www.ftc.gov/os/2012/03/120326privacyreport.pdf>.

² See, e.g., Letter from EPIC Exec. Dir. Marc Rotenberg to FTC Comm’r Christine Varney (Dec. 14, 1995) (urging the FTC to investigate the misuse of personal information by the

Commission’s investigation and October 24, 2011 subsequent settlement concerning the social networking service.³ In that case, the Commission found that Google “used deceptive tactics and violated its own privacy promises to consumers when it launched [Buzz].”⁴ The Commission’s settlement with Facebook also followed from a Complaint filed by EPIC and a coalition of privacy and civil liberties organization in December 2009 and a Supplemental Complaint filed by EPIC in February 2010.⁵ EPIC has previously urged the Commission to investigate businesses that make misleading representations as to record destruction practices. In 2008, EPIC notified the Commission that AskEraser falsely represented that search queries would be deleted when in fact they were retained by the company and made available to law enforcement agencies.⁶

2. Snapchat⁷ is a Delaware corporation with its principal place of business in Los Angeles County, California. The company provides a photosharing mobile application that allows users to send photos and purports to provide for their automatic deletion after a set period of time.⁸

III. Factual Background

A. Snapchat’s Business Practices Impact Millions of Consumers

3. Among all apps for the iOS operating system, Snapchat has the 5th most number of users.⁹
4. Users transmit an enormous amount of personal data, including intimate, personal photos, through Snapchat.

direct marketing industry), http://epic.org/privacy/internet/ftc/ftc_letter.html; DoubleClick, Inc., *FTC* File No. 071-0170 (2000) (Complaint and Request for Injunction, Request for Investigation and for Other Relief), http://epic.org/privacy/internet/ftc/DCLK_complaint.pdf; Microsoft Corporation, *FTC* File No. 012 3240 (2002) (Complaint and Request for Injunction, Request for Investigation and for Other Relief), http://epic.org/privacy/consumer/MS_complaint.pdf; Choicepoint, Inc., *FTC* File No. 052-3069 (2004) (Request for Investigation and for Other Relief), <http://epic.org/privacy/choicepoint/fcraltr12.16.04.html>.

³ Press Release, Federal Trade Comm’n, *FTC Charges Deceptive Privacy Practices in Google’s Rollout of Its Buzz Social Network* (Mar. 30, 2011), <http://ftc.gov/opa/2011/03/google.shtm> (“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.”).

⁴ *Id.*

⁵ In the Matter of Facebook, Inc., (2009) (EPIC Complaint, Request for Investigation, Injunction, and Other Relief), <https://epic.org/privacy/infacebook/EPIC-FacebookComplaint.pdf> [hereinafter EPIC 2009 Facebook Complaint]; In the Matter of Facebook, Inc., (2010) (EPIC Supplemental Materials in Support of Pending Complaint and Request for

Injunction, Request for Investigation and for Other Relief),

https://epic.org/privacy/infacebook/EPIC_Facebook_Supp.pdf [hereinafter EPIC 2009 Facebook Supplement]; In the Matter of Facebook, Inc., (2010) (EPIC Complaint, Request for Investigation, Injunction, and Other Relief), https://epic.org/privacy/facebook/EPIC_FTC_FB_Complaint.pdf [hereinafter EPIC 2010 Facebook Complaint].

⁶ <https://epic.org/privacy/ask/>

⁷ See Snapchat.com, <http://www.snapchat.com/>

⁸ <http://www.snapchat.com/#What-is-snapchat?>

⁹ <http://blog.appannie.com/app-annie-index-apps-march-2013/>

5. Over 150 million photos are sent every day.¹⁰

C. Snapchat Represented that User Photos Would Be Deleted After a Designated Period of Time

6. Snapchat represents its app as a way for users to send photos, videos, and messages without having those messages stored on the recipient's mobile device.

7. Snapchat states that it allows users to “Snap an ugly self or a video, add a caption, and send it to a friend (or maybe a few). They'll receive it, laugh, and then the snap disappears.”¹¹

8. Snapchat's app descriptions in the App Store and Google Play state that “You control how long your friends can view your message” and that after time expires “it disappears forever.”¹²

9. Snapchat's FAQ states: “Question: “Is there any way to view an image after the time has expired? Answer: No, snaps disappear after the timer runs out.”¹³

10. Snapchat's FAQ states: “Each photo is deleted after the recipient opens it.”¹⁴

11. Snapchat's Privacy Policy states that “Although we attempt to delete image data as soon as possible after the message is received and opened by the recipient . . . we cannot guarantee that the message contents will be deleted in every case.”¹⁵

12. Snapchat's Privacy Policy's disclaimer on deletion gives the following example: “users may take a picture of the message contents with another imaging device or capture a screenshot of the message contents on the device screen.”¹⁶

13. After being questioned about the failure to delete user photos, Snapchat continues to misrepresent its business practices.¹⁷

¹⁰ Salvador Rodriguez, *SnapChat users are sending 150 million photos a day*, L.A. TIMES, Apr. 16, 2013, <http://www.latimes.com/business/technology/la-fi-tn-snapchat-150-million-photos-per-day-20130416,0,3363737.story>.

¹¹ *About*, Snapchat, <http://www.snapchat.com/#>.

¹² *Snapchat*, Google Play, <https://play.google.com/store/apps/details?id=com.snapchat.android&hl=en>; *see also Snapchat*, App Store, <https://itunes.apple.com/us/app/snapchat/id447188370?mt=8>

¹³ Is there any way to view an image after the time has expired?, Snapchat, <http://www.snapchat.com/#Is-there-any-way-to-view-an-image-after-the-time-has-expired?>

¹⁴ Do you look at my pictures? Snapchat, <http://www.snapchat.com/#Do-you-look-at-my-pictures?>

¹⁵ *Privacy Policy*, Snapchat, <http://www.snapchat.com/>

¹⁶ *Privacy Policy*, Snapchat, <http://www.snapchat.com/>

¹⁷ Kate Knibbs, *Snapchat (Sort of) Admits Your Old Picture Data Doesn't Actually Disappear*, DIGITAL TRENDS (May 14, 2013), <http://www.digitaltrends.com/social-media/snapchat-admits-your-old-picture-data-doesnt-exactly-disappear/> (noting that forensic expert Richard Hickman states that “not everything they have posted is accurate from what I have found so far. They say that after a snap is viewed that it is deleted from temporary memory, however, in every instance that I have tested, it is not.”)

D. Snapchat Fails to Delete Messages After Time Expires

14. The images that Snapchat says are deleted are in fact stored on Snapchat users' phones.¹⁸
15. Snapchat simply changes the file extension to .NOMEDIA.
16. By removing the .NOMEDIA extension, the pictures become viewable again.¹⁹
17. A forensic expert stated he was "surprised no one else had done it because of how easy it was."²⁰
18. Others have previously noted poor security practices by Snapchat. For example, "there is a method to easily capture images sent through SnapChap with no technical knowhow whatsoever."²¹

IV. Legal Analysis

A. The FTC's Section 5 Authority

19. The FTC Act prohibits unfair and deceptive acts and practices, and empowers the Commission to enforce the Act's prohibitions.²² These powers are described in FTC Policy Statements on Deception²³ and Unfairness.²⁴
20. A trade practice is unfair if it "causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition."²⁵
21. The injury must be "substantial."²⁶ Typically, this involves monetary harm, but may also include "unwarranted health and safety risks."²⁷ Emotional harm and other "more

¹⁸ Richard Hickman, *Snapchat unveiled: an examination of Snapchat on Android devices*, Decipher Forensics Blog (Apr. 30, 2013), <http://decipherforensics.com/index.php/blog-landing-page/56-snapchat>

¹⁹ Andrew Adams, *'Deleted' Snapchat photos saved in phone data, can be examined as evidence*, KSL 5 News, (May 8, 2013), <http://www.ksl.com/?sid=25106057>

²⁰ Kashmir Hill, *Snapchats Don't Disappear: Forensics Firm Has Pulled Dozens of Supposedly-Deleted Photos From Android Phones*, Forbes (May 9, 2013), <http://www.forbes.com/sites/kashmirhill/2013/05/09/snapchats-dont-disappear/>.

²¹ Jesus Diaz, *How to Easily Capture Images In SnapChat Without the Other Person Noticing*, GIZMODO (Jan. 22, 2013), <http://gizmodo.com/5978053/how-to-easily-capture-images-in-snapchat-without-the-other-person-noticing>

²² See 15 U.S.C. § 45 (2010).

²³ Fed. Trade Comm'n, FTC Policy Statement on Deception (1983), available at <http://www.ftc.gov/bcp/policystmt/ad-decept.htm> [hereinafter FTC Deception Policy].

²⁴ Fed. Trade Comm'n, FTC Policy Statement on Unfairness (1980), available at <http://www.ftc.gov/bcp/policystmt/ad-unfair.htm> [hereinafter FTC Unfairness Policy].

²⁵ 15 U.S.C. § 45(n); see, e.g., *Fed. Trade Comm'n v. Seismic Entertainment Productions, Inc.*, Civ. No. 1:04-CV-00377 (Nov. 21, 2006) (finding that unauthorized changes to users' computers that affected the functionality of the computers as a result of Seismic's anti-spyware software constituted a "substantial injury without countervailing benefits.").

subjective types of harm” generally do not make a practice unfair.²⁸ Secondly, the injury “must not be outweighed by an offsetting consumer or competitive benefit that the sales practice also produces.”²⁹ Thus the FTC will not find a practice unfair “unless it is injurious in its net effects.”³⁰ Finally, “the injury must be one which consumers could not reasonably have avoided.”³¹ This factor is an effort to ensure that consumer decision making still governs the market by limiting the FTC to act in situations where seller behavior “unreasonably creates or takes advantage of an obstacle to the free exercise of consumer decisionmaking.”³² Sellers may not withhold from consumers important price or performance information, engage in coercion, or unduly influence highly susceptible classes of consumers.³³

22. The FTC will also look at “whether the conduct violates public policy as it has been established by statute, common law, industry practice, or otherwise.”³⁴ Public policy is used to “test the validity and strength of the evidence of consumer injury, or, less often, it may be cited for a dispositive legislative or judicial determination that such injury is present.”³⁵
23. An act or practice is deceptive if it involves a representation, omission, or practice that is likely to mislead the consumer acting reasonably under the circumstances, to the consumer’s detriment.³⁶
24. There are three elements to a deception claim. First, there must be a representation, omission, or practice that is likely to mislead the consumer.³⁷ The relevant inquiry for this factor is not whether the act or practice actually misled the consumer, but rather whether it is likely to mislead.³⁸
25. Second, the act or practice must be considered from the perspective of a reasonable consumer.³⁹ “The test is whether the consumer’s interpretation or reaction is

²⁶ FTC Unfairness Policy, *supra*.

²⁷ *Id.*; *see, e.g., Fed. Trade Comm’n v. Information Search, Inc.*, Civ. No. 1:06-cv-01099 (Mar. 9, 2007) (“The invasion of privacy and security resulting from obtaining and selling confidential customer phone records without the consumers’ authorization causes substantial harm to consumers and the public, including, but not limited to, endangering the health and safety of consumers.”).

²⁸ FTC Unfairness Policy, *supra*.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ FTC Deception Policy, *supra*.

³⁷ FTC Deception Policy, *supra*; *see, e.g., Fed Trade Comm’n v. Pantron I Corp.*, 33 F.3d 1088 (9th Cir.

1994) (holding that Pantron’s representation to consumers that a product was effective at reducing hair loss was materially misleading, because according to studies, the success of the product could only be attributed to a placebo effect, rather than on scientific grounds).

³⁸ FTC Deception Policy, *supra*.

³⁹ *Id.*

reasonable.”⁴⁰ The FTC will look at the totality of the act or practice and ask questions such as “how clear is the representation? How conspicuous is any qualifying information? How important is the omitted information? Do other sources for the omitted information exist? How familiar is the public with the product or service?”⁴¹

26. Finally, the representation, omission, or practice must be material.⁴² Essentially, the information must be important to consumers. The relevant question is whether consumers would have chosen another product if the deception had not occurred.⁴³ Express claims will be presumed material.⁴⁴ Materiality is presumed for claims and omissions involving “health, safety, or other areas with which the reasonable consumer would be concerned.”⁴⁵

27. The FTC presumes that an omission is material where “the seller knew, or should have known, that an ordinary consumer would need omitted information to evaluate the product or service, or that the claim was false . . . because the manufacturer intended the information or omission to have an effect.”⁴⁶

B. The FTC’s Interest in Privacy by Design and Privacy Enhancing Technologies

28. In 2012, the Commission released a report, *Protecting Consumer Privacy in an Era of Rapid Change*.⁴⁷

29. The Commission’s report emphasizes privacy by design.⁴⁸

30. The report describes privacy by design as requiring companies to “incorporate substantive privacy protections into their practices, such as data security, reasonable collection limits, sound retention practices, and data accuracy.”⁴⁹

31. The report also “call[ed] on companies to continue to look for new ways to protect consumer privacy throughout the life cycle of their products and services, including through the development and deployment of PETs [privacy enhancing technologies].”⁵⁰

32. Privacy Enhancing Techniques include those methods that minimize or eliminate the collection of personally identifiable information.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Cliffdale Associates, Inc.*, 103 F.T.C. 110, 110 (1984).

⁴⁷ FED. TRADE COMM’N, *PROTECTING CONSUMER PRIVACY IN AN ERA OF RAPID CHANGE* 22-35 (2012), <http://www.ftc.gov/os/2012/03/120326privacyreport.pdf>.

⁴⁸ *Id.* at 22-35

⁴⁹ *Id.* at 22.

⁵⁰ *Id.* at 31

33. The Commission has repeatedly taken action against companies for deceiving consumers about the extent to which they incorporated privacy by design or adopted privacy enhancing techniques.
34. For example, the Commission settled with a financial website that Commission alleged that the site falsely represented that personal information collected from children in a survey would be maintained anonymously.⁵¹
35. Recently, the Commission settled a complaint with a web-analytics company that made false and deceptive assurances to consumers that their personal information would be removed from the data it collected.⁵²

C. Snapchat’s Misrepresentations Constitute Deceptive Trade Practices

36. As set forth above, Snapchat represented to users that photos sent using its app would be deleted after a user-designated amount of time.
37. In fact, Snapchat fails to provide for the deletion of user photo data.
38. The only qualification Snapchat makes regarding the deletion of messages concerns surreptitious capture by recipients.
39. Snapchat’s representations are likely to mislead the reasonable consumer.
40. Snapchat’s representations regarding the deletion of user photos are material.
41. Accordingly, Snapchat engaged in deceptive business practices in violation of Section 5 of the Federal Trade Commission Act.

V. Prayer for Investigation and Relief

42. EPIC urges the Commission to investigate Snapchat, Inc.
43. The Commission should require Snapchat to improve its data security practices, and specifically to ensure that photos and videos are in fact deleted such that they cannot subsequently be obtained by others.
44. The Commission should require the company to cure any deceptive statements.

⁵¹ Liberty Financial Companies, FTC File No. 982 3522 (1999) (Complaint), <http://www.ftc.gov/os/1999/08/libertycmp.pdf>

⁵² Compete, Inc., FTC File No. 102 3155 (2012) (Complaint), <http://www.ftc.gov/os/caselist/1023155/130222competecmpt.pdf>.

45. Finally, the Commission should provide such other relief as the Commission finds necessary and appropriate.
46. EPIC reserves the right to supplement this petition as other information relevant to this proceeding becomes available.

Respectfully Submitted,

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