

Analysis of Proposed Consent Order to Aid Public Comment
In the Matter of Aaron's, Inc., File No. 1223264

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Aaron's, Inc.

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

The Commission's administrative complaint alleges that respondent Aaron's engaged in unfair practices that caused, or are likely to cause, substantial injury to consumers that cannot be reasonably avoided and are not outweighed by countervailing benefits to consumers or competition.

Aaron's, an operator and franchisor of more than 1,300 corporate and nearly 750 franchisee rent-to-own ("RTO") stores across the country and Canada, played an important role in the use of PC Rental Agent, a privacy-invasive software that many of its franchisees installed on computers rented to consumers. PC Rental Agent surreptitiously collected private, confidential, and personal information about consumers who used rented computers. RTO stores that licensed PC Rental Agent from its manufacturer, DesignerWare, could use this illicitly gathered data about their customers to assist in collecting on past-due accounts and recovering computers after default. When in its "Detective Mode," PC Rental Agent could log keystrokes, capture screenshots, and activate a computer's webcam. Detective Mode also allowed users to deceptively gather consumers' personal information through fake software registration notices. Information that Detective Mode collected was transmitted from rented computers to DesignerWare, which in turn would email it to its licensees, including Aaron's franchisees. Another feature of PC Rental Agent allowed RTO stores to track the physical location of rented computers using WiFi hotspot information, which RTO store licensees could access by logging onto DesignerWare's website.

According to the Commission's complaint, Aaron's knowingly assisted its franchisees in using PC Rental Agent in a variety of ways. First, Aaron's specifically allowed its franchisees to access DesignerWare's website, which was necessary in order for them to use PC Rental Agent. Without this permission from Aaron's, many of its franchisees could not have activated Detective Mode and secretly monitored consumers' activities on rented computers. Second, Aaron's corporate server was used to transmit and store a voluminous number of emails containing Detective Mode content. Aaron's provided email accounts to its franchisees that many of them used to receive messages sent from DesignerWare containing Detective Mode-captured information. Emails sent to and from these accounts were routed through Aaron's corporate headquarters and

stored on computer servers owned, controlled, and maintained by Aaron's. As a result, Aaron's maintained on its corporate server upwards of 100,000 Detective Mode messages containing covertly gathered consumer information. Finally, Aaron's provided franchisees with vital technical support about PC Rental Agent. For example, Aaron's published trouble-shooting advice about installing the program on rented computers and avoiding conflicts with antivirus software.

The proposed complaint alleges that, as a result of Aaron's practices, consumers were substantially harmed. It further alleges that Aaron's knew the data being gathered by Detective Mode could be highly intrusive and invaded consumers' privacy. This knowing support of franchisees' use of Detective Mode without notice to computer users placed those consumers at risk from exposure of their personal, financial account access, and medical information. Consumers were also injured by the unwarranted invasion into the peaceful enjoyment of their homes. Detective Mode's surreptitious capture of the private details of individual and family life – including images of visitors, children, family interactions, partially undressed individuals, and people engaged in intimate conduct – caused actual consumer harm. Because Detective Mode functioned secretly, consumers were unable to reasonably avoid this harm, which was neither trivial nor speculative. Further, there were no countervailing benefits to consumers or to Aaron's that outweighed this harm.

The proposed consent order contains provisions designed to prevent Aaron's and its franchisees from engaging in the challenged practices and similar future conduct. Section I of the order prohibits Aaron's from using monitoring technology on computers and from receiving, storing, or communicating information about consumers collected with such technology. Section II prohibits Aaron's use of geophysical location tracking technology on any consumer product without notifying and obtaining consent from renters. Aaron's must also notify a user of a rented computer immediately prior to activating tracking technology on that device, unless Aaron's has a reasonable basis to believe that the computer has been stolen and a police report filed. Both Sections I and II also contain provisos that permit Aaron's to use monitoring or geophysical location tracking technology for purposes of providing requested customer assistance, where the consumer has consented to the use of the technology and any information collected is used only to provide the requested assistance.

Section III of the proposed order prohibits the deceptive gathering of consumer information, which will bar Aaron's from using fake software registration notices or similar deceptive tactics. Section IV will prevent Aaron's from using any consumer information to collect on rental contracts that was improperly obtained through monitoring technology, tracking technology, or deceptive notices that appear on computer screens. Section V requires the destruction of any data using monitoring or tracking technology without the requisite notice and consent or obtained under false pretenses, and mandates the encryption of any properly collected data when it is transmitted. Section VI prohibits Aaron's from making any misrepresentations about the privacy or security of consumer information it collects.

The order also contains provisions that require Aaron's to oversee and monitor its franchisees to ensure that their conduct complies with the core constraints imposed on Aaron's. Section VII mandates that Aaron's require its franchisees to delete or destroy any consumer information improperly gathered via monitoring technology, tracking technology, or deceptive notices that appear on computer screens. Under that section, Aaron's must also prohibit its franchisees from: 1) using any monitoring technology to gather consumer information from a leased computer; 2) receiving, storing, or communicating any data gathered using monitoring technology; 3) using any geophysical location tracking technology that Aaron's has not approved in advance; 4) gathering any data from any consumer product using geophysical location tracking technology without providing notice and consent; 5) using any improperly gathered consumer information to collect a debt; and 6) making a false representation to a consumer through the use of fake software registration notices or other deceptive statements that appear on the screen of a computer. Aaron's must also monitor, on an annual basis or more frequently, its franchisees' compliance with these requirements and, if Aaron's learns through this process or otherwise has reason to know that a franchisee has violated Section VII of the order, it must take immediate action to ensure that the franchisee corrects its practices. If it does not, Aaron's must terminate that franchisee.

Sections VIII – XI of the proposed order contain order distribution, compliance reporting, and recordkeeping provisions. Section VIII requires Aaron's to disseminate the order to persons with responsibilities related to the subject matter of the order, including franchisee principals. It also requires Aaron's to secure a signed and dated statement acknowledging receipt of the order from all persons who receive a copy. Section IX imposes standard reporting requirements, requiring Aaron's to file compliance reports to the Commission within sixty (60) days and periodically thereafter upon request. This section also requires that Aaron's notify the Commission of any changes in corporate status. Section X mandates that, for five (5) years, Aaron's retain documents relating to its compliance with the order and about complaints or inquiries concerning consumer privacy. Finally, Section XI is a provision "sunsetting" the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.