



Office of the Secretary

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

December 20, 2021

Parental Values LLC

Re: *In the Matter of Support King, LLC (SpyFone.com)*
FTC File No. 192 3003, FTC Docket No. C-4756

Thank you for your comments regarding the Federal Trade Commission's proposed consent agreement in the above-titled proceeding against Support King, LLC, formerly doing business as SpyFone.com, and Scott Zuckerman (collectively, "SpyFone"). 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), and has given it serious consideration.

Your six comments provide additional information about the privacy or security issues that can arise with the various monitoring products and services available on the open market. Specifically, you point out that companies in this space will use various tactics to "gain a competitive advantage while also creating vulnerabilities and opportunities for threats concerning stalking and hacking." Some of these tactics include: a company stating that they do not knowingly collect information from children while using images of young children as part of its marketing; a company stating that its product is designed to be used only to monitor children, but the product features include the ability to monitor mobile applications that are for adults (i.e., dating applications); and a company stating that its product can be used to monitor social media applications, when no social media platforms allow their applications to be monitored or allow children under 13 years old to create accounts. We appreciate the insights you provide in your comments.

Your comments make five additional points. First, you highlight the dangers associated with monitoring products and services, stating that "there is a strong link between stalkerware and online grooming that can lead to sexual slavery or forced trafficking of a minor." The relief in this proposed Order, in particular banning SpyFone from selling monitoring products or services in the future, demonstrates the Commission's commitment to protecting consumers from the very serious harms that can come from these types of privacy and security violations.

Second, your comments remark that the conduct in SpyFone "should have been prevented after [Retina-X Studios, LLC]'s abysmal oversight"¹ and that a "fee per violation is not enough to encourage developers to prioritize personally identifiable information above a consumer's monetary value." The Commission agrees that it is important to apply appropriate relief. It is the Commission's belief that the ban in the proposed Order will send a clear message to the monitoring products and services industry that the Commission takes violations seriously

¹ *In the Matter of Retina-X Studios, LLC*, FTC File No. 172 3118 (Oct. 22, 2019).

and will take appropriate action. Importantly, if SpyFone fails to comply with any obligations under the proposed Order, it could face substantial civil penalties.

Third, your comments raise concerns with app developers' compliance with the Children's Online Privacy Protection Act ("COPPA") Rule. Specifically, you note that many apps include claims that they "do not knowingly collect children's information" in order to maintain "deniability." You further state that, to address this concern, the Commission should require the developers of "sophisticated tracking software" to "use or develop a certified COPPA compliant age gate." The Commission has made clear that a website or online service may be deemed directed to children even where the developer's terms of service prohibit children from participating on the site or service,² in cases where the site or service is directed to children or the operator has actual knowledge it has collected personal information from children. In addition, the COPPA Rule does require age gates for websites and online services that wish to be considered "mixed audience" under the Rule,³ and staff guidance provides that such age gates must be "neutral," allowing the user to enter an age under 13, and not encouraging children to falsify age information.⁴ Importantly, the Commission remains committed to vigorously enforcing COPPA and will continue to address threats to children's privacy through law enforcement action where necessary.

Fourth, you note that Support King, LLC is registered for contracting with the federal government, and you ask if Support King, LLC, or any of its affiliates or subsidiaries, will be permitted to continue contracting with the federal government once the proposed Order in the above-titled proceeding is finalized. The relief in the proposed Order is directly tied to the unlawful practices alleged in the Complaint, which do not involve Support King, LLC's role as a government contractor. Importantly, the proposed Order bans SpyFone from licensing, advertising, marketing, promoting, distributing, or offering for sale any monitoring product or service, prohibits SpyFone from misrepresenting the extent to which it maintains and protects the privacy, security, confidentiality, or integrity of personal information, and mandates the implementation of an information security program with assessments to be obtained from a third party, among other relief. If SpyFone fails to comply with any obligations under the proposed order, it could face substantial civil penalties.

Finally, your comments ask if the Commission will pursue law enforcement actions against "copycat companies or other parental controls that don't know whose personal information their software is collecting, storing, and transferring..." The Commission remains committed to protecting consumers from the dangers posed by stalkerware, as can be seen by its cases against Retina-X and now SpyFone, and will continue to pursue law enforcement where appropriate.

² Complying with COPPA: Frequently Asked Questions ("COPPA FAQs"), FAQ A.12, <https://www.ftc.gov/tips-advice/business-center/guidance/complying-coppa-frequently-asked-questions-0>.

³ A "mixed audience" site is a website or online service that falls within the definition of a "Web site or online service directed to children" as set forth in paragraph (3) of 16 C.F.R. §312.2, which provides that a website or online service that is directed to children, "but that does not target children as its primary audience," shall not be deemed directed to children if it "does not collect personal information from any visitor prior to collecting age information" and "prevents the collection, use, or disclosure of personal information from visitors who identify themselves as under age 13 without first complying with the notice and parental consent provisions" of the Rule.

⁴ COPPA FAQs, FAQ D.7.

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in the above-titled proceeding in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and it thanks you again for your comment.

By direction of the Commission.

April J. Tabor
Secretary