

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Joseph J. Simons, Chairman
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter
Christine S. Wilson

In the Matter of)
)
VenPath, Inc.,) DOCKET NO. C-4664
a corporation.)
)
_____)

COMPLAINT

The Federal Trade Commission (“FTC”), having reason to believe that VenPath Inc., a corporation, has violated provisions of the Federal Trade Commission Act (“FTC Act”), and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent VenPath, Inc. is a Delaware corporation with its principal office or place of business at 228 Park Ave S #37362, New York, New York 10003.
2. Respondent offers data analytics services related to mobile apps.
3. The acts and practices of Respondent alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act.
4. Respondent has set forth on its website, <https://www.venpath.net>, privacy policies and statements about its practices, including statements related to its participation in the EU-U.S. Privacy Shield framework agreed upon by the U.S. government and the European Commission.

Privacy Shield

5. The EU-U.S. Privacy Shield framework (“Privacy Shield”) was designed by the U.S. Department of Commerce (“Commerce”) and the European Commission to provide a mechanism for U.S. companies to transfer personal data outside of the EU that is consistent with the requirements of the European Union Directive on Data Protection. Enacted in 1995, the Directive sets forth EU requirements for privacy and the protection of personal data. Among other things, it requires EU Member States to implement legislation that prohibits the

transfer of personal data outside the EU, with exceptions, unless the European Commission has made a determination that the recipient jurisdiction's laws ensure the protection of such personal data. This determination is referred to commonly as meeting the EU's "adequacy" standard.

6. To satisfy the EU adequacy standard for certain commercial transfers, Commerce and the European Commission negotiated the EU-U.S. Privacy Shield framework, which went into effect in July 2016. The EU-U.S. Privacy Shield framework allows companies to transfer personal data lawfully from the EU to the United States. To join the EU-U.S. Privacy Shield framework, a company must self-certify to Commerce that it complies with the Privacy Shield Principles and related requirements that have been deemed to meet the EU's adequacy standard. Any company that voluntarily withdraws or lets its self-certifications lapse must take steps to affirm to Commerce that it is continuing to protect the personal information it received while it participated in the program.
7. Companies under the jurisdiction of the FTC, as well as the U.S. Department of Transportation, are eligible to join the EU-U.S. Privacy Shield framework. A company under the FTC's jurisdiction that claims it has self-certified to the Privacy Shield Principles, but failed to self-certify to Commerce, may be subject to an enforcement action based on the FTC's deception authority under Section 5 of the FTC Act.
8. Commerce maintains a public website, <https://www.privacyshield.gov/welcome>, where it posts the names of companies that have self-certified to the EU-U.S. Privacy Shield framework. The listing of companies, <https://www.privacyshield.gov/list>, indicates whether the company's self-certification is current.
9. Through at least June 2018, Respondent has disseminated or caused to be disseminated privacy policies and statements on the <https://www.venpath.net/legal/privacy-policy/> website, including, but not limited to, the following statements in its September 2016 privacy policy:

VenPath participates in and has certified its compliance with the EU-U.S. Privacy Shield Framework. VenPath is committed to subjecting all personal data received from European Union (EU) member countries, in reliance on the Privacy Shield Framework, to the Framework's applicable Principles. To learn more about the Privacy Shield Framework, visit the U.S. Department of Commerce's Privacy Shield List at <https://www.privacyshield.gov/list>.

VenPath is responsible for the processing of personal data it receives, under the Privacy Shield Framework, and subsequently transfers to a third party acting as an agent on its behalf. VenPath complies with the Privacy Shield Principles for all onward

transfers of personal data from the EU, including the onward transfer liability provisions.

With respect to personal data received or transferred pursuant to the Privacy Shield Framework, VenPath is subject to the regulatory enforcement powers of the U.S. Federal Trade Commission.

10. Although Respondent obtained Privacy Shield certification in October 2016, it did not complete the steps necessary to renew its participation in the EU-U.S. Privacy Shield framework after that certification expired in October 2017, nor did it withdraw and affirm its commitment to protect any personal information it had acquired while in the program. After allowing its certification to lapse Respondent has continued to claim, as indicated in paragraph 9, that it participates in the Privacy Shield framework.

Count 1 – Privacy Misrepresentation

11. As described in Paragraph 9, Respondent represents, directly or indirectly, expressly or by implication, that it is a current participant in the EU-U.S. Privacy Shield framework.
12. In fact, as described in Paragraph 10, Respondent is not a current participant in the EU-U.S. Privacy Shield framework. Therefore, the representation set forth in Paragraph 11 is false or misleading.

Count 2 – Misrepresentation Regarding Continuing Obligations

13. As described in Paragraph 9, Respondent represented that it would abide by the EU-U.S. Privacy Shield framework principles. These principles include a requirement that if a company ceases to participate in the EU-U.S. Privacy Shield framework, it must affirm to Commerce that it will continue to apply the principles to personal information that it received during the time it participated in the program.
14. In fact, as described in paragraph 10, Respondent has not affirmed to Commerce that it will continue to apply the principles to personal information that it received during the time it participated in the program. Therefore, the representation set forth in Paragraph 13 is false or misleading.

Violations of Section 5 of the FTC Act

15. The acts and practices of Respondent as alleged in this complaint constitute deceptive acts or practices, in or affecting commerce, in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this fifteenth day of November 2018, has issued this complaint against Respondent.

By the Commission, Commissioner Wilson not participating.

Donald S. Clark
Secretary

SEAL: