

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Julie Brill
 Maureen K. Ohlhausen
 Terrell McSweeney

_____)
In the Matter of)
) **DOCKET NO. C-4538**
NOMI TECHNOLOGIES, INC.,)
a corporation.)
_____)

COMPLAINT

The Federal Trade Commission, having reason to believe that Nomi Technologies, Inc., a corporation, has violated the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Nomi Technologies, Inc. (“Nomi” or “respondent”) is a Delaware corporation with its principal office or place of business at 26 West 17th Street, 2nd Floor, New York, NY 10011.
2. The acts and practices of respondent as alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

RESPONDENT’S BUSINESS PRACTICES

3. Nomi uses mobile device tracking technology to provide analytics services to brick and mortar retailers through its “Listen” service. Nomi has been collecting information from consumers’ mobile devices to provide the Listen service since January 2013.
4. Nomi places sensors in its clients’ retail locations that detect the media access control (“MAC”) address broadcast by a mobile device when it searches for WiFi networks. A MAC address is a 12-digit identifier that is unique to a particular device. Alternatively, in some instances Nomi collects MAC addresses through its clients’ existing WiFi access points.
5. In addition to the MAC address, Nomi also collects the following information about each mobile device that comes within range of its sensors or its clients’ WiFi access points:
 - A. the mobile device’s signal strength;
 - B. the mobile device’s manufacturer (derived from the MAC address);

- C. the location of the sensor or WiFi access point observing the mobile device; and
 - D. the date and time the mobile device is observed.
6. Nomi cryptographically hashes the MAC addresses it observes prior to storing them on its servers. Hashing obfuscates the MAC address, but the result is still a persistent unique identifier for that mobile device. Each time a MAC address is run through the same hash function, the resulting identifier will be the same. For example, if MAC address 1A:2B:3C:4D:5E:6F is run through Nomi's hash function on ten different occasions, the resulting identifier will be the same each time. As a result, while Nomi does not store the MAC address, it does store a persistent unique identifier for each mobile device. Nomi collected information about approximately nine million unique mobile devices between January 2013 and September 2013.
 7. Nomi uses the information it collects to provide analytics reports to its clients about aggregate customer traffic patterns such as:
 - A. the percentage of consumers merely passing by the store versus entering the store;
 - B. the average duration of consumers' visits;
 - C. types of mobile devices used by consumers visiting a location;
 - D. the percentage of repeat customers within a given time period; and
 - E. the number of customers that have also visited another location within the client's chain.
 8. Through October 22, 2013, Nomi's Listen service had approximately 45 clients. Some of these clients deployed the service in multiple locations within their chains.
 9. Nomi has not published, or otherwise made available to consumers, a list of the retailers that use or used the Listen service.
 10. Nomi does not require its clients to post disclosures or otherwise notify consumers that they use the Listen service. Through October 22, 2013, most, if not all, of Nomi's clients did not post any disclosure, or otherwise notify consumers, regarding their use of the Listen service.
 11. Nomi provided, and continues to provide, an opt out on its website for consumers who do not want Nomi to store observations of their mobile device. Once a consumer has entered the MAC address of their device into Nomi's website opt out, Nomi adds it to a blacklist of MAC addresses for which information will not be stored. Nomi did not make an opt out available through any other means, including at any of its clients' retail locations.
 12. From at least November 2012, until October 22, 2013, Nomi disseminated or caused to be disseminated privacy policies on its website, nomi.com or getnomi.com, which included the following statement:

Nomi pledges to.... Always allow consumers to opt out of Nomi's service on its website as well as at any retailer using Nomi's technology. (See Exhibits A-C).

13. In order to opt out of the Listen service on Nomi's website, consumers were required to provide Nomi with all of their mobile devices' MAC addresses, without knowing whether they would ever shop at a retail location using the Listen service. Consumers who did not opt out on Nomi's website and instead wanted to make the opt out decision at retail locations were unable to do so, despite the explicit promise in Nomi's privacy policies. Consumers were not provided any means to opt out at retail locations and were unaware that the service was even being used.

VIOLATIONS OF THE FTC ACT

Count I

14. As described in Paragraph 12, Nomi represented, directly or indirectly, expressly or by implication, that consumers could opt out of Nomi's Listen service at retail locations using this service.

15. In fact, Nomi did not provide an opt-out mechanism at its clients' retail locations. Therefore, the representation set forth in Paragraph 14 is false or misleading.

Count II

16. As described in Paragraph 12, Nomi represented, directly or indirectly, expressly or by implication, that consumers would be given notice when a retail location was utilizing Nomi's Listen service.

17. In fact, neither Nomi nor its clients disclosed to consumers that Nomi's Listen service was being used at a retail location. Therefore, the representation set forth in Paragraph 16 is false or misleading.

18. The acts and practices of respondent as alleged in this complaint constitute unfair or 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 twenty-eighth day of August, 2015, has issued this complaint against respondent.

By the Commission, Commissioner Ohlhausen dissenting.

Donald S. Clark
Secretary

SEAL: