



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

Office of the Secretary

June 17, 2021

World Privacy Forum
Attn: Pam Dixon, Executive Director

Re: *Flo Health, Inc.*, File No. 1923133

Dear Ms. Dixon:

Thank you for your comment regarding the Federal Trade Commission's proposed consent agreement in the above-titled proceeding against Flo Health, Inc. ("Flo Health"). 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.

The World Privacy Forum's ("WPF") comment recommends that the FTC's complaint allege that Flo Health violated the FTC's Health Breach Notification Rule, 16 C.F.R. § 318, ("Rule") because Flo Health may be a third-party service provider to entities such as Fitbit. Your comment suggests that Fitbit may be a vendor of personal health records ("PHR") or a PHR-related entity, covered by the Rule, by virtue of its acquisition of health coaching platform Twine. In addition, the comment expresses concern that the mechanism by which the Flo Health's mobile application ("App") obtains consent for third-party disclosures is inadequate.

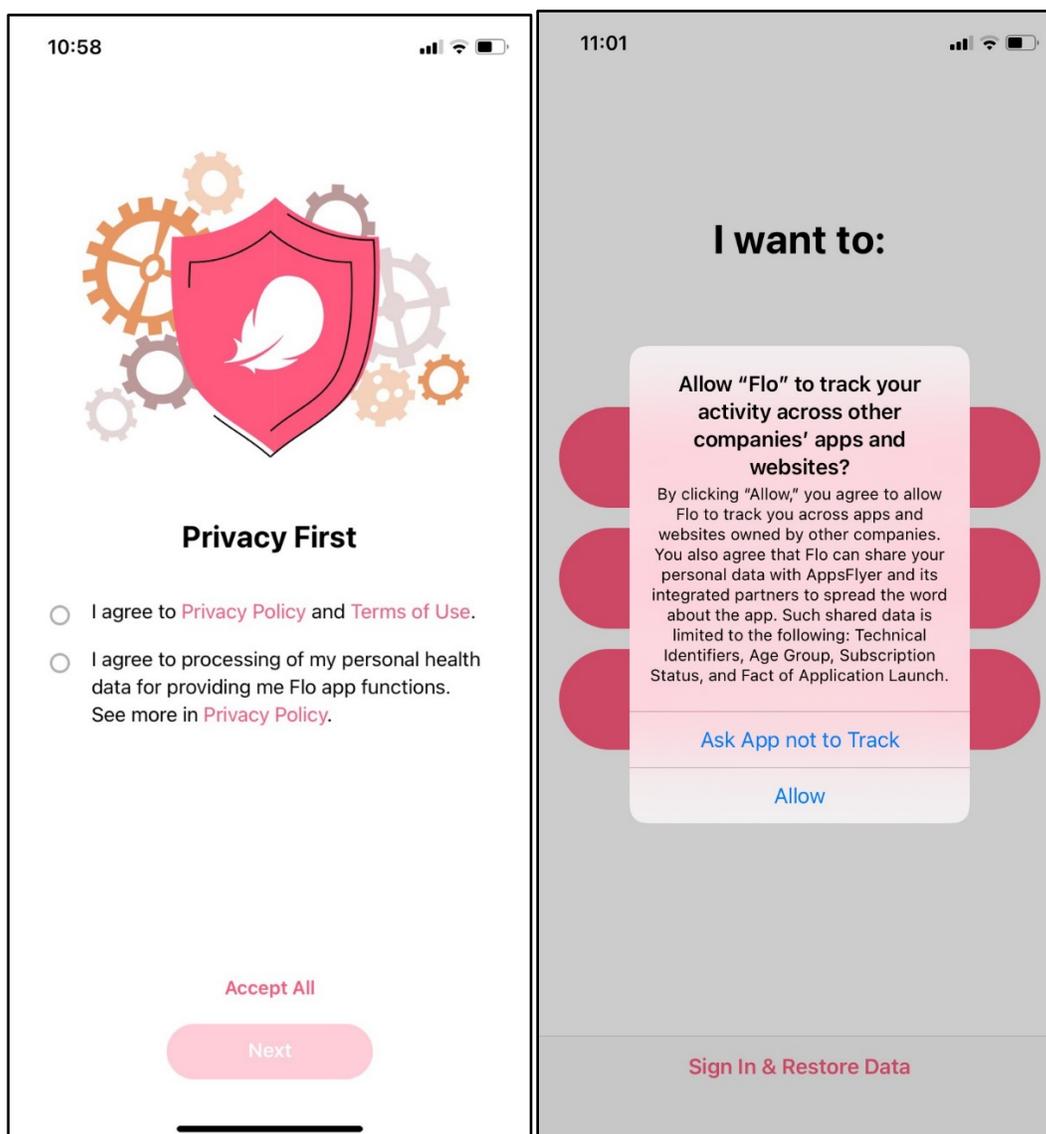
The Commission is committed to protecting consumer privacy and is particularly concerned about the important issues that you raised: notice and consent, especially when it comes to sensitive health information. To that end, the consent order requires Flo Health to notify consumers about disclosures of their health information to third parties. It also requires Flo Health to provide notice and obtain affirmative express consent from a user before sharing health information with a third party in the future. The Commission is currently reviewing the Rule and is actively considering public comments regarding the application of the Rule to mobile applications and other direct-to-consumer technologies that handle consumers' sensitive health information.¹

With respect to the concern you raised about the App's consent mechanism, we note that the App did in fact allow users to opt out of third-party disclosures. On the screen shown on page 3 of your comment, the user could have selected only the first two of the four radio buttons presented (regarding the privacy policy and terms of use and the App's data processing) and then selected "Next" (rather than "Accept All"). In this manner, the user would have declined

¹ See Request for Public Comment on the FTC's Health Breach Notification Rule, 85 *Fed. Reg.* 31,085 (May 22, 2020), <https://www.federalregister.gov/documents/2020/05/22/2020-10263/health-breach-notification>.

marketing and third-party disclosures, as described in the third and fourth radio buttons. That said, we share your concern about the confusing nature of this screen.

In any event, Flo Health has re-designed this consent screen. The disclosures and options originally presented on a single screen (shown on page 3 of your comment) are now displayed on two consecutive screens. The first screen requires the user's consent to the privacy policy and terms of use. The second screen asks to track the user (consistent with Apple's requirements for mobile applications to use its current operating system²), explaining that a limited set of personal data will be shared with third parties if the user selects "Allow." The user has the choice to instead select "Ask App not to Track."



² See Apple User Privacy and Data Use, Apple, <https://developer.apple.com/app-store/user-privacy-and-data-use/> (last visited Apr. 26, 2021).

The consent order includes other provisions designed to hold Flo Health accountable for its privacy practices. For example, the order prohibits Flo Health from making false or deceptive statements regarding its collection, use, disclosure, maintenance, or deletion of users' personal information, including their health information. The order also requires Flo Health to ask third parties that have received health information about Flo Health's app users to destroy such information. The order requires Flo Health to obtain a compliance review by an independent third party, to make sure that Flo Health's practices are consistent with its privacy promises. The Commission believes this, as well as other relief in the order, will protect the privacy of consumers who use Flo Health's products and services.

The FTC is committed to enforcement of this and all of its orders. The Bureau of Consumer Protection includes an entire division devoted specifically to monitoring Flo Health and other respondents' compliance with existing orders and taking action, up to and including seeking monetary penalties, for order violations. And if, in the future, you have specific information suggesting that Flo Health is not maintaining reasonable privacy or security of user information, please contact the Consumer Response Center at (877) 382-4357, or file a report online at <https://reportfraud.ftc.gov>.

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



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June 17, 2021

Sharon Kyle

Re: *Flo Health, Inc.*, File No. 1923133

Dear Ms. Kyle:

Thank you for your comment regarding the Federal Trade Commission's proposed consent agreement in the above-titled proceeding against Flo Health, Inc. ("Flo Health"). 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 comment asks why the FTC's complaint does not allege that Flo Health violated the FTC's Health Breach Notification Rule, 16 C.F.R. § 318 ("Rule"). The Commission is committed to protecting consumer privacy and is particularly concerned about providing notice to consumers whose sensitive health information has been disclosed without their knowledge or consent. To that end, the consent order requires Flo Health to notify consumers about disclosures of their health information to third parties. It also requires Flo Health to provide notice and obtain affirmative express consent from a user before sharing health information with a third party in the future. The Commission is currently reviewing the Rule and is actively considering public comments regarding the application of the Rule to mobile applications and other direct-to-consumer technologies that handle consumers' sensitive health information.¹

Your comment also states that the consent order should include redress for injured consumers. Although the consent order does not provide for redress, importantly, if Flo Health were to violate any provision in the proposed consent order, it would face substantial monetary penalties.

The consent order also includes other provisions designed to hold Flo Health accountable for its privacy practices. For example, the order prohibits Flo Health from making false or deceptive statements regarding its collection, use, disclosure, maintenance, or deletion of users' personal information, including their health information. The order also requires Flo Health to ask third parties that have received health information about Flo Health's app users to destroy that information. And the order requires Flo Health to obtain a compliance review by an independent third party, to make sure that Flo Health's practices are consistent with its privacy promises. The Commission believes this, as well as other relief in the order, will protect the privacy of consumers who use Flo Health's products and services.

¹ See Request for Public Comment on the FTC's Health Breach Notification Rule, 85 *Fed. Reg.* 31,085 (May 22, 2020), <https://www.federalregister.gov/documents/2020/05/22/2020-10263/health-breach-notification>.

The FTC is committed to enforcement of this and all of its orders. The Bureau of Consumer Protection includes an entire division devoted specifically to monitoring Flo Health and other respondents' compliance with existing orders and taking action, up to and including seeking monetary penalties, for order violations. And if, in the future, you have specific information suggesting that Flo Health is not maintaining reasonable privacy or security of user information, please contact the Consumer Response Center at (877) 382-4357, or file a report online at <https://reportfraud.ftc.gov>.

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.

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June 17, 2021

Anne Ridinger

Re: *Flo Health, Inc.*, File No. 1923133

Dear Ms. Ridinger:

Thank you for your comment regarding the Federal Trade Commission's proposed consent agreement in the above-titled proceeding against Flo Health, Inc. ("Flo Health"). 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 comment notes that you have not yet received notice from Flo Health about the data disclosure described in the complaint. Your comment also expresses concern that Facebook will not delete the data it received from Flo Health. The Commission is committed to protecting consumer privacy and is particularly concerned about the important issues that you raised: notice to consumers about broken privacy promises and the need to delete personal information disclosed contrary to privacy promises. To that end, the consent order requires Flo Health to notify affected users by posting a notice on its website and sending the notice by email. The consent order also requires Flo Health to tell third parties that have received health information about Flo Health's app users (such as Facebook) to destroy that information. You have not yet received notice from Flo Health because the notice requirement has only gone into effect now that the Commission has finalized the Order. You should receive notice via email within 14 days.

The consent order also includes other provisions designed to hold Flo Health accountable for its privacy practices. For example, the order prohibits Flo Health from making false or deceptive statements regarding its collection, use, disclosure, maintenance, or deletion of users' personal information, including their health information. The order also requires Flo Health to obtain a compliance review by an independent third party, to make sure that Flo Health's practices are consistent with its privacy promises. The Commission believes this, as well as other relief in the order, will protect the privacy of consumers who use Flo Health's products and services.

The FTC is committed to enforcement of this and all of its orders. The Bureau of Consumer Protection includes an entire division devoted specifically to monitoring Flo Health and other respondents' compliance with existing orders and taking action, up to and including seeking monetary penalties, for order violations. And if, in the future, you have specific information suggesting that Flo Health is not maintaining reasonable privacy or security of user information, please contact the Consumer Response Center at (877) 382-4357, or file a report online at <https://reportfraud.ftc.gov>.

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.fcc.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



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June 17, 2021

Samantha Anonymous

Re: *Flo Health, Inc.*, File No. 1923133

Dear Samantha:

Thank you for your comment regarding the Federal Trade Commission's proposed consent agreement in the above-titled proceeding against Flo Health, Inc. ("Flo Health"). 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 comment raises concerns that Flo Health sold information about the loss of your child to third parties, in violation of the Health Information Portability and Accountability Act ("HIPAA"), and that it is not possible to cancel a subscription within the Flo mobile application ("app"). At the outset, we want to express our deepest condolences for the loss of your child. We cannot begin to understand your loss or your grief. We do understand and share your concerns about your privacy. Indeed, the Commission is committed to protecting consumer privacy and is particularly concerned about disclosures of sensitive health information contrary to privacy promises.

The consent order is designed to hold Flo Health accountable for its privacy practices and to prevent Flo Health from disclosing any user's health information to a third party without their affirmative express consent. In particular, the order prohibits Flo Health from making false or deceptive statements regarding its collection, use, disclosure, maintenance, or deletion of users' personal information, including their health information. The order also requires Flo Health to ask third parties that have received health information about Flo Health's app users to destroy the information. Flo Health must notify affected users by posting a notice on its website and sending it by email. In addition, under the order, Flo Health must obtain an outside compliance review of its privacy practices. The Commission believes this, as well as other relief in the order, will protect the privacy of consumers who use Flo Health's products and services. With respect to your concern about cancelling subscriptions within the app, we share your concerns about a user's inability to cancel an account. Indeed, if a company impedes consumers' ability to cancel a subscription, the Commission can examine whether that practice may violate consumer protection laws. We note that the current versions of the Flo Android and iOS apps provide users direction, in the "Help" sections as to how to cancel their accounts through their phone's "Subscriptions" settings.

The FTC is committed to enforcement of this and all of its orders. The Bureau of Consumer Protection includes an entire division devoted specifically to monitoring Flo Health and other respondents' compliance with existing orders and taking action, up to and including

seeking monetary penalties, for order violations. And if, in the future, you have specific information suggesting that Flo Health is not maintaining reasonable privacy or security of user information, please contact the Consumer Response Center at (877) 382-4357, or file a report online at <https://reportfraud.ftc.gov>.

The Commission has now 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



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June 17, 2021

Yadi Y.

Re: *Flo Health, Inc.*, File No. 1923133

Dear Ms. Y:

Thank you for your comment regarding the Federal Trade Commission's proposed consent agreement in the above-titled proceeding against Flo Health, Inc. ("Flo Health"). 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 comment asks why the FTC's complaint does not allege that Flo Health violated the FTC's Health Breach Notification Rule, 16 C.F.R. § 318, and recommends that the order require Flo Health to notify consumers of the disclosure of their information on the homepage of Flo Health's mobile application ("app") or in the media. Your comment also asks the Commission to require Flo Health and similar companies to provide users with the ability to opt out of sharing personal information with third parties.

The Commission is committed to protecting consumer privacy and is particularly concerned about the important issues that you raised: notice and consent, especially when it comes to sensitive health information. To that end, the consent order requires Flo Health to notify consumers about disclosures of their health information to third parties by posting the notice on the Flo Health website and sending the notice by email, or, if email information is not available, through Flo Health's primary means of communicating with the user, such as in-app notification. The requirement that Flo Health provide both website and email (or in-app) notice ensures that the notice will not only reach current app users, but also past users who have deleted the app and potential future users who have not yet downloaded the app. The consent order also requires Flo Health to provide notice and obtain affirmative express consent from a user before sharing health information with a third party in the future.

As to your specific concern about the Health Breach Notification Rule, the Commission is currently reviewing the Rule and is actively considering public comments regarding the application of the Rule to mobile applications and other direct-to-consumer technologies that handle consumers' sensitive health information.¹

¹ See Request for Public Comment on the FTC's Health Breach Notification Rule, 85 *Fed. Reg.* 31,085 (May 22, 2020), <https://www.federalregister.gov/documents/2020/05/22/2020-10263/health-breach-notification>.

Importantly, the consent order includes numerous provisions designed to hold Flo Health accountable for its privacy practices. For example, the order prohibits Flo Health from making false or deceptive statements regarding its collection, use, disclosure, maintenance, or deletion of users' personal information, including their health information. The order also requires Flo Health to ask third parties that have received health information about Flo Health's app users to destroy such information. In addition, the order requires Flo Health to obtain a compliance review by an independent third party, to make sure that Flo Health's practices are consistent with its privacy promises. The Commission believes this, as well as other relief in the order, will protect the privacy of consumers who use Flo Health's products and services.

The FTC is committed to enforcement of this and all of its orders. The Bureau of Consumer Protection includes an entire division devoted specifically to monitoring Flo Health and other respondents' compliance with existing orders and taking action, up to and including seeking monetary penalties, for order violations. And if, in the future, you have specific information suggesting that Flo Health is not maintaining reasonable privacy or security of user information, please contact the Consumer Response Center at (877) 382-4357, or file a report online at <https://reportfraud.ftc.gov>.

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