

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

UPROMISE, INC.,

Defendant.

Civil Action No. 17-10442

COMPLAINT FOR CIVIL PENALTY, INJUNCTION, AND OTHER RELIEF

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission (“FTC” or “Commission”), for its Complaint alleges that:

1. Plaintiff brings this action against Defendant Upromise, Inc. under Sections 5(l) and 16(a)(1) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(l) and 56(a)(1), to obtain civil penalties, an injunction, and other equitable relief for violations of an order previously issued by the Commission. *See Exhibit A, Decision and Order, In the Matter of Upromise, Inc.*, FTC No. 1023116, Docket No. C-4351 (“Commission Order”).

2. The Commission Order requires Upromise to unambiguously inform consumers what data is collected and how that data is used when consumers download a particular Upromise toolbar onto their computers. RewardU is a free toolbar that members can download and install onto their web browser to, among other things, remind them of cash-back opportunities. Upromise did not inform consumers as required under the Order.

Instead, Upromise disclosed this information in such a way that many consumers would either not notice or not understand Upromise's explanation of the RewardU toolbar's data collection and use.

3. The Commission Order also requires Upromise to obtain and submit third-party assessments of any service offering consumers downloadable toolbars. The assessor must determine that the service adequately protects consumer data. Upromise did not obtain and submit compliant assessments as required under the Order. Instead, Upromise obtained and submitted assessments that were impermissibly narrow in scope (i.e., did not evaluate the toolbar).

Jurisdiction and Venue

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(l) and 56(a)(1).

5. Venue in this District is proper under 28 U.S.C. §§ 1391(b)(2), (c)(2), and 1395(a).

Defendant

6. Upromise, Inc. is a Delaware corporation with its principal office or place of business at 85 Wells Avenue, Suite 110, Newton, MA 02459. Upromise offers free memberships that allow consumers to earn cash-back rewards on eligible online and in-store purchases. Members can direct those rewards to a college savings plan or to pay down student loans.

7. At all times material to this Complaint, Defendant has participated in the acts and practices described in this Complaint. Defendant transacts business in this district.

8. At all times material to this Complaint, Defendant has maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

Prior Commission Proceeding

9. In an administrative proceeding bearing Docket No. C-4351, the Commission charged Upromise with violating the FTC Act in connection with its provision of a downloadable toolbar, named TurboSaver, to consumers.

10. The FTC previously alleged, among other things, that (a) Upromise failed to adequately disclose to consumers the full scale of data collection by the TurboSaver toolbar; (b) Upromise failed to assess and address the risk that the toolbar would collect data it was not authorized to collect; and (c) Upromise failed to take adequate measures to ensure its toolbar vendor adequately protected consumer information and implemented its own data collection program in a manner consistent with the parties’ contractual provisions and Upromise’s privacy policies.

11. To settle the matter, Upromise agreed to an Order, which was issued on March 27, 2012, became final on May 16, 2012, was served on Upromise, and remains in effect (“the Commission Order” or “Order”). A copy of the Commission Order is attached as Exhibit A.

Order Provisions on Targeting Tool Disclosures

12. In pertinent part, Section I(A)(1) of the Commission Order requires Upromise to disclose all types of data collected by a “targeting tool,” and all uses of that data. In pertinent part, Definition 10 of the Commission Order defines “targeting tool” as “any software program or application...that is installed on a consumer’s computer [and used to] record or transmit information about any activity occurring on that computer involving the computer’s interactions with websites, services, applications, or forms...,” subject to various exceptions not applicable to RewardU.

13. Section I(A) of the Commission Order further requires Upromise to disclose any necessary information (a) clearly and prominently; (b) on a separate screen from any end user license agreement (EULA, also known as “terms and conditions”), privacy policy, or similar document; and (c) prior to download.

14. Definition 2 of the Commission Order defines “clearly and prominently:”

- (a) “In textual communications (e.g., printed publications or words displayed on the screen of a computer or mobile device), the required disclosures are of a type, size, and location sufficient noticeable for an ordinary consumer to read and comprehend them, in print that contrasts highly with the background on which they appear.” Order Def 2.A.
- (b) “In communications made through interactive media, such as the Internet, online services, and software, the required disclosures are unavoidable and presented in a form consistent with subparagraph (A) of this definition, in addition to any audio or video presentation of them.” Order Def 2.D.
- (c) “In all instances, the required disclosures are presented in an understandable language and syntax, and with nothing contrary to, inconsistent with, or in mitigation of the disclosures used in any communication of them.” Order Def 2.E.

Upromise's Business Practices – the RewardU Toolbar

15. From March 2013 to January 2016, Upromise distributed the RewardU toolbar. RewardU is a free toolbar that Upromise members can download and install onto their web browser to remind them of cash-back opportunities. Among other things, the toolbar highlights Upromise partner companies in consumers' search results.

16. RewardU collects information about consumers' online activities and search queries. This collection occurs in the background as a consumer uses the Internet, and there is no way for consumers – without special software or technical expertise – to discover the extent of the data collection. At least until January 2016, Upromise shared collected data with its affiliates with whom Upromise co-branded the toolbar.

17. Freecause, Inc. (dba Rakuten Loyalty) ("Rakuten") created and operates RewardU. Yahoo provides the toolbar's search function and pays commissions to Rakuten. Rakuten in turn pays a portion of that amount to Upromise.

18. RewardU is a "targeting tool" because it is a software program or application that is installed on consumers' computers and used to record or transmit information about activity occurring on those computers involving interactions with websites, services, and applications, or forms. None of the Order's exceptions to the "targeting tool" definition are applicable. Upromise acknowledged that RewardU is a "targeting tool" for purposes of the Order's assessment provision.

Upromise's Purported Disclosure of RewardU's Data Collection and Use

19. The RewardU download page purportedly disclosed the toolbar's data collection and use practices after a consumer clicked a link or scrolled down two full

screens and passed a large amount of intervening text. The download page appeared like this:

The screenshot shows the Upromise website with a blue header bar. The header includes the Upromise logo, a 'Sallie Mae' link, a 'Need a student loan? Start with Sallie Mae' call-to-action, and links for 'Home' and 'Sign In'. Below the header is a navigation menu with options: 'What Is Upromise?', 'How It Works', 'Where to Earn', 'Coupons & Deals', and 'Shop Now'. A search bar and a 'Search' button are also present. To the right, there's a promotional banner for 'YOU CAN EARN MORE CASH BACK with Upromise Online Shopping' featuring a MasterCard logo and a 'LEARN MORE' link.

Shopping online without earning cash back for college is a terrible thing to waste.

Get RewardU and get rewarded!

► DOWNLOAD RewardU NOW

Please [see below](#) for important information about the types of data that the RewardU toolbar collects and how the data is used and shared.

RewardUSM reminds you about cash back opportunities.

If you forget to start your shopping at Upromise.com, you won't get the cash back for college you could have earned — unless you use RewardU. It's the helpful tool that makes sure you don't miss out on any chances to earn all the cash back for college you can.

And if you have the Upromise MasterCard, RewardU can help remind you of up to 10% cash back opportunities on eligible purchases at our 850+ partner sites¹.

Why you need the new RewardU

1CLICK CASH BACK Reminds you when there are cash back opportunities available at the site you are visiting (or searching for) - even if you don't start at Upromise.com. **details**

SEARCH & EARN You can earn cash back for college when you search online through the RewardU search box.² It's FREE and no purchase is required! **details**

SEE IT IN SEARCH Compatible with Google, Yahoo!, and Bing search engines and highlights partners offering cash back on eligible online purchases. **details**

WATCH EARNINGS GROW Displays your total cash back earnings — it's a great reminder to keep earning cash back for college whenever online. **details**

REWARDU A magnifying glass highlights a laptop screen displaying the Upromise website with the RewardU toolbar installed.

NEW! Now available on Safari RewardU works with Safari, Chrome, Internet Explorer, and Firefox. Chrome now available on both PC and Mac computers.

VIEW THE RewardU FAQS

► DOWNLOAD RewardU NOW

Please [see below](#) for important information about the types of data that the RewardU toolbar collects and how the data is used and shared.

1 Upromise members can earn \$0.01 cash back for every 5 valid searches conducted through the RewardU search bar. A valid search is a unique search that results in at least one search result back from the search provider. Limited to 30 valid searches or \$0.06 per day. Members will receive their cash back earnings for valid searches made through RewardU within 90 days following each completed search. Offer may be modified or cancelled at any time without notice. Additional terms and conditions may apply.

By installing or upgrading RewardU, you understand and agree that RewardU collects and processes all search criteria you may submit in the RewardU search box, along with information about your Internet browser, your installation of RewardU, your RewardU settings, your computer's IP address, a unique ID assigned to your RewardU toolbar (the "Toolbar ID"), a unique ID (the "Upromise ID") which is not your Upromise account number, but is another number which may identify you personally to Upromise but not to our RewardU service provider, and the URL of the website from which you came (if any) (collectively, the "Event Information"). The RewardU service provider cannot use the Upromise ID or the Toolbar ID to identify you personally, but may have information from another source which would allow it to personally identify you.

If you accept Upromise Search as your browser's default search provider (through the option provided on the RewardU installation page), then RewardU also collects and processes all search criteria you may submit in any browser search boxes or otherwise where the browser defaults to a search, along with the Event Information.

These search criteria (which may contain personal, financial or health information to the extent that you include such information in the search criteria you submit) and Event Information will be shared with our RewardU service provider and the RewardU search provider (currently, Yahoo!). Similar to conducting a search directly on yahoo.com, all such transmissions to the RewardU search provider are sent unencrypted over the public Internet, so please use caution when including any search criteria so that they do not include any personal or other sensitive information. The RewardU search provider cannot use the Upromise ID or the Toolbar ID to identify you personally, but may have information from another source which would allow it to personally identify you.

The information collected by RewardU is used by Upromise to operate and improve RewardU and the Upromise service, and to help us understand how often individual Upromise partner websites are visited. It may also be used to offer third party products and services, to process transactions and calculate cash back rewards and as otherwise permitted by applicable law. Upromise may share the information collected by RewardU with its parent company Sallie Mae and its affiliates. In addition, all search criteria you enter and the Event Information will be used and/or disclosed by the RewardU search provider to provide the search results and as otherwise described in its privacy policy.

In addition, RewardU collects and processes the search results from searches conducted through the RewardU toolbar and any RewardU compatible search engine so that RewardU may identify and highlight Upromise partners in the search results.

When you visit a website (regardless of whether you access such website via a RewardU search), RewardU will review that website URL to determine if it is a Upromise partner website and, if it is, the URL as well as the Event Information will be collected and processed by RewardU, and shared with our RewardU service provider and the Upromise partner in order to accurately credit cash back earned by Upromise members. If you are a Upromise member, you will be identified to the Upromise partner as a Upromise member via the Upromise ID. The Upromise partner cannot use the Upromise ID to identify you personally, but may have information from another source (for example, if you provide your contact information in connection with your online purchases, applications or other transactions at the Upromise partner's website) which would allow it to personally identify you. In the event you make an online purchase, application or other transaction with the Upromise partner, including through a secure session, Upromise will receive information about your online purchase, application or transaction, including financial or health information if applicable to the transaction.

3 The Search & Earn functionality is not available on Google Chrome browsers.

The screens and relevant text are attached as Exhibit B.

20. The relevant text was presented in a “footnote style” format, and the relevant information only began in the second paragraph of the second footnote.
21. The text was in a small font, much smaller than the “Get RewardU and get rewarded!” tagline. Even the pointer language immediately beneath the first screen’s download button was in a small font.
22. The relevant text (633 words, see Exhibit B) was written in a style that is difficult for consumers to decipher. For most of the time, the text was in a light gray color against a white background. The entire download process was confusing and directed consumers to contradictory provisions.
23. When a consumer first joins Upromise, he agrees to the general Upromise

terms and conditions as well as the general Upromise privacy policy. Then, when that consumer clicked to download the RewardU toolbar, he was presented with a popup box that said, “By installing the application, you agree to the terms & conditions below and the [privacy policy](#).” The hyperlinked privacy policy was the Upromise RewardU privacy policy, which was different from the Upromise privacy policy and the RewardU text. During 2013-2015, the referenced “terms and conditions below” – the text in the scroll box generically titled Toolbar End User License Agreement – was actually the user agreement for Rakuten, and it expressly incorporated *two more* privacy policies (the Rakuten toolbar privacy policy and the Rakuten general privacy policy), which themselves have different – and contradictory – disclosures, both internally and in contrast to the Upromise/RewardU text. For example, Upromise informed consumers that their search queries may be used to provide search engine results, but one of Rakuten’s policies informs consumers that their search queries may be used to create marketing profiles. In the final step, the consumer checked the box for “I agree to the terms of the EULA and Privacy Policy,” but there was no indication which of the various EULAs or privacy policies was the one to which the consumer was agreeing.

Order Provisions on Assessments

24. In pertinent part, Section VI of the Commission Order requires Upromise to obtain and submit a privacy assessment for any Covered Online Service that incorporates a “targeting tool.”

25. In pertinent part, Sections VI(A) through (D) of the Commission Order list particular requirements for the assessment, including but not limited to a statement that

“sets forth the specific administrative, technical, and physical safeguards,” an explanation of how those safeguards are adequate to protect consumers and satisfy the Order’s minimum requirements for a comprehensive information security program, and a certification that Upromise’s security program is “operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of personal information is protected...”

Upromise’s Purported Assessment of the RewardU Toolbar

26. In November 2013, Upromise submitted to the FTC an assessment from Fishnet Security, Inc. (denominated the “Second Fishnet Assessment,” because it updated and replaced an initial Fishnet assessment).

27. The Second Fishnet Assessment should have evaluated the RewardU toolbar as required under the Order.

28. The Second Fishnet Assessment mentions RewardU just once in 133 pages, and does so incorrectly: “Upromise is currently using Compete, Inc. [should be Rakuten] as the sole service provider for target data” and the contract with that company “includes all three of the specified criteria.” The Second Fishnet Assessment does not identify or further discuss the three criteria.

29. Although it addresses other topics, the Second Fishnet Assessment does not “set forth the specific administrative, technical, and physical safeguards” for RewardU. Similarly, the Second Fishnet Assessment does not explain how RewardU’s safeguards protect consumers and otherwise comply with the Order’s requirements.

30. In the absence of those features specific to RewardU, the Second Fishnet Assessment is not a compliant assessment as required by the Order.

31. A later Fishnet review (“Third Fishnet Assessment”) merely states, “Rakuten Loyalty, Inc. is the vendor who provides the source code for the toolbar. The third-party agreement with Rakuten includes all three (3) of the specified criteria in the contract language.”

32. Although it addresses other topics, the Third Fishnet Assessment does not “set forth the specific administrative, technical, and physical safeguards” for RewardU. Similarly, the Third Fishnet Assessment does not explain how RewardU’s safeguards protect consumers and otherwise comply with the Order’s requirements.

33. In the absence of those features specific to RewardU, the Third Fishnet Assessment is not a compliant assessment as required by the the Order.

**First Cause of Action
(Disclosures)**

34. In connection with the advertising, promotion, and offering for sale, sale, or distribution of a “targeting tool,” and prior to a consumer enabling that “targeting tool,” Defendant must make a disclosure required by the Commission Order.

35. In numerous instances, Defendant failed to make the disclosure required by the Commission Order. For example, Defendant’s disclosure was:

- A. Not in a sufficiently noticeable size;
- B. Not presented in an understandable language and syntax;
- C. Not in print that contrasts highly with the background; and
- D. Presented with contrary, inconsistent, or mitigating terms.

Therefore, Defendant violated the Commission Order.

**Second Cause of Action
(Assessments)**

36. In connection with its compliance with Part V of the Order (the comprehensive information security program), Defendant must obtain assessments (which must include any targeting tools) as required under Part VI of the Order.

37. Defendant failed to obtain assessments as required by Part VI of the Order. Therefore, Defendant violated the Commission Order.

Civil Penalties

38. Each time Defendant failed to clearly and prominently disclose its data collection and use as required under the Commission Order is a separate violation for which Plaintiff may seek a civil penalty pursuant to Section 5(l) of the FTC Act, 15 U.S.C. § 45(l).

39. Alternatively, Defendant has continuously failed to obey the Commission Order by not clearly and prominently disclosing its data collection and use and this constitutes a continuing violation for which Plaintiff may seek a daily civil penalty pursuant to Section 5(l) of the FTC Act, 15 U.S.C. § 45(l).

40. Each time Defendant failed to obtain a compliant assessment as required under the Commission Order is a separate violation for which Plaintiff may seek a civil penalty pursuant to Section 5(l) of the FTC Act, 15 U.S.C. § 45(l).

41. Alternatively, Defendant failed to obey the Commission Order by not obtaining compliant assessments and this constitutes a continuing violation for which

Plaintiff may seek a daily civil penalty pursuant to Section 5(l) of the FTC Act, 15 U.S.C. § 45(l).

42. Section 5(l) of the FTC Act, 15 U.S.C. § 45(l), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and Section 1.98(c) of the FTC's Rules of Practice, 16 C.F.R. § 1.98(c), authorizes the Court to award monetary civil penalties of not more than \$40,654 for each violation of the Commission Order.

43. Under Section 5(l) of the FTC Act, 15 U.S.C. § 45(l), this Court is authorized to permanently enjoin Defendant from violating the Commission Order as well as grant ancillary relief to prevent and remedy any violation of law enforced by the Commission.

Prayer for Relief

44. Plaintiff requests this Court, pursuant to 15 U.S.C. §§ 45(l) and 56(a), and pursuant to the Court's own equitable powers:

- A. enter judgment against Defendant and in favor of Plaintiff for each violation of the Commission Order as alleged in this Complaint;
- B. award Plaintiff monetary civil penalties from Defendant for each violation of the Commission Order;
- C. enjoin Defendant from violating the Commission Order issued in FTC Docket No. C-4351, or as it is subsequently modified by operation of law;

- D. award Plaintiff its costs and attorneys' fees incurred in connection with this action; and
- E. award such other and further relief as the Court may deem just and proper.

Date: 3/15/17

Respectfully submitted:

Of Counsel:

FEDERAL TRADE COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that I emailed a true and correct copy of the foregoing instrument to Mr. Antony Kim, counsel for Defendant, on March 16, 2017. Counsel for Defendant agreed to accept service of this document by email on behalf of Defendant:

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**Exhibit A
(FTC Order)**

102 3116

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Jon Leibowitz, Chairman**
J. Thomas Rosch
Edith Ramirez
Julie Brill

In the Matter of)
UPROMISE, INC.,)
a corporation.)
DOCKET NO. C-4351

DECISION AND ORDER

The Federal Trade Commission, having initiated an investigation of certain acts and practices of the Respondent named in the caption hereof, and the Respondent having been furnished thereafter with a copy of a draft of Complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued, would charge the Respondent with violation of the Federal Trade Commission Act; and

The Respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the Respondent of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by the Respondent that the law has been violated as alleged in such complaint, or that any of the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the Respondent has violated the Federal Trade Commission Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comment received from an interested person pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, 16 C.F.R. § 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Upromise, Inc., is a Delaware corporation with its principal office at 95 Wells Avenue, Suite 160, Newton, Massachusetts 02459.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. “Affected Consumers” shall mean persons who, prior to the date of issuance of this order, downloaded and installed the TurboSaver Toolbar and had the Personalized Offers feature enabled.
2. “Clearly and prominently” shall mean as follows:
 - A. In textual communications (*e.g.*, printed publications or words displayed on the screen of a computer or a mobile device), the required disclosures are of a type, size, and location sufficiently noticeable for an ordinary consumer to read and comprehend them, in print that contrasts highly with the background on which they appear;
 - B. In communications disseminated orally or through audible means (*e.g.*, radio or streaming audio), the required disclosures are delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend them;
 - C. In communications disseminated through video means (*e.g.*, television or streaming video), the required disclosures are in writing in a form consistent with subparagraph (A) of this definition and shall appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend them, and in the same language as the predominant language that is used in the communication;
 - D. In communications made through interactive media, such as the Internet, online services, and software, the required disclosures are unavoidable and presented in a form consistent with subparagraph (A) of this definition, in addition to any audio or video presentation of them; and
 - E. In all instances, the required disclosures are presented in an understandable language and syntax, and with nothing contrary to,

inconsistent with, or in mitigation of the disclosures used in any communication of them.

3. “Collected Information” shall mean any information or data transmitted from a computer by the TurboSaver Toolbar as a result of the Personalized Offers feature being enabled prior to the date of issuance of this order to any computer server owned by, operated by, or operated for the benefit of respondent.
4. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
5. “Computer” shall mean any desktop or laptop computer, handheld device, telephone, or other electronic product or device that has a platform on which to download, install, or run any software program, code, script, or other content and to play any digital audio, visual, or audiovisual content.
6. “Covered Online Service” shall mean any product or service using or incorporating a Targeting Tool. Covered Online Service includes, but is not limited to, the TurboSaver Toolbar with the Personalized Offers feature enabled.
7. “Personal information” shall mean individually identifiable information from or about an individual consumer including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or a screen name; (d) a telephone number; (e) a Social Security number; (f) a driver’s license number or other government-issued identification number; (g) prescription information, such as medication and dosage, and prescribing physician name, address, and telephone number, health insurer name, insurance account number, or insurance policy number; (h) a bank account, debit card, or credit card account number; (i) a persistent identifier, such as a customer number held in a “cookie” or processor serial number, that is combined with other available data that identifies an individual consumer; (j) a biometric record; or (k) any information that is combined with any of (a) through (j) above.
8. “Personalized Offers feature” shall mean the component of the TurboSaver Toolbar that Upromise has offered under the name of “Personalized Offers.”
9. “Respondent” shall mean Upromise, Inc., and its successors and assigns, and its officers, agents, representatives, and employees.
10. “Targeting Tool” shall mean any software program or application distributed by or on behalf of respondent that is installed on a consumer’s computer, whether as a standalone product or as a feature of another product, and used by or on behalf

of respondent to record or transmit information about any activity occurring on that computer involving the computer's interactions with websites, services, applications, or forms, unless (a) the activity involves transmission of information related to the configuration of the software program or application itself; (b) the activity involves a consumer's interactions with respondent's websites, services, applications, and/or forms; or (c) the activity involves a consumer's interactions with respondent's member merchants and that information is collected, retained, or used only as necessary for the purpose of providing the consumer's reward service benefits for transactions involving those merchants.

The TurboSaver Toolbar when configured to collect consumer data, for example, with the Personalized Offers feature enabled, is a Targeting Tool.

11. “Third party” shall mean any individual or entity other than respondent, except that a third party shall not include a service provider of respondent that:
 - A. only uses or receives personal information collected by or on behalf of respondent for and at the direction of the respondent and no other individual or entity,
 - B. does not disclose the data, or any individually identifiable information derived from such data, to any individual or entity other than respondent, and
 - C. does not use the data for any other purpose.

I.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, website, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any Targeting Tool, in or affecting commerce, shall,

- A. Prior to the consumer enabling (by downloading, installing, or otherwise activating) any Targeting Tool:
 1. Clearly and prominently, and prior to the display of and on a separate screen from, any “end user license agreement,” “privacy policy,” “terms of use” page, or similar document, disclose:
 - a) all the types of data that the Targeting Tool will collect, including but not limited to, if applicable, a statement that the data includes transactions or communications between the consumer and third parties in secure sessions, interactions with shopping baskets, application forms, online accounts, web-based email

accounts, or search engine pages, and if the information includes personal, financial or health information.

- b) how the data is used, including if the data is shared with a third party, other than as reasonably necessary: (i) to comply with applicable law, regulation, or legal process, (ii) to enforce respondent's terms of use, or (iii) to detect, prevent, or mitigate fraud or security vulnerabilities.
 2. Obtain express affirmative consent from the consumer to the enabling (by downloading, installing, or otherwise activating) and to the collection of data.
- B. For those TurboSaver Toolbars installed by consumers before the date of issuance of this order, prior to (1) enabling data collection through any Targeting Tool or (2) otherwise making any material change from stated practices about collection or sharing of personal information through the TurboSaverToolbar, provide the notice and obtain the express consent described in subparts A(1) and (2) of this Part.

II.

IT IS FURTHER ORDERED that respondent shall:

- A. Notify Affected Consumers: a) that they have or had the Personalized Offers feature enabled, and that from 2005 through January 2010 use of this feature resulted in collection and transmission of data to or on behalf of respondent, listing the categories of personal information that were, or could have been, transmitted; and b) how to permanently disable the Personalized Offers feature and uninstall the TurboSaver Toolbar.
- Notification shall be by each of the following means:
1. Beginning within thirty (30) days after the date of service of this order and for two (2) years after the date of service of this order, posting of a clear and prominent notice on its website.
 2. Beginning within thirty (30) days after the date of service of this order and for three (3) years after the date of service of this order, informing Affected Consumers who complain or inquire about the privacy or security of the TurboSaver Toolbar.
 3. Within sixty (60) days after the date of service of this order, providing direct, clear and prominent notice to Affected Consumers who have the Personalized Offers feature enabled.

- B. Provide prompt, toll-free, telephonic and electronic mail support to help Affected Consumers disable the Personalized Offers feature and, if requested, uninstall the TurboSaver Toolbar.

III.

IT IS FURTHER ORDERED that respondent shall, within five (5) days after the date of service of this order, delete or destroy, or cause to be deleted or destroyed, all Collected Information in respondent's custody or control, unless otherwise directed by a representative of the Commission.

IV.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, website, or other device, in connection with its advertising, marketing, promotion, or offering of any service or product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the extent to which respondent maintains and protects the security, privacy, confidentiality, or integrity of any personal information collected from or about consumers, unless the representation is true, and non-misleading.

V.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, website, or other device, in connection with its advertising, marketing, promotion, or offering of any product or service, in or affecting commerce, shall maintain a comprehensive information security program that is reasonably designed to protect the security, privacy, confidentiality, and integrity of personal information collected from or about consumers. This section may be satisfied through the review and maintenance of an existing program so long as that program fulfills the requirements set forth herein. Such program, the content and implementation of which must be fully documented in writing, shall contain administrative, technical, and physical safeguards appropriate to respondent's size and complexity and the nature and scope of respondent's activities, and the sensitivity of the personal information collected from or about consumers, including:

- A. The designation of an employee or employees to coordinate and be accountable for the information security program;
- B. The identification of material internal and external risks that could result in the unauthorized disclosure, misuse, loss, alteration, destruction, or other compromise of personal information and an assessment of the sufficiency of any safeguards in place to control these risks. At a minimum, this risk assessment should include consideration of risks in each area of relevant operation, including, but not limited to: (1)

- employee training and management; (2) information systems, including network and software design, information processing, storage, transmission, and disposal; and (3) prevention, detection, and response to attacks, intrusions, account takeovers, or other systems failures;
- C. The design and implementation of reasonable safeguards to control the risks identified through risk assessment, and regular testing or monitoring of the effectiveness of the safeguards' key controls, systems, and procedures;
 - D. The development and use of reasonable steps to select and retain service providers capable of appropriately safeguarding personal information such service providers receive from respondent or obtain on respondent's behalf, and the requirement, by contract, that such service providers implement and maintain appropriate safeguards; and
 - E. The evaluation and adjustment of respondent's information security program in light of the results of the testing and monitoring required by subpart C, any material changes to respondent's operations or business arrangements, or any other circumstances that respondent knows or has reason to know may have a material impact on the effectiveness of its information security program.

VI.

IT IS FURTHER ORDERED that, in connection with its compliance with Part V of this order, for any Covered Online Service respondent shall obtain initial and biennial assessments and reports ("Assessments") from a qualified, objective, independent third-party professional, who uses procedures and standards generally accepted in the profession. Professionals qualified to prepare such Assessments shall be: a person qualified as a Certified Information System Security Professional (CISSP) or as a Certified Information Systems Auditor (CISA); a person holding Global Information Assurance Certification (GIAC) from the SysAdmin, Audit, Network, Security (SANS) Institute; or a similarly qualified person or organization approved by the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580. The reporting period for the Assessments shall cover: (1) the first one hundred and eighty (180) days after service of the order for the initial Assessment, and (2) each two (2) year period thereafter for twenty (20) years after service of the order for the biennial Assessments. Each Assessment shall:

- A. Set forth the specific administrative, technical, and physical safeguards that respondent has implemented and maintained during the reporting period;
- B. Explain how such safeguards are appropriate to respondent's size and complexity, and the nature and scope of respondent's activities, and the sensitivity of the personal information collected from or about consumers;
- C. Explain how the safeguards that have been implemented meet or exceed the protections required by Part V of this order; and
- D. Certify that respondent's security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of personal information is protected and has so operated throughout the reporting period.

Each Assessment shall be prepared and completed within sixty (60) days after the end of the reporting period to which the Assessment applies. Respondent shall provide the initial Assessment to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, within ten (10) days after the Assessment has been prepared. All subsequent biennial Assessments shall be retained by respondent until the order is terminated and provided to the Associate Director of Enforcement within ten (10) days of request.

VII.

IT IS FURTHER ORDERED that respondent shall, for a period of five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Commission for inspection and copying:

- A. All advertisements, labeling, packaging and promotional material containing the representation;
- B. All materials relied upon in disseminating the representation;
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations; and
- D. All acknowledgments of receipt of this order, obtained pursuant to Part IX.

Moreover, for a period of three (3) years after the date of preparation of each Assessment required under Part VI of this order, respondent shall maintain and upon request make available to the Commission for inspection and copying all materials relied upon to prepare the Assessment, whether prepared by or on behalf of the respondent, including but not limited to all plans, reports, studies, reviews, audits, audit trails, policies, training materials, and assessments, for the compliance period covered by such Assessment.

VIII.

IT IS FURTHER ORDERED that respondent shall, in connection with this action or any subsequent investigations related to or associated with the transactions or the occurrences that are the subject of the Commission's complaint, cooperate in good faith with the Commission and appear at such places and times as the Commission shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by the Commission. If requested in writing by the Commission, respondent shall appear and provide truthful testimony in any trial, deposition, or other proceeding related to or associated with the transactions or the occurrences that are the subject of the complaint, without the service of a subpoena.

IX.

IT IS FURTHER ORDERED that respondent shall deliver a copy of this order to: (1) all current and future principals, officers, and directors; and (2) all current and future managers who have responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order, with any electronic signatures complying with the requirements of the E-Sign Act, 15 U.S.C. § 7001 *et seq.* Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of the order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

X.

IT IS FURTHER ORDERED that respondent shall notify the Commission at least thirty (30) days prior to any change in respondent that may affect compliance obligations arising under this order, including but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor company; the creation or dissolution of a subsidiary (including an LLC), parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in respondent's name or address. *Provided, however,* that with respect to any proposed change about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge.

Unless otherwise directed by a representative of the Commission, all notices required by this Part shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, with the subject line FTC v. Upromise. Provided, however, that, in lieu of overnight courier, notices may be sent by first-class mail, but only if an electronic version of such notices is contemporaneously sent to the Commission at Debrief@ftc.gov.

XI.

IT IS FURTHER ORDERED that respondent shall, within sixty (60) days after service of this order, and at such other times as the FTC may require, file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form in which respondent has complied with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, respondent shall submit additional true and accurate written reports.

XII.

This order will terminate on December 31, 2031, or twenty (20) years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however,* that the filing of such a complaint will not affect the duration of:

- A. Any Part of this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that this order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.


Donald S. Clark
Secretary

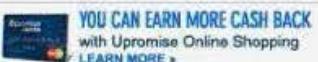
SEAL:

ISSUED: March 27, 2012

Exhibit B
(RewardU screens and text)

[view all stores & services >>](#)

Search for a product or store:

[Search](#)

Shopping online without earning cash back for college is a terrible thing to waste.

Get RewardU and get rewarded!

[▶ DOWNLOAD RewardU NOW](#)

Please [see below](#) for important information about the types of data that the RewardU toolbar collects and how the data is used and shared.



RewardUSM reminds you about cash back opportunities.

If you forget to start your shopping at Upromise.com, you won't get the cash back for college you could have earned — unless you use RewardU. It's the helpful tool that makes sure you don't miss out on any chances to earn all the cash back for college you can.

And if you have the Upromise MasterCard, RewardU can help remind you of up to 10% cash back opportunities on eligible purchases at our 850+ partner sites¹.

NEW! Now available on Safari



RewardU works with Safari, Chrome, Internet Explorer, and Firefox

Chrome now available on both PC and Mac computers

Why you need the new RewardU

1 CLICK CASH BACK

Reminds you when there are cash back opportunities available at the site you are visiting (or searching for) - even if you don't start at Upromise.com.

[details](#)

SEARCH & EARN

You can earn cash back for college when you search online through the RewardU search box.² It's FREE and no purchase is required!

[details](#)

SEE IT IN SEARCH

Compatible with Google, Yahoo!, and Bing search engines and highlights partners offering cash back on eligible online purchases.

[details](#)

WATCH EARNINGS GROW

Displays your total cash back earnings — it's a great reminder to keep earning cash back for college whenever online.

[details](#)

► **DOWNLOAD RewardU NOW**

Please see below for important information about the types of data that the RewardU toolbar collects and how the data is used and shared.

1 Upromise members can earn up to 5% cash back on participating online retail purchases using your Upromise MasterCard in addition to the online retailers 5% or more Cash Back. Exclusions and limitations to the 5% cash back apply. Go to <http://shop.upromise.com> and click on "Store Info" next to the online partner to see the applicable cash back amount and product exclusions for that partner, if any.

2 Upromise members can earn \$.01 cash back for every 5 valid searches conducted through the RewardU search bar. A valid search is a unique search that results in at least one search result back from the search provider. Limited to 30 valid searches or \$.06 per day. Members will receive their cash back earnings for valid searches made through RewardU within 90 days following each completed search. Offer may be modified or cancelled at any time without notice. Additional terms and conditions may apply.

By installing or upgrading RewardU, you understand and agree that RewardU collects and processes all search criteria you may submit in the RewardU search box, along with information about your internet browser, your installation of RewardU, your RewardU settings, your computer's IP address, a unique ID assigned to your RewardU toolbar (the "Toolbar ID"), a unique ID (the "Upromise ID") which is not your Upromise account number, but is another number which may identify you personally to Upromise but not to our RewardU service provider, and the URL of the website from which you came (if any) (collectively, the "Event Information"). The RewardU service provider cannot use the Upromise ID or the Toolbar ID to identify you personally, but may have information from another source which would allow it to personally identify you.

If you accept Upromise Search as your browser's default search provider (through the option provided on the RewardU installation page), then RewardU also collects and processes all search criteria you may submit in any browser search boxes or otherwise where the browser defaults to a search, along with the Event Information.

These search criteria (which may contain personal, financial or health information to the extent that you include such information in the search criteria you submit) and Event Information will be shared with our RewardU service provider and the RewardU search provider (currently, Yahoo!). Similar to conducting a search directly on yahoo.com, all such transmissions to the RewardU search provider are sent unencrypted over the public Internet, so please use caution when including any search criteria so that they do not include any personal or other sensitive information. The RewardU search provider cannot use the Upromise ID or the Toolbar ID to identify you personally, but may have information from another source which would allow it to personally identify you.

The information collected by RewardU is used by Upromise to operate and improve RewardU and the Upromise service, and to help us understand how often individual Upromise partner websites are visited. It may also be used to offer third party products and services, to process transactions and calculate cash back rewards and as otherwise permitted by applicable law. Upromise may share the information collected by RewardU with its parent company Sallie Mae and its affiliates. In addition, all search criteria you enter and the Event Information will be used and/or disclosed by the RewardU search provider to provide the search results and as otherwise described in its privacy policy.

In addition, RewardU collects and processes the search results from searches conducted through the RewardU toolbar and any RewardU compatible search engine so that RewardU may identify and highlight Upromise partners in the search results.

When you visit a website (regardless of whether you access such website via a RewardU search), RewardU will review that website URL to determine if it is a Upromise partner website and, if it is, the URL as well as the Event Information will be collected and processed by RewardU, and shared with our RewardU service provider and the Upromise partner in order to accurately credit cash back earned by Upromise members. If you are a Upromise member, you will be identified to the Upromise partner as a Upromise member via the Upromise ID. The Upromise partner cannot use the Upromise ID to identify you personally, but may have information from another source (for example, if you provide your contact information in connection with your online purchases, applications or other transactions at the Upromise partner's website) which would allow it to personally identify you. In the event you make an online purchase, application or other transaction with the Upromise partner, including through a secure session, Upromise will receive information about your online purchase, application or transaction, including financial or health information if applicable to the transaction.

³ The Search & Earn functionality is not available on Google Chrome browsers.

(relevant text at bottom of download page)

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