



Office of the Secretary

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

September 6, 2023

John Davisson, Director of Litigation & Senior Counsel  
Suzanne Bernstein, Law Fellow  
Electronic Privacy Information Center  
1519 New Hampshire Ave. NW  
Washington, DC 20036

Re: *1Health.io Inc., also d/b/a Vitagene, Inc.*, File No. 1923170

Dear Mr. Davisson and Ms. Bernstein:

Thank you for your comment regarding the Federal Trade Commission's ("FTC" or "Commission") proposed consent agreement in the above-titled proceeding against 1Health.io Inc., also d/b/a Vitagene, Inc. ("Vitagene"). 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). Your comment discusses important issues, and we have given it serious consideration.

EPIC's comment supports the proposed consent agreement, focusing in particular on the importance of privacy and security protections for consumers' sensitive health and genetic data. EPIC's comment highlights in particular the proposed order's mandated data security program and mandated reporting of "Covered Incidents" to the Commission. The comment emphasizes the importance of addressing unauthorized exposure of consumers' health information both through enforcement of Section 5 of the FTC Act, 15 U.S.C. § 45(a), and through the Commission's Health Breach Notification Rule, 16 C.F.R. Part 318.

We appreciate EPIC's support of the proposed consent agreement. The Commission will continue to use both its unfairness and deception authority under Section 5 of the FTC Act and the Health Breach Notification Rule, as appropriate, to protect consumers' privacy. This matter is a case in point. The Commission's complaint against Vitagene alleges that the company engaged in deceptive and unfair practices in violation of Section 5. Specifically, the complaint alleges that Vitagene misrepresented its data security and privacy practices involving consumers' genetic information (regarding industry security standards, storing DNA results with identifying information, data deletion, and saliva sample destruction) and made unfair material retroactive changes to its privacy policy regarding sharing of consumers' sensitive personal information with third parties.

The proposed consent agreement is specifically tailored to hold Vitagene accountable for its violative conduct and to require better prospective practices. Specifically, the proposed consent agreement requires Vitagene to instruct third parties that received genetic samples to destroy them and to obtain consumers' affirmative express consent before disclosing their personal information to third parties. Under the proposed order, Vitagene must notify the Commission of any "Covered Incident," which includes any exposure of consumers' health information without authorization. In addition to requiring Vitagene to pay monetary relief that the Commission intends to use to provide partial redress for consumers, the proposed consent agreement mandates that Vitagene implement a comprehensive security program that includes strong safeguards to protect the security, confidentiality, and integrity of consumers' personal information and is subject to assessments by an independent third party. The proposed consent agreement prohibits Vitagene from misrepresenting its privacy and security practices, including (among other things) the extent to which it meets or exceeds industry standards, stores individually identifiable health information, deletes or destroys samples or information, or has received approval or authorization from a government agency for its claims, products, or services.

The Commission is committed to enforcing compliance with its orders, including the order in this proceeding. If Vitagene violates the Commission's final order, the Commission may seek civil monetary penalties of over \$50,000 per violation pursuant to Section 5(l) of the FTC Act. If, in the future, you have specific information suggesting that Vitagene is not maintaining reasonable privacy or security of user information, please contact the FTC 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 complaint and 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