

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Lina M. Khan, Chair**
Rebecca Kelly Slaughter
Alvaro M. Bedoya
Melissa Holyoak
Andrew Ferguson

In the Matter of

**Facebook, Inc.,
a corporation.**

Respondent.

DOCKET NO. C-4365

ORDER DIRECTING COMPLAINT COUNSEL TO FILE A REPLY

In 2012, Facebook, Inc. (now known as Meta Platforms, Inc.) (“Respondent” or “Meta”) entered into a consent order resolving a Commission complaint that charged Respondent with unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act. *See* Decision and Order (July 27, 2012) (“2012 Order”). In 2019, acting on the Commission’s notification and authorization, the Department of Justice filed a complaint in the United States District Court for the District of Columbia alleging that Respondent violated the 2012 Order. To resolve that case, Respondent agreed to a Stipulated Order for Civil Penalty, Monetary Judgment, and Injunctive Relief, pursuant to which Respondent consented to reopening the Commission’s administrative proceeding to modify the 2012 Order. On April 7, 2020, the Commission issued a modified order that expanded and clarified the 2012 Order. *See* Order Modifying Prior Decision and Order (“2020 Order”).

The Commission initiated proceedings to modify the 2020 Order based on information indicating that (1) Respondent failed to establish and implement an effective privacy program as mandated by the 2020 Order; (2) Respondent misrepresented the extent to which apps that had not been used by a user in the previous 90 days could continue to receive users’ nonpublic information, in violation of Section 5 of the FTC Act, the 2012 Order for the period before April 27, 2020, and the 2020 Order thereafter; and (3) Respondent’s Messenger Kids product allowed children to communicate with contacts who were not approved by their parents, in contravention of Respondent’s representations and notice to parents, in violation of the 2012 Order, Section 5 of the FTC Act, the Children’s Online Privacy Protection Act (15 U.S.C. § 6502), and the Children’s Online Privacy Protection Rule (16 C.F.R. Part 312).

Under the FTC Act, the Commission may, after notice and opportunity for hearing, modify a prior order when it believes that the conditions of fact or of law have changed so as to require such action or if the public interest so requires. 15 U.S.C. §45(b). Commission Rule of Practice 3.72(b), 16 C.F.R. § 3.72(b), sets out relevant procedures.

On May 3, 2023, pursuant to Rule 3.72(b), the Commission issued an Order to Show Cause Why the Commission Should Not Modify the Order and Enter the Proposed New Order (“Show Cause Order”). The Show Cause Order included the Proposed Decision and Order as well as Preliminary Findings of Fact in Support of the Order to Show Cause.

On April 1, 2024, after multiple extensions, Respondent submitted a Response to the Show Cause Order and a Response to the Preliminary Findings of Fact. *See* Response of Meta Platforms, Inc. (F/K/A Facebook, Inc.) to the Order to Show Cause Why the Commission Should Not Modify the Order and Enter the Proposed New Order (“Response to Show Cause Order”); Response of Meta Platforms, Inc. (F/K/A Facebook, Inc.) to the Commission’s Preliminary Findings of Fact (“Response to Preliminary Findings of Fact”). The Response to Show Cause Order put forward numerous arguments concerning, among other things, the Commission’s authority to reopen the order, whether conditions for reopening have been met, the propriety of the proposed order modifications, and the constitutionality of the proceeding. The Response to Preliminary Findings of Fact averred that the preliminary findings were inaccurate or incomplete and introduced new factual assertions.¹

On April 10, 2024, Complaint Counsel moved for an order requiring the parties, within 90 days, to meet and confer, identify any factual disputes requiring resolution, and submit a joint proposed scheduling order. *See* Complaint Counsel’s Motion for Order Requiring Parties to Meet-and-Confer and Submit Joint Proposed Scheduling Order (“Motion for Meet-and-Confer”). Respondent opposed the motion, arguing that Rule 3.72(b) does not contemplate the proposed meet-and-confer process or any further submissions, that the meet-and-confer process is unlikely to materially narrow the scope of factual disputes, and that in any event Respondent seeks discovery. *See generally* Respondent’s Opposition to Complaint Counsel’s Motion for Order Requiring Parties to Meet-and-Confer and Submit Joint Proposed Scheduling Order (Apr. 22, 2024). The Commission must now determine the appropriate next steps.

Meta’s Response to Show Cause Order raised a number of threshold legal issues regarding the show cause proceeding. These predicate issues should be resolved first to the extent practicable, and a reply from Complaint Counsel addressing these issues would facilitate

¹ Meta also filed a separate motion seeking confidential or *in camera* treatment of portions of its submissions and supporting materials. *See* Motion of Respondent Meta Platforms, Inc. (F/K/A Facebook, Inc.) for Confidential or In Camera Treatment. Complaint Counsel did not respond to the motion. We direct the General Counsel or her designee to act on Meta’s request for confidential treatment consistent with 16 C.F.R. § 4.9(c). Should this matter proceed to an evidentiary hearing, the ALJ may separately consider, on motion, whether *in camera* treatment is appropriate pursuant to the standards in 16 C.F.R. §3.45(b).

their resolution.² The Commission therefore directs Complaint Counsel to submit a reply to the legal questions raised in the Response to Show Cause Order. We are not directing Complaint Counsel, at this juncture, to address arguments raised with respect to remedy—i.e., those in Part IV of the Response to Show Cause Order—or to reply to the Response to Preliminary Findings of Fact. If the Commission does not dismiss the Order to Show Cause based on Meta’s legal arguments, after resolving the threshold legal issues, the Commission will determine whether to refer the matter to an ALJ for discovery and further evidentiary proceedings, as appropriate. At that time the Commission will also determine the appropriate course for resolving legal issues raised with respect to remedy. Accordingly,

IT IS HEREBY ORDERED THAT Complaint Counsel are directed to file, within thirty days of this order, a reply to the legal issues raised in Response of Meta Platforms, Inc. (F/K/A Facebook, Inc.) to the Order to Show Cause Why the Commission Should Not Modify the Order and Enter the Proposed New Order, other than legal arguments raised with respect to remedy, as identified above.

IT IS FURTHER ORDERED THAT Complaint Counsel’s Motion for Meet-and-Confer is **DENIED**.

By the Commission.

April J. Tabor
Secretary

SEAL:
ISSUED: May 8, 2024

² Respondent’s contention that the process laid out in Rule 3.72 does not contemplate further submissions is without merit. Rule 3.72 gives the Commission flexibility to direct hearings as it deems appropriate and allows for the filings of briefs before the Commission renders its decision. Indeed, the Commission has previously permitted post-answer briefing in other show cause proceedings. *See Nat’l Housewares, Inc.*, 84 F.T.C. 1566 (Dec. 3, 1974).