



BILLING CODE: 6750-01S

FEDERAL TRADE COMMISSION

[File No. 182 3144]

VenPath, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order -- embodied in the consent agreement -- that would settle these allegations.

DATES: Comments must be received on or before October 29, 2018.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write: "VenPath, Inc." on your comment, and file your comment online at <https://ftcpublishcommentworks.com/ftc/venpathconsent/> by following the instructions on the web-based form. If you prefer to file your comment on paper, write "VenPath, Inc.; File No. 1823144" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex D), Washington, DC 20580; or deliver your comment to: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Ruth Yodaiken (202-326-2127),
Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania
Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade
Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR § 2.34, notice is hereby
given that the above-captioned consent agreement containing a consent order to cease and
desist, having been filed with and accepted, subject to final approval, by the Commission,
has been placed on the public record for a period of thirty (30) days. The following
Analysis to Aid Public Comment describes the terms of the consent agreement, and the
allegations in the complaint. An electronic copy of the full text of the consent agreement
package can be obtained from the FTC Home Page (for September 27, 2018), on the
World Wide Web, at <https://www.ftc.gov/news-events/commission-actions>.

You can file a comment online or on paper. For the Commission to consider your
comment, we must receive it on or before October 29, 2018. Write “VenPath, Inc.; File
No. 1823144” on your comment. Your comment - including your name and your state -
will be placed on the public record of this proceeding, including, to the extent practicable,
on the public Commission Website, at <https://www.ftc.gov/policy/public-comments>.

Postal mail addressed to the Commission is subject to delay due to heightened
security screening. As a result, we encourage you to submit your comments online.
To make sure that the Commission considers your online comment, you must file it at
<https://ftcpublic.commentworks.com/ftc/venpathconsent/> by following the instructions on
the web-based form. If this Notice appears at <http://www.regulations.gov/#!/home>, you
also may file a comment through that website.

If you prefer to file your comment on paper, write “VenPath, Inc.; File No. 1823144” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC Website at <http://www.ftc.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential” – as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) – including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC Website – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment from the FTC Website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before October 29, 2018. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, a consent agreement applicable to VenPath, Inc. (“VenPath” or “the company”).

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement’s proposed order.

This matter concerns alleged false or misleading representations that VenPath made to consumers concerning its participation in the Privacy Shield framework agreed upon by the U.S. and the European Union (“EU”). The Privacy Shield framework allows U.S. companies to transfer data outside the EU consistent with EU law. To join the EU-U.S. Privacy Shield framework, a company must self-certify to the U.S. Department of Commerce (“Commerce”) that it complies with a set of principles and related requirements that have been deemed by the European Commission as providing “adequate” privacy protection. The principles include notice; choice; accountability for onward transfer; security; data integrity and purpose limitation; access; and recourse, enforcement, and liability. The related requirements include, for example, securing an independent recourse mechanism to handle any disputes about how the company handles information about EU citizens. Commerce reviews these applications for self-certification and maintains a public website, <https://www.privacyshield.gov/list>, where it

posts the names of companies that have self-certified to the EU-U.S. Privacy Shield framework and completed the requirements for certification. The listing of companies indicates whether their self-certification is current. Companies are required to re-certify every year in order to retain their status as current members of the EU-U.S. Privacy Shield framework.

VenPath offers data analytics services related to mobile apps. According to the Commission's complaint, the company has set forth on its website, <https://www.venpath.net>, privacy policies and statements about its practices, including statements related to the status of its participation in the EU-U.S. Privacy Shield framework.

The Commission's complaint alleges that VenPath deceptively represented that it was a current participant in the EU-U.S. Privacy Shield framework when, in fact, it was not. The complaint also alleges that the company deceptively represented that it would abide by the EU-U.S. Privacy Shield framework principles, but did not do so. The principles include a requirement that if a company ceases to participate in the EU-U.S. Privacy Shield framework, it must affirm to Commerce that it will continue to apply the principles to personal information that it received during the time it participated in the program, but according to the complaint, VenPath did not make such an affirmation. Part I of the proposed order prohibits the company from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the EU-U.S. Privacy Shield framework and the Swiss-U.S. Privacy Shield framework. Because the company had a certification that had lapsed, Part II requires the company to

comply with the Privacy Shield requirement to continue to protect, on a going forward basis, personal information it had received while in the program, or return or delete the information.

Parts III through VII of the proposed order are reporting and compliance provisions. Part III requires acknowledgement of the order and dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part IV ensures notification to the FTC of changes in corporate status and mandates that the company submit an initial compliance report to the FTC. Part V requires the company to retain documents relating to its compliance with the order for a five-year period.

Part VI mandates that the company make available to the FTC information or subsequent compliance reports, as requested. Part VII is a provision “sunsetting” the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed complaint or order or to modify the order’s terms in any way.

By direction of the Commission, Commissioner Wilson not participating.

Donald S. Clark,
Secretary.

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