

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

**COMMISSIONERS: Jon Leibowitz, Chairman
Pamela Jones Harbour
William E. Kovacic
J. Thomas Rosch**

In the Matter of)
)
)
SEARS HOLDINGS MANAGEMENT)
CORPORATION,)
a corporation.)
_____)

DOCKET NO. C-

COMPLAINT

The Federal Trade Commission, having reason to believe that Sears Holdings Management Corporation, a corporation, has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Sears Holdings Management Corporation (“respondent” or “SHMC”) is a Delaware corporation with its principal office or place of business at 3333 Beverly Road, Hoffman Estates, Illinois 60179. SHMC, a subsidiary of Sears Holdings Corporation (“SHC”) with shares owned by Sears, Roebuck and Co. and Kmart Management Corporation, handles marketing operations for the Sears Roebuck and Kmart retail stores, and operates the sears.com and kmart.com retail Internet websites.
2. The acts and practices of respondent, as alleged herein, have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.
3. From on or about April 2007 through on or about January 2008, SHMC disseminated or caused to be disseminated via the Internet a software application for consumers to download and install onto their computers (the “Application”). The Application was created, developed, and managed for respondent by a third party in connection with SHMC’s “My SHC Community” market research program.
4. The Application, when installed, runs in the background at all times on consumers’ computers and transmits tracked information, including nearly all of the Internet behavior that occurs on those computers, to servers maintained on behalf of respondent. Information collected and transmitted includes: web browsing, filling shopping baskets, transacting business during

secure sessions, completing online application forms, checking online accounts, and, through select header information, use of web-based email and instant messaging services.

5. SHMC, during the relevant time period, presented fifteen out of every hundred visitors to the sears.com and kmart.com websites with a “My SHC Community” pop-up box (Exhibit A) that said:

Ever wish you could talk directly to a retailer? Tell them about the products, services and offers that would really be right for you?

If you're interested in becoming part of something new, something different, we'd like to invite you to become a member of My SHC Community. My SHC Community, sponsored by Sears Holdings Corporation, is a dynamic and highly interactive on-line community. It's a place where your voice is heard and your opinion matters, and what you want and need counts!

The pop-up box made no mention of the Application. Likewise, the general “Privacy Policy” statement accessed via the hyperlink in the pop-up box did not mention the Application.

6. The pop-up box message further invited consumers to enter their email address to receive a follow-up email from SHMC with more information. Subsequently, invitation messages (Exhibit B) were emailed to those consumers who supplied their email address. These emails stated, in pertinent part:

From shopping, current events, social networking, to entertainment and email, it seems that the Internet is playing a bigger and bigger role in our daily lives these days.

If you're interested in becoming part of something new, something different, we'd like to invite you to join a new and exciting online community; My SHC Community, sponsored by Sears Holdings Corporation. *Membership is absolutely free!*

My SHC Community is a dynamic and highly interactive online community. It's a place where your voice is heard and your opinion matters, and what you want and need counts! As a member of My SHC Community, you'll partner directly with the retail industry. You'll participate in exciting, engaging and on-going interactions – always on your terms and always by your choice. My SHC Community gives you the chance to help shape the future by sharing and receiving information about the products, services and offers that would really be right for you.

To become a member of My SHC Community, we simply ask you to complete the registration process which includes providing us with your contact information as well as answering a series of profile questions that will help us get to know you better. You'll also be asked to take a few minutes to download software that is powered by (VoiceFive). This research software will confidentially track your online browsing. This will help us better understand you and your needs, enabling us to create more relevant future offerings for you, other community members, and eventually all shoppers. You can uninstall the software at any time through the Add/Remove program utility on your computer. During the registration process, you'll learn more about this application software and you'll always have the opportunity to ask any and every question you may have.

Once you're a member of My SHC Community, you'll regularly interact with My SHC Community members as well as employees of Sears Holdings Corporation through special online engagements, surveys, chats and other fun and informative online techniques. We'll ask you to journal your shopping and purchasing behavior. Again, this will be when you want and how you want to record it – always on your terms and always by your choice. We'll also collect information on your internet usage. Community engagements are always fun and always voluntary!

The email invitation message then described what consumers would receive in exchange for becoming a member of the My SHC Community, including a \$10 payment for joining the “online community,” contingent upon the consumer retaining the Application on his or her computer for at least one month. Consumers who wished to proceed further would need to click a button, at the bottom, center portion of the invitation email, that said “Join Today!”

7. Consumers who clicked on the “Join Today!” button in the email invitation were directed to a landing page (Exhibit C) that restated many of the aforementioned representations about the potential interactions between members and the “community” and about the putative benefits of membership. The landing page did not mention the Application.

8. Consumers who clicked on the “Join Today” button in the landing page were directed to a registration page (Exhibit D). To complete registration, consumers needed to enter information, including their name, address, age, and email address. Below the fields for entering information, the registration page presented a “Privacy Statement and User License Agreement” (“PSULA”) in a “scroll box” that displayed ten lines of the multi-page document at a time (“Printable version” attached as Exhibit E). A description of the Application’s specific functions begins on approximately the 75th line down in the scroll box:

Computer hardware, software, and other configuration information: Our application may collect certain basic hardware, software, computer configuration and application usage information about the computer on which you install our application, including such data as the speed of the computer processor, its memory capacities and Internet connection speed. In addition, our application may report on devices connected to your computer, such as the type of printer or router you may be using.

Internet usage information: Once you install our application, it monitors all of the Internet behavior that occurs on the computer on which you install the application, including both your normal web browsing and the activity that you undertake during secure sessions, such as filling a shopping basket, completing an application form or checking your online accounts, which may include personal financial or health information. We may use the information that we monitor, such as name and address, for the purpose of better understanding your household demographics; however we make commercially viable efforts to automatically filter confidential personally identifiable information such as UserID, password, credit card numbers, and account numbers. Inadvertently, we may collect such information about our panelists; and when this happens, we make commercially viable efforts to purge our database of such information.

The software application also tracks the pace and style with which you enter information online (for example, whether you click on links, type in webpage names, or use shortcut keys), the usage of cookies, and statistics about your use of online applications (for example, it may observe that during a given period of use of a computer, the computer downloaded X number of bytes of data using a particular Internet enabled gaming application).

Please note: Our application does not examine the text of your instant messages or e-mail messages. We may, however, review select e-mail header information from web-based e-mails as a way to verify your contact information and online usage information.

The PSULA went on to describe how the information the Application would collect was transmitted to respondent's servers, how it might be used, and how it was maintained. It also described how consumers could stop participating in the online community and remove the Application from their computers. Respondent stated in the PSULA that it reserved the right to continue to use information collected prior to a consumer's "resignation."

9. Below the scroll box on the registration page was a link that consumers could click to access a printable version of the PSULA, and a blank checkbox next to the statement: "I am the authorized user of this computer and I have read, agree to, and have obtained the agreement of

all computer users to the terms and conditions of the Privacy Statement and User License Agreement.” To continue with the registration process, consumers needed to check the box and click the “Next” button at the bottom of the registration page.

10. Consumers who completed the required information, checked the box, and clicked the “Next” button on the registration page, were directed to an installation page (Exhibit F) that explained the Application download and installation process. Consumers were required to click a “Next” button to begin the download, and then click an “Install” or “Yes” button in a “security warning” dialog box to install the Application. Nothing on the installation page provided information on the Application.

11. When installed, the Application functioned and transmitted information substantially as described in the PSULA. The Application, when installed, would run in the background at all times on consumers’ computers. Although the Application would be listed (as “mySHC Community”) in the “All Programs” menu and “Add/Remove” utilities of those computers, and the Application’s executable file name (“srhc.exe”) would be listed as a running process in Windows Task Manager, the Application would display to users of those computers no visible indication, such as a desktop or system tray icon, that it was running.

12. The Application transmitted, in real time, tracked information to servers maintained on behalf of respondent. The tracked information included not only information about websites consumers visited and links that they clicked, but also the text of secure pages, such as online banking statements, video rental transactions, library borrowing histories, online drug prescription records, and select header fields that could show the sender, recipient, subject, and size of web-based email messages.

13. Through the means described in paragraphs 3-12, respondent has represented, expressly or by implication, that the Application would track consumers’ “online browsing.” Respondent failed to disclose adequately that the software application, when installed, would: monitor nearly all of the Internet behavior that occurs on consumers’ computers, including information exchanged between consumers and websites other than those owned, operated, or affiliated with respondent, information provided in secure sessions when interacting with third-party websites, shopping carts, and online accounts, and headers of web-based email; track certain non-Internet-related activities taking place on those computers; and transmit nearly all of the monitored information (excluding selected categories of filtered information) to respondent’s remote computer servers. These facts would be material to consumers in deciding to install the software. Respondent’s failure to disclose these facts, in light of the representations made, was, and is, a deceptive practice.

14. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this _____ day of _____, 2009, has issued this complaint against respondent.

By the Commission.

Donald S. Clark
Secretary