

ORIGINAL
FILED

2013 JAN 31 P 2:31

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 STUART F. DELERY
Principal Deputy Assistant Attorney General
2 MAAME EWUSI-MENSAH FRIMPONG (CSBN 222986)
Deputy Assistant Attorney General
3 MICHAEL S. BLUME
Director
4 RICHARD GOLDBERG
Assistant Director
5 TIMOTHY T. FINLEY
Trial Attorney
6 Consumer Protection Branch
7 U.S. Department of Justice
P.O Box 386
8 Washington, DC 20044
9 Telephone: 202-307-0050
Fax: 202-514-8742
10 Email: Timothy.T.Finley@usdoj.gov

11 Attorneys for the Plaintiff

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JCS

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 PATH, INC.,

18 Defendant.
19
20

C 13 0448

COMPLAINT FOR CIVIL PENALTIES,
PERMANENT INJUNCTION, AND
OTHER RELIEF

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

24 1. Plaintiff brings this action under Sections 5(a)(1), 5(m)(1)(A), 13(b), and 16(a) of
25 the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b), and
26 56(a) and Sections 1303(c) and 1306(d) of the Children's Online Privacy Protection Act of 1998
27 ("COPPA"), 15 U.S.C. §§ 6501-6506, 6502(c) and 6505(d) to obtain monetary civil penalties, a
28

1 permanent injunction, and other equitable relief for Defendant's violations of Section 5 of the
2 FTC Act and the Commission's Children's Online Privacy Protection Rule ("Rule" or "COPPA
3 Rule"), 16 C.F.R. Part 312.

4 **JURISDICTION AND VENUE**

5 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a),
6 1345, and 1355, and under 15 U.S.C. §§ 45(m)(1)(A), 53(b), 56(a), and 57b.

7 3. Venue is proper in the Northern District of California under 15 U.S.C. § 53(b)
8 and 28 U.S.C. §§ 1391(b)-(c) and 1395(a).

9 **INTRADISTRICT ASSIGNMENT**

10 4. Defendant Path, Inc. has its primary place of business in the county of San
11 Francisco.

12 **SECTION FIVE OF THE FTC ACT**

13 5. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a) prohibits unfair and deceptive acts
14 or practices in or affecting commerce.

15 **THE CHILDREN'S ONLINE PRIVACY PROTECTION ACT RULE**

16 6. Congress enacted COPPA in 1998 to protect the safety and privacy of children
17 online by prohibiting the unauthorized or unnecessary collection of children's personal
18 information online by operators of Internet websites or online services. COPPA directed the
19 Commission to promulgate a rule implementing COPPA. The Commission promulgated the
20 Children's Online Privacy Protection Rule, 16 C.F.R. Part 312, on November 3, 1999, under
21 Section 1303(b) of COPPA, 15 U.S.C. § 6502(b), and Section 553 of the Administrative
22 Procedure Act, 5 U.S.C. § 553. The Rule went into effect on April 21, 2000.

23 **DEFENDANT**

24 7. Defendant Path, Inc. ("Path"), is a Delaware corporation with its principal place
25 of business located at 301 Howard Street, Suite 2200, San Francisco, California 94105, and
26

1 transacts or has transacted business in the Northern District of California. Path develops,
2 markets, distributes, or sells software applications for mobile devices to consumers throughout
3 the U.S. and provides online services to users of its applications. From at least 2010, Defendant
4 has operated a social networking online service that is accessible worldwide on the Internet
5 through a website and mobile applications for Apple Inc.'s iOS operating system and, since
6 2011, Google Inc.'s Android operating system.

8 **COMMERCE**

9 8. At all times material to this Complaint, Defendant has maintained a substantial
10 course of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act,
11 15 U.S.C. § 44.

12 **DEFENDANT'S PRACTICES REGARDING CONTACT INFORMATION**

13 9. Since November 14, 2010, Defendant has provided its social networking service
14 to consumers online through a mobile application ("Path App") developed for iOS. On
15 November 29, 2011, Defendant released version 2.0 of the Path App for iOS.

16 10. Defendant describes its social networking service as "the smart journal that helps
17 you share life with the ones you love," and allows users to keep a journal about "moments" in
18 the user's life and to share that journal with a network of up to 150 persons. Through the Path
19 App, the user can upload, store and share photos, written "thoughts," the user's location, and the
20 names of songs to which the user is listening. On the "About" page of its website, Defendant
21 describes its "Values" and espouses that "Path should be private by default. Forever. You
22 should always be in control of your information and experience."

23
24 11. At all times relevant to this Complaint, when a user registers for Defendant's
25 social networking service, the user must provide an email address, a first name, and a last name.
26 The user's email address serves as his or her login identity. At registration, the user is also
27 invited to provide gender, phone number, and date of birth. The Path App for iOS has been
28

1 downloaded and installed over 2.5 million times.

2 12. In version 2.0 of the Path App for iOS, Defendant added a new “Add Friends”
3 feature that displayed a user interface providing three options: “Find friends from your contacts;”
4 “Find friends from Facebook;” and “Invite friends to join Path by email or SMS.” Exhibit A
5 (“Add Friends” User Interface). The new feature allowed the user to search for friends to add to
6 the user’s network.

7
8 13. In version 2.0 of the Path App for iOS, regardless of whether the user elected to
9 “Add Friends,” Defendant automatically collected personal information from users’ mobile
10 device contacts (also known as the user’s “address book”) and stored the personal information
11 on Defendant’s servers. For each contact in the user’s mobile device address book, Defendant
12 automatically collected and stored the following personal information, if available: first name;
13 last name; address; phone numbers; email addresses; Facebook username; Twitter username; and
14 date of birth.

15 14. The automatic collection and storage of personal information from the user’s
16 mobile device contacts occurred the first time the user launched version 2.0 of the Path App and,
17 if the user signed out of the service, each time the user signed in again. This practice continued
18 until February 8, 2012.

19
20 15. Contrary to the representation made by the Path App’s user interface described in
21 Paragraph 12, Defendant automatically collected and stored personal information from the user’s
22 mobile device contacts even if the user had never selected the “Find friends from your contacts”
23 option. As a result, the user had no meaningful choice as to the collection and storage of
24 personal information from the user’s mobile device contacts, and the user interface options were
25 illusory.

26 16. From at least December 29, 2010, until May 4, 2012, Defendant disseminated or
27 caused to be disseminated the following statements to consumers in its Privacy Policy on its
28

1 website, path.com, and through the Path App regarding its collection of personal information:

2 **What is Personal Information?**

3 “Personal information” means information that specifically identifies an individual (such as
4 name, address, telephone number, mobile number, or e-mail address) or information about
5 that individual that is directly linked to personal information. Personal information does not
6 include “aggregate” information, which is data we collect about the use of our site and our
7 services. Our privacy policy does not restrict or limit our collection and use of aggregate
8 information.
9

10 **What Personal Information Do We Collect?**

11 We actively collect certain information you voluntarily provide to us, such as when you
12 create an account and profile, send us an email or post information or other content to our
13 site.

14 We automatically collect certain information when you use our site and our services, such
15 as your Internet Protocol (IP) address, your operating system, the browser type, the address
16 of a referring site and your activity on our site. We treat this information as personal
17 information if we combine it with or link it to any of the identifying information mentioned
18 above. Otherwise, it is used in the aggregate only.

19 We may also automatically collect certain information through the use of “cookies” or web
20 beacons. Exhibit B (Privacy Policy).
21

22 17. Defendant informed users that it automatically collected only certain information
23 such as IP address, operating system, browser type, address of referring site, and site activity
24 information. In fact, Defendant automatically collected and stored for each contact in the user’s
25 mobile device address book, if available: name, address, telephone number, mobile number, e-
26 mail address, Facebook username, Twitter username, and date of birth. Defendant failed to
27 provide users with any notice, as part of its Privacy Policy or otherwise, before automatically
28

1 collecting and storing personal information from the user's mobile device contacts.

2 **DEFENDANT'S PRACTICES REGARDING COLLECTION OF INFORMATION**
3 **FROM CHILDREN UNDER THE AGE OF 13**

4 18. For purposes of Paragraphs 18 through 29, and 34 through 38 herein, the terms
5 "child," "collects," "collection," "Commission," "delete," "disclosure," "Internet," "operator,"
6 "parent," "person," "personal information," "verifiable consent," and "website or online service
7 directed to children," are defined as those terms are defined in Section 312.2 of the COPPA
8 Rule, 16 C.F.R. § 312.2.

9
10 19. The Rule applies to any operator of a commercial website or online service, or
11 portion thereof, directed to children that collects, uses, and/or discloses personal information
12 from children, and to any operator of a commercial website or online service that has actual
13 knowledge that it collects, uses, and/or discloses personal information from children. Among
14 other things, the Rule requires a subject website operator to meet specific requirements prior to
15 collecting online, using, or disclosing personal information from children, including, but not
16 limited to:

- 17
- 18 a. Posting a privacy policy on its website or online service providing clear,
19 understandable, and complete notice of its information practices,
20 including what information the website operator collects from children
21 online, how it uses such information, its disclosure practices for such
22 information, and other specific disclosures set forth in the Rule;
 - 23 b. Providing clear, understandable, and complete notice of its information
24 practices, including specific disclosures, directly to parents when required
25 by the Rule; and
 - 26 c. Obtaining verifiable parental consent prior to collecting, using, and/or
27 disclosing personal information from children.
- 28

1 20. In addition to its Path App for iOS, Defendant's social networking service is also
2 accessible through a Path App for Google, Inc.'s Android operating system, and, until December
3 2011, through Defendant's website, path.com. The Path App for iOS, the Path App for Android,
4 and the Defendant's website were all intended for a general audience, but also attracted a
5 significant number of children.

6 21. As discussed in Paragraph 11, when a user registered for the Defendant's social
7 networking service, whether through one of the Path Apps or through Defendant's website, the
8 user was required to provide an email address, a first name, and a last name, and was invited to
9 provide gender, phone number, and date of birth.

10 22. From November 14, 2010, through May 4, 2012, Defendant accepted registrations
11 from users who entered a date of birth indicating that the user was under the age of 13. As a
12 result, Defendant knowingly collected email address, first name, last name, date of birth, and if
13 provided, gender and phone number, from approximately 3,000 children under age 13.
14 Defendant, therefore, was an "operator" as defined in the Rule.

15 23. From November 29, 2011, through February 8, 2012, Defendant also knowingly
16 collected from these children the following personal information for each contact in the child's
17 mobile device address book, if available: first name, last name, address, phone numbers, email
18 addresses, and date of birth.

19 24. A child who registered through the Path App or Defendant's website was able to
20 create a journal and upload, store and share photos, written "thoughts," the child's precise
21 location, and the names of songs to which the child was listening. In fact, each time a child
22 uploaded a photo or posted a "thought," the Path App would invite the child to also share his or
23 her location through the application's geo-location tracking feature and the names of any friends
24 that were with the child when the photo was taken or the thought was posted. Likewise, if the
25 child decided to share his or her location through the application's geo-location tracking feature,
26
27
28

1 the Path App would invite the child to also share the names of friends that were with the child at
2 that location, and prompt the child to add a “thought.” The child could also comment on the
3 posts of other users in the child’s network.

4 25. Until May 4, 2012, Defendant knowingly collected children’s personal
5 information and enabled children to publicly disclose their personal information through the
6 Defendant’s social networking service.

7 26. Defendant’s online notice of its information practices did not clearly, completely,
8 or accurately disclose all of Defendant’s information collection, use, and disclosure practices for
9 children, as required by the Rule.

10 27. Defendant did not provide parents with a direct notice of its information practices
11 prior to collecting, using, or disclosing children’s personal information.

12 28. Defendant did not obtain verifiable consent from parents prior to collecting,
13 using, or disclosing children’s personal information.

14 29. In approximately 3,000 instances, Defendant knowingly collected, used, and/or
15 disclosed personal information from children in violation of the Children’s Online Privacy
16 Protection Rule.

17
18
19 **COUNT I**
20 **DEFENDANT’S VIOLATIONS OF THE FTC ACT**
21 **IN CONNECTION WITH ITS USER INTERFACE**

22 30. Through the means described in Paragraph 12, Defendant represented, expressly
23 or by implication, that personal information from the user’s mobile device contacts would only
24 be collected if the user clicked on the “Add Friends” feature and chose the “Find friends from
25 your contacts” option.

26 31. In truth and in fact, as set forth in Paragraphs 13-15, Defendant automatically
27 collected and stored personal information from the user’s mobile device contacts each time the
28 user launched the Path App and, if the user signed out, each time the user signed in again. This

1 occurred even if the user never selected the “Find friends from your contacts” option. Therefore,
2 the representation set forth in Paragraph 30 was false or misleading and constituted a deceptive
3 act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

4
5 **COUNT II**
6 **DEFENDANT’S VIOLATIONS OF THE FTC ACT**
7 **IN CONNECTION WITH ITS PRIVACY POLICY**

8 32. Through the means described in Paragraph 16, Defendant represented, expressly
9 or by implication, that the only information automatically collected by Defendant was
10 information such as IP address, operating system, browser type, address of referring site, and site
11 activity information.

12 33. In truth and in fact, as set forth in Paragraphs 13-15, Defendant automatically
13 collected, uploaded, and stored personal information from the user’s mobile device contacts.
14 Therefore, the representation set forth in Paragraph 32 was false or misleading and constituted a
15 deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

16 **COUNT III**
17 **DEFENDANT’S VIOLATIONS OF THE CHILDREN’S**
18 **ONLINE PRIVACY PROTECTION RULE**

19 34. In numerous instances, in connection with operating its Path App for iOS, its Path
20 App for the Android operating system, and its website, path.com, Defendant collected, used,
21 and/or disclosed, with actual knowledge, personal information online from children younger than
22 age 13. Defendant failed to: (1) provide sufficient notice on its website or online services of the
23 information it collects online from children, how it uses such information, and its disclosure
24 practices, among other required content; (2) provide direct notice to parents of the information
25 Defendant collects online from children, how it uses such information, and its disclosure
26 practices for such information, among other required content; and (3) obtain verifiable parental
27 consent before any collection, use, and/or disclosure of personal information from children.

28 35. Defendant is an “operator” as defined by the COPPA Rule, 16 C.F.R. § 312.2.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

OF COUNSEL:

JAMIE E. HINE
NITHAN SANNAPPA
MAMIE KRESSES

Attorneys
Federal Trade Commission
600 Pennsylvania Avenue, NW
Mail Drop NJ-8100
Washington, D.C. 20580
202-326-2188 (voice)
202-326-3062 (fax)

FOR THE UNITED STATES OF AMERICA:

STUART F. DELERY
Principal Deputy Assistant Attorney General
Civil Division
U.S. Department of Justice

MAAME EWUSI-MENSAH FRIMPONG
Deputy Assistant Attorney General
CSBN 222986
Civil Division

MICHAEL S. BLUME
Director
Consumer Protection Branch

RICHARD GOLDBERG
Assistant Director
Consumer Protection Branch

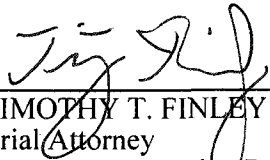

TIMOTHY T. FINLEY
Trial Attorney
Consumer Protection Branch
U.S. Department of Justice
P.O. Box 386
Washington, DC 20044
Telephone: 202-307-0050
Fax: 202-514-8742
Email: timothy.t.finley@usdoj.gov

EXHIBIT A

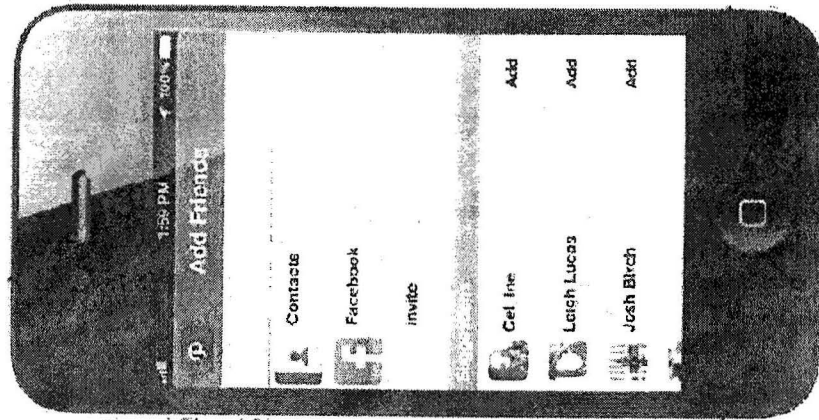


EXHIBIT B



Our privacy policy explains how personal information is collected, used and disclosed by Path with respect to your access and use of Path's site (located at www.path.com) and Path's social networking services (available via Path's site and Path's app).

Our privacy policy may be modified from time-to-time. We will alert you that changes have been made by indicating on our privacy policy the date it was last updated.

What Is Personal Information?

"Personal information" means information that specifically identifies an individual (such as a name, address, telephone number, mobile number or e-mail address) or information about that individual that is directly linked to personally identifiable information. Personal information does not include "aggregate" information, which is data we collect about the use of our site and our services. Our privacy policy does not restrict or limit our collection and use of aggregate information.

What Personal Information Do We Collect?

We actively collect certain information you voluntarily provide to us, such as when you create an account and profile, send us an email or post information or other content to our site.

We automatically collect certain information when you use our site and our services, such as your Internet Protocol (IP) address, your operating system, the browser type, the address of a referring site and your activity on our site. We treat this information as personal information if we combine it with or link it to any of the identifying information mentioned above. Otherwise, it is used in the aggregate only.

We may also automatically collect certain information through the use of "cookies" or web beacons.

How Do We Use the Personal Information We Collect?

We use personal information collected through our site and our services for the purposes described in our privacy policy or elsewhere on our site. For example, we may use personal information we collect:

- to provide our services or information you request, and to process and complete any transactions;
- respond to your emails, submissions, questions, comments, requests, and complaints and provide customer service;
- to monitor and analyze site usage and trends, and to personalize and improve our site and our users' experiences on our site, such as providing ads, content, or features that match their profiles or interests, and to increase our site's functionality and user friendliness;
- to send you confirmations, updates, security alerts, and support and administrative messages and otherwise facilitate your use of, and our administration and operation of, our site; and
- for any other purpose for which the information was collected.

What Personal Information Do We Share With Third Parties?

We will not share the personal information we collect from you through our site or our services with third parties, except as described in our privacy policy or on our site. For example, we share personal information as follows:

- with service providers who are working with us in connection with the operation of our site or our services;
- when you give us your consent to do so, including if we notify you on our site that the information you provide will be shared in a particular manner and you provide such information;
- when we believe in good faith that we are lawfully authorized or required to do so or that doing so is reasonably necessary or appropriate to comply with the law or legal processes or respond to lawful requests or legal authorities, including responding to lawful subpoenas, warrants or court orders;

- to enforce or apply our privacy policy, our terms of use or our other policies or agreements; and
- in connection with, or during negotiations of, any merger, sale of company assets, financing or acquisition, or in any other situation where personal information may be disclosed or transferred as one of the business assets of us.

We are not responsible for the actions of service providers or other third parties, nor are we responsible for any additional information you provide directly to any third parties.

Your Control

Aside from what is set forth in our privacy policy, you control what others see about you except if you are tagged in a photo. Say Edie Salander, a user of our site, tags you in a picture – "Dancing with Josh De Mott at the Rex". The only people who can see the photo are the people with whom Edie has shared the photo. However, the "dancing with" would forever be added to our geo-located things database which everyone can see, though not associated with anyone. Also, the same goes for "Rex" at that same geo-location.

Links to Other Sites

Our site may contain links to other sites. Any personal information you provide on the linked pages is provided directly to that third party and is subject to that third party's privacy policy. Our privacy policy does not apply to such linked sites, and we are not responsible for the content or privacy and security practices and policies of these sites or any other sites that are linked to from our site.

What Steps Do We Take To Protect Your Information Online?

We take reasonable measures to protect your personal information in an effort to prevent loss, misuse and unauthorized access, disclosure, alteration and destruction. Please be aware, however, that despite our efforts, no security measures are perfect or impenetrable and no method of data transmission can be guaranteed against any interception or other type of misuse.

What Choices Do You Have Regarding the Use of Your Information?

You may "opt out" of receiving marketing or promotional emails from us by following the instructions in those emails or by emailing us at service@path.com. If you opt out, we may still send you non-promotional emails, such as emails about your accounts or our ongoing business relations.

Questions?

If you have any questions about our privacy policy, please contact us at service@path.com.

© 2010 Path • [Home](#) • [About](#)