



[BILLING CODE: 6750-01S]

FEDERAL TRADE COMMISSION

[File No. 142 3039]

Practice Fusion, Inc.; Analysis of Proposed Consent Order 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 draft 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 July 8, 2016.

ADDRESSES: Interested parties may file a comment at

<https://ftcpublic.commentworks.com/ftc/practicefusionconsent>

online or on paper, by following the instructions in the Request for Comment part of the

SUPPLEMENTARY INFORMATION section below. Write “Practice Fusion, Inc. - Consent Agreement; File No. 142 3039” on your comment and file your comment online at

<https://ftcpublic.commentworks.com/ftc/practicefusionconsent>

by following the instructions on the web-based form. If you prefer to file your comment on paper, write “Practice Fusion, Inc. - Consent Agreement; File No. 142 3039” 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.

FOR FURTHER INFORMATION CONTACT: Allison Lefrak, Attorney, (202-326-2804) or Ryan Mehm, Attorney, (202-326-2918), Bureau of Consumer Protection, 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 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 June 8, 2016), on the World Wide Web at: <http://www.ftc.gov/os/actions.shtm>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before July 8, 2016. Write “Practice Fusion, Inc. - Consent Agreement; File No. 142 3039” 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 <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone’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, like medical records or other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial information which . . . is privileged or confidential,” as discussed in 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). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR § 4.9(c).¹ Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

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/practicefusionconsent> 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 file your comment on paper, write “Practice Fusion, Inc. - Consent Agreement; File No. 142 3039” on your comment and on the envelope, and mail your comment to the

¹ 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), 16 CFR § 4.9(c).

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.

Visit the Commission 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 July 8, 2016. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an agreement containing a consent order from Practice Fusion, Inc. ("Practice Fusion").

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 (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Since 2007, Practice Fusion has provided services for healthcare providers. Since 2007, its core service has been a cloud-based electronic health record ("EHR") that allows healthcare providers in the ambulatory/out-patient setting to store and utilize health information. In 2009, Practice Fusion launched the Patient Fusion website, www.patientfusion.com ("Patient Fusion"),

with an online portal that allows patients, who have been granted access by their healthcare providers, to view, download, and transmit to other providers their health information and send and receive secure messages directly to their providers.

Practice Fusion planned to launch a public-facing healthcare provider directory portion of the Patient Fusion website in 2013. The directory would, among other things, allow current and prospective patients to read patient reviews of providers. To populate this website with reviews, starting on April 5, 2012, Practice Fusion sent emails to the patients of its healthcare provider clients soliciting those patients to take surveys to rate and review their provider. The email – and the survey itself – suggested that the health care provider was directly seeking the survey responses to improve the consumer’s experience on future visits. Neither the email nor the survey clearly indicated that the reviews would be posted publicly. Practice Fusion solicited reviews for a full year – collecting information from over 600,000 patients during that time – before launching the review service on April 8, 2013, at which time all of the reviews previously collected were posted publicly on the Internet. Many of the reviews contained highly sensitive information, combined with identifying information, indicating that many patients likely thought they were communicating directly with their doctors, and did not intend for their feedback to be posted publicly.

The Commission’s proposed complaint alleges that Practice Fusion violated Section 5(a) of the Federal Trade Commission Act from April 2012 through April 2013 by failing to adequately disclose that survey responses would be made publicly available on Patient Fusion’s healthcare provider review website. This fact, according to the proposed complaint, would be material to consumers in deciding whether or how to respond to the survey. The Commission’s

complaint alleges that Practice Fusion's failure to adequately disclose this material information is a deceptive act or practice in violation of Section 5.

The proposed order contains provisions designed to prevent Practice Fusion from engaging in the same or similar acts or practices in the future. Part I of the proposed order prohibits Practice Fusion from misrepresenting the extent to which it uses, maintains, and protects the privacy and confidentiality of any covered information, including the extent to which covered information is made publicly available.

Part II of the proposed order requires Practice Fusion, prior to making any consumer's covered information publicly available, to (A) clearly and conspicuously disclose to the consumer, separate and apart from "privacy policy," "terms of use" page, or similar document, that such information is being made publicly available; and (B) obtain the consumer's affirmative express consent.

Part III of the proposed order prohibits Practice Fusion from displaying any healthcare provider review information obtained from consumers between April 5, 2012 and April 8, 2013. Part III of the proposed order also prohibits Practice Fusion from maintaining such information, except for review and retrieval by its healthcare provider customers, or their respective agents, contractors, assigns, or as permitted to comply with applicable law, regulation, or legal process.

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

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

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

By direction of the Commission.

Donald S. Clark
Secretary.

[FR Doc. 2016-14091 Filed: 6/14/2016 8:45 am; Publication Date: 6/15/2016]