

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Rebecca Kelly Slaughter, Acting Chairwoman**
 Noah Joshua Phillips
 Rohit Chopra
 Christine S. Wilson

In the Matter of

MOVIEPASS, INC., a corporation,

**HELIOS AND MATHESON ANALYTICS,
INC., a corporation,**

**MITCHELL LOWE, individually and as an
officer of MOVIEPASS, INC., and**

**THEODORE FARNSWORTH, individually and
as an officer of HELIOS AND MATHESON
ANALYTICS, INC.**

DOCKET NO.

COMPLAINT

The Federal Trade Commission, having reason to believe that MoviePass, Inc., a corporation, Helios and Matheson Analytics, Inc., a corporation, Mitchell Lowe, individually and as an officer of MoviePass, Inc., and Theodore Farnsworth, individually and as an officer of Helios and Matheson Analytics, Inc. (collectively, “Respondents”), have violated the provisions of the Federal Trade Commission Act, 15 U.S.C. § 45, and the Restore Online Shoppers’ Confidence Act (“ROSCA”), 15 U.S.C. § 8403, and it appearing to the Commission that this proceeding is in the public interest, alleges:

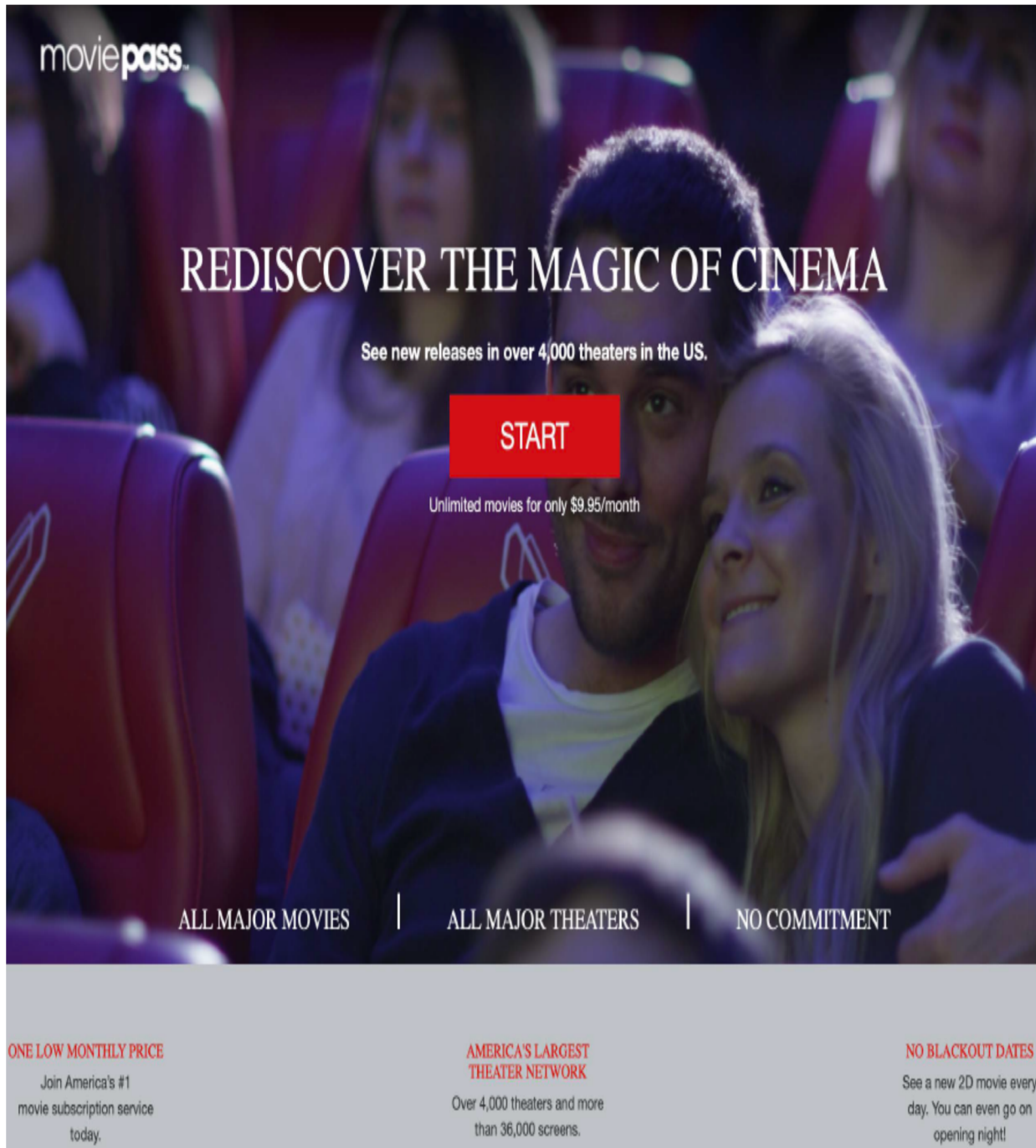
1. Respondent MoviePass, Inc. is a Delaware corporation with its principal place of business at 350 Fifth Avenue, Suite 5330, New York, New York 10118. Respondent MoviePass is a subsidiary of Helios and Matheson Analytics, Inc., which acquired a controlling interest in August 2017 and more than 90 percent of the company by April 2018.
2. Respondent Helios and Matheson Analytics, Inc. (“Helios”) is a Delaware corporation with its principal place of business also at 350 Fifth Avenue, Suite 5330, New York, New York 10118.

3. Respondent Mitchell Lowe (“Lowe”) is the Chief Executive Officer of Respondent MoviePass. Individually or in concert with others, he controlled or had the authority to control, or participated in the acts and practices of Respondent MoviePass, including those relating to its advertising, marketing, public relations, data security, customer service, and the acts and practices alleged in this complaint. At all times material to this complaint, his principal office or place of business was the same as that of Respondents MoviePass and Helios.
4. Respondent Theodore Farnsworth (“Farnsworth”) was the Chief Executive Officer of Helios until September 2019. Individually or in concert with others, he controlled or had the authority to control, or participated in the acts and practices of Respondents MoviePass and Helios, including those relating to Respondent MoviePass’s advertising, marketing, public relations, customer service, and the acts and practices alleged in this complaint. At all times material to this complaint, his principal office or place of business was the same as that of Respondents MoviePass and Helios.
5. Respondents MoviePass and Helios (collectively, “Corporate Respondents”) have operated as a common enterprise while engaging in the unlawful acts and practices alleged below. Corporate Respondents have conducted the business practices described below through interrelated companies that have common ownership, managers, employees, and office locations. Because these Corporate Respondents have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged below. Lowe and Farnsworth have formulated, directed, controlled, or had the authority to control, or participated in the acts and practices of the common enterprise alleged in this complaint.
6. Respondents have advertised, offered for sale, sold, and distributed services to consumers, including the MoviePass movie viewing subscription service.
7. The acts and practices of Respondents alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

RESPONDENTS’ BUSINESS PRACTICES

8. In 2011, Respondent MoviePass launched a “MoviePass” subscription service that allowed consumers to view movies at their local theaters for a monthly fee. Between 2011 and 2017, Respondent MoviePass offered a variety of subscription plans at different price points, which were generally sold through a negative option in which consumers continued to pay a monthly fee for the service unless they affirmatively canceled their subscriptions.
9. In August 2017, Respondents re-launched the MoviePass service nationwide, offering consumers “unlimited” movie viewings at theaters for \$9.95 per month, again sold as a negative option. Respondents expressly marketed the service (a) as offering

“Unlimited movies for only \$9.95/month”; (b) as providing access to “ANY MOVIE ANY THEATER ANY DAY,” including “ALL MAJOR MOVIES” in “ALL MAJOR THEATERS”; and (c) as allowing consumers to “[e]njoy a new movie every day.” The following marketing materials were representative of its advertisements during the period material to this complaint:



The advertisement features a background image of a man and a woman sitting in a theater, smiling. The text is overlaid on this image. At the top left is the 'moviepass.' logo. The main headline is 'REDISCOVER THE MAGIC OF CINEMA'. Below it, it says 'See new releases in over 4,000 theaters in the US.' A prominent red button with the word 'START' in white is centered. Below the button, it says 'Unlimited movies for only \$9.95/month'. At the bottom, there are three columns of text: 'ALL MAJOR MOVIES', 'ALL MAJOR THEATERS', and 'NO COMMITMENT'. Below these are three more columns of text: 'ONE LOW MONTHLY PRICE', 'AMERICA'S LARGEST THEATER NETWORK', and 'NO BLACKOUT DATES'.

moviepass.

REDISCOVER THE MAGIC OF CINEMA

See new releases in over 4,000 theaters in the US.

START

Unlimited movies for only \$9.95/month

ALL MAJOR MOVIES | ALL MAJOR THEATERS | NO COMMITMENT

ONE LOW MONTHLY PRICE
Join America's #1 movie subscription service today.

AMERICA'S LARGEST THEATER NETWORK
Over 4,000 theaters and more than 36,000 screens.

NO BLACKOUT DATES
See a new 2D movie every day. You can even go on opening night!

Figure 1 (image produced to the FTC by Respondent MoviePass on June 14, 2019).

Figure 2 (image produced to the FTC by Respondent MoviePass on June 14, 2019).

Figure 3 (image produced to the FTC by Respondent MoviePass on June 14, 2019).

10. Respondents had attracted approximately 3.2 million subscribers to MoviePass by early 2018. By this time, however, Corporate Respondents were already incurring financial losses due to the cost of the movie tickets subscribers acquired through the service.
 - a. In Respondent Helios's April 2018 Form 10-K filing, its auditors "expressed substantial doubt about [Respondent Helios's] ability to continue as a going concern."
 - b. In a May 2018 SEC filing, Respondent Helios provided a "Financial Update" in which it disclosed that it ran an average cash deficit of \$21.7 million per month from September 30, 2017 to April 30, 2018.

RESPONDENTS DECEPTIVELY PREVENTED SUBSCRIBERS FROM USING MOVIEPASS AS ADVERTISED

11. In April 2018, Respondents devised and implemented "password disruption" and "ticket verification" programs in tandem to limit frequent MoviePass users' ability to view movies through the service as advertised.
12. Password Disruption. Under Respondents' password disruption program, Respondents invalidated the passwords of the 75,000 subscribers who used the service most frequently while claiming that "we have detected suspicious activity or potential fraud" on the affected subscribers' accounts.
13. This representation regarding purported "suspicious activity" caused one MoviePass executive to advise that it "**could insinuate there may have been a data breach**" (emphasis in original) and another to advise that "[i]t will go on [an online forum] and suspicions will arise ... 'were they hacked?' 'Is our data really safe?'"
14. The password disruption program impeded subscribers' ability to view movies because MoviePass's password reset process often failed.
 - a. To reset their passwords, subscribers generally had to complete four steps:
 - (i) enter their email addresses into the MoviePass app's "Reset Password" tool;
 - (ii) wait for Respondent MoviePass to send an email with a password reset hyperlink;
 - (iii) respond to the email by clicking on a hyperlink in the email; and
 - (iv) fill out password reset information on a webpage accessed by the hyperlink.
 - b. Subscribers were often unable to reset their passwords because (i) the app would not accept their email address; (ii) the subscriber would never receive a password reset email; or (iii) the email's hyperlink would lead to a "Page Not Found" notification.
 - c. Indeed, when discussing the password disruption program, a MoviePass executive acknowledged that subscribers using a common smartphone operating system

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