

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

COMMISSIONERS: Joseph J. Simons, Chairman
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter
Christine S. Wilson

**In the Matter of
FLO HEALTH, INC.**

DOCKET NO.

COMPLAINT

The Federal Trade Commission (“FTC”), having reason to believe that Flo Health, Inc., a corporation (“Respondent”), 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 Flo Health, Inc. (“Flo Health”) is a Delaware corporation with its principal office or place of business at 1013 Centre Road, Suite 403-B, Wilmington, Delaware 19805.
2. Respondent has developed, advertised, offered for sale, sold, and distributed the Flo Period & Ovulation Tracker, a mobile application (“app”) powered by artificial intelligence that functions as an ovulation calendar, period tracker, and pregnancy guide (“Flo App”).
3. Millions of women use the Flo App, giving Respondent details of their menstruations and gynecological health on the promise that the app will help predict ovulation and aid in pregnancy and childbirth. These users trust Respondent with intimate details of their reproductive health because Respondent repeatedly promised to protect the information and keep it secret. Indeed, Respondent’s privacy policies stated, time and again, that Respondent would not share users’ health details with anyone.
4. In fact, beginning in 2016, Respondent handed users’ health information out to numerous third parties, including Google, LLC (“Google”); Google’s separate marketing service, Fabric (“Fabric”); Facebook, Inc., through its Facebook Analytics tool (“Facebook”); marketing firm AppsFlyer, Inc. (“AppsFlyer”); and analytics firm Flurry, Inc. (“Flurry”). And Respondent took no action to limit what these companies could do with the users’ information. Rather, they merely agreed to each company’s standard terms of service. By doing so, Respondent gave these third parties the ability to use Flo App users’ personal health information expansively, including for advertising.

5. Respondent shared women’s personal health information with these third parties for years, while at the same time promising them privacy. It was not until February 2019, when the Wall Street Journal revealed the practice, that Respondent halted sharing the data. Indeed, Respondent stopped sharing users’ health information with Facebook the day after the exposé.

6. Upon learning that Respondent had turned some data related to their menstruations, pregnancies, and childbirths over to these third parties, hundreds of users wrote to Respondent, stating that they were “outraged,” “incredibly upset,” “disturbed,” “appalled,” and “very angry.” Indeed, they felt “victimized” and “violated” by Respondent’s actions.

7. The acts and practices of Respondent alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

Flo App

8. Since at least 2016, Respondent has made the Flo App available to users for free download from the Apple App Store and the Google Play Store. In the product description available on the Apple App Store, Respondent describes the Flo App as “a smart and simple period tracker, helpful pregnancy week by week app, accurate ovulation and fertility calendar and PMS symptoms tracker for women all over the world.”

9. The Flo App is one of the most popular health and fitness apps available to consumers. Since 2016, more than 100 million users have downloaded the Flo App, including more than 16 million users across the United States and more than 19 million users in the European Union (“EU”) and Switzerland. In 2019, the Flo App was the most downloaded health and fitness app in the Apple App store, and was the “App of the Day” in the Apple App Store in over 30 countries.

10. During the relevant time period, Respondent contracted with dozens of third-party firms to provide, among other things, various marketing and analytics services in connection with the Flo App. These firms included Facebook’s analytics division, Google’s analytics division, Fabric, AppsFlyer, and Flurry. Respondent did not contractually limit how these third parties could use data they received from the Flo App. In fact, the Terms of Service governing the agreements permitted the third parties to use the data for their own purposes.

11. Respondent encourages women to input vast quantities of health information into the Flo App: “Log your menstruation days in a handy period calendar, ovulation and fertility tracker, schedule menstrual cycle reminders, record moods and PMS symptoms, use a due date calculator, follow a pregnancy calendar” By doing so, Respondent tells users, you can “take full control of your health.”

12. By encouraging millions of women to input extensive information about their bodies and mental and physical health, Respondent has collected personal information about consumers, including name, email address, date of birth, place of residence, dates of menstrual cycles, when pregnancies started and ended, menstrual and pregnancy-related symptoms, weight, and temperature.

Respondent's Repeated Deceptive Statements to Flo App Users About Health Data

13. Between 2017 and 2019, Respondent repeatedly promised users that the Flo App would keep their health data private, and that Respondent would only use Flo App users' data to provide the Flo App's services. Many users entrusted Respondent with their health information in part because they believed that Respondent would treat it according to Respondent's privacy policies.

14. Specifically, in privacy policies in effect between August 28, 2017 and February 19, 2019, Respondent explained that it "may share certain" personal data with third parties, but only for purposes of operating and servicing the Flo App. The privacy policies defined "personal data" broadly to include "information about your health." However, the privacy policies then asserted that any information shared with third parties "**exclud[ed] information regarding your marked cycles, pregnancy, symptoms**, notes and other information that is entered by you and that you do not elect to share." (emphasis added).

15. In the privacy policies described in Paragraph 14, Respondent also promised that third parties could not use Flo App users' personal information "for any other purpose except to provide services in connection with the App."

16. In addition to stating that Respondent would not share "information regarding your marked cycles, pregnancy, [or] symptoms ..." with any third parties (as described in Paragraph 14), privacy policies in effect between May 28, 2018 and February 19, 2019 specifically promised that Respondent would not disclose "any data related to health" to either AppsFlyer or Flurry.

- A. "AppsFlyer is a mobile marketing platform. We may share certain non-identifiable information about you and some Personal Data (**but never any data related to health**) in order to carry out marketing activities and provide you better and more targeted, tailor-made service." (emphasis added)
- B. "We may share certain non-identifiable information about you and some Personal Data (**but never any data related to health**) with Flurry." (emphasis added)

17. The privacy policies described in Paragraph 16 also singled out Facebook, Google, and Fabric, claiming that these third parties would only receive "non-personally identifiable information," "Personal Data like device identifiers," or "device identifiers." Specifically, Respondent's privacy policies stated as follows:

- A. "We use Facebook Analytics and Google Analytics tools to track installs of our App. Normally, Facebook and Google collect **only non-personally identifiable information**, though some **Personal Data like device identifiers** may be transferred to Facebook" (emphasis added).
- B. "**Fabric may use device identifiers** that are stored on your mobile device and allow us to analyze your use of the App in order to improve our app feature [sic]." (emphasis added).

For Years, Respondent Disclosed Health Data About Millions of App Users to Facebook, Google, and Other Third Parties

18. Like most app developers, Respondent tracks “Standard App Events,” records of routine app functions, such as launching or closing the app, as well as “Custom Apps Events,” records of user-app interactions unique to the Flo App. For example, when a user enters menstruation dates, Respondent records the user’s interaction with that feature as a Custom App Event. Respondent analyzes Custom App Events to improve the Flo App’s functionality and identify which features are likely to interest new users.

19. Respondent gave each Custom App Event a descriptive title. For example, when a user enters the week of her pregnancy, Respondent records the Custom App Event “R_PREGNANCY_WEEK_CHOSEN.” When a user selects a feature to receive menstruation reminders in the “wanting to get pregnant branch” of the app, Respondent records the Custom App Event “P_ACCEPT_PUSHES_PERIOD.” Consequently, many of Respondent’s Custom App Events convey information about users’ menstruation, fertility, or pregnancies.

20. Despite its repeated representations between 2017 and 2019 that it would keep users’ health data secret, Respondent disclosed health information to various third parties. In fact, as far back as June 2016, Respondent integrated into the Flo App software development tools, known as software development kits (“SDKs”), from the numerous third-party marketing and analytics firms mentioned above, including Facebook, Flurry, Fabric, AppsFlyer, and Google. These SDKs gathered the unique advertising or device identifiers and Custom App Events of the millions of Flo App users. By including sensitive health information in the titles of the Custom App Events, Respondent conveyed the health information of millions of users to these third parties for years. This directly contradicted Respondent’s statements in its privacy policies that it would not divulge such information. Specifically, Respondent disclosed Custom App Event information to:

- A. Facebook from June 2016 to February 2019;
- B. Flurry from June 2016 to February 2019;
- C. Fabric from November 2016 to February 2019;
- D. AppsFlyer from May 2018 to February 2019; and
- E. Google from September 2018 to February 2019.

21. Besides breaking promises to Flo App users, Respondent’s disclosures violated several of the third parties’ own terms of service or use—terms to which Respondent had agreed:

- A. Facebook’s Business Tools Terms stated: “**You will not share Customer Data with us that you know or reasonably should know ... includes health**, financial information, or other categories of sensitive information (including any information defined as sensitive under applicable law).” (emphasis added).

- B. AppsFlyer’s Terms of Use stated: “**AppsFlyer strictly prohibits you from using the Services to collect or otherwise enable the collection of any Restricted Data.** You hereby warrant that you shall not configure the Codes or Services to collect any Restricted Data through the Services.” The Terms of Use defined “Restricted Data” to include “**any health information.**” (emphasis added).

22. Despite representing in the privacy policies described in Paragraphs 14 and 15 that it would restrict how third parties could use Flo App users’ personal data, Respondent merely agreed to these third parties’ stock terms of service, several of which permitted the third party to use any information obtained from Flo App users for the third party’s own purposes, including, in certain cases, for advertising and product improvement:

- A. Facebook’s Business Tools Terms stated: “We use [aggregated] Event Data to personalize the features and content (including ads and recommendations) we show people on and off our Facebook Company Products We may also use Event Data ... for research and development purposes, and to ... improve the Facebook Company Products.” That “Event Data” includes Custom App Events.
- B. Google Analytics’s Terms of Service stated: “Google and its wholly owned subsidiaries may retain and use ... information collected in [Flo Health’s] use of the service.”
- C. AppsFlyer’s Terms of Use stated: “You hereby allow AppsFlyer to collect, store, use and process Customer Data,” where “Customer Data” was defined to include “data concerning the characteristics and activities” of app users.
- D. The Fabric Software and Services Agreement stated: “[Flo Health] acknowledges and agrees that Google [Fabric] may use Usage Data for its own business purposes,” where “Usage Data” was defined to mean “all information, data and other content, not including any [identifying data], received by Google related to [Flo Health]’s use of the Fabric Technology.”

23. As a result, at least one of these third parties (Facebook) used Flo App event data (which Facebook did not know included users’ personal and health data) for its own purposes, including its own research and development purposes.

24. On February 22, 2019, the *Wall Street Journal* reported that it was able to intercept unencrypted identifying health information transmitted by the Flo App to Facebook. The *Wall Street Journal* reported that this information included a unique advertising identifier, the user’s intention to get pregnant, and when the user was having her period.

25. Following publication of the *Wall Street Journal*’s story, Respondent received more than 300 complaints from Flo App users about the unauthorized disclosures of health information to Facebook. For example, users stated:

- A. “I’m absolutely [sic] disgusted at this invasion of my most personal information.”

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