

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

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In the Matter of)	
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ELI LILLY and COMPANY,)	DOCKET NO.
a corporation.)	
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)	

COMPLAINT

The Federal Trade Commission, having reason to believe that Eli Lilly and Company, 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 Eli Lilly and Company is an Indiana corporation with its principal office or place of business at Lilly Corporate Center, Indianapolis, Indiana 46285. Respondent, a pharmaceutical company, has advertised and promoted its anti-depressant medication, Prozac, through the company’s Web sites www.prozac.com and www.lilly.com.
2. The acts and practices of respondent as alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.
3. Respondent promotes its Prozac.com Web site as “Your Guide to Evaluating and Recovering from Depression.” From March 15, 2000 until June 22, 2001, respondent advertised, promoted, and marketed via www.Prozac.com and www.Lilly.com an email reminder service known as “Medi-messenger.” Consumers who utilized the Medi-messenger service could design and receive personal email reminder messages from respondent concerning their medication or other matters. Once a visitor registered for Medi-messenger, the reminder messages were automatically emailed from Prozac.com to the subscriber at the email address s/he provided, and according to the schedule established by the subscriber.
4. Subscribers to the Medi-messenger service registered by providing an email address, a password, the text of the reminder message they wanted to receive, and the schedule for sending the reminder messages. (Complaint Exhibit A, pp.1-4). After providing information to register for Medi-messenger, the subscriber was invited to view the Prozac.com “Privacy Statement” via a hyperlink, which was positioned just above the “Submit” and “Reset” buttons. (Complaint Exhibit A, p.4)

5. Respondent has disseminated or has caused to be disseminated privacy policies on Prozac.com and Lilly.com, including but not necessarily limited to the attached Exhibits B and C. These privacy policies contain the following statements regarding the privacy and confidentiality of personal information collected through respondent's Web sites:

A. **“Your Privacy**

This Web site has been created to provide our visitors with information on certain medical conditions. Eli Lilly and Company respects the privacy of visitors to its Web sites, and we feel it is important to maintain our guests' privacy as they take advantage of this resource. As a result, we have developed this privacy code.

* * *

We will use Your Information to respond to requests you may make of us, and from time to time, we may refer to Your Information to better understand your needs and how we can improve our Web sites, products and services. Any and all uses would comply with all applicable laws. We may also use Your Information to contact you. However, the provision of Your Information will only be necessary if you choose to use or receive certain tools or services, such as a newsletter or our medical reminder service.

* * *

Our Web sites have security measures in place, including the use of industry standard secure socket layer encryption (SSL), to protect the confidentiality of any of Your Information that you volunteer; however, to take advantage of this your browser must support encryption protection (found in Internet Explorer release 3.0 and above). These security measures also help us to honor your choices for the use of Your Information.”

Exhibit B: “Prozac.com | Privacy Statement,” http://www.prozac.com/your_privacy.jsp; and https://secure.prozac.com/your_privacy.jsp.

B. **“privacy**

Eli Lilly and Company respects the privacy of visitors to its websites, and we feel it is important to maintain our guests' privacy as they take advantage of this resource. As a result, we have developed this privacy code.

* * *

We will use Your Information to respond to requests you may make of us, and from time to

time, we may refer to Your Information to better understand your needs and how we can improve our Web sites, products and services. Any and all uses would comply with all applicable laws. We may also use Your Information to contact you in connection with your requests.

* * *

Our Web sites have security measures in place, including the use of industry standard secure socket layer encryption (SSL), to protect the confidentiality of any of Your Information that you volunteer; however, to take advantage of this your browser must support encryption protection (found in Internet Explorer release 3.0 and above).”

Exhibit C: “Lilly: Privacy,” <http://www.lilly.com/privacy.html>.

6. On June 27, 2001, at respondent’s direction, an Eli Lilly employee sent an email message to Medi-messenger subscribers announcing the termination of the Medi-messenger service. To do this, the employee created a new computer program to access subscribers’ email addresses and send them the email. The June 27th email disclosed the email addresses of all 669 Medi-messenger subscribers to each individual subscriber by including all of the recipients’ email addresses within the “To:” line of the message. (Complaint Exhibit D, *email addresses redacted from original*). By including the email addresses of all Medi-messenger subscribers within the June 27th email message, respondent unintentionally disclosed personal information provided to it by consumers in connection with their use of the Prozac.com Web site.

7. The June 27th disclosure of personal information resulted from respondent’s failure to maintain or implement internal measures appropriate under the circumstances to protect sensitive consumer information. For example, respondent failed to provide appropriate training for its employees regarding consumer privacy and information security; failed to provide appropriate oversight and assistance for the employee who sent out the email, who had no prior experience in creating, testing, or implementing the computer program used; and failed to implement appropriate checks and controls on the process, such as reviewing the computer program with experienced personnel and pretesting the program internally before sending out the email. Respondent’s failure to implement appropriate measures also violated certain of its own written policies.

8. Through the means described in Paragraph 5, respondent has represented, expressly or by implication, that it employs measures and takes steps appropriate under the circumstances to maintain and protect the privacy and confidentiality of personal information obtained from or about consumers through its Prozac.com and Lilly.com Web sites.

9. In truth and in fact, as described in Paragraphs 6 and 7, respondent has not employed measures and has not taken steps appropriate under the circumstances to maintain and protect the privacy and

confidentiality of personal information obtained from or about consumers through its Prozac.com and Lilly.com Web sites. Therefore, the representation set forth in Paragraph 8 was, and is, false or misleading.

10. 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 , 2002, has issued this complaint against respondent.

By the Commission.

Donald S. Clark
Secretary

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

In the Matter of)	
)	FILE NO. 012 3214
)	
ELI LILLY AND COMPANY,)	AGREEMENT CONTAINING
a corporation.)	CONSENT ORDER
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)	

The Federal Trade Commission has conducted an investigation of certain acts and practices of Eli Lilly and Company, a corporation (“proposed respondent”). Proposed respondent, having been represented by counsel, is willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

IT IS HEREBY AGREED by and between Eli Lilly and Company, by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. Proposed respondent Eli Lilly and Company is an Indiana corporation with its principal office or place of business at Lilly Corporate Center, Indianapolis, Indiana 46285.
2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint.
3. Proposed respondent waives:
 - (a) Any further procedural steps;
 - (b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and
 - (c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.
4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together

with the draft complaint, will be placed on the public record for a period of thirty (30) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondent's address as stated in this agreement by any means specified in Section 4.4(a) of the Commission's Rules shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the draft complaint and consent order. It understands that it may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. “Personally identifiable information” or “personal information” shall mean individually identifiable information from or about an individual consumer including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or a screen name that reveals an individual’s email address; (d) a telephone number; (e) a social security number; (f) an Internet Protocol (“IP”) address or host name that identifies an individual consumer; (g) a persistent identifier, such as a customer number held in a “cookie” or processor serial number, that is combined with other available data that identifies an individual consumer; or (h) or any information that is combined with (a) through (g) above. Provided that, this definition shall not include personally identifiable information about physicians, nurses, or other health care professionals, or their staff, that is collected in connection with such persons’ professional duties.
2. Unless otherwise specified, “respondent” shall mean Eli Lilly and Company, its successors and assigns and its officers, agents, representatives, and employees acting within the scope of their authority on behalf of, or in active concert or participation with, Eli Lilly and Company.
3. “Lilly USA division” shall mean Lilly USA, a division of Eli Lilly and Company, and Lilly USA's successors, assigns, officers, representatives, agents, employees, and other entities responsible for the development, control, support, or oversight of U.S. product or service sales, advertising, or marketing, information management, or information technology. Provided that, the Lilly USA division shall be treated as a corporation under the control of Eli Lilly and Company for the purpose of determining whether any other entity is Lilly USA division’s successor or assign.
4. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondent shall not misrepresent in any manner, expressly or by implication, the extent to which it maintains and protects the privacy or confidentiality of any personally identifiable information collected from or about consumers, in connection with the advertising, marketing, offering for sale or sale, in or affecting commerce, of any pharmaceutical, medical or other

health-related product or service by respondent's Lilly USA division, directly or through any corporation, subsidiary, division, or other entity.

II.

IT IS FURTHER ORDERED that respondent shall establish and maintain an information security program for the protection of personally identifiable information collected from or about consumers in connection with the advertising, marketing, offering for sale, or sale of any pharmaceutical, medical, or other health-related product or service, in or affecting commerce, by respondent's Lilly USA division, directly or through any corporation, subsidiary, division, or other entity. Such program shall consist of:

- A. designating appropriate personnel to coordinate and oversee the program;
- B. identifying reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of personal information, including any such risks posed by lack of training, and addressing these risks in each relevant area of its operations, whether performed by employees or agents, including: (i) management and training of personnel; (ii) information systems for the processing, storage, transmission, or disposal of personal information; and (iii) prevention and response to attacks, intrusions, unauthorized access, or other information systems failures;
- C. conducting an annual written review by qualified persons, within ninety (90) days after the date of service of this order and yearly thereafter, which review shall monitor and document compliance with the program, evaluate the program's effectiveness, and recommend changes to it; and
- D. adjusting the program in light of any findings and recommendations resulting from reviews or ongoing monitoring, and in light of any material changes to its operations that affect the program.

III.

IT IS FURTHER ORDERED that respondent shall for a period of five (5) years after the date of service of this order maintain and upon request make available to the Federal Trade Commission for inspection and copying a print or electronic copy of the following documents relating to

compliance with Parts I and II of this order by respondent's Lilly USA division, directly or through any corporation, subsidiary, division, or other entity:

- A. a sample copy of each different consumer-targeted print, broadcast, cable, or Internet advertisement, promotion, information collection form, Web page, screen, email message, or other document containing any representation regarding the Lilly USA division's collection, use, and security of personal information from or about consumers. Each Web page copy shall be dated and contain the full URL of the Web page where the material was posted online. Electronic copies shall include all text and graphics files, audio scripts, and other computer files used in presenting the information on the Web. Provided, however, that after creation of any Web page or screen in compliance with this order, the Lilly USA division shall not be required to retain a print or electronic copy of any amended Web page or screen to the extent that the amendment does not affect its compliance obligations under this order;
- B. all reports, studies, reviews, audits, audit trails, policies, training materials, and plans, whether prepared by or on behalf of respondent, relating to the Lilly USA division's compliance with the information security program required by Part II of this order; and
- C. any documents, whether prepared by or on behalf of the Lilly USA division, that contradict, qualify, or call into question its compliance with the information security program required by Part II of this order, maintained through reasonable efforts in accordance with a document retention program.

IV.

IT IS FURTHER ORDERED that respondent Eli Lilly and Company, and its successors and assigns, shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities relating to the subject matter of this order. Respondent shall deliver this order to such current personnel within thirty (30) days after the date of service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities.

V.

IT IS FURTHER ORDERED that respondent Eli Lilly and Company, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

VI.

IT IS FURTHER ORDERED that respondent Eli Lilly and Company, and its successors and assigns, shall within one hundred and twenty (120) days after service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order. This report shall include a copy of the initial annual review required by Part II.C of this order.

VII.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Signed this _____ day of _____, 2002.

ELI LILLY AND COMPANY

By: _____
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Senior Vice President and General Counsel
Eli Lilly and Company

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Latham & Watkins
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FEDERAL TRADE COMMISSION

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