



4. When a consumer seeks to make a purchase from a merchant Web site that uses Respondent's software, the software generates shopping cart and check out pages, which collect information provided by the consumer. Such information includes the consumer's name, billing and shipping addresses, phone number, email address, credit card information, and the item and quantity of merchandise selected by the consumer. The software then transmits the customer information to Respondent and notifies the merchant so that the merchant can fulfill the customer's order.
5. Some of the merchants using Respondent's shopping cart software have disseminated or caused to be disseminated various privacy policies on their Web sites. These privacy policies contain statements regarding the use and disclosure of personal information collected through their Web sites. A few examples of these statements are as follows:
  - A. "[ ] is committed to protecting customer privacy. We use the information we collect from you to process orders and to provide an enhanced shopping experience. [ ] does not sell, trade or rent personal information or shopping habits to third parties. Customer account and transaction information, as well as correspondence, is handled with the utmost discretion."
  - B. "PRIVACY POLICY: It's simple. We don't sell, trade, or lend any information on our customers or visitors to anyone."
  - C. "[ ] Pledges and solidly guarantees that all personal information, from any source, that is submitted, gathered, tracked or otherwise obtained or retained in the normal course of online business activity associated with the company's Web site/s, is secure and held confidential at all times from sale, disclosure, rental, and tampering by any known third party. . . ."
  - D. "[ ] is committed to protecting your privacy. . . . We never sell any information to outside parties. We protect your information from unauthorized access. Information you give us is used only to the extent needed to conduct our business and to meet the highest quality service standards for processing, verifying and filling your orders."
6. In January 2003, Respondent began renting to third parties for marketing purposes consumers' personal information collected through shopping cart and check out pages generated by its software at merchant sites. Such personal information includes the name, address, phone number, and purchase history of nearly one million consumers. This personal information was used by third parties to send direct mail and make telemarketing calls to consumers who shopped at merchant sites using the software.

7. Although the shopping cart and check out pages generated by Respondent's software appear to be part of the merchants' sites, the pages do not disclose to consumers that the information entered on them is not subject to the merchant privacy policies or that it will be shared with third parties for marketing purposes. Further, because the shopping cart and check out pages are typically the only pages on the merchants' sites that collect personal information, consumers reasonably expect that the merchants' privacy policies cover information consumers provide on those pages.
8. Respondent also does not adequately inform merchants – in promoting its shopping cart software or at a later time – that it intends to use information collected from merchants' customers in a manner that may be inconsistent with the merchants' privacy policies or that it intends to share the information with third parties for marketing purposes. Although Respondent's online license agreement asserts that "CartManager shall retain full ownership of all data submitted by either Merchant or Purchaser through the CartManager Shopping Cart . . . including, but not limited to name, mailing & shipping address, email address, phone number, dollar amount of purchase, type of purchase and description of purchase," this statement is buried in the middle of the online agreement and does not explain how Respondent intends to use the information or that such use may conflict with the merchants' privacy policies.
9. Through shopping cart software used at merchant Web sites, Respondent has collected personal information from consumers and shared it with third parties knowing that such practices were contrary to merchant privacy policies. Respondent's practices have caused consumers substantial injury that is not offset by countervailing benefits to consumers or competition. Further, because Respondent's practices were not adequately disclosed to merchants or consumers, the injury was not reasonably avoidable.
10. The acts and practices of Respondent as alleged in this complaint constitute unfair acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C § 45(a).

THEREFORE, the Federal Trade Commission this nineteenth day of April, 2005, has issued this complaint against Respondent.

By the Commission.

Donald S. Clark  
Secretary