

I respectfully disagree. Lenovo failed to disclose that VisualDiscovery would act as a man-in-the-middle. However, Lenovo *did* disclose that the software would introduce advertising into consumers' web browsing, although its disclosure could have been better. Furthermore, to the extent ordinary consumers expect anything from advertising software, they likely expect it to affect their web browsing and to be intrusive, as the popularity of ad blocking technology shows. In addition, unlike the man-in-the-middle technique, VisualDiscovery's ad placement and web browsing effects did not introduce gross hazards obviously outside of consumers' ordinary expectations for advertising software. In short, although VisualDiscovery's ad placement and effect on web browsing may have been irritating to many, those features did not make VisualDiscovery unfit for its intended use. Therefore, I do not find Lenovo's silence about those features to be a deceptive omission.

Fortunately, the outcome in this case does not depend on resolving our disagreement on the application of deceptive omission to advertising software. My goal in writing separately is to maintain the clear distinction set forth in *International Harvester* between deceptive failures to disclose and unfair omissions.¹³ When evaluating the legality of a party's silence, we must be careful not to circumvent unfairness's higher evidentiary burden by simply restyling an unfair omission as a deceptive omission.

Statement of Commissioner Terrell McSweeney in the Matter of Lenovo, Inc.

I support the Commission's complaint against Lenovo, but I am troubled by conduct in this case that the Commission fails to challenge. According to the complaint, Lenovo, Inc. preinstalled software on computers that was designed to serve advertisements to consumers while they were browsing Web sites. The software, called VisualDiscovery, acted as a "man-in-the-middle" between the consumers and all of the Web sites with which they communicated. It allegedly

actively contravened the security posture of consumers' computers, leaving them vulnerable both to attack from cyber-criminals and to transmitting personal information across the web to Superfish, Inc. servers. These unfair practices violate the Federal Trade Commission Act and are appropriately challenged by the FTC in Counts II and III of the complaint.

But Lenovo's unlawful conduct went beyond the data security failings alleged in the complaint. The complaint also describes how the software it preinstalled on computers would: (1) Inject pop-up ads every time consumers visited a shopping Web site; and (2) disrupt web browsing by reducing download speeds by almost 25 percent and upload speeds by 125 percent. These facts were not disclosed to consumers and these omissions were deceptive.

Moreover, the FTC alleges that the VisualDiscovery software was designed to be difficult to discover. Consumers were initially made aware of the existence of the VisualDiscovery software via a pop-up window the first time they visited an ecommerce site. But clicking to close that window *opted consumers into the program*. The initial pop-up window failed to disclose that VisualDiscovery would follow the consumers from shopping site to shopping site; slow the performance and functionality of the Web sites they visited; and compromise their security and privacy throughout each online browsing session.

Under Section 5 of the FTC Act, the failure to disclose information necessary to prevent the creation of a false impression is a deceptive practice.¹ A seller's silence may make an implied representation "based on ordinary consumer expectations as to the irreducible minimum performance standards of a particular class of good."² In this case, Lenovo deceptively omitted that VisualDiscovery would alter the very internet experience for which most consumers buy a computer. I believe that if consumers were fully aware of what VisualDiscovery was, how it compromised their system, and

how they could have opted out, most would have decided to keep VisualDiscovery inactive.

This is an exceptionally strong case and clearly articulates how the Commission uses its unfairness tools to protect the data security and privacy of consumers. I support Count I, but believe the FTC should have included additional deceptive conduct alleged in the complaint within the count. The FTC should not turn a blind eye to deceptive disclosures and opt-ins, particularly when consumers' privacy and security are at stake.

[FR Doc. 2017-19385 Filed 9-12-17; 8:45 am]

BILLING CODE 6750-01-P

FEDERAL TRADE COMMISSION

Granting of Requests for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination—on the dates indicated—of the waiting period provided by law and the premerger notification rules. The listing for each transaction includes the transaction number and the parties to the transaction. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

EARLY TERMINATIONS GRANTED JULY 1, 2017 THROUGH JULY 31, 2017

07/03/2017

20171409	G	Quest Diagnostics Incorporated; Med Fusion, LLC; Quest Diagnostics Incorporated.
20171459	G	Synnex Corporation; Datatec Limited; Synnex Corporation.
20171460	G	Datatec Limited; Synnex Corporation; Datatec Limited.

¹³ *International Harvester*, 104 FTC at 1051.

¹ *FTC Policy Statement on Deception*, 103 F.T.C. 174, 175 (1984) (appended to *Cliffdale Assocs., Inc.*, 103 F.T.C. 110 (1984)).

² *Int'l. Harvester Co.*, 104 F.T.C. 949, 1058 (1984).

EARLY TERMINATIONS GRANTED—Continued
JULY 1, 2017 THROUGH JULY 31, 2017

20171483	G	Warburg Pincus Private Equity XII, L.P.; Odyssey Investment Partners Fund IV, L.P.; Warburg Pincus Private Equity XII, L.P.
07/05/2017		
20171470	G	Caerus Operating, LLC; Encana Corporation; Caerus Operating, LLC.
20171480	G	Enerflex Ltd.; Mesa Compression, LLC; Enerflex Ltd.
07/06/2017		
20171464	G	Donuts Inc.; Rightside Group Ltd.; Donuts Inc.
07/10/2017		
20171506	G	Vista Foundation Fund III, L.P.; Francisco Partners III (Domestic AIV), L.P.; Vista Foundation Fund III, L.P.
20171508	G	Gryphon Partners IV, L.P.; ACOF IV CWC AIV Blocked Feeder, L.P.; Gryphon Partners IV, L.P.
20171516	G	Softbank Group Corp.; Alphabet Inc.; Softbank Group Corp.
20171524	G	Vista Foundation Fund III, L.P.; Upserve, Inc.; Vista Foundation Fund III, L.P.
20171533	G	2297984 Ontario Limited; TEGNA Inc.; 2297984 Ontario Limited.
20171538	G	Marquee Brands Partners, LP; BCBG Max Azria Global Holdings, LLC; Marquee Brands Partners, LP.
07/11/2017		
20171468	G	John C. Malone; Liberty Interactive Corporation; John C. Malone.
20171504	G	Sonoco Products Company; Sanfilippo Family SD Trust; Sonoco Products Company.
20171531	G	Tallgrass Equity, LLC; Kinder Morgan, Inc.; Tallgrass Equity, LLC.
07/12/2017		
20171462	G	JANA Nirvana Offshore Fund, Ltd.; Zimmer Biomet Holdings, Inc.; JANA Nirvana Offshore Fund, Ltd.
20171474	G	William P. Foley, II; Black Knight Holdco Corp.; William P. Foley, II.
20171475	G	Thomas H. Lee Parallel Fund VI, L.P.; Black Knight Holdco Corp.; Thomas H. Lee Parallel Fund VI, L.P.
20171476	G	Thomas H. Lee Equity Fund VI, L.P.; Black Knight Holdco Corp.; Thomas H. Lee Equity Fund VI, L.P.
20171477	G	THL Equity Fund VI Investors (BKFS), L.P.; Black Knight Holdco Corp.; THL Equity Fund VI Investors (BKFS), L.P.
20171478	G	THL Equity Fund VI Investors (BKFS) II, L.P.; Black Knight Holdco Corp.; THL Equity Fund VI Investors (BKFS) II, L.P.
20171497	G	Desmarais Family Residuary Trust; Personal Capital Corporation; Desmarais Family Residuary Trust.
20171505	G	Asia-Germany Industry 4.0 Promotion Cross-Border Fund I L.P.; Olympus Growth Fund V, L.P.; Asia-Germany Industry 4.0 Promotion Cross-Border Fund I L.P.
20171518	G	AECOM; Shimmick Construction Company, Inc.; AECOM.
20171532	G	Xinghai Zhang; Ronald Perelman; Xinghai Zhang.
20171535	G	Legrand S.A.; PGPC-Milestone LLC; Legrand S.A.
07/13/2017		
20171195	G	IAC/InterActiveCorp; Angie's List, Inc.; IAC/InterActiveCorp.
20171443	G	Astra-LOGIX Holdings, LLC; Gores Capital Partners III, L.P.; Astra-LOGIX Holdings, LLC.
20171444	G	WAFRA Real Assets & Infrastructure Fund I, L.P.; Gores Capital Partners III, L.P.; WAFRA Real Assets & Infrastructure Fund I, L.P.
20171503	G	Occidental Petroleum Corporation; Hess Corporation; Occidental Petroleum Corporation.
20171529	G	Centerbridge Capital Partners III, L.P.; Clearlake Capital Partners IV, L.P.; Centerbridge Capital Partners III, L.P.
07/14/2017		
20171224	G	Cisco Systems, Inc.; Viptela, Inc.; Cisco Systems, Inc.
20171525	G	Unilever N.V.; Carisa Janes Levitt; Unilever N.V.
20171534	G	True Wind Capital, L.P.; ARI Network Services, Inc.; True Wind Capital, L.P.
20171539	G	AK Steel Holding Corporation; PPHC Holdings, LLC; AK Steel Holding Corporation.
20171542	G	Massimo Scagliarini; Industrial Opportunity Partners, L.P.; Massimo Scagliarini.
20171548	G	Arsenal Capital Partners IV, LP; PolyOne Corporation; Arsenal Capital Partners IV, LP.
20171550	G	Enel S.p.A.; EnerNOC, Inc.; Enel S.p.A.
20171554	G	The Home Depot, Inc.; Compact Power Equipment, Inc.; The Home Depot, Inc.
20171558	G	SoftBank Vision Fund L.P.; Michael G. Rubin; SoftBank Vision Fund L.P.
20171560	G	Mason Wells Buyout Fund IV, LP; King Juice Company, Inc.; Mason Wells Buyout Fund IV, LP.
07/17/2017		
20171487	G	Glenview Capital Partners (Cayman), Ltd.; The Dow Chemical Company; Glenview Capital Partners (Cayman), Ltd.
20171488	G	Larry Robbins; The Dow Chemical Company; Larry Robbins.
20171490	G	Glenview Institutional Partners, L.P.; The Dow Chemical Company; Glenview Institutional Partners, L.P.
20171491	G	Glenview Offshore Opportunity Fund, Ltd.; The Dow Chemical Company; Glenview Offshore Opportunity Fund, Ltd.
20171492	G	GCM Equity Partners LP; The Dow Chemical Company; GCM Equity Partners LP.
20171553	G	Warburg Pincus Private Equity XII, L.P.; Sterling Investment Partners II, L.P.; Warburg Pincus Private Equity XII, L.P.

EARLY TERMINATIONS GRANTED—Continued
JULY 1, 2017 THROUGH JULY 31, 2017

07/18/2017

20171498	G	Fairholme Funds, Inc.; The St. Joe Company; Fairholme Funds, Inc.
20171527	G	Letterone Investment Holdings S.A.; Parexel International Corporation; Letterone Investment Holdings S.A.
20171536	G	EQT Corporation; Rice Energy Inc.; EQT Corporation.
20171540	G	Macquarie Group Limited; Cargill Incorporated; Macquarie Group Limited.
20171563	G	Odyssey Investment Partners Fund V, L.P.; CPI International Holding LLC; Odyssey Investment Partners Fund V, L.P.

07/19/2017

20171522	G	Third Point Partners Qualified L.P.; Nestle S.A.; Third Point Partners Qualified L.P.
20171566	G	Olympus Growth Fund V, L.P.; Southern Imperial, Inc., Employee Stock Ownership Trust; Olympus Growth Fund V, L.P.

07/20/2017

20170539	S	Baxter International Inc.; Mr. Arjun Handa; Baxter International Inc.
20171541	G	ScanSource, Inc.; Kent B. Stryker; ScanSource, Inc.
20171551	G	Teekay Corporation; Tanker Investments Ltd.; Teekay Corporation.
20171561	G	TPG Growth III DE AIV II, L.P.; Old Ironside Energy Fund II–A, LP; TPG Growth III DE AIV II, L.P.
20171562	G	Littlejohn Fund V, L.P.; H.I.G. BBC Holdings, LLC; Littlejohn Fund V, L.P.

07/21/2017

20170913	S	Vertex Pharmaceuticals Incorporated; Concert Pharmaceuticals, Inc.; Vertex Pharmaceuticals Incorporated.
20171559	G	CP VI Raptor Holdings, L.P.; Snow Phipps II AIV, L.P.; CP VI Raptor Holdings, L.P.
20171569	G	Trilantic Capital Partners V (N.A.) L.P.; BP Ortholite LLC; Trilantic Capital Partners V (N.A.) L.P.
20171570	G	Logitech International S.A.; Mill Road Capital II, L.P.; Logitech International S.A.
20171573	G	Kyocera Corporation; Wynnchurch Capital Partners II, L.P.; Kyocera Corporation.
20171574	G	WPH Holdings II, LLC ; Olympus Growth Fund V, L.P. ; WPH Holdings II, LLC
20171575	G	Snow Phipps III, L.P.; Industrial Growth Partners IV, L.P.; Snow Phipps III, L.P.
20171576	G	DS Smith plc; Merpas Co. S.a.r.l.; DS Smith plc.
20171583	G	Letterone Investment Holdings S.A.; Mill Luxembourg I S.a.r.l.; Letterone Investment Holdings S.A.
20171589	G	3i Group plc; Century Park Capital Partners II, L.P.; 3i Group plc.

07/24/2017

20171404	G	CoreLogic, Inc.; Serent Capital II, L.P.; CoreLogic, Inc.
20171544	G	JANA Nirvana Offshore Fund, Ltd.; EQT Corporation; JANA Nirvana Offshore Fund, Ltd.
20171545	G	JANA Partners Qualified, L.P.; EQT Corporation; JANA Partners Qualified, L.P.
20171596	G	Solar Capital Ltd.; NEF Holdings, LLC; Solar Capital Ltd.

07/25/2017

20171519	G	GTT Communications, Inc.; F. Francis Najafi; GTT Communications, Inc.
20171547	G	Vistra Energy Corp.; Koch Industries, Inc.; Vistra Energy Corp.
20171585	G	USI Advantage Corp.; Wells Fargo & Company; USI Advantage Corp.
20171586	G	Monomoy Capital Partners III, L.P.; West Marine, Inc.; Monomoy Capital Partners III, L.P.
20171590	G	CK William UK Holdings Ltd; Granger Energy Holdings, LLC; CK William UK Holdings Ltd.
20171597	G	Verisk Analytics, Inc.; Primus Capital Fund VI, LP; Verisk Analytics, Inc.

07/26/2017

20171287	G	Motorola Solutions, Inc.; Kodiak Networks, Inc.; Motorola Solutions, Inc.
20171523	G	Cedars-Sinai Health System; Torrance Health Association; Cedars-Sinai Health System.
20171579	G	Sycamore Partners II, L.P.; Staples, Inc.; Sycamore Partners II, L.P.
20171581	G	ACOF V DP–A AIV LP; DMG Practice Management Solutions LLC; ACOF V DP–A AIV LP.

07/27/2017

20171593	G	H.I.G. Middle Market LBO Fund II, L.P.; Charles K. Narang; H.I.G. Middle Market LBO Fund II, L.P.
20171595	G	EQT VII (No. 1) Limited Partnership; Arsenal MBDD Holding, LP; EQT VII (No. 1) Limited Partnership.

07/28/2017

20171599	G	WCF APF Ventures LLC; Trident V, L.P.; WCF APF Ventures LLC.
20171600	G	MasterCard Incorporated; Akli Adjaoute; MasterCard Incorporated.
20171614	G	TowerBrook Investors IV (Onshore), L.P.; Aernnova Aerospace Corporation, S.A.; TowerBrook Investors IV (Onshore), L.P.
20171620	G	AP VIII Constellation Holdings, L.P.; ClubCorp Holdings, Inc.; AP VIII Constellation Holdings, L.P.
20171623	G	MTS Health Investors IV, L.P.; Private Equity Holdings Fund LP; MTS Health Investors IV, L.P.
20171624	G	Larry Robbins; DowDuPont Inc.; Larry Robbins.
20171625	G	Glenview Offshore Opportunity Fund, Ltd.; DowDuPont Inc.; Glenview Offshore Opportunity Fund, Ltd.
20171627	G	Glenview Institutional Partners, L.P.; DowDuPont Inc.; Glenview Institutional Partners, L.P.
20171628	G	Glenview Capital Partners (Cayman), Ltd.; DowDuPont Inc.; Glenview Capital Partners (Cayman), Ltd.

EARLY TERMINATIONS GRANTED—Continued
JULY 1, 2017 THROUGH JULY 31, 2017

20171629	G	GCM Equity Partners LP; DowDuPont Inc.; GCM Equity Partners LP.
20171637	G	Church & Dwight Co., Inc.; Pik Holdings, Inc.; Church & Dwight Co., Inc.

07/31/2017

20171349	G	Rayonier Advanced Materials Inc.; Tembec Inc.; Rayonier Advanced Materials Inc.
20171571	G	Brynwood Partners VII L.P.; Dorothy M. Lenore; Brynwood Partners VII L.P.
20171578	G	Reyes Holdings, L.L.C.; The Coca-Cola Company; Reyes Holdings, L.L.C.

FOR FURTHER INFORMATION CONTACT:

Theresa Kingsberry, Program Support Specialist, Federal Trade Commission Premerger Notification Office, Bureau of Competition, Room CC-5301, Washington, DC 20024, (202) 326-3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

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BILLING CODE 6750-01-P

FEDERAL TRADE COMMISSION

[File No. 1623184]

CSGO Lotto, Inc.; Analysis 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 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 October 10, 2017.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the

SUPPLEMENTARY INFORMATION section below. Write: “In the Matter of CSGO Lotto, Inc., File No. 1623184” on your comment, and file your comment online at <https://ftcpublic.commentworks.com/ftc/csgolottoconsent> by following the instructions on the web-based form. If you prefer to file your comment on paper, write “In the Matter of CSGO Lotto, Inc., File No. 1623184” 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: Michael Osteheimer (202-326-2699), 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 a 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 September 7, 2017), on the World Wide Web, at <https://www.ftc.gov/news-events/commission-actions>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before October 10, 2017. Write “In the Matter of CSGO Lotto, Inc., File No. 1623184” 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 Web site, at <https://www.ftc.gov/policy/public-comments>.

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/csgolottoconsent> 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 Web site.

If you prefer to file your comment on paper, write “In the Matter of CSGO Lotto, Inc., File No. 1623184” 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. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC Web site at <https://www.ftc.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else’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, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential”—as provided by 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)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies