

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

COMMISSIONERS: **Lina M. Khan, Chair**
 Rebecca Kelly Slaughter
 Alvaro M. Bedoya
 Melissa Holyoak
 Andrew Ferguson

In the Matter of

INTELLIVISION TECHNOLOGIES CORP.

DECISION AND ORDER

DOCKET NO. C-

DECISION

The Federal Trade Commission (“Commission”) initiated an investigation of certain acts and practices of the Respondent named in the caption. The Commission’s Bureau of Consumer Protection (“BCP”) prepared and furnished to Respondent a draft Complaint. BCP proposed to present the draft Complaint to the Commission for its consideration. If issued by the Commission, the draft Complaint would charge Respondent with violations of the Federal Trade Commission Act.

Respondent and BCP thereafter executed an Agreement Containing Consent Order (“Consent Agreement”). The Consent Agreement includes: 1) statements by Respondent that it neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Decision and Order, and that only for purposes of this action, it admits the facts necessary to establish jurisdiction; and 2) waivers and other provisions as required by the Commission’s Rules.

The Commission considered the matter and determined that it had reason to believe that Respondent has violated the Federal Trade Commission Act, and that a Complaint should issue stating its charges in that respect. The Commission accepted the executed Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments. The Commission duly considered any comments received from interested persons pursuant to Section 2.34 of its Rules, 16 C.F.R. § 2.34. Now, in further conformity with

the procedure prescribed in Rule 2.34, the Commission issues its Complaint, makes the following Findings, and issues the following Order:

Findings

1. Respondent is a Delaware corporation with its principal office or place of business at 6203 San Ignacio Avenue, San Jose, California 95119.
2. The Commission has jurisdiction over the subject matter of this proceeding and over Respondent, and the proceeding is in the public interest.

ORDER

Definitions

For the purposes of this Order, the following definitions apply:

1. “Facial Recognition Technology” means (a) the automated or semi-automated process that can be used, singly or in combination with other data, to verify, authenticate, or ascertain a person’s identity based on the characteristics of their face, singly or in combination with other data, including identification of individuals or groups; or (b) the automated or semi-automated process by which characteristics of a person’s face, singly or in combination with other data, are analyzed for inferences about an individual’s sentiment, emotional state, state of mind, personality, character, and other qualities including but not limited to veracity, state of attentiveness, and mood; or (c) any similar process that is a combination of (a) and (b) above.
2. “Liveness” means that a living subject is present at the point of capture.
3. “Respondent” means IntelliVision Technologies Corp., a corporation, and its successors and assigns.

Provisions

I.

Prohibited Misrepresentations

IT IS ORDERED that Respondent, and Respondent’s officers, agents, employees, and attorneys and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with advertising, promotion, offering for sale, sale or distribution of Facial Recognition Technology, must not make any misrepresentation, expressly or by implication:

- a. About the accuracy or efficacy of its Facial Recognition Technology;

- b. About the comparative performance of its Facial Recognition Technology with respect to individuals of different genders, ethnicities, and skin tones, or reducing or eliminating differential performance based on such factors; or
- c. About the accuracy or efficacy of its Facial Recognition Technology with respect to detecting spoofing or otherwise determining Liveness.

II.

Prohibition on Unsubstantiated Accuracy and Bias Claims

IT IS FURTHER ORDERED that Respondent, and Respondent's officers, agents, employees, and attorneys and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with advertising, promotion, offering for sale, sale or distribution of Facial Recognition Technology, must not make any representation, expressly or by implication, about the effectiveness, accuracy, or lack of bias of such Facial Recognition Technology, or about the effectiveness of such Facial Recognition Technology at detecting spoofing, unless Respondent possesses and relies upon competent and reliable testing that substantiates the representation at the time the representation is made. To satisfy this requirement Respondent must:

- A. Possess and rely upon competent and reliable testing of the Facial Recognition Technology. For the purposes of this Order, competent and reliable testing shall mean testing that is based on the expertise of professionals in the relevant area, and that (1) has been conducted and evaluated in an objective manner by qualified persons and (2) is generally accepted by experts in the profession to yield accurate and reliable results; and
- B. Document all such testing including: the dates and results of all tests; the method and methodology used; the source and number of images used; the source and number of different people in the images; whether such testing includes Liveness tests; any technique(s) used to modify the images to create different angles, different lighting conditions or other modifications; demographic information collected on images used in testing if applicable; information about the skin tone collected on images used in testing if applicable; and any information that supports, explains, qualifies, calls into question or contradicts the results.

III.

Acknowledgements of the Order

IT IS FURTHER ORDERED that Respondent obtain acknowledgments of receipt of this Order:

- A. Respondent, within 10 days after the effective date of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For 20 years after the issuance date of this Order, Respondent for any business that such Respondent is the majority owner or controls directly or indirectly must deliver a copy of

this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees having managerial responsibilities for conduct related to the subject matter of the Order and all agents and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Provision titled Compliance Reports and Notices. Delivery must occur within 10 days after the effective date of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

- C. From each individual or entity to which Respondent delivered a copy of this Order, Respondent must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

IV. Compliance Reports and Notices

IT IS FURTHER ORDERED that Respondent make timely submissions to the Commission:

- A. One year after the issuance date of this Order, Respondent must submit a compliance report, sworn under penalty of perjury, in which Respondent must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission, may use to communicate with Respondent; (b) identify all of Respondent's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales; (d) describe in detail whether and how Respondent is in compliance with each provision of this Order, including a discussion of all of the changes Respondent made to comply with the Order; and (e) provide a copy of each Acknowledgment of the Order obtained pursuant to this Order, unless previously submitted to the Commission.
- B. Respondent must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following: (a) any designated point of contact; or (b) the structure of any entity that Respondent has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.
- C. Respondent must submit notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against Respondent within 14 days of its filing.
- D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____" and supplying the date, signatory's full name, title (if applicable), and signature.

- D. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: In re IntelliVision Technologies Corp.

**V.
Recordkeeping**

IT IS FURTHER ORDERED that Respondent must create certain records for 15 years after the issuance date of the Order, and retain each such record for 5 years. Specifically, Respondent must create and retain the following records:

- A. Accounting records showing the revenues from all goods or services sold, the costs incurred in generating those revenues, and resulting net profit or loss;
- B. Personnel records showing, for each person providing services in relation to any aspect of the Order, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. Copies or records of all consumer complaints and refund requests related to any representation covered by this Order, whether received directly or indirectly, such as through a third party, and any response;
- D. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission;
- E. A copy of each unique advertisement or other marketing material making a representation subject to this Order;
- F. Records and documentation of all testing performed or retained pursuant to Part II of this Order. *Provided however*, that if Respondent possesses and relies on competent and reliable third-party testing, in whole or in part, to comply with Part II of this Order and Respondent is unable through reasonable means to obtain and retain all of the documentation required under Part II.B, Respondent shall retain all reasonably available information;
- G. For 5 years from the date of the last dissemination of any representation covered by this Order:
 - 1. all materials that were relied upon in making the representation; and

2. all tests, studies, analysis, demonstrations, other research or other such evidence in Respondent's possession, custody, or control that contradicts, qualifies, or otherwise calls into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations;
- H. For 5 years from the date received, copies of all subpoenas and other communications with law enforcement, if such communications relate to Respondent's compliance with this Order; and
- I. For 5 years from the date created or received, all records, whether prepared by or on behalf of Respondent, that demonstrate non-compliance or tend to show any lack of compliance by Respondent with this Order.

VI. Compliance Monitoring

IT IS FURTHER ORDERED that, for the purpose of monitoring Respondent's compliance with this Order:

- A. Within 10 days of receipt of a written request from a representative of the Commission, Respondent must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury, and produce records for inspection and copying.
- B. For matters concerning this Order, representatives of the Commission are authorized to communicate directly with Respondent. Respondent must permit representatives of the Commission to interview anyone affiliated with Respondent who has agreed to such an interview. The interviewee may have counsel present.
- C. The Commission may use all other lawful means, including posing through its representatives as consumers, suppliers, or other individuals or entities, to Respondent or any individual or entity affiliated with Respondent, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

VII. Order Effective Dates

IT IS FURTHER ORDERED that this Order is final and effective upon the date of its publication on the Commission's website (ftc.gov) as a final order. This Order will terminate 20 years from the date of its issuance (which date may be stated at the end of this Order, near the Commission's seal), or 20 years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying settlement) in federal court alleging any violation of this Order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Provision in this Order that terminates in less than 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 Provision.

Provided, further, that if such complaint is dismissed or a federal court rules that 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 Provision 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.

By the Commission.

April J. Tabor
Secretary

SEAL:
ISSUED: