

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

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)  
**In the Matter of** )  
)  
**GATEWAY LEARNING CORP.,** )  
**a corporation.** )  
)  
\_\_\_\_\_)

**DOCKET NO.**

**COMPLAINT**

The Federal Trade Commission, having reason to believe that Gateway Learning Corporation, 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 Gateway Learning Corporation is a Delaware corporation with its principal office or place of business at 2900 South Harbor Boulevard, Suite 202, Santa Ana, CA 92704.
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 markets and sells products designed for children who are learning math and reading under the “Hooked on Phonics” brand name and trademark. Since at least 2000, Respondent has marketed its products to parents and teachers through the Internet at its Web site, [www.hop.com](http://www.hop.com) (the “Gateway Learning Web site”).
4. Respondent collects personal information from parents who visit the Gateway Learning Web site and purchase Respondent’s products online. This personal information includes the parent’s first and last name, billing address, shipping address, phone number, email address, purchase history, and his or her child’s age and gender.
5. Since at least 2000, Respondent has disseminated or has caused to be disseminated various privacy policies on the Gateway Learning Web site, including but not necessarily limited to the attached Exhibit A, containing the following statements regarding the privacy and confidentiality of personal information collected through Respondent’s Web site:

## **Our Promise of Privacy**

We at Gateway Learning Corporation are committed to protecting the privacy of our visitors, and we treat any information you share with discretion, care and respect. This notice describes our privacy policy for the Hooked on Phonics Web site (“Site”).

### **Do we share your personally identifiable information with third parties?**

We do not sell, rent or loan any personally identifiable information regarding our consumers with any third party unless we receive a customer’s explicit consent. We do share information with third parties that help us run our operations or provide services to customers (e.g., credit card processing and shipping companies), but only to the extent necessary to provide these services.

\* \* \*

### **What about children’s privacy?**

The Site does not sell products for purchase by children; we sell children’s products for purchase by adults. Children under 13 years of age may not submit personal information without the consent of their parents. We do not provide any personally identifiable information about children under 13 years of age to any third party for any purpose whatsoever.

\* \* \*

### **Will this policy change?**

If at some future time there is a material change to our information usage practices that affect your personally identifiable information, we will notify you of the relevant changes on this Site or by e-mail. You will then be able to opt-out of this information usage by sending an e-mail to: [webmaster@hop.com](mailto:webmaster@hop.com). You should also check this privacy policy for changes.

Exhibit A, Gateway Learning Web Site Privacy Policy, December 6, 2001 (emphasis in original).

6. In April 2003, Respondent began renting personal information provided by consumers on the Gateway Learning Web site, including first and last name, address, phone number, and purchase history, without seeking or receiving any form of consent from such consumers. As part of the rental, Respondent also provided the age range (0-5 years old,

2-5 years old, and 6-10 years old) and gender of consumers' children for use by marketers in targeting parents. This personal information was used by third parties to send direct mail and make telemarketing calls to Gateway's online customers.

7. On June 20, 2003, Respondent posted on its Web site a revised privacy policy, attached hereto as Exhibit B. The June 20, 2003, privacy policy contained the same statements regarding children's privacy and policy changes as the previous policy, and the following revised statement regarding the sharing of personal information collected through Respondent's Web site:

**Our Promise of Privacy**

\* \* \*

**Do we share your personally identifiable information with third parties?**

From time to time, we may provide your name, address and phone number (not your e-mail address) to reputable companies whose products or services you may find of interest. If you do not want us to share this information with these companies, please write to us at: Gateway Learning Corporation, 2900 South Harbor Blvd., Suite 202, Santa Ana, CA 92704, call 1-800-544-7323 or e-mail us at [webmaster@hop.com](mailto:webmaster@hop.com) with the word do-not-share in the subject line.

Exhibit B, Gateway Learning Web Site Privacy Policy, June 20, 2003 (emphasis in original).

8. When Respondent posted the revised privacy policy, it did not take any additional steps to alert consumers that it had changed its privacy policy to permit third-party sharing of consumers' personal information. Respondent continued to rent to third parties personal information collected on the Gateway Learning Web site before June 20, 2003, including information about consumers' children.
9. On or about July 1, 2003, Respondent temporarily suspended rental of any customer data collected on its Web site. Prior to that date, Respondent had rented personal information provided by its online customers, all of whom had provided personal information under a privacy policy that stated that Respondent "do[es] not sell, rent or loan" personal information (see Exhibit A). Respondent earned approximately \$4,608 from the rental orders.

10. On July 17, 2003, Respondent posted on its Web site a further revised privacy policy, attached hereto as Exhibit C. Respondent also added the phrase “(updated July 17, 2003)” to the hyperlink for the revised policy. The revised policy contained the same statement about policy changes as the previous policies, and the following revised statements regarding children’s privacy and the sharing of personal information collected through Respondent’s Web site:

**Our Promise of Privacy**

We at Gateway Learning Corporation are committed to protecting the privacy of our customers, and we treat any information you share with discretion, care and respect. This notice describes Gateway Learning Corporation’s privacy policy for information we collect from individuals both online (on our website) and offline (such as by mail or telephone).

\* \* \*

**Do we disclose your personally identifiable information to third parties?**

From time to time, we may provide your name, address and telephone number (not your e-mail address) to reputable companies whose products or services you may find of interest. If you do not want us to disclose this information to these companies, please write to us at: Gateway Learning Corporation, 2900 South Harbor Blvd., Suite 202, Santa Ana, CA 92704, call 1-800-544-7323 or e-mail us at do-not-rent@hop.com with your full name in the subject line. Please be sure to include your first name, last name, address, city, state, zip code, and phone number to ensure we can process your request. We will process your request promptly. Please be aware that you may receive another contact before your name removal takes effect. We regret any inconvenience this may cause.

\* \* \*

**What about children’s privacy?**

The Site is not targeted to children, and we do not knowingly collect personally-identifiable information from children under the age of 13 on this site. We do not sell products for purchase by children; we sell children’s products for purchase by adults. This site is entirely aimed at adults.

Exhibit C, Gateway Learning Web Site Privacy Policy, July 17, 2003 (emphasis in original).

11. Through the means described in Paragraph 5, Respondent has represented, expressly or by implication, that:
  - A. Respondent would not sell, rent, or loan to third parties any personal information collected from consumers on the Gateway Learning Web site unless it received consumers' explicit consent.
  - B. Respondent would not provide to any third party for any purpose any personal information about children under the age of thirteen.
12. In truth and in fact:
  - A. Respondent did rent to third parties personal information collected from consumers without receiving consumers' explicit consent.
  - B. Respondent did provide to third parties personal information about children under the age of thirteen, specifically, age range (0-5 years old, 2-5 years old, and 6-10 years old), gender, and parent's name and address.

Therefore, the representations set forth in Paragraph 11 were false or misleading.

13. As described in Paragraphs 7 - 9, Respondent posted a revised privacy policy containing material changes to its practices that were inconsistent with Respondent's original promise to consumers. Respondent retroactively applied such changes to personal information it had previously collected from consumers. Respondent's retroactive application of its revised privacy policy caused or is likely to cause substantial injury to consumers that is not outweighed by countervailing benefits to consumers or competition and is not reasonably avoidable by consumers. The practice was, and is, an unfair act or practice.
14. Through the means described in Paragraph 5, Respondent has represented, expressly or by implication, that Respondent would notify consumers of material changes to its information practices.
15. In truth and in fact, Respondent did not notify consumers of material changes to its information practices. Instead, Respondent posted a revised privacy policy on its Web site without any indication that the policy had materially changed or what aspects of the policy had changed. Therefore, the representation set forth in Paragraph 14 was, and is, false or misleading.
16. The acts and practices of Respondent as alleged in this complaint constitute unfair and

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                      , 2004, has issued this complaint against Respondent.

By the Commission.

Donald S. Clark  
Secretary



1. Respondent Gateway Learning Corporation is a Delaware corporation with its principal office or place of business at 2900 South Harbor Boulevard, Suite 202, Santa Ana, CA 92704.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

## 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 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) 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; or (g) any other information from or about an individual that is combined with any of (a) through (f) above.
2. Unless otherwise specified, “Respondent” shall mean Gateway Learning Corporation and its successors and assigns and its officers, and its agents, representatives, and employees.
3. “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, directly or through any corporation, subsidiary, division, or other device, in connection with the collection of personal information from or about an individual, shall not misrepresent in any manner, expressly or by implication:

- A. That Respondent will not sell, rent, or loan to third parties such personal information;
- B. That Respondent will not provide to any third party personal information about children under the age of thirteen;

- C. The manner by which Respondent will notify consumers of changes to its privacy policy; or
- D. The manner in which Respondent will collect, use, or disclose personal information.

II.

IT IS FURTHER ORDERED that Respondent, directly or through any corporation, subsidiary, division, or other device, shall not disclose to any third party any personal information collected on the [www.hop.com](http://www.hop.com) Web site prior to the date Gateway posted its revised privacy policy permitting third-party sharing (June 20, 2003), unless Respondent obtains the express affirmative (“opt-in”) consent of the consumers to whom such personal information relates.

III.

IT IS FURTHER ORDERED that Respondent, in connection with the posting of any privacy policy that contains a material change from the previous version of the policy, shall not apply such changes to information collected from or about consumers before the date of the posting, unless Respondent obtains the express affirmative (“opt-in”) consent of the consumers to whom such personal information relates.

IV.

IT IS FURTHER ORDERED that within five (5) days of the date of service of this Order, Respondent, its successors and assigns, shall pay \$4,608 to the United States Treasury as disgorgement. Such payment shall be by cashier’s check or certified check made payable to the Treasurer of the United States. In the event of any default in payment, which default continues for more than ten (10) days beyond the due date of payment, Respondent shall also pay interest as computed under 28 U.S.C. § 1961, which shall accrue on the unpaid balance from the date of default until the date the balance is fully paid.

V.

IT IS FURTHER ORDERED that respondent Gateway Learning Corporation and its successors and assigns shall, for a period of five (5) years after the date of issuance of this Order, maintain and upon request make available to the Federal Trade Commission for inspection and copying a print or electronic copy of all documents demonstrating their compliance with the terms and provisions of this Order, including, but not limited to:

- A. a sample copy of each different privacy statement or communication relating to the collection of personally identifiable information containing representations about how personally identifiable information will be used or disclosed. 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, Respondent 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 Respondent's compliance obligations under this Order;

- B. a sample copy of each different document relating to any attempt by Respondent to obtain the express affirmative ("opt-in") consent of consumers and copies of any documents demonstrating such consent provided by consumers, as required by Parts II and III of this Order; and
- C. all invoices, communications, and records relating to the disclosure of personally identifiable information to third parties.

## VI.

IT IS FURTHER ORDERED that respondent Gateway Learning Corporation 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 with respect 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.

## VII.

IT IS FURTHER ORDERED that respondent Gateway Learning Corporation and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) 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 a respondent learns less than thirty (30) days prior to the date such action is to take place, the 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.

VIII.

IT IS FURTHER ORDERED that respondent Gateway Learning Corporation and its successors and assigns shall, within sixty (60) 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 it has complied with this Order.

IX.

This Order will terminate on September 10, 2024, 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 a 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.

By the Commission.

Donald S. Clark  
Secretary

SEAL

ISSUED: September 10, 2004