

**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
	)	
	)	

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 This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1)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: \_\_\_\_\_  
REBECCA O. KENDALL  
Senior Vice President and General Counsel  
Eli Lilly and Company

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KAREN E. SILVERMAN  
Latham & Watkins  
Counsel for Respondent Eli Lilly and Company

**FEDERAL TRADE COMMISSION**

\_\_\_\_\_  
MAMIE KRESSES  
Counsel for the Federal Trade Commission

DEAN C. FORBES  
Counsel for the Federal Trade Commission



APPROVED:

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MARY KOELBEL ENGLE  
Acting Associate Director  
Division of Advertising Practices

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J. HOWARD BEALES, III  
Director  
Bureau of Consumer Protection