

CLAIM UNDER ARTICLE 77(1) OF THE GENERAL DATA PROTECTION REGULATION

noyb case n°C-20/19

1. FACTS

1.1 Data Controllers / Defendants

1. This complaint is directed against:
2. CDISCOUNT, a public limited company registered in the Bordeaux Trade and Companies Register under number 424 059 822, whose registered office is located at 120-126 quai de Bacalan 33067 Bordeaux Cedex, France (hereinafter "CDISCOUNT"), as a supplier of the website "CDISCOUNT.com"
3. And
4. Facebook Ireland Limited, a foreign company not registered in a French Trade and Companies Register, whose registered office is located at 4 Grand Canal Square, 99136 Dublin, Ireland (hereinafter "FACEBOOK"), as a provider of "Facebook.com".
5. In their respective capacities as controllers or joint controllers as may be decided by the CNIL.

1.2 Data Subject / Applicant

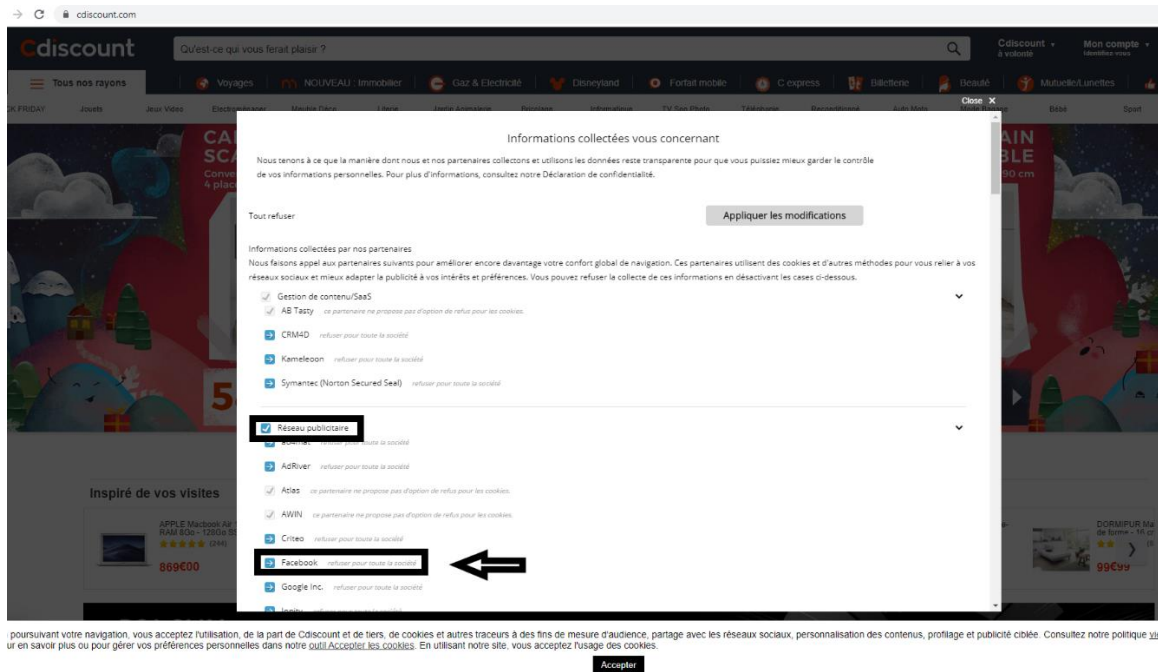
6. Applicant: Mrs [REDACTED], as a user of the online sales platform made available by CDISCOUNT (hereinafter the Data Subject).
7. The Data Subject has mandated us (*noyb* - European Centre for Digital Rights) to represent them in accordance with Article 80, paragraph 1 of the General Data Protection Regulations (hereinafter GDPR) (Exhibit n°1).

1.3 The use of cookies and other tracking devices by CDISCOUNT

8. CDISCOUNT uses cookies and other tracking devices "*for audience measurement, sharing with social networks, content personalization, profiling and targeted advertising*". In this context, CDISCOUNT deploys on CDiscount.com a cookie banner developed by the *Consent Management Platform* (CMP) Evidon, Inc. (hereinafter EVIDON) (Exhibit 2). This CMP takes part in the *transparency and consent framework* (TCF) of the *Interactive Advertising Bureau* (IAB). This cookie banner allows users to "manage [their] personal preferences" using the "Accept cookies" tool.

1.4 FACEBOOK as a CDISCOUNT business partner

9. As part of its activity, CDISCOUNT uses a number of business partners who use "*cookies and other methods to link [the Data Subject] to [his] social networks and better adapt advertising to[his] interests and preferences*" (Exhibit n°3). The "*Accept cookies*" tool accessible from the cookie banner deployed on the CDiscount.com website effectively lists 103 partners ranked according to their industry sectors, covering no less than 19 sectors such as advertising networks, retargeting companies, advertising servers or social media. FACEBOOK appears prominently three times: once under the category "*advertising networks*" and twice under the category "*social media*", as shown in the screenshot below.



10. It is in this context that FACEBOOK sets cookies on the terminal equipment of users of the Cdiscount.com site.

1.5 The expression of a clear choice by the Data Subject

11. On December 2, 2019, the Data Subject deleted all their browsing data before visiting the CDISCOUNT website using the Chrome browser by entering the URL CDISCOUNT.com directly in the navigation bar of the latter.
12. Not wishing to consent to the installation of cookies on their terminal equipment, the Data Subject used the "Accept cookies" tool to ensure that their choice would be taken into account.
13. In addition to allowing Cdiscount.com users to discover the identity of CDISCOUNT's business partners, this tool also offers them the possibility to "refuse the collection of [their] [personal] information by deactivating the [boxes provided for this purpose]" (see paragraph 9 to this effect).
14. Each of the industry sectors listing CDISCOUNT's partners is assigned a pre-checked box ("opt-out"). The partners listed fall into two categories regarding the refusal to set cookies. Some partners make it impossible to refuse the placement of cookies by using a greyed pre-checked box with the inscription "this partner does not offer any opt-out option for cookies ". Others allow the user to express their refusal ("opt-out") by unchecking a dedicated box followed by the inscription "refuse for the whole company" (Exhibit n°4).
15. Thus, it seems that the authorization to install cookies on users' terminal equipment is almost systematically given by default for each business partner of CDISCOUNT.
16. Nevertheless, the "Accept Cookies" tool offer the user the possibility to refuse the installation of any cookie thanks to the "Refuse All" ("opt-out") link, which appears above the list of the Data Controller's business partners (Exhibit n°5).
17. The Data Subject clicked on this link and thereby **explicitly refused all cookies**.

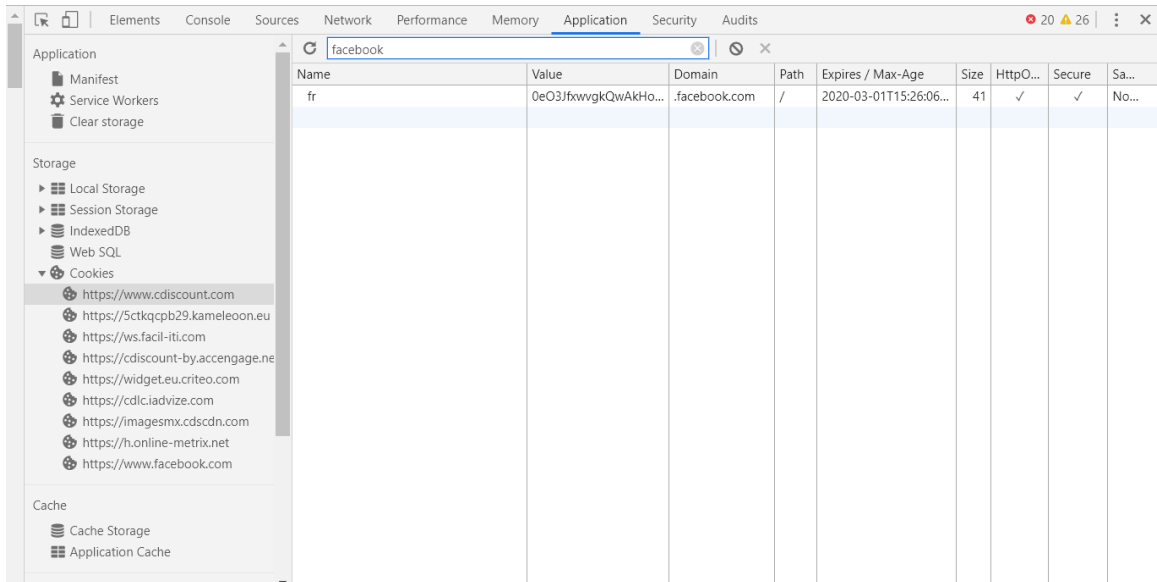
18. A grey strip "*Refuse... Refused*" was then displayed on the screen (Exhibit n°6) then the tool "*Accept cookies*" disappeared, leaving the Data Subject on the home page of the Cdiscount.com site. The cookie banner then faded out a few seconds later as soon as the Data subject started scrolling the page and clicked subsequently on the link "*Cyber Monday*" within the top menu bar of the welcoming page (Exhibit n°7).
19. Consequently, there was every reason to believe that both CDISCOUNT and its partners had effectively taken into account the wishes of the Data Subject and that no cookies or other trackers requiring the consent of the Data Subject would have been installed on their terminal equipment.

1.6 The transfer of an alleged authorization by the Data Subject to install cookies to 431 companies

20. "*Cookie Glasses*" is a browser extension developed by researchers at Inria (<https://www-sop.inria.fr/members/Nataliia.Bielova/cookiebanners/>) that makes it possible to detect vendors who have been authorized to place cookies on a given terminal equipment and the purposes of the tracking technologies these vendors were allowed to set for any data controller who takes part in the IAB's Transparency and Consent Framework (link to the github repository of the extension: <https://github.com/Perdu/Cookie-Glasses>). Using the extension "*Cookie Glasses*", the Data Subject found that despite her opposition to the placement of any cookies and other trackers, Cdiscount has sent signals that falsely claim she has consent tracking to no fewer than 431.
21. The number of 431 vendors also contrasts very strongly with the 102 partners listed in the "*Accept Cookies*" tool (Exhibit n°8). It seems Cdiscount does not only send incorrect consent signals, but also sends personal information to **far more** vendors than listed in the cookie banner.
22. For example, while Vectaury is not included in CDISCOUNT's list of trading partners, it is included in the list of vendors who have been authorised to set cookies on the Data Subject's terminal equipment, as identified by the Data Subject using the "*Cookie Glasses*" extension (Exhibit n°9). Therefore, even if the Data Subject has not been able to express their refusal to the installation of cookies on their terminal by this company, it is possible that following the visit to the CDISCOUNT site, it is likely that Vectaury received a "consent" signal to do so. In addition, the same company states in its privacy policy that it "*collects mobile device user data, including (...) to sell targeted ads*" (Exhibit n°10). Thus, the placement of cookies by Vectaury could result in the processing of personal data on the Data Subject without the Data Subject's consent.
23. Therefore, even if the Data Subject has clearly stated their refusal to install cookies and other trackers to CDISCOUNT, the company has nevertheless stored their authorization to do otherwise to 102 "sellers" of the CMP developed by EVIDON.

1.7 The installation of a "fr" cookie by Facebook despite the opposition of the Data Subject

24. Noting that her choice had not been respected, the Data Subject opened the activity tab of her browser to discover that an "fr" cookie from FACEBOOK, as shown in the screenshot below, despite all cookies having been cleared when starting the browser.



25. This is remarkable as Facebook is included in the "cookie banner" of CDISCOUNT, but does not participate in the IAB Transparency and Consent Framework and did therefore not even show up in the "Cookie Glasses" browser extension as having received a false consent information by CDISCOUNT.
26. FACEBOOK presents its use of cookies in its cookie policy as allowing it to "offer Facebook Products and understand the information received from [users], including information about [their] use of other websites and apps, [whether registered or connected on the social network] or not". In particular, the company uses cookies to "distribute and measure ads on different browsers and devices used by the same person" (Exhibit n°11).
27. Such is the case of the "fr" cookie, which allows FACEBOOK to identify the user as well as their browser and collects other "various data" in order to broadcast and measure the "relevance" of the ads, as shown in the screenshot below.

Nom	Expiration	Contenu	Objectif
fr	90 jours	ID d'utilisateur et identificateur de navigateur ; horodatage ; autres données diverses	Le cookie publicitaire primaire de Facebook sert à diffuser, à mesurer et à améliorer la pertinence des publicités.
oo	5 ans	1 ou 0	Utilisé pour enregistrer les arrêts de diffusion des publicités

28. Consequently, FACEBOOK has installed an explicit advertising cookie for which the company has not obtained any valid consent from the Data Subject. It is unclear if FACEBOOK has received false consent information from CDISCOUNT or if FACEBOOK has not even attempted to get consent from the data subject. It will be up to FACEBOOK to explain how a tracking cookie could have been placed without any consent by the data subject.

1.8 Subject of the complaint

29. CDISCOUNT is accused to have made available inaccurate personal data related to the Data Subject by generating a false authorisation information for the purpose of placement of cookies on their terminal equipment to at least 431 "sellers" despite the clearly expressed opposition of the Data Subject in violation of Articles 5(1)(a)(d) ("*lawfulness, fairness and transparency*" and "*accuracy*") of the GDPR and Article 82 of the French *loi Informatique et Libertés*.
30. FACEBOOK is accused of having set a cookie that collects personal data on the Data Subject's equipment in violation of Article 82 of the *loi Informatique et Libertés*.

1.9 Need to investigate under Articles 20 et seq. of Act No. 78-17 of 6 January 1978

31. It appears from the facts above that despite the Data Subject's clearly expressed opposition to the setting of cookies on their terminal equipment, we observe three different types of processing taking place in this matter: the dissemination by CDISCOUNT of inaccurate personal data ("alleged consent") on the Data Subject by means of the cookie banner deployed on the Cdiscount.com site, the receipt of said consent by the CMP developed by EVIDON and the installation of an advertising cookie by FACEBOOK.
32. As regards the sharing of responsibility between these three actors, we leave it to the CNIL to assess the possible need to extend its investigation beyond the scope of this complaint, including the possibility of joint controllership. In our view, at least the two defendants to this complaint have violated the rights of the Data Subject as we attempt to demonstrate below.

2. LEGAL ANALYSIS

2.1 Opening remark

33. First of all, in its deliberation n°2019-093 of 4 July 2019, the CNIL considered that it could take all corrective measures and sanctions in the event of a violation of Article 82 of the *loi Informatique et Libertés*, and in particular the principle of prior obligation to obtain the user's consent as defined in Article 4(11) of the General Data Protection Regulation (GDPR) in order to install cookies and other tracking devices on the user's terminal equipment. Importantly, the authority specifies that this competence applies "*independently of the cooperation and consistency provisions of Chapter VII of the GDPR, insofar as Article 82 results from the transposition of a separate directive*".
34. Consequently, since the present complaint mainly concerns a violation of Article 82 of the *loi Informatique et Libertés*, we believe that the CNIL is fully competent to investigate it in complete independence.

2.2 On processing operations carried out by CDISCOUNT

2.2.1 A violation of Article 82 of the French *loi Informatique et Libertés*

35. Article 82 of the *loi Informatique et Libertés* is the French transposition of Article 5(3) of Directive 2002/58/EC on privacy and electronic communications. It provides for the setting of cookies and other trackers on the terminal equipment of any subscriber or user of an electronic communications service. In particular, it provides that "*access or registration may only take place if the subscriber or user has expressed[...] his consent, which may result from the appropriate parameters of his connection device or any other device under his control*". In this regard, the CNIL specified in deliberation n°2019-093 of 4 July 2019, on the one hand, that access and registration was understood as "*all operations aimed at accessing, by electronic transmission, information already stored in the subscriber's or user's terminal or*

at entering information in this equipment" and on the other hand that this information could be "stored and/or consulted".

36. The consent referred to in Article 82 of the *loi Informatique et Libertés* must be interpreted in accordance with the criteria and conditions defined under Article 4(11) and 7 of the GDPR, as confirmed by the Court of Justice of the European Union (CJEU), the Conseil d'Etat and the CNIL (see, to that effect, the judgment of 1 October 2019, *Planet49*, C-673/17, ECLI:EU:C:2019:801; Conseil d'Etat, 10th - 9th Chambers, 16 October 2019, 433069 and CNIL, Deliberation n°2019-093 of 4 July 2019). These conditions and criteria must be respected regardless of whether the processing involves personal data (see *Planet49*, para 69).
37. CDISCOUNT is therefore required to obtain free, specific consent, informed and unambiguous prior to the installation by itself or by one of its business partners of any cookie on the user's terminal equipment.

a) The lack of consent of the Data Subject

38. We note that the Data Controller uses a cookie banner that does not meet the legal requirements for consent, by using the following formula: *"By continuing your navigation, you accept the use, by Cdiscount and third parties, of cookies and other tracking devices"*. The Data Subject was never invited to give her consent through a clear affirmative act. Her silence or mere browsing of a page cannot amount to a "clear affirmative action" to allow tracking of more than 400 third parties on her device.
39. In addition, following the disappearance of the CDISCOUNT cookie banner and the Data Subject's visit of the "Cyber Monday" tab accessible from the homepage, the activity tab of their browser displayed the deposit of a FACEBOOK cookie "fr" linked to the domain "facebook.com" (see paragraphs 18 and 24).
40. Consequently, CDISCOUNT has authorised the installation of cookies on the Data Subject's terminal equipment in the absence of any form of valid consent from the latter.

b) The setting of cookies that do not fall within the exceptions provided for by law

41. Article 82 of the *loi Informatique et Libertés* provides that the requirement of prior consent does not apply if access to information stored in the user's terminal equipment or the registration of information in the user's terminal equipment (1) has the exclusive purpose of allowing or facilitating communication by electronic means; or (2) is strictly necessary for the provision of an online communication service at the user's express request. These exceptions are strictly interpreted by the French authorities. In a decision of 6 June 2018, the Conseil d'Etat considered that all cookies that are set for advertising purposes cannot be treated as cookies "strictly necessary for the provision" of an online communication service, even when such cookies are necessary for the economic viability of a website (Council of State, 10th - 9th chambers together, 06/06/2018, 412589).
42. It appears from the various privacy policies of CDISCOUNT's business partners that the vast majority of cookies and other tracking devices for which CDISCOUNT has recorded the consent of the Data Subject appear to be used for advertising purposes. The cookie banner provides that the cookies placed by CDISCOUNT and its business partners are intended to "link [the Data Subject] to[his] social networks and better adapt advertising to[his] interests and preferences" (Exhibit n°3 and paragraph 8). Such is the case of the "fr" cookie set by FACEBOOK on the Data Subject's terminal equipment (see paragraph 24).
43. Therefore, we argue that it is certain that a significant number of cookies for which an authorization has been recorded cannot fall within the scope of the exceptions organized by Article 82 of the French *Loi Informatique et Libertés* and could be placed in violation of the requirement to obtain consent under the same article.

c) The right of refusal for the placement of cookies on the data subject's terminal equipment

44. In the light of recital 25 of Directive 2002/58/EC on privacy and electronic communications, which states that "Users should have the possibility of refusing to allow a connection cookie or similar device to be placed on their terminal equipment", the consent requirement provided for in Article 82 of the French *Loi Informatique et Libertés* guarantees a right to oppose the placement of cookies and other tracers.

45. The same article provides that any subscriber or user must be informed of the means at his disposal to prevent access to the information stored in his terminal equipment or the recording of information in it. It is clear that the controller has a duty to provide information and must put in place appropriate mechanisms as regards the effective exercise of the right to refuse the placement of cookies. Concerning the means available to the user, the CNIL's decision of 5 December 2013 already specifies that "*the deposit and reading of cookies should not be carried out if [the Internet user] clicks on the link present in the banner allowing him to set up Cookies and, if necessary, refuses the deposit of Cookies*" (Decision No. 2013-378 of 5 December 2013 adopting a recommendation relating to Cookies and other tracers referred to in Article 32-II of the law of 6 January 1978).
46. Indeed, the Data Subject has tried to exercise their right to refuse the placement of cookies and other tracers on their terminal equipment by using the "*Accept cookies*" tool and by clicking on the "*Refuse all*" link accessible from the cookie banner deployed by CDISCOUNT (Exhibits n°5 and n°6) (see in this sense paragraph 17). However, despite its opposition and despite the appearance of the inscription "*everything refused*" once its choice had been validated, CDISCOUNT nevertheless transmitted its authorization to 431 sellers for the placement of cookies and other tracers on its terminal equipment (Exhibit n°2).
47. Therefore, even though the Data Subject seems to have been adequately informed of the possibility of opposing the placement of cookies on his terminal equipment, the exercise of this right was effectively denied.
48. **In conclusion, CDISCOUNT has violated the right to oppose the placement of cookies and tracers by the Concerned Person.**

2.2.2 On the violation of Article 5(1)(d) of the GDPR

49. Article 5(1)(d) of the GDPR provides:

" 1. Personal data must be: (d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data which are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay"

50. In the present case, we argue that the false authorisation to place cookies collected by CDISCOUNT using the information banner developed by EVIDON constitutes in itself personal data since it necessarily allows CDISCOUNT and its partners to identify whether they are entitled to place cookies on the specific terminal equipment of the Data Subject at issue.
51. Also, by generating the Data Subject's authorisation to place cookies on 431 "*vendors*" of the EVIDON CMP despite the latter's clearly expressed opposition by means of the "*Refuse all*" link contained in the "*Accept cookies*" tool in the information banner (see paragraph 17), CDISCOUNT processed and shared **incorrect personal data** relating to the Data Subject.
52. At present, we have no evidence to show that CDISCOUNT has taken any measure to have this data erased and/or rectified, the purpose of which appears to be explicitly advertising (see paragraphs 22, 26 to 28).
53. **Consequently, CDISCOUNT violated Article 5(1)(d) of the GDPR.**

2.2.3 On the violation of the French Criminal Code's provisions

a) On CDISCOUNT's criminal liability

54. In criminal matters, article 40 of the *loi Informatique et Libertés* provides that infringements of the provisions of the said Act are provided for by section 5 of chapter VI, title II, book II of the French Criminal Code.
55. Article 226-24 of the same Code provides for the criminal liability of legal persons for these offences.
56. In addition, Article 8, I, 2°, f) of the *loi Informatique et Libertés* mentions that the CNIL is required to notify the public prosecutor when it becomes aware of a crime or criminal offence.
57. Finally, in Article 1 of Resolution No. 2019-093 of 4 July 2019, the CNIL recalls that "*any processing operation involving a tracer, since it falls within the category of personal data - sometimes directly identifying (for example, an e-mail address) and often indirectly identifying (for example, The unique identifier of a cookie, an IP address, an identifier of the user's terminal or a component of the user's terminal, the result of the fingerprint calculation in the case of a fingerprinting technique, or an identifier generated by software or an operating system) - requires compliance with the provisions of the GDPR*".
58. Among them, Article 5(1)(a) of the GDPR provides that personal data must be "*processed in a lawful, fair and transparent manner in relation to the data subject*".
59. As mentioned above, CDISCOUNT has disseminated inaccurate personal data relating to the Data Subject (see paragraphs 50 to 53), allowing FACEBOOK to install a "fr" cookie linked to the "facebook.com" domain on the terminal equipment of the Data Subject disregarding their legitimate expectations. We consider that there is no doubt that some of the information collected by this cookie constitutes personal data since it allows the user and their browser to be identified and participates in the company's advertising targeting activity (see paragraphs 22, 24 to 28).
60. **Therefore, we argue that CDISCOUNT has committed criminal offences relating to the processing of personal data.**

b) On the violation of article 226-18 of the Criminal Code

61. Article 226-18 of the Criminal Code provides that: "*The collection of personal data by fraudulent, unfair or unlawful means shall be punishable by five years' imprisonment and a fine of 300,000 euros*". This penalty is set at €1,500,000 when this offence is committed by a legal person pursuant to Article 226-24 of the Criminal Code.
62. In a judgment of 14 March 2006, the Criminal Division of the Court of Cassation ruled that it was unfair to collect, without their knowledge, e-mail addresses of natural persons on the public Internet space, as this process obstructs their right to object (see on this subject Court of Cassation, Criminal Division. 14 March 2006, n°05-83.423).
63. In the present case, we consider that CDISCOUNT disseminated inaccurate personal data relating to the Data Subject by sharing with 431 "vendors" that the Data Subject accepted the filing of cookies on its terminal equipment (see paragraph 39), opening the door to a large-scale violation of the Concerned Person's rights.
64. The first signs of such a violation were confirmed by the observation of the deposit of a FACEBOOK "fr" cookie in the activity console of the concerned person's browser after the latter had taken care to delete the navigation data of the said browser before visiting the Cdiscount.com site (see paragraph 11). This cookie, whose purpose is explicitly advertising, necessarily comes from visiting the Cdiscount.com site and collects personal data (see paragraphs 24 to 28).
65. These events took place despite the clearly indicated opposition of the Concerned Person via the "Refuse All" link in the information banner.
66. We therefore draw two legal consequences from this:
67. First, we consider that CDISCOUNT, by maintaining the appearance of an effective refusal by the Data Subject to install cookies and other tracers on their terminal equipment, has certainly collected and disseminated incorrect personal data relating to the Concerned Person in an unfair manner.

68. Secondly, by allowing FACEBOOK to install a "fr" cookie on the Data Subject's terminal equipment, CDISCOUNT participated in an unfair collection of personal data by means of the said cookie
69. In conclusion, in the event that the CNIL considers that the Data Controller has authorised certain processing of personal data by illegally granting authorisation to install and participating in the installation of cookies, the Data Controller has violated Article 5(1)(a) of the RGPD and Article 226-18 of the Criminal Code. The CNIL is therefore required to inform the public prosecutor without delay.

2.3 On the processing operations carried out by FACEBOOK

2.3.1 A violation of Article 82 of the French *loi Informatique et Libertés*

70. As stated previously, Article 82 of the *Loi Informatique et Libertés* provides that "access or registration may only take place if the subscriber or user has expressed[...] his **consent**, which may result from the appropriate parameters of his connection device or any other device under his control".
71. The consent referred to in this Article must be interpreted in accordance with the criteria and conditions set out in Articles 4(11) and 7 of the GDPR (see on this subject paragraph 36).
72. In its decision n°MED-2018-042 of 30 October 2018, the CNIL recalls that "in cases where the processing is based on consent, the controller[must] be able to demonstrate that the data subject has given his or her consent to the processing of personal data relating to him or her" and specifies that this obligation "cannot be fulfilled solely by the presence of a contractual clause guaranteeing an initial consent validly collected. The controller] must be able to demonstrate, for all the data that he/she currently processes, the validity of the consent expressed" (Decision No. MED 2018-042 of 30 October 2018 delivering a formal warning to VECTAURY).
73. Finally, as mentioned above, only two exceptions to the requirement of prior consent are provided for in Article 82 of the *Loi Informatique et Libertés* (see paragraphs 41 to 43). In this respect, the aforementioned decision of the Council of State of 6 June 2018 recalls that "cookies" with an advertising purpose cannot constitute cookies "strictly necessary for the provision" of the online communication service (Council of State, 10th - 9th Chambers together, 06/06/2018, 412589).
74. It appears from the above facts that the Data Subject visited the Cdiscount.com website after having previously deleted his browsing data (see paragraph 11). Thus, the cookies set on their terminal equipment necessarily come from the visit of the said site.
75. However, the Data Subject were at no time invited to give their consent by a clear declaration or positive act (see paragraph 35). The latter even tried to express their opposition to such an installation by clicking on the "Refuse All" link in the "Accept Cookies" tool (see to this effect, paragraph 16). This refusal applies to any setting of cookies on the terminal equipment of the Data Subject by CDISCOUNT and its partners, including FACEBOOK whose name appears in the "Accept Cookies" tool under the categories "Advertising Networks" and "Social Media" (see paragraph 9.).
76. Clicking on the "Refuse All" link in the cookie banner also resulted in the unchecking of this last category, as shown in the screenshot below.

Informations collectées vous concernant

Nous tenons à ce que la manière dont nous et nos partenaires collectons et utilisons les données reste transparente pour que vous puissiez mieux garder le contrôle de vos informations personnelles. Pour plus d'informations, consultez notre Déclaration de confidentialité.

[Tout refuser](#) Appliquer les modifications

Refuser ... refusé

Informations collectées par nos partenaires

Nous faisons appel aux partenaires suivants pour améliorer encore davantage votre confort global de navigation. Ces partenaires utilisent des cookies et d'autres méthodes pour vous relier à vos réseaux sociaux et mieux adapter la publicité à vos intérêts et préférences. Vous pouvez refuser la collecte de ces informations en désactivant les cases ci-dessous.

- Gestion de contenu/SaaS
- AB Tasty ce partenaire ne propose pas d'option de refus pour les cookies.
- CRM4D refuser pour toute la société
- Kameleoon refuser pour toute la société
- Symantec (Norton Secured Seal) refuser pour toute la société

- Réseau publicitaire
 - ad4mat refuser pour toute la société
 - AdRiver refuser pour toute la société
 - Atlas ce partenaire ne propose pas d'option de refus pour les cookies.
 - AWIN ce partenaire ne propose pas d'option de refus pour les cookies.
 - Criteo refuser pour toute la société
 - Facebook refuser pour toute la société
 - Google Inc. refuser pour toute la société

77. In addition, when visiting the "Cyber Monday" tab accessible from the homepage of Cdiscount.com, the activity console of the "Chrome" browser displayed the deposit of a FACEBOOK "fr" cookie linked to the "facebook.com" domain (see paragraph 18, exhibit n°7 and paragraphs 24 to 28).
78. This type of cookie allows FACEBOOK to identify the user and their browser and collects other "various data" in order to, among other things, broadcast and measure the "relevance" of advertisements (see paragraph 27).
79. Consequently, it appears that FACEBOOK placed a cookie on the Data Subject's terminal equipment without verifying that consent had been lawfully obtained by CDISCOUNT. Since it is a cookie installed for advertising purposes, it cannot fall within the scope of one of the exceptions provided for in Article 82 of the French *Loi Informatique et Libertés*.
80. **In conclusion, FACEBOOK has violated article 82 of the French Loi Informatique et Libertés.**

3. APPLICATIONS

3.1 Request to investigate

81. The Data Subject hereby requests the CNIL to fully investigate this complaint, in accordance with the powers conferred on it by Articles 19 to 23 of the French *Loi Informatique et Libertés*, in order to determine in particular:
- (i) The processing operations carried out by CDISCOUNT and FACEBOOK in relation to the Data Subject and their respective roles;
 - (ii) Their consent ("opt-in") and/or the lack of a possibility to reject tracking ("opt-out")
 - (iii) The validity of the cookie banner deployed by CDISCOUNT
82. In addition, we request that evidence be provided as to the lawfulness of the consent collected by the defendants to this complaint pursuant to Article 7 of the GDPR.

83. Finally, we request that the results of this investigation be communicated to us and to be heard as a party in this procedure, in accordance with Article 77(2) of the GDPR.

3.2 Request to prohibit the relevant processing operations

84. We request that the CNIL take the necessary measures in accordance with the powers conferred on it, including Article 58(1)(d) and (f) and Article 58(2)(c) of the GDPR in conjunction with Article 17 of the GDPR, to stop any processing operation that may follow the opposition to the placement of cookies and other tracers by the Data Subject on his terminal equipment.

3.3 Request to notify the public prosecutor

85. We ask the CNIL to notify the public prosecutor without delay in view of CDISCOUNT's violation of article 226-18 of the Criminal Code, pursuant to article 8, I, 2°, f) of the *Loi Informatique et Libertés*.

3.4 Application for the imposition of effective, proportionate and dissuasive fines

86. Finally, we ask that the CNIL impose effective, proportionate and dissuasive fines on both CDISCOUNT and FACEBOOK pursuant to Article 20, III, 7° of the *Loi Informatique et Libertés*, taking into account the fact that the purpose of its violations of Article 82 of the *Loi Informatique et Libertés* and the provisions of the French Criminal Code was to obtain, directly and indirectly, financial benefits

87. According to our information, the current revenues of the Casino group, of which CDISCOUNT is a member, amounted to approximately 36.6 billion euros for the 2018 financial year, while those of the Facebook group amounted to approximately 56 billion dollars (or approximately 51 billion euros) for the same year. The maximum fines under Article 20, III, 7° of the French *Loi Informatique et Libertés* based on 4% of the worldwide annual turnover of these groups would thus amount to approximately €1.4 billion and approximately €2 billion respectively.

4. CONTACT

[REDACTED]