

BIG BROTHER WATCH



LIBERTY



04 June 2024

Mr Michael Murray
CEO, Frasers Group
By email only.

CC. Mr Mike Ashley

Dear Mr Murray,

We are writing to you as the CEO of Frasers Group to inform you of legal action being brought, with the support of Big Brother Watch, against Home Bargains and the facial recognition company Facewatch. Facewatch's live facial recognition (LFR) software is already being used by several retailers across the UK, including your Flannels, House of Fraser and Sports Direct stores. Given these developments and the negative impact on the human rights and civil liberties of innocent shoppers, we seek your commitment to not using LFR surveillance systems in your stores.

The claimant, who is a teenager, has initiated civil action after having been misidentified by Facewatch's facial recognition software in a Home Bargains store, wrongly accused of being a thief, subjected to a bag search and then told that she would be banned from all Home Bargains stores across the country as well as other stores, such as your own, who use Facewatch's technology. In subsequent correspondence with the claimant, Facewatch has now admitted that its technology and "super-recogniser" produced this serious error.

Following Big Brother Watch's letter to you dated 23 April 2023, you will be aware of the privacy, inaccuracy, and race and gender discrimination issues

relating to LFR technology, giving rise to serious legal issues. The legal action now being taken and national media coverage¹ it has attracted also highlights the associated reputational harm and exposure to legal challenge that businesses risk when employing this controversial technology.

The technology obtains the facial biometric data – information as sensitive as a fingerprint – of every customer entering the store to check them against a privately created watchlist. This is the equivalent of performing an identity check on every single customer. Data protection and human rights laws set a high bar for the processing of such sensitive data in order to protect the privacy and security of everyone in the UK. Use of live facial recognition in a retail setting is a disproportionate infringement of shoppers' right to privacy.

The legal action also highlights the inaccuracies associated with LFR technology. Evidence has shown that these inaccuracies disproportionately impact people of colour and women.¹ The statistical conclusions are backed by real-life experience; the claimant, who was wrongly identified by LFR software, is a young woman of colour. The distress associated with being publicly misidentified can also have wider ramifications for individuals' lives and livelihoods, particularly if they are accused in front of their families, friends or colleagues. Companies who use LFR technologies risk not only facing data protection challenges, but also run the risk of perpetuating unlawful discrimination.

Whilst we appreciate the security challenges faced by retailers, LFR is an inappropriate solution that undermines customers' legal rights and creates serious liabilities.

We anticipate further legal action being highly likely as more and more people are contacting Big Brother Watch following Facewatch misidentifications or wrongful inclusion on watchlists. Similar complaints to data protection authorities in the Netherlands and Spain have resulted in LFR in retail settings

¹ BBC, 'I was misidentified as a shoplifter by facial recognition tech,' <https://www.bbc.co.uk/news/technology-69055945>

being labelled as “disproportionate”² by the former and a supermarket being fined 2,520,000 EUR for unlawful use of LFR by the latter.³

Can you commit to not using LFR surveillance systems in your stores in future?

We look forward to hearing from you.

Yours sincerely,

Silkie Carlo, Director, Big Brother Watch

Habib Kadiri, Executive Director, Stop Watch

Akiko Hart, Director, Liberty

Sara Chitseko, Programme Manager, Open Rights Group

Christina Tanti, Head of Research, Race Equality First

Romain Lanneau, Consultant Researcher, Statewatch

Alexandrine Pirlot de Corbion, Director of Strategy, Privacy International

² European Digital Rights (EDRi), ‘The Rise and Rise of Biometric Mass Surveillance in the EU,’ July 2021, p82

³ Hunton Andrews Kurth, Spanish DPA Fines Supermarket Chain 2,520,000 EUR for Unlawful Use of Facial Recognition System, 30 July 2021