



Federal Trade Commission
Office of the Secretary
600 Pennsylvania Ave., N.W.
Washington, DC 20580

October 1, 2007

Re: In the Matter of Milliman, Inc. (FTC File No. 062-3189);
In the Matter of Ingenix, Inc. (FTC File No. 062-3190)

Dear Mr. Secretary:

The World Privacy Forum presents these comments to the proposed consent agreements in two cases: In the Matter of Milliman, Inc. (FTC File No. 062-3189) and In the Matter of Ingenix, Inc. (FTC File No. 062-3190).

The World Privacy Forum is a non-partisan, non-profit public interest research and consumer education organization. Our focus is on conducting in-depth research and analysis of privacy issues, including issues related to health care. See <http://www.worldprivacyforum.org>.

Both the complaints and the consent agreements in these cases are substantially identical. The World Privacy Forum offers the same comments and objections to both proposed settlements.

In both cases, the World Privacy Forum objects to the proposed consent agreements in their present form and asks that the Commission withdraw both consent agreements.

Based on the two complaints, it appears that both companies engaged in similar practices. Both companies provided individual medical profiles of health and life insurance applicants based in whole or in part on prescription drug purchase histories. Both companies provided reports to their insurance company clients that constituted consumer reports under the Fair Credit Reporting Act. Neither company provided its clients with the notice required by the Act of a consumer reporting agency. Both companies violated the Act.

We observe that the application of the FCRA in this context is not new. Commission action involving the Medical Information Bureau dates from 1995.

We object to the consent agreements because neither seeks to impose a fine or penalty of any sort for the violations. The violations date back at least two years in one case and four years in the other.

We cannot tell from the public documents whether or to what extent consumers were prejudiced and denied their rights by the violations of the two companies. However, if consumers were affected by the failure of the companies to provide notice, then we offer a second objection to the consent agreements because neither agreement requires the company to rectify the violations of law and provide actual notice and other remedies to consumers.

The message of these consent agreements from a consumer perspective is both chilling and disappointing. Overt violation of the FCRA results in neither a penalty to the violator nor a remedy for aggrieved consumers. The only consequence for a violation is a requirement to comply with the Act in the future. We are pleased that the FTC took notice of these violations and is preparing to take public action against these companies. But our concern with the current consent agreements is that companies may not be compelled to comply with a law that falls within the Commission's bailiwick if clear, substantiated violations of the law have no cost.

We believe it is crucial for the Commission to penalize the companies that it prosecutes for violations of the rights of consumers. In this particular area, where health information intersects with the FCRA, there are indications that the growing availability of electronic health care data could lead to an increasing number of these kinds of violations. It is our hope that the FTC will act in these two cases in such a way so as to proactively send a message in this area. A strong decision in these cases from the FTC may have an important and timely deterrent effect.

We suggest that a penalty for violation of the FCRA in these cases be based on the gross revenues from the activities that violated the Act. A penalty of fifty percent of gross revenues would send an appropriate message, and go far in deterring other companies from FCRA non-compliance.

Respectfully,

Pam Dixon
Executive director