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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

COMMISSIONERS: **Edith Ramirez, Chairwoman**
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright
Terrell McSweeny

In the Matter of	)	
	)	
TES Franchising, LLC,	)	
a limited liability company.	)	
	)	
	)	**DOCKET NO.**
	)	

COMPLAINT

The Federal Trade Commission, having reason to believe that TES Franchising, LLC, a limited liability company, has violated the Federal Trade Commission Act ("FTC Act"), and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent TES Franchising, LLC ("TES") is a Connecticut limited liability company with its principal office or place of business at 900 Main Street South, Building 2, Southbury, CT 06484.

2. Respondent provides business coaching services to franchisees.

3. 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 FTC Act.

4. Respondent has set forth on its website, www.entrepreneursource.com, privacy policies and statements about its practices, including (1) statements related to its participation in the Safe Harbor privacy frameworks agreed upon by the U.S. and the European Union and the U.S. and Switzerland (collectively, "the Safe Harbor Frameworks"), and (2) statements indicating that it is a licensee of the TRUSTe Privacy Program.

The Safe Harbor Frameworks

5. The U.S.-EU Safe Harbor Framework provides a method for U.S. companies to transfer personal data outside of Europe that is consistent with the requirements of the European Union Directive on Data Protection ("Directive"). Enacted in 1995, the Directive sets forth European Union ("EU") requirements for privacy and the protection of personal data.

Among other things, it requires EU Member States to implement legislation that prohibits the transfer of personal data outside the EU, with exceptions, unless the European Commission ("EC") has made a determination that the recipient jurisdiction's laws ensure the protection of such personal data. This determination is referred to commonly as meeting the EU's "adequacy" standard.

6. To satisfy the EU adequacy standard for certain commercial transfers, the U.S. Department of Commerce ("Commerce") and the EC negotiated the U.S.-EU Safe Harbor Framework, which went into effect in 2000. The U.S.-EU Safe Harbor Framework allows U.S. companies to transfer personal data lawfully from the EU. To join the U.S.-EU Safe Harbor Framework, a company must self-certify to Commerce that it complies with seven principles and related requirements that have been deemed to meet the EU's adequacy standard.

7. The seven principles are: notice, choice, onward transfer, security, data integrity, access, and enforcement. Among other things, the enforcement principle requires companies to provide a readily available and affordable independent recourse mechanism to investigate and resolve an individual's complaints and disputes.

8. Companies under the jurisdiction of the U.S. Federal Trade Commission ("FTC"), as well as the U.S. Department of Transportation, are eligible to join the U.S.-EU Safe Harbor Framework. A company under the FTC's jurisdiction that claims it has self-certified to the Safe Harbor principles, but failed to self-certify to Commerce, may be subject to an enforcement action based on the FTC's deception authority under Section 5 of the FTC Act.

9. Commerce maintains a public website, www.export.gov/safeharbor, where it posts the names of companies that have self-certified to the U.S.-EU Safe Harbor Framework. The listing of companies indicates whether their self-certification is "current" or "not current" and a date when recertification is due. Companies are required to re-certify every year in order to retain their status as "current" members of the Safe Harbor Framework.

10. The U.S.-Swiss Safe Harbor Framework is identical to the U.S.-EU Safe Harbor Framework and is consistent with the requirements of the Swiss Federal Act on Data Protection.

Violations of Section 5 of the FTC Act

Misrepresentations Regarding Safe Harbor Participation

11. In March 2011, respondent submitted to Commerce a self-certification of compliance with the Safe Harbor Frameworks, which is publicly available at the www.export.gov/safeharbor website.

12. In its self-certification, respondent identified the European data protection authorities as its chosen independent recourse mechanism.

13. In March 2013, respondent did not renew its self-certification to the Safe Harbor Frameworks, and Commerce subsequently updated respondent's status to "not current" on its public website.

14. From at least March 2011 until February 2015, respondent disseminated or caused to be disseminated privacy policies and statements on the www.entrepreneursource.com website, including but not limited to, the following statements:

> TES Franchising, LLC complies with the U.S.-EU Safe Harbor Framework and the U.S.-Swiss Safe Harbor Framework as set forth by the U.S. Department of Commerce regarding the collection, use and retention of personal information transferred from the European Union and Switzerland to the United States. We have certified that we adhere to the Safe Harbor Privacy Principles of notice, choice, onward transfer, security, data integrity, access and enforcement. To learn more about the Safe Harbor program, and to view our certification, please visit http://www.export.gov/safeharbor/...
>
> If you are a resident of the European Union or Switzerland and have any concerns or complaints, please first address these issues to our Privacy Officer… If the Privacy Officer does not satisfactorily address a complaint within thirty (30) days, any dispute, controversy or claim shall be settled by an arbitration administered agency, such as the American Arbitration Association ("AAA"). All arbitration will be conducted in English. Judgment rendered by the arbitrator may be entered into any court having jurisdiction. The costs of arbitration will be borne equally by the parties. Connecticut, USA will be the site of all hearings, and such hearings will be before a single arbitrator…

Count 1

15. Through the means described in Paragraph 14, respondent represented, expressly or by implication, that it was a "current" participant in the U.S.-EU Safe Harbor and U.S.-Swiss Frameworks.

16. In truth and in fact, beginning in March 2013, respondent was not a "current" participant in the U.S.-EU Safe Harbor Framework or the U.S.-Swiss Safe Harbor Framework. Therefore, the representation set forth in Paragraph 15 is false and misleading.

Count 2

17. Through the means described in Paragraph 14, respondent represented, expressly or by implication, that all Safe Harbor-related disputes would be settled by an "arbitration administered agency" such as the American Arbitration Association, that hearings would take place in Connecticut, and that the costs of arbitration would be shared equally by the parties.

18. In truth and in fact, the independent recourse mechanism authorized under respondent's Safe Harbor certification was the European data protection authorities, which resolve Safe Harbor-related disputes at no cost to consumers and do not require in-person hearings. Therefore, the representation set forth in Paragraph 17 is false and misleading.

19. Further, the representation set forth in Paragraph 17 is likely to deter EU and Swiss citizens from attempting to take advantage of the dispute resolution services offered by the company.

Misrepresentations Regarding TRUSTe Status

20. True Ultimate Standards Everywhere, Inc. ("TRUSTe") provides privacy and data security certification seals to online businesses. A business that meets TRUSTe's designated program requirements for a particular certification program receives a corresponding seal for display on the business's websites. Program requirements include specifications related to transparency of company practices, verification of privacy practices, and consumer choice regarding the collection and use of consumer personal information.

21. Respondent has disseminated or caused to be disseminated privacy policies and statements on the www.entrepreneursource.com website, including but not limited to, the following statement:

> www.entrepreneursource.com is a Licensee of the TRUSTe Privacy Program . . . Because this Website wants to demonstrate its commitment to your privacy, it has agreed to disclose its information practices and have its privacy practices reviewed for compliance by TRUSTe.

Count 3

22. Through the means described in Paragraph 21, respondent represented, expressly or by implication, that respondent was a current Licensee of the TRUSTe Privacy Program.

23. In truth and in fact, respondent was not a current Licensee of the TRUSTe Privacy Program. Therefore, the representation set forth in Paragraph 22 was and is false and misleading.

24. The acts and practices of respondent as alleged in this complaint constitute 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 ____ 2015, has issued this complaint against respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: