

ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT

In the Matter of Milliman, Inc.

File No. 0623189

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Milliman, Inc. (“respondent” or “Milliman”).

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement’s proposed order.

Milliman markets IntelliScript, a data aggregation service that provides individual medical profiles, including but not limited to prescription drug purchase histories of insurance applicants, to health and life insurance companies. Insurance companies use IntelliScript for underwriting or claims review purposes. The medical profile generated by IntelliScript analyzes the individual’s prescription drug history, and provides a ‘map’ of the risk levels associated with each drug, based on information provided by the insurer.

The Commission’s complaint alleges that the medical profile generated for the IntelliScript service is a consumer report and that respondent is a consumer reporting agency, as those terms are defined in Sections 603(d) and (f) of the Fair Credit Reporting Act, 15 U.S.C. §§1681a(d) and (f). The complaint alleges that the respondent’s failure to provide the “Notice To Users of Consumer Reports: Obligations of Users Under the FCRA” (“Notice To Users”), the required content of which is found in 16 CFR 698, Appendix H, is a violation of Section 607(d) of the Fair Credit Reporting Act, 15 U.S.C. § 1681e(d).

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts and practices in the future.

Part I of the proposed order requires respondent to provide the Notice To Users to any user or prospective user of any medical profile generated by IntelliScript that constitutes a consumer report or of any other consumer report.

Part II.A. of the proposed order requires respondent to maintain or continue to maintain reasonable procedures to limit the furnishing of consumer reports to those with a permissible purpose, as required by Section 607(a) of the Fair Credit Reporting Act, 15 U.S.C. § 1681e(a).

Part II.B. of the proposed order requires respondent to follow or continue to follow reasonable procedures to assure maximum possible accuracy of the information concerning the individuals about whom the reports relates, as required by Section 607(b) of the Fair Credit Reporting Act, 15 U.S.C. §1681e(b).

Part II.C. of the proposed order requires respondent to maintain or continue to maintain reasonable procedures to ensure compliance with Section 611 of the Fair Credit Reporting Act, 15 U.S.C. § 1681i, “Procedure in case of disputed accuracy.”

Part II.D. of the proposed order requires respondent to conduct or continue to conduct a reasonable reinvestigation in cases of disputed accuracy, as required by Section 611 of the Fair Credit Reporting Act, 15 U.S.C. §1681i.

Part II.E. of the proposed order requires respondent to comply or continue to comply with the Disposal of Consumer Report Information and Records Rule, 16 C.F.R. Part 682.

Part III of the proposed order contains a document retention requirement. It requires respondent to maintain and upon request make available to the Commission for inspection and copying documents demonstrating compliance with the requirements of Parts I and II of the proposed order.

Part IV of the proposed order requires respondent to distribute copies of the order to various officers, directors, and managers, employees, agents, and representatives having decision-making responsibilities with respect to IntelliScript or any other consumer report.

Part V of the proposed order requires respondent to notify the Commission of any changes in corporate structure that might affect compliance with the order.

Part VI of the proposed order requires respondent to file with the Commission one or more reports detailing its compliance with the order.

Part VII of the proposed order is a “sunset” provision, dictating the conditions under which the order will terminate twenty years from the date it is issued or twenty years after a complaint is filed in federal court, by either the United States or the FTC, alleging any violation of the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify in any way its terms.