

Complaint

IN THE MATTER OF

ADT LLCCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4460; File No. 122 3121*
Complaint, June 18, 2014 – Decision, June 18, 2014

This consent order addresses ADT LLC, also d/b/a ADT Security Services's use of paid spokespersons to promote the ADT Pulse home security system in appearances on national and local television and radio news programs and talk shows. The complaint alleges that paid spokespersons were identified on air as experts in child safety, home security, or technology. The experts demonstrated and provided favorable reviews of the ADT Pulse as part of news segments on topics related to their expertise. The complaint further alleges ADT represented that the demonstrations and discussions of the features and benefits of the ADT Pulse were independent reviews by impartial experts and failed to disclose that the experts were ADT's paid spokespersons. The consent order requires ADT, in connection with the advertising of any security or monitoring product by means of an endorsement, to disclose clearly and prominently a material connection, if one exists, between the endorser and ADT. The order also prohibits ADT, in connection with the advertising of any security or monitoring product or service, from misrepresenting that a discussion or demonstration of such product or service is an independent review provided by an impartial expert.

Participants

For the *Commission*: *Mary Johnson, Shira Modell, and Michelle K. Rusk.*

For the *Respondent*: *William MacLeod and Daniel Blynn, Kelley Drye & Warren LLP.*

COMPLAINT

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

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1. ADT LLC, also doing business as ADT Security Services, is a Delaware limited liability company with its principal office or place of business at 1501 Yamato Road, Boca Raton, Florida, 33431.

2. The acts and practices of Respondent, as alleged herein, have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

3. Respondent manufactures, advertises, markets, promotes, offers to sell, sells, and distributes various electronic security products and services, including but not limited to, the ADT Pulse home security and monitoring system (“ADT Pulse”).

4. Respondent used paid spokespersons to promote the ADT Pulse in interviews on national and local television and radio news programs and talk shows. Respondent set up these media interviews through its public relations firms and booking agents, often providing the reporters and news anchors with suggested interview questions and b-roll (background video). The paid spokesperson would be identified on air as an expert in child safety, home security, or technology and would be interviewed as part of a news segment on a topic related to his or her expertise. During the course of the interview, the paid spokesperson would demonstrate the ADT Pulse and provide a favorable review of the product. The paid spokesperson sometimes demonstrated other child safety, home security, or technology products, in addition to the ADT Pulse, adding to the impression that the spokesperson was providing an impartial, expert review of products. In most of these media appearances, there was no mention of any connection between the spokesperson and Respondent.

5. Respondent also used these paid spokespersons to promote the ADT Pulse in what appeared to be independent and objective reviews on the spokesperson’s own website, in blog posts, and in other online materials.

6. Respondent provided both financial and in-kind compensation to its spokespersons for the activities referred to in Paragraphs 4 and 5. For example, Respondent paid three spokespersons, including a child safety expert, a home security

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expert, and a technology expert, a total of approximately \$313,000, with one spokesperson receiving more than \$200,000. Two of the spokespersons also received a free ADT Pulse security system, valued at approximately \$4,000, and free monthly monitoring service. In exchange, the spokespersons appeared on more than 40 different television programs in markets across the country and posted regular blogs and other online material touting the benefits of the ADT Pulse.

7. Through the television and radio appearances and online materials referred to in Paragraphs 4 through 6, Respondent's spokespersons made favorable statements about the features and benefits of the ADT Pulse. The appearances and online materials include but are not limited to those attached as Exhibits A-D. They include the following statements:

A. Today Show (NBC), January 4, 2011 (Video attached as Exhibit A)

(Excerpted from national market television interview of Alison Rhodes by Hoda Kotb and Kathie Lee Gifford)

Kotb: Keeping your kids safe when you're not around is probably the biggest concern worrying most parents.

Gifford: Well now with advances in technology, a parent's job is much easier than it was only a handful of years ago. Here to tell us what is out there is Alison Rhodes. She's a national family and safety expert known as "The Safety Mom"

[Video Banner: "KEEP YOUR KIDS SAFE
TOOLS FOR AT SCHOOL & AT HOME"]

Kotb: We were captivated by the first thing you have on your table. And it's almost, like I guess, a motion detector for kids at home while you're at work so you can check on them, right?

[Video Banner "CHILD SAFETY
ADT PULSE \$399
ADTPULSE.COM"]

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Rhodes: This is truly the virtual babysitter. I travel a lot. I'm on the road. This is the ADT Pulse Home Monitoring System. I've got wireless cameras. I've got motion detectors. I've got texts that come into my iPhone if my daughter doesn't walk into the door from school So I can see my kids if they're not doing their homework after school

Kotb: How pricey is this whole apparatus?

Rhodes: You know, it's really not that much. It starts at \$399 and then it's a monthly fee, but you actually get a discount on your homeowner's insurance because it's your ADT security system.

Gifford: That's a great idea. Smart.

Rhodes: It's amazing!

[News segment continues with Ms. Rhodes discussing three other child safety products.]

B. Daybreak USA (USA Radio Network), Jan. 20, 2011 (Video attached as Exhibit B) (Excerpt of interview of Alison Rhodes on nationally syndicated talk radio show)

Host Scott West: A nationally known family safety and lifestyle expert who often provides tips and advice on keeping moms and kids safe, happy, and healthy, is with us this morning, Alison Rhodes, welcome to Daybreak USA.

. . . .

Now what is it that makes this house, that you're in, there in Windermere, Florida, a busy mom's dream?

Rhodes: [interviewed remotely by phone from KB model home at International Builders Show in Windermere, Florida] ... There are things here like the ADT Pulse home monitoring system. When I'm on the road, I can look in, I can turn the lights on and off. I can turn the thermostat on and off. I can get alerts when my kids walk in the door from school. So I know exactly what's going on in this home.

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[interview continues with discussion of other features of the model home]

Rhodes: ... what's also nice about this [ADT] system is: say somebody's coming in the door, I can look on my computer. I can see the cameras. I can see who's coming in. I can see who's going out. So I also have my touch screen for the ADT set up in the bedroom. So this home itself opens up onto a big lake. I'm a little worried about the kids walking right out the door. So I can see everything that's going on anywhere in this house. I can see who's coming and going. I can remember to turn off the lights because, with girls, they never remember to turn off the lights. So literally I can run it. It's completely wired.

C. Blog by Alison Rhodes, Aug. 30, 2010 (posted on www.safetymom.com) (Exhibit C)

**Tips to Remember From National Safe at Home Week
by Alison Rhodes, The Safety Mom**

Written by Safety Mom August 30, 2010

This blog could go on forever since there are so many things to consider about being safe at home. But, here are a few of the top things to keep in mind:

Get a security and home monitoring system. I'll admit, I never had one before but, now that I have the **ADT Pulse** system, I can't imagine living with out [sic] it. We used to have dogs which made me feel much safer but now I'm a single mom living in a home without dogs and was just informed by a friend that there were three break-ins in our community this past month. Nothing has ever given me greater peace of mind. Not only do I have a "panic" button to get the police immediately but also a medical emergency button and fire button. I have a camera monitoring my driveway so I can see who is driving in and I can lock and unlock the doors remotely from my computer or iPhone. I also get alerts if my daughter hasn't walked in the door at a certain time after school. The ADT Pulse system will save on your energy bill since you can control lights and your thermostat

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as well as probably qualify you for a discount on your home owners insurance policy. . . .

[Blog post goes on to discuss other safety tips and products.]

D. News First Early Edition (Fox 29), San Antonio, TX, Jan. 6, 2011 (Video attached as Exhibit D)
(Excerpted from local market television interview of David Gregg at the Las Vegas Consumer Electronics Show)

Reporter: We got David Gregg up and early this morning. He is a technology expert with BehindTheBuy.com and he's live with us this morning. ...

[Video Banner: "DAVID GREGG
TECHNOLOGY EXPERT"]

[Segment includes remote interview of David Gregg from the International Consumer Electronics Show in Las Vegas, NV. Mr. Gregg reviews various electronics, including a television set, a smart phone, the ADT Pulse home security system, a remote control for the car, and a hearing aid.]

Reporter: I see you've got the laptop in front of you, or what looks like a laptop. What's that all about?

Gregg: The purpose of the laptop is really more to focus on the video that's on the screen. What it's featuring is a service from ADT, that alarm company that people are familiar with. This kind of impressed us, because it's not just home security. It also features the ability to have full home automation, so while you're away from home, besides operating your security system even having video cameras in your home and seeing what's going on, you can even control your thermostat, your air conditioning, your heat, even your appliances like your coffee maker, too. And the fact is you can control it from any smart phone anywhere in the world. It will even save you money on your insurance because these types of systems are associated with discounts of upwards of 20 per cent on your insurance premiums.

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Reporter: And the images look good too. I mean everything looks clear. That's amazing you can do that.

Gregg: It really is incredible and just an added dimension of home automation that you can really control remotely

8. Through the means described in Paragraphs 4 through 7, Respondent has represented, expressly or by implication, that the demonstrations and discussions of the features and benefits of the ADT Pulse by individuals with expertise in child safety, technology, security, or other relevant fields, on various television and radio news programs and talks shows, and in online blogs and other online materials, were independent reviews by impartial experts.

9. In truth and in fact, the demonstrations and discussions of the features and benefits of the ADT Pulse were not independent reviews by impartial experts. The reviews were by experts who were ADT spokespersons who received financial and in-kind compensation for their promotion of the ADT Pulse. Therefore, the representation set forth in Paragraph 8 was, and is, false and misleading.

10. Through the means described in Paragraphs 4 through 7, Respondent has represented, expressly or by implication, that the demonstrations and discussions of the features and benefits of the ADT Pulse reflected the opinions of individuals with relevant expertise. On numerous occasions, Respondent failed to disclose or disclose adequately that these individuals were paid spokespersons for Respondent. These facts would be material to consumers in their decision to purchase the ADT Pulse. The failure to disclose these facts, in light of the representation made, was, and is, a deceptive practice.

11. The acts and practices of Respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

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THEREFORE, the Federal Trade Commission this eighteenth day of June, 2014, has issued this Complaint against Respondent.

By the Commission, Commissioner McSweeney not participating.

Exhibit A

**Today Show Appearance – Alison Rhodes-Jacobson
Jan. 4, 2011**



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Exhibit B

**Daybreak USA Appearance – Alison Rhodes-Jacobson
Jan. 20, 2011**

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Exhibit C

**Alison Rhodes-Jacobson Blog on ADT Pulse
Posted on www.safetymom.com
Aug. 30, 2010**

1/24/12

Tips to Remember From National Safe at Home Week by Alison Rhodes, T...



Home Organizing Safety Tips For The New Year

[read more](#)

Tips to Remember From National Safe at Home Week by Alison Rhodes, The Safety Mom

Written by SafetyMom August 30, 2010

This blog could go on forever since there are so many things to consider about being safe at home. But, here are a few of the top things to keep in mind:

Get a security and home monitoring system – I'll admit, I never had one before but now that I have the ADT Pulse system I can't imagine living with out it. We used to have dogs which made me feel much safer but now I'm a single mom living in a home without dogs and was just informed by a friend that there were three break-ins in our community this past month. Nothing has ever given me greater peace of mind. Not only do I have a "panic" button to get the police immediately but also a medical emergency button and fire button. I have a camera monitoring my driveway so I can see who is driving in and I can lock and unlock the doors remotely from my computer or iPhone. I also get alerts if my daughter hasn't walked in the door at a certain time after school. The ADT Pulse system will save on your energy bill since you can control lights and your thermostat as well as probably qualify you for a discount on your home owners insurance policy.

Check all your baby proofing items – Be sure that hardware mounted gates are still securely in place and that all cabinet and drawer latches are in good working order. If you have not secured furniture to the walls do so immediately. Topple-over accidents have increased over 46% over the last several years. Install furniture straps or corner braces to furniture, including changing tables, and use heavy-duty velcro to secure TVs to their stands.

Practice an emergency evacuation plan – As much as we know that an emergency can occur, we very often don't plan for it. Whether it's a fire, earthquake, hurricane or some other disaster, you need to have a plan as to who would be in charge of grabbing each child, establishing a meeting place away from the home and having an emergency preparedness kit ready to go which includes batteries, flashlights, bottled water and a blanket. Determine a person that each family member could call who lives in a different community that could be the "central point person" to receive information.

Refresh your First Aid kit – Be sure that items in your First Aid kit have been replenished and that your anti-biotic ointment hasn't expired. Stock up bandages, a thermometer, an ice-pack and ibuprofen, and anti-bacterial cream. Be sure that you are CPR and First Aid certified and, if you haven't taken a course in a while, re-certify.

safetymom.com/tips-to-remember-from-national-safe-at-home-week-by-...

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1/24/12

Tips to Remember From National Safe at Home Week by Alison Rhodes, T...

- Post to Twitter
- Post to Facebook



Filed under: Child Safety, Parenting Topics

Recent Comments



December 21, 2011 - 12:12am

My son who is 7 and in first grade is being bullied. Now to my un...



December 5, 2011 - 5:49pm

I'll be there- :) @ovnmomma88 -Thanks



December 5, 2011 - 4:49pm

Sounds like fun and informative Party! @cin_20



• Best of Safety Mom

- Win a Cybex Solution X-Fix HB booster seat this month! By Alison Rhodes, The Safety Mom founder of Safety Mom Solutions: I can't think of any oh...
- Twitter Party Every Expectant Mother Should Attend - Cord Blood Banking – Insurance for the Future: Did you know that over th...
- Happy Birthday Connor! Celebrating the life of my SIDS baby-- by Alison Rhodes, The Safety Mom: By The Safety Mom Toda...

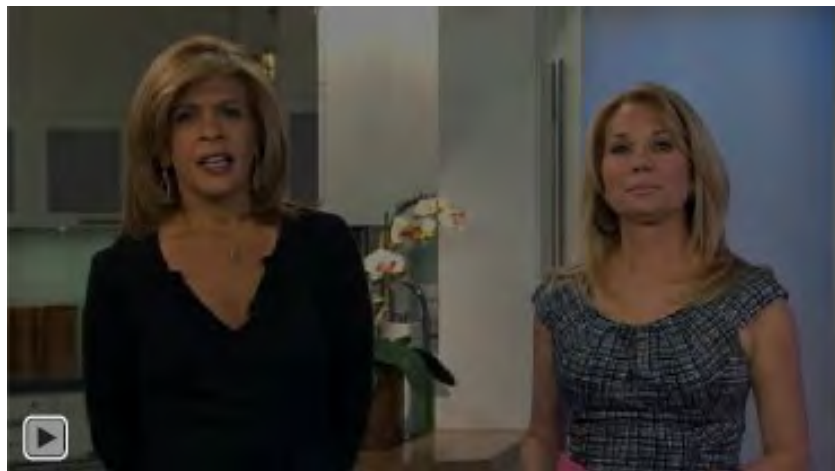


safetymom.com/.../tips-to-remember-from-national-safe-at-home-week-by-...

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Exhibit D

**News First Early Edition Appearance – David Gregg
Jan. 6, 2011**



Decision and Order

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of the Federal Trade Commission Act, 15 U.S.C. § 45 *et seq.*; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order (“consent agreement”) which includes: a statement that the respondent neither admits nor denies any of the allegations in the draft complaint except as specifically stated in the consent agreement; an admission by the respondent of facts necessary to establish jurisdiction for purposes of this action; and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it has reason to believe that the respondent has violated the Federal Trade Commission Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such consent agreement on the public record for a period of thirty (30) days, and having duly considered the comments filed thereafter by interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure prescribed in Commission Rule 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent ADT LLC (“ADT”), also doing business as ADT Security Services, is a Delaware limited liability company with its principal office or place of business at 1501 Yamato Road, Boca Raton, Florida, 33431.

Decision and Order

2. The Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER**DEFINITIONS**

For purposes of this order, the following definitions shall apply:

- A. Unless otherwise specified, “Respondent” shall mean ADT LLC, a limited liability company, its successors and assigns, and its officers, agents, representatives, and employees.
- B. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
- C. “Material connection” shall mean any relationship that materially affects the weight or credibility of any endorsement and that would not be reasonably expected by consumers.
- D. “Endorsement” shall mean as defined in the Commission’s Guides Concerning the Use of Endorsements and Testimonials in Advertising, 16 C.F.R. § 255.0.
- E. “Endorser” shall mean an individual or organization that provides an Endorsement.
- F. “Clearly and prominently” shall mean:
 1. In textual communications (e.g., printed publications or words displayed on the screen of a computer), the required disclosures are of a type, size, and location sufficiently noticeable for an ordinary consumer to read and comprehend them, in print that contrasts with the background on which they appear;

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2. In communications disseminated orally or through audible means (e.g., radio or streaming audio), the required disclosures are delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend them;
 3. In communications disseminated through video means (e.g., television or streaming video), the required disclosures are in writing in a form consistent with subparagraph (A) of this definition and shall appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend them, and in the same language as the predominant language that is used in the communication. *Provided, however,* that, for communications disseminated through programming over which Respondent does not have editorial control (e.g., an endorser's appearance on a news program or talk show), the required disclosures may be made in a form consistent with subparagraph (B) of this definition;
 4. In communications made through interactive media, such as the Internet, online services, and software, the required disclosures are unavoidable and presented in a form consistent with subparagraph (A) of this definition, in addition to any audio or video presentation of them; and
 5. In all instances, the required disclosures are presented in an understandable language and syntax, and with nothing contrary to, inconsistent with, or in mitigation of the disclosures used in any communication of them.
- G. The term "including" in this order shall mean "without limitation."
- H. The terms "and" and "or" in this order shall be construed conjunctively or disjunctively as necessary,

Decision and Order

to make the applicable phrase or sentence inclusive rather than exclusive.

I.

IT IS THEREFORE ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other means, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any security or monitoring product or service, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, that a discussion or demonstration of the security or monitoring product or service is an independent review provided by an impartial expert.

II.

IT IS FURTHER ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other means, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any security or monitoring product or service, in or affecting commerce, by means of an endorsement, shall clearly and prominently disclose a material connection, if one exists, between such endorser and Respondent.

III.

IT IS FURTHER ORDERED that Respondent shall, within seven (7) days of the date of service of this order, take all reasonable steps to remove any demonstration, review, or endorsement, by an endorser with a material connection to Respondent, of any security or monitoring product or service currently viewable by the public that does not comply with Parts I and II of this order.

IV.

IT IS FURTHER ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the advertising,

Decision and Order

labeling, promotion, offering for sale, sale, or distribution of any security or monitoring product or service, in or affecting commerce, by means of an endorsement by an endorser with a material connection to Respondent, shall take steps sufficient to ensure compliance with Parts I and II of this order. Such steps shall include, at a minimum:

- A. Providing each such endorser with a clear statement of his or her responsibility to disclose, clearly and prominently, in any television appearance, blog posting, or other communication, the endorser's material connection to Respondent, and obtaining from each such endorser a signed and dated statement acknowledging receipt of that statement and expressly agreeing to comply with it;
- B. Establishing, implementing, and thereafter maintaining a system to monitor and review the representations and disclosures of endorsers with material connections to Respondent to ensure compliance with Parts I and II of this order. The system shall include, at a minimum, monitoring and reviewing its endorsers' television and radio appearances, web sites, and blogs;
- C. Immediately terminating and ceasing payment to any endorser with a material connection to Respondent who Respondent reasonably concludes:
 1. Has misrepresented, in any manner, his or her independence and impartiality; or
 2. Has failed to disclose, clearly and prominently, a material connection between such endorser and Respondent; and
- D. Creating, and thereafter maintaining, reports sufficient to show the monitoring required by subpart B of this Part.

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V.

IT IS FURTHER ORDERED that Respondent shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon reasonable notice make available to the Federal Trade Commission for inspection and copying, any documents, whether prepared by or on behalf of Respondent, that:

- A. Comprise or relate to complaints or inquiries, whether received directly, indirectly, or through any third party, concerning any endorsement made or disseminated by Respondent, and any responses to those complaints or inquiries;
- B. Are reasonably necessary to demonstrate full compliance with each provision of this order, including, but not limited to, all documents obtained, created, generated, or which in any way relate to the requirements, provisions, terms of this order, and all reports submitted to the Commission pursuant to this order;
- C. Contradict, qualify, or call into question Respondent's compliance with this order; and
- D. Are acknowledgments of receipt of this order obtained pursuant to Part VI.

VI.

IT IS FURTHER ORDERED that Respondent shall deliver a copy of this order to all officers and directors, and to all current and future managers, employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each person a signed and dated statement acknowledging receipt of this order. Respondent shall deliver this order to current personnel within thirty (30) days after date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

Decision and Order

VII.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including, but not limited to, dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however,* that, with respect to any proposed change in the corporation about which Respondent learns less than thirty (30) days prior to the date such action is to take place, Respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier to: Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: In the Matter of ADT LLC, FTC File No. 122 3121.

VIII.

IT IS FURTHER ORDERED that Respondent, within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form in which it has complied with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, it shall submit additional true and accurate written reports.

IX.

This order will terminate on June 18, 2034, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however,* that the filing of such a complaint will not affect the duration of:

Analysis to Aid Public Comment

- A. Any Part in this order that terminates in less than twenty (20) years; and
- B. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that Respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission, Commissioner McSweeney not participating.

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT,

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an agreement containing a consent order from ADT LLC, also doing business as ADT Security Services (“ADT”).

The proposed consent order (“proposed 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.

This matter involves ADT’s use of paid spokespersons to promote the ADT Pulse home security system in appearances on

Analysis to Aid Public Comment

national and local television and radio news programs and talk shows. The Commission's complaint alleges that the paid spokespersons were identified on air as experts in child safety, home security, or technology. The experts demonstrated and provided favorable reviews of the ADT Pulse as part of news segments on topics related to their expertise. In most of these appearances, there was no mention of any connection between the experts and ADT. The complaint also alleges that ADT used these paid spokespersons to promote the ADT Pulse in what appeared to be independent and objective reviews on the spokesperson's own website, in blog posts, and in other online materials. The complaint alleges that ADT violated Section 5 by misrepresenting that the demonstrations and discussions of the features and benefits of the ADT Pulse were independent reviews by impartial experts. The complaint further alleges that ADT violated Section 5 by failing to disclose that the experts were ADT's paid spokespersons.

The proposed order includes injunctive relief to address these alleged violations and requires ADT to follow certain monitoring and compliance procedures related to its use of paid spokespersons.

Part I of the proposed order prohibits ADT, in connection with the advertising of any security or monitoring product or service, from misrepresenting that a discussion or demonstration of such product or service is an independent review provided by an impartial expert.

Part II of the proposed order requires ADT, in connection with the advertising of any security or monitoring product by means of an endorsement, to disclose clearly and prominently a material connection, if one exists, between the endorser and ADT.

Part III of the proposed order requires ADT to take all reasonable steps to remove, within seven days of service of the order, any demonstration, review, or endorsement, by an endorser with a material connection to ADT, that does not comply with Parts I and II of the order.

Analysis to Aid Public Comment

Part IV of the proposed order sets out certain monitoring and compliance obligations that ADT must meet with respect to any endorser with a material connection to ADT, including: obtaining signed acknowledgements from such endorsers that they will disclose their connection to ADT; monitoring the endorsers' media appearances and online reviews; terminating endorsers who fail to disclose their connection to ADT; and maintaining records of its monitoring efforts.

Parts V through VIII of the proposed order require ADT to: keep copies of relevant consumer complaints and inquiries and documents demonstrating order compliance; provide copies of the order to officers, employees, and others with responsibilities with respect to the subject matter of the order; notify the Commission of changes in corporate structure that might affect compliance obligations under the order; and file compliance reports with the Commission.

Part IX provides that the order will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the complaint or proposed order, or to modify the proposed order's terms in any way.

Complaint

IN THE MATTER OF

APPERIAN, INC.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4461; File No. 142 3017*
Complaint, June 19, 2014 – Decision, June 19, 2014

This consent order addresses Apperian, Inc.'s alleged false or misleading representations that Apperian made to consumers concerning its participation in the Safe Harbor privacy frameworks agreed upon by the U.S. and the European Union and the U.S. and Switzerland. The complaint alleges that Apperian, through its statements and use of the mark, falsely represented that it was a "current" participant in the Safe Harbor Frameworks when, in fact, from July 2012 until November 2013, Apperian was not a "current" participant in the Safe Harbor Frameworks. The consent order prohibits Apperian from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework and U.S.-Swiss Safe Harbor Framework.

Participants

For the *Commission*: Jessica Lyon, Katie Race Brin, and Katherine White.

For the *Respondent*: Brenda R. Sharton, Goodwin Proctor LLP.

COMPLAINT

The Federal Trade Commission, having reason to believe that Apperian, Inc., a corporation, 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 Apperian, Inc. ("Apperian") is a Delaware corporation, with its principal office or place of business at 321 Summer Street, Boston, MA 02210.

Complaint

2. Respondent develops mobile applications management platforms for enterprises and provides tools to help companies deploy apps to employees.

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.apperian.com, privacy policies and statements about its practices, including statements related to its participation in the Safe Harbor privacy frameworks agreed upon by the U.S. and the European Union (“U.S.-EU Safe Harbor Framework”) and the U.S. and Switzerland (“U.S.-Swiss Safe Harbor Framework”).

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.

Complaint

7. 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.

8. 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.

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 and the U.S.-Swiss Safe Harbor Framework (“Safe Harbor Frameworks”). 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 Frameworks.

The U.S.-EU Safe Harbor Framework Certification Mark

10. In 2008, Commerce developed the U.S.-EU Safe Harbor Framework Certification Mark (“the mark”). Upon request, Commerce provides the mark to those organizations that maintain a “current” self-certification to the U.S.-EU Safe Harbor Framework. In addition, Commerce has established certain rules for using the mark, such as requirements relating to the mark’s placement on a website and the inclusion of a link to www.export.gov/safeharbor. The mark appears as follows:



Complaint

Violations of Section 5 of the FTC Act

11. In July 2010, respondent submitted to Commerce a self-certification of compliance with the Safe Harbor Frameworks.

12. In July 2012, 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. In November 2013, respondent renewed its self-certification to the Safe Harbor Frameworks, and respondent's status was changed to "current" on Commerce's website.

13. Since at least July 2010, respondent has disseminated or caused to be disseminated privacy policies and statements on the www.apperian.com website, including, but not limited to, the following statements:

Apperian, Inc. 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 from European Union member countries and Switzerland. Apperian, Inc. has certified that it adheres 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 Apperian's certification, please visit <http://www.export.gov/safeharbor/>.

14. From at least July 2010, respondent has displayed the mark on the www.apperian.com website.

15. Through the means described in Paragraphs 13 and 14, respondent represents, expressly or by implication, that it is a "current" participant in the U.S.-EU Safe Harbor and U.S.-Swiss Safe Harbor Frameworks.

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16. In truth and in fact, from July 2012 until November 2013, respondent was not a “current” participant in the U.S.-EU Safe Harbor and U.S.-Swiss Safe Harbor Frameworks. Therefore, the representation set forth in Paragraph 15 was false and misleading.

17. 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 nineteenth day of June, 2014, has issued this complaint against respondent.

By the Commission, Commissioner McSweeney not participating.

DECISION AND ORDER

The Federal Trade Commission (“Commission” or “FTC”), having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45, *et seq.*;

The respondent, its attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), which includes: a statement by respondent that it neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in the Consent Agreement, and, only for purposes of this action, admits the facts

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necessary to establish jurisdiction; and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the FTC Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from interested persons pursuant to section 2.34 of its Rules, now in further conformity with the procedure prescribed in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following Order:

1. Respondent Apperian, Inc. is a Delaware corporation, with its principal office or place of business at 321 Summer Street, Boston, MA 02210.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this Order, the following definitions shall apply:

- A. Unless otherwise specified, "respondent" shall mean Apperian, Inc. and its successors and assigns.
- B. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondent and its officers, agents, representatives, and employees, whether acting directly or

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indirectly, in connection with the advertising, marketing, promotion, offering for sale, or sale of any product or service, in or affecting commerce, shall not misrepresent in any manner, expressly or by implication, the extent to which respondent is a member of, adheres to, complies with, is certified by, is endorsed by, or otherwise participates in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework and the U.S.-Swiss Safe Harbor Framework.

II.

IT IS FURTHER ORDERED that respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying, a print or electronic copy of, for a period of five (5) years from the date of preparation or dissemination, whichever is later, all documents relating to compliance with this order, including but not limited to:

- A. all advertisements, promotional materials, and any other statements containing any representations covered by this order, with all materials relied upon in disseminating the representation; and
- B. any documents, whether prepared by or on behalf of respondent, that call into question respondent's compliance with this order.

III.

IT IS FURTHER ORDERED that respondent shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities relating to the subject matter of this order. Respondent shall deliver this order to such current personnel within thirty (30) days after service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities. For any business entity resulting from any change in structure set forth in Part IV, delivery shall be at least ten (10) days prior to the change

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in structure. Respondent must secure a signed and dated statement acknowledging receipt of this order, within thirty (30) days of delivery, from all persons receiving a copy of the order pursuant to this section.

IV.

IT IS FURTHER ORDERED that respondent shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including, but not limited to: a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however,* that, with respect to any proposed change in the corporation(s) about which respondent learns fewer than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The subject line must begin: *In re Apperian, Inc.*, FTC File No. 1423017.

V.

IT IS FURTHER ORDERED that respondent, and its successors and assigns, within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, it shall submit an additional true and accurate written report.

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VI.

This order will terminate on June 19, 2034, or twenty (20) years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. any Part in this order that terminates in fewer than twenty (20) years;
- B. this order's application to any respondent that is not named as a defendant in such complaint; and
- C. this order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order as to such respondent will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission, Commissioner McSweeney not participating.

Analysis to Aid Public Comment

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, a consent agreement applicable to Apperian, Inc. (“Apperian”).

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 and take appropriate action or make final the agreement’s proposed order.

This matter concerns alleged false or misleading representations that Apperian made to consumers concerning its participation in the Safe Harbor privacy frameworks agreed upon by the U.S. and the European Union (“EU”) (“U.S.-EU Safe Harbor Framework”) and the U.S. and Switzerland (“U.S.-Swiss Safe Harbor Framework”). It is among several actions the Commission is bringing to enforce the promises that companies make when they certify that they participate in the U.S.-EU Safe Harbor Framework and/or U.S.-Swiss Safe Harbor Framework (“Safe Harbor Frameworks”). The Safe Harbor Frameworks allow U.S. companies to transfer data outside the EU and Switzerland consistent with European law. To join the Safe Harbor Frameworks, a company must self-certify to the U.S. Department of Commerce (“Commerce”) that it complies with a set of principles and related requirements that have been deemed by the European Commission and Switzerland as providing “adequate” privacy protection. Commerce maintains a public website, www.export.gov/safeharbor, where it posts the names of companies that have self-certified to the Safe Harbor Frameworks. The listing of companies indicates whether their self-certification is “current” or “not current.” Companies are required to re-certify every year in order to retain their status as “current” members of the Safe Harbor Frameworks.

In 2008, Commerce developed the U.S.-EU Safe Harbor Framework Certification Mark (“the mark”) to allow companies

Analysis to Aid Public Comment

to highlight for consumers their compliance with the Safe Harbor framework. Upon request, Commerce provides the mark to those organizations that maintain a “current” self-certification to the U.S.-EU Safe Harbor Framework. Commerce has established certain rules for using the mark, such as requirements related to the mark’s placement on a website and the inclusion of a link to www.export.gov/safeharbor.

Apperian develops mobile applications management platforms for enterprises and provides tools to help companies deploy apps to employees. According to the Commission’s complaint, since at least July 2010, Apperian has set forth on its website, www.apperian.com, privacy policies and statements about its practices, including statements related to its participation in the U.S.-EU Safe Harbor Framework and the U.S.-Swiss Safe Harbor Framework. In addition, since at least July 2010, Apperian has displayed the mark on its website.

The Commission’s complaint alleges that Apperian, through its statements and use of the mark, falsely represented that it was a “current” participant in the Safe Harbor Frameworks when, in fact, from July 2012 until November 2013, Apperian was not a “current” participant in the Safe Harbor Frameworks. The Commission’s complaint alleges that in July 2010, Apperian submitted a self-certification to the Safe Harbor Frameworks. Apperian did not renew its self-certification in July 2012, and Commerce subsequently updated Apperian’s status to “not current” on its public website. In November 2013, Apperian renewed its self-certification to the Safe Harbor Frameworks, and its status was changed to “current” on Commerce’s website.

Part I of the proposed order prohibits Apperian from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework and U.S.-Swiss Safe Harbor Framework.

Parts II through VI of the proposed order are reporting and compliance provisions. Part II requires Apperian to retain documents relating to its compliance with the order for a five-

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year period. Part III requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part IV ensures notification to the FTC of changes in corporate status. Part V mandates that Apperian submit an initial compliance report to the FTC, and make available to the FTC subsequent reports. Part VI is a provision “sunsetting” the order after twenty (20) years, with certain exceptions.

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 complaint or order or to modify the order’s terms in any way.

Complaint

IN THE MATTER OF

ATLANTA FALCONS FOOTBALL CLUB, LLCCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket No. C-4462; File No. 142 3018
Complaint, June 19, 2014 – Decision, June 19, 2014

This consent order addresses Atlanta Falcons Football Club, LLC's alleged false or misleading representations that the Atlanta Falcons made to consumers concerning their participation in the Safe Harbor privacy framework agreed upon by the U.S. and the European Union. The complaint alleges that the Atlanta Falcons falsely represented that they were a "current" participant in the Safe Harbor when, in fact, from September 2006 until November 2013, the Atlanta Falcons were not a "current" participant in the U.S.-EU Safe Harbor Framework. The consent order prohibits the Atlanta Falcons from making misrepresentations about their membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework.

Participants

For the *Commission*: Jessica Lyon, Katie Race Brin, and Katherine White.

For the *Respondent*: John Graubert and Kurt Wimmer, Covington & Burling LLP.

COMPLAINT

The Federal Trade Commission, having reason to believe that the Atlanta Falcons Football Club, 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 the Atlanta Falcons Football Club, LLC ("Atlanta Falcons") is a Georgia limited liability company with its principal office or place of business at 440 Falcon Parkway, Flowery Branch, GA 30542.

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2. Respondent is a professional football team and member of the National Football League.

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.atlantafalcons.com, privacy policies and statements about its practices, including statements related to its participation in the Safe Harbor privacy framework agreed upon by the U.S. and the European Union (“U.S.-EU Safe Harbor Framework”).

The Framework

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. 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

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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.

8. 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 U.S.-EU Safe Harbor Framework.

Violations of Section 5 of the FTC Act

9. In September 2005, respondent submitted to Commerce a self-certification of compliance to the U.S.-EU Safe Harbor Framework.

10. In September 2006, respondent did not renew its self-certification to the U.S.-EU Safe Harbor Framework, and Commerce subsequently updated respondent's status to "not current" on its public website.

11. From least September 2005 until November 2013, respondent disseminated or caused to be disseminated privacy policies and statements on the www.atlantafalcons.com website, including, but not limited to, the following statements:

The Atlanta Falcons Football Club, LLC complies with the U.S.-EU Safe Harbor Framework as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of personal data from European Union member countries. The Atlanta Falcons Football Club, LLC has certified that it adheres to the Safe Harbor Privacy Principles of notice, choice, onward transfer, security, data integrity, access, and enforcement. To

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learn more about the Safe Harbor program, and to view The Atlanta Falcons Football Club, LLC's certification, please visit <http://www.export.gov/safeharbor>.

12. Through the means described in Paragraph 11, respondent represented, expressly or by implication, that it was a "current" participant in the U.S.-EU Safe Harbor Framework.

13. In truth and in fact, from September 2006 until November 2013, respondent was not a "current" participant in the U.S.-EU Safe Harbor Framework. Therefore, the representation set forth in Paragraph 12 is false and misleading.

14. 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 nineteenth day of June, 2014, has issued this complaint against respondent.

By the Commission, Commissioner McSweeney not participating.

DECISION AND ORDER

The Federal Trade Commission ("Commission" or "FTC"), having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of the

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Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45, *et seq.*;

The respondent, its attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), which includes: a statement by respondent that it neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in the Consent Agreement, and, only for purposes of this action, admits the facts necessary to establish jurisdiction; and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the FTC Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from interested persons pursuant to section 2.34 of its Rules, now in further conformity with the procedure prescribed in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following Order:

1. Respondent the Atlanta Falcons Football Club, LLC is a Georgia limited liability company with its principal office or place of business at 440 Falcon Parkway, Flowery Branch, GA 30542.
2. Respondent neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in this order. Only for purposes of this action, respondent admits the facts necessary to establish jurisdiction.

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ORDER

DEFINITIONS

For purposes of this Order, the following definitions shall apply:

- A. Unless otherwise specified, “respondent” shall mean Atlanta Falcons Football Club, LLC and its successors and assigns.
- B. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondent and its officers, agents, representatives, and employees, whether acting directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, or sale of any product or service, in or affecting commerce, shall not misrepresent in any manner, expressly or by implication, the extent to which respondent is a member of, adheres to, complies with, is certified by, is endorsed by, or otherwise participates in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework and the U.S.-Swiss Safe Harbor Framework.

II.

IT IS FURTHER ORDERED that respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying, a print or electronic copy of, for a period of five (5) years from the date of preparation or dissemination, whichever is later, all documents relating to compliance with this order, including but not limited to:

- A. all advertisements, promotional materials, and any other statements containing any representations

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covered by this order, with all materials relied upon in disseminating the representation; and

- B. any documents, whether prepared by or on behalf of respondent, that call into question respondent's compliance with this order.

III.

IT IS FURTHER ORDERED that respondent shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities relating to the subject matter of this order. Respondent shall deliver this order to such current personnel within thirty (30) days after service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities. Respondent must secure a signed and dated statement acknowledging receipt of this order, within thirty (30) days of delivery, from all persons receiving a copy of the order pursuant to this section.

IV.

IT IS FURTHER ORDERED that respondent shall notify the Commission within fourteen (14) days of any change in the corporation(s) that may affect compliance obligations arising under this order, including, but not limited to: a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The subject line must begin: *In re Atlanta Falcons Football Club, LLC*, FTC File No. 1423018.

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V.

IT IS FURTHER ORDERED that respondent, and its successors and assigns, within ninety (90) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, it shall submit an additional true and accurate written report.

VI.

This order will terminate on June 19, 2034, or twenty (20) years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. any Part in this order that terminates in fewer than twenty (20) years;
- B. this order's application to any respondent that is not named as a defendant in such complaint; and
- C. this order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order as to such respondent will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission, Commissioner McSweeney not participating.

Analysis to Aid Public Comment

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT**

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, a consent agreement applicable to the Atlanta Falcons Football Club, LLC (“the Atlanta Falcons”).

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 and take appropriate action or make final the agreement’s proposed order.

This matter concerns alleged false or misleading representations that the Atlanta Falcons made to consumers concerning their participation in the Safe Harbor privacy framework (“Safe Harbor”) agreed upon by the U.S. and the European Union (“EU”) (“U.S.-EU Safe Harbor Framework”). It is among several actions the Commission is bringing to enforce the promises that companies make when they certify that they participate in the Safe Harbor Framework. The Safe Harbor framework allows U.S. companies to transfer data outside the EU consistent with European law. To join the Safe Harbor framework, a company must self-certify to the U.S. Department of Commerce (“Commerce”) that it complies with a set of principles and related requirements that have been deemed by the European Commission as providing “adequate” privacy protection. Commerce maintains a public website, www.export.gov/safeharbor, where it posts the names of companies that have self-certified to the Safe Harbor framework. The listing of companies indicates whether their self-certification is “current” or “not current.” Companies are required to re-certify every year in order to retain their status as “current” members of the Safe Harbor framework.

The Atlanta Falcons are a professional football team and a member of the National Football League. According to the Commission’s complaint, from September 2005 until November

Analysis to Aid Public Comment

2013, the Atlanta Falcons set forth on their website, www.atlantafalcons.com, privacy policies and statements about their practices, including statements related to their participation in the U.S.-EU Safe Harbor Framework.

The Commission's complaint alleges that the Atlanta Falcons falsely represented that they were a "current" participant in the Safe Harbor when, in fact, from September 2006 until November 2013, the Atlanta Falcons were not a "current" participant in the U.S.-EU Safe Harbor Framework. The Commission's complaint alleges that in September 2005, the Atlanta Falcons submitted a Safe Harbor self-certification. The Atlanta Falcons did not renew the self-certification in September 2006, and Commerce subsequently updated the Atlanta Falcons' status to "not current" on its public website.

Part I of the proposed order prohibits the Atlanta Falcons from making misrepresentations about their membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework.

Parts II through VI of the proposed order are reporting and compliance provisions. Part II requires the Atlanta Falcons to retain documents relating to compliance with the order for a five-year period. Part III requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part IV ensures notification to the FTC of changes in corporate status. Part V mandates that the Atlanta Falcons submit an initial compliance report to the FTC, and make available to the FTC subsequent reports. Part VI is a provision "sunsetting" the order after twenty (20) years, with certain exceptions.

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 complaint or order or to modify the order's terms in any way.

Complaint

IN THE MATTER OF

BAKER TILLY VIRCHOW KRAUSE, LLPCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket No. C-4463; File No. 142 3019
Complaint, June 19, 2014 – Decision, June 19, 2014

This consent order addresses Baker Tilly Virchow Krause, LLP's alleged false or misleading representations that Baker Tilly made to consumers concerning its participation in the Safe Harbor privacy framework agreed upon by the U.S. and the European Union. The complaint alleges that Baker Tilly, through its statements and use of the mark, falsely represented that it was a "current" participant in the Safe Harbor when, in fact, from June 2011 until December 2013, Baker Tilly was not a "current" participant in the Safe Harbor. The consent order prohibits Baker Tilly from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework.

Participants

For the *Commission*: Jessica Lyon, Katie Race Brin, and Katherine White.

For the *Respondents*: Catherine Casey, General Counsel, Baker Tilly Virchow Krause, LLP.

COMPLAINT

The Federal Trade Commission, having reason to believe that Baker Tilly Virchow Krause, LLP, a limited liability partnership, 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 Baker Tilly Virchow Krause, LLP, ("Baker Tilly") is an Illinois limited liability partnership with its principal office or place of business at 205 North Michigan Avenue, Chicago, IL 60601.
2. Respondent is an accounting and advisory services firm.

Complaint

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.bakertilly.com, privacy policies and statements about its practices, including statements related to its participation in the Safe Harbor privacy framework agreed upon by the U.S. and the European Union (“U.S.-EU Safe Harbor Framework”).

The Framework

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. 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, or subsequently renew its Safe Harbor

Complaint

certification, may be subject to an enforcement action based on the FTC's deception authority under Section 5 of the FTC Act.

8. 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.

The U.S.-EU Safe Harbor Framework Certification Mark

9. In 2008, Commerce developed the U.S.-EU Safe Harbor Framework Certification Mark ("the mark"). Upon request, Commerce provides the mark to those organizations that maintain a "current" self-certification to the U.S.-EU Safe Harbor Framework. In addition, Commerce has established certain rules for using the mark, such as requirements relating to the mark's placement on a website and the inclusion of a link to www.export.gov/safeharbor. The mark appears as follows:



Violations of Section 5 of the FTC Act

10. In June 2010, respondent submitted to Commerce a self-certification of compliance with the Safe Harbor.

11. In June 2011, respondent did not renew its self-certification to the Safe Harbor, and Commerce subsequently updated respondent's status to "not current" on its public website. In December 2013, respondent renewed its self-certification to the Safe Harbor Framework, and respondent's status was changed to "current" on Commerce's website.

Complaint

12. Since at least June 2010, respondent has disseminated or caused to be disseminated privacy policies and statements on the www.bakertilly.com website, including, but not limited to, the following statements:

Baker Tilly Virchow Krause, LLP, whose principal office is located in the State of Illinois, United States of America (the “United States”) controls and operates the following data processing systems (referred to herein as the “Systems”) that are certified under the voluntary U.S.-EU Safe Harbor program...

13. From at least June 2010, respondent has displayed the mark on the www.bakertilly.com website.

14. Through the means described in Paragraphs 12 and 13, respondent represents, expressly or by implication, that it is a “current” participant in the U.S.-EU Safe Harbor Framework.

15. In truth and in fact, from June 2011 until December 2013, respondent was not a “current” participant in the U.S.-EU Safe Harbor Framework. Therefore, the representation set forth in Paragraph 14 was false and misleading.

16. 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 nineteenth day of June, 2014, has issued this complaint against respondent.

By the Commission, Commissioner McSweeney not participating.

Decision and Order

DECISION AND ORDER

The Federal Trade Commission (“Commission” or “FTC”), having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45, *et seq.*;

The respondent, its attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), which includes: a statement by respondent that it neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in the Consent Agreement, and, only for purposes of this action, admits the facts necessary to establish jurisdiction; and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent violated the FTC Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed Consent Agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from interested persons pursuant to section 2.34 of its Rules, now in further conformity with the procedure prescribed Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following Order:

1. Respondent Baker Tilly Virchow Krause, LLP, is an Illinois limited liability partnership with its principal office or place of business at 205 North Michigan Avenue, Chicago, IL 60601.

Decision and Order

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER**DEFINITIONS**

For purposes of this Order, the following definitions shall apply:

- A. Unless otherwise specified, “respondent” shall mean Baker Tilly Virchow Krause, LLP, and its successors and assigns.
- B. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondent and its officers, agents, representatives, and employees, whether acting directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, or sale of any product or service, in or affecting commerce, shall not misrepresent in any manner, expressly or by implication, the extent to which respondent is a member of, adheres to, complies with, is certified by, is endorsed by, or otherwise participates in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework and the U.S.-Swiss Safe Harbor Framework.

II.

IT IS FURTHER ORDERED that respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying, a print or electronic copy of, for a period of five (5) years from the date of preparation or dissemination, whichever is later, all documents relating to compliance with this order, including but not limited to:

Decision and Order

- A. all advertisements, promotional materials, and any other statements containing any representations covered by this order, with all materials relied upon in disseminating the representation; and
- B. any documents, whether prepared by or on behalf of respondent, that call into question respondent's compliance with this order.

III.

IT IS FURTHER ORDERED that respondent shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities relating to the subject matter of this order. Respondent shall deliver this order to such current personnel within thirty (30) days after service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities. For any business entity resulting from any change in structure set forth in Part IV, delivery shall be at least ten (10) days prior to the change in structure. Respondent must secure a signed and dated statement acknowledging receipt of this order, within thirty (30) days of delivery, from all persons receiving a copy of the order pursuant to this section.

IV.

IT IS FURTHER ORDERED that respondent shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including, but not limited to: a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however,* that, with respect to any proposed change in the corporation(s) about which respondent learns fewer than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after

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obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The subject line must begin: *In re Baker Tilly Virchow Krause, LLP*, FTC File No. 1423019.

V.

IT IS FURTHER ORDERED that respondent, and its successors and assigns, within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, it shall submit an additional true and accurate written report.

VI.

This order will terminate on June 19, 2034, or twenty (20) years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. any Part in this order that terminates in fewer than twenty (20) years;
- B. this order's application to any respondent that is not named as a defendant in such complaint; and
- C. this order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order as to such respondent will terminate

Analysis to Aid Public Comment

according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission, Commissioner McSweeney not participating.

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, a consent agreement applicable to Baker Tilly Virchow Krause, LLP (“Baker Tilly”).

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 and take appropriate action or make final the agreement’s proposed order.

This matter concerns alleged false or misleading representations that Baker Tilly made to consumers concerning its participation in the Safe Harbor privacy framework (“Safe Harbor”) agreed upon by the U.S. and the European Union (“EU”) (“U.S.-EU Safe Harbor Framework”). It is among several actions the Commission is bringing to enforce the promises that companies make when they certify that they participate in the Safe Harbor Framework. The Safe Harbor framework allows U.S. companies to transfer data outside the EU consistent with European law. To join the Safe Harbor framework, a company must self-certify to the U.S. Department of Commerce (“Commerce”) that it complies with a set of principles and

Analysis to Aid Public Comment

related requirements that have been deemed by the European Commission as providing “adequate” privacy protection. These principles include notice, choice, onward transfer, security, data integrity, access, and enforcement. Commerce maintains a public website, www.export.gov/safeharbor, where it posts the names of companies that have self-certified to the Safe Harbor framework. The listing of companies indicates whether their self-certification is “current” or “not current.” Companies are required to re-certify every year in order to retain their status as “current” members of the Safe Harbor framework.

In 2008, Commerce developed the U.S.-EU Safe Harbor Framework Certification Mark (“the mark”) to allow companies to highlight for consumers their compliance with the Safe Harbor Framework. Upon request, Commerce provides the mark to those organizations that maintain a “current” self-certification to the U.S.-EU Safe Harbor Framework. Commerce has established certain rules for using the mark, such as requirements related to the mark’s placement on a website and the inclusion of a link to www.export.gov/safeharbor.

Baker Tilly is an accounting and advisory services firm. According to the Commission’s complaint, since at least June 2010, Baker Tilly has set forth on its website, www.bakertilly.com, privacy policies and statements about its practices, including statements related to its participation in the U.S.-EU Safe Harbor Framework. In addition, from at least June 2010, Baker Tilly displayed the mark on its website.

The Commission’s complaint alleges that Baker Tilly, through its statements and use of the mark, falsely represented that it was a “current” participant in the Safe Harbor when, in fact, from June 2011 until December 2013, Baker Tilly was not a “current” participant in the Safe Harbor. The Commission’s complaint alleges that in June 2010, Baker Tilly submitted a Safe Harbor self-certification. Baker Tilly did not renew its self-certification in June 2011 and Commerce subsequently updated Baker Tilly’s status to “not current” on its public website. In December 2013, Baker Tilly renewed its self-certification to the Safe Harbor and its status was changed to “current” on Commerce’s website.

Analysis to Aid Public Comment

Part I of the proposed order prohibits Baker Tilly from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework.

Parts II through VI of the proposed order are reporting and compliance provisions. Part II requires Baker Tilly to retain documents relating to its compliance with the order for a five-year period. Part III requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part IV ensures notification to the FTC of changes in corporate status. Part V mandates that Baker Tilly submit an initial compliance report to the FTC, and make available to the FTC subsequent reports. Part VI is a provision “sunsetting” the order after twenty (20) years, with certain exceptions.

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 complaint or order or to modify the order’s terms in any way.

Complaint

IN THE MATTER OF

BITTORRENT, INC.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket No. C-4464; File No. 142 3020
Complaint, June 19, 2014 – Decision, June 19, 2014

This consent order addresses BitTorrent, Inc.’s alleged false or misleading representations that BitTorrent made to consumers concerning its participation in the Safe Harbor privacy framework agreed upon by the U.S. and the European Union. The complaint alleges that BitTorrent falsely represented that it was a “current” participant in the Safe Harbor when, in fact, from January 2008 until November 2013, BitTorrent was not a “current” participant in the U.S.-EU Safe Harbor Framework. The consent order prohibits BitTorrent from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework.

Participants

For the *Commission*: *Jessica Lyon, Katie Race Brin, and Katherine White.*

For the *Respondent*: *Stacey Brandenburg and Ken Driefach, ZwiGen PLLC.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the BitTorrent, Inc., a corporation, 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 BitTorrent, Inc. (“BitTorrent”) is a California corporation, with its principal office or place of business at 303 2nd Street, Suite S600, San Francisco, CA 94107.

Complaint

2. Respondent is the developer of a popular peer-to-peer file-sharing system used to exchange software, music, movies, digital books, and other large files online.

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.bittorrent.com, privacy policies and statements about its practices, including statements related to its participation in the Safe Harbor privacy framework agreed upon by the U.S. and the European Union (“U.S.-EU Safe Harbor Framework”).

The Framework

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. Companies under the jurisdiction of the U.S. Federal Trade Commission (“FTC”), as well as the U.S. Department of

Complaint

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.

8. 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 U.S.-EU Safe Harbor Framework.

Violations of Section 5 of the FTC Act

9. In January 2007, respondent submitted to Commerce a self-certification of compliance to the U.S.-EU Safe Harbor Framework.

10. In January 2008, respondent did not renew its self-certification to the U.S.-EU Safe Harbor Framework, and Commerce subsequently updated respondent's status to "not current" on its public website.

11. From at least January 2007 until November 2013, respondent disseminated or caused to be disseminated privacy policies and statements on the www.bittorrent.com website, including, but not limited to, the following statements:

BitTorrent adheres to the European Union Safe Harbor principles as set forth by the United States Department of Commerce regarding the collection, use, and retention of personal information covered by the Privacy Policy from the European Union.

Decision and Order

12. Through the means described in Paragraph 11, respondent represented, expressly or by implication, that it was a “current” participant in the U.S.-EU Safe Harbor Framework.

13. In truth and in fact, from January 2008 until November 2013, respondent was not a “current” participant in the U.S.-EU Safe Harbor Framework. Therefore, the representation set forth in Paragraph 12 is false and misleading.

14. 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 nineteenth day of June, 2014, has issued this complaint against respondent.

By the Commission, Commissioner McSweeney not participating.

DECISION AND ORDER

The Federal Trade Commission (“Commission” or “FTC”), having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45 *et seq.*;

The respondent, its attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), which includes: a statement by

Decision and Order

respondent that it neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in the Consent Agreement, and, only for purposes of this action, admits the facts necessary to establish jurisdiction; and waives and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the FTC Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from interested persons pursuant to section 2.34 of its Rules, now in further conformity with the procedure prescribed in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following Order:

1. Respondent BitTorrent, Inc. is a California corporation, with its principal office or place of business at 303 2nd Street, Suite S600, San Francisco, CA 94107.
2. Respondent neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in this order. Only for purposes of this action, respondent admits the facts necessary to establish jurisdiction.

ORDER**DEFINITIONS**

For purposes of this Order, the following definitions shall apply:

- A. Unless otherwise specified, "respondent" shall mean BitTorrent, Inc. and its successors and assigns.

Decision and Order

- B. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondent and its officers, agents, representatives, and employees, whether acting directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, or sale of any product or service, in or affecting commerce, shall not misrepresent in any manner, expressly or by implication, the extent to which respondent is a member of, adheres to, complies with, is certified by, is endorsed by, or otherwise participates in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework and the U.S.-Swiss Safe Harbor Framework.

II.

IT IS FURTHER ORDERED that respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying, a print or electronic copy of, for a period of five (5) years from the date of preparation or dissemination, whichever is later, all documents relating to compliance with this order, including but not limited to:

- A. all advertisements, promotional materials, and any other statements containing any representations covered by this order, with all materials relied upon in disseminating the representation; and
- B. any documents, whether prepared by or on behalf of respondent, that call into question respondent’s compliance with this order.

Decision and Order

III.

IT IS FURTHER ORDERED that respondent shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities relating to the subject matter of this order. Respondent shall deliver this order to such current personnel within thirty (30) days after service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities. For any business entity resulting from any change in structure set forth in Part IV, delivery shall be at least ten (10) days prior to the change in structure. Respondent must secure a signed and dated statement acknowledging receipt of this order, within thirty (30) days of delivery, from all persons receiving a copy of the order pursuant to this section.

IV.

IT IS FURTHER ORDERED that respondent shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including, but not limited to: a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however,* that, with respect to any proposed change in the corporation(s) about which respondent learns fewer than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The subject line must begin: *In re BitTorrent, Inc.*, FTC File No. 1423020.

Decision and Order

V.

IT IS FURTHER ORDERED that respondent, and its successors and assigns, within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, it shall submit an additional true and accurate written report.

VI.

This order will terminate on June 19, 2034, or twenty (20) years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. any Part in this order that terminates in fewer than twenty (20) years;
- B. this order's application to any respondent that is not named as a defendant in such complaint; and
- C. this order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order as to such respondent will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission, Commissioner McSweeney not participating.

Analysis to Aid Public Comment

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, a consent agreement applicable to BitTorrent, Inc. (“BitTorrent”).

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 and take appropriate action or make final the agreement’s proposed order.

This matter concerns alleged false or misleading representations that BitTorrent made to consumers concerning its participation in the Safe Harbor privacy framework (“Safe Harbor”) agreed upon by the U.S. and the European Union (“EU”) (“U.S.-EU Safe Harbor Framework”). It is among several actions the Commission is bringing to enforce the promises that companies make when they certify that they participate in the Safe Harbor Framework. The Safe Harbor framework allows U.S. companies to transfer data outside the EU consistent with European law. To join the Safe Harbor framework, a company must self-certify to the U.S. Department of Commerce (“Commerce”) that it complies with a set of principles and related requirements that have been deemed by the European Commission as providing “adequate” privacy protection. Commerce maintains a public website, www.export.gov/safeharbor, where it posts the names of companies that have self-certified to the Safe Harbor framework. The listing of companies indicates whether their self-certification is “current” or “not current.” Companies are required to re-certify every year in order to retain their status as “current” members of the Safe Harbor framework.

BitTorrent is the developer of a peer-to-peer file-sharing system. According to the Commission’s complaint, from January 2007 until November 2013, BitTorrent set forth on its website, www.bittorrent.com, privacy policies and statements about its

Analysis to Aid Public Comment

practices, including statements related to its participation in the U.S.-EU Safe Harbor Framework.

The Commission's complaint alleges that BitTorrent falsely represented that it was a "current" participant in the Safe Harbor when, in fact, from January 2008 until November 2013, BitTorrent was not a "current" participant in the U.S.-EU Safe Harbor Framework. The Commission's complaint alleges that in January 2007, BitTorrent submitted a Safe Harbor self-certification. BitTorrent did not renew its self-certification in January 2008, and Commerce subsequently updated BitTorrent's status to "not current" on its public website.

Part I of the proposed order prohibits BitTorrent from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework.

Parts II through VI of the proposed order are reporting and compliance provisions. Part II requires BitTorrent to retain documents relating to its compliance with the order for a five-year period. Part III requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part IV ensures notification to the FTC of changes in corporate status. Part V mandates that BitTorrent submit an initial compliance report to the FTC, and make available to the FTC subsequent reports. Part VI is a provision "sunsetting" the order after twenty (20) years, with certain exceptions.

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 complaint or order or to modify the order's terms in any way.

Complaint

IN THE MATTER OF

**CHARLES RIVER LABORATORIES
INTERNATIONAL, INC.**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket No. C-4465; File No. 142 3022
Complaint, June 19, 2014 – Decision, June 19, 2014

This consent order addresses Charles River Laboratories International, Inc.'s alleged false or misleading representations that Charles River Labs made to consumers concerning its participation in the Safe Harbor privacy framework agreed upon by the U.S. and the European Union. The complaint alleges that that Charles River Labs falsely represented that it was a "current" participant in the Safe Harbor when, in fact, from May 2011 until December 2013, Charles River Labs was not a "current" participant in the U.S.-EU Safe Harbor Framework. The consent order prohibits Charles River Labs from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework.

Participants

For the *Commission: Jessica Lyon, Katie Race Brin, and Katherine White.*

For the *Respondent: Robert Kidwell, Mintz, Levin, Cohen, Ferris, Glovsky and Popeo, P.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Charles River Laboratories International, Inc., a corporation, 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 Charles River Laboratories International, Inc. ("Charles River Labs") is a Delaware corporation, with its principal office or place of business at 251 Ballardvale Street, Wilmington, Massachusetts 01887.

Complaint

2. Respondent provides solutions that accelerate the early-stage drug discovery and development process and models required in research and development of new drugs, devices and therapies.

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.criver.com, privacy policies and statements about its practices, including statements related to its participation in the Safe Harbor privacy framework agreed upon by the U.S. and the European Union (“U.S.-EU Safe Harbor Framework”).

The Framework

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.

Complaint

7. 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.

8. 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 U.S.-EU Safe Harbor Framework.

Violations of Section 5 of the FTC Act

9. In May 2006, respondent submitted to Commerce a self-certification of compliance to the U.S.-EU Safe Harbor Framework.

10. In May 2011, respondent did not renew its self-certification to the U.S.-EU Safe Harbor Framework, and Commerce subsequently updated respondent’s status to “not current” on its public website. In December 2013, respondent renewed its self-certification to the U.S.-EU Safe Harbor Framework, and respondent’s status was changed to “current” on Commerce’s website.

11. Since at least May 2006, respondent has disseminated or caused to be disseminated privacy policies and statements on the www.criver.com website, including, but not limited to, the following statements:

It is our policy to respect the privacy of our employees, customers, business partners, and others. Personal Data is used, collected, and retained in a manner consistent with the laws of the countries in which we do

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business. In furtherance of this commitment, we comply with the U.S.-EU Safe Harbor Framework as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of personal data from European Union countries (“EU”). We self-certify our adherence to the Safe Harbor Privacy Principles (“Safe Harbor Principles”) of notice, choice, onward transfer, security, data integrity, access and enforcement. To learn more about the Safe Harbor Principles, and to view our certification, please visit <http://www.export.gov/safe-harbor/>.

12. Through the means described in Paragraph 11, respondent represents, expressly or by implication, that it is a “current” participant in the U.S.-EU Safe Harbor Framework.

13. In truth and in fact, from May 2011 until December 2013, respondent was not a “current” participant in the U.S.-EU Safe Harbor Framework. Therefore, the representation set forth in Paragraph 12 was false and misleading.

14. 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 nineteenth day of June, 2014, has issued this complaint against respondent.

By the Commission, Commissioner McSweeney not participating.

Decision and Order

DECISION AND ORDER

The Federal Trade Commission (“Commission” or “FTC”), having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45, *et seq.*;

The respondent, its attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), which includes: a statement by respondent that it neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in the Consent Agreement, and, only for purposes of this action, admits the facts necessary to establish jurisdiction; and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the FTC Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from interested persons pursuant to section 2.34 of its Rules, now in further conformity with the procedure prescribed in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following Order:

1. Respondent Charles River Laboratories International, Inc. is a Delaware corporation, with its principal office or place of business at 251 Ballardvale Street, Wilmington, Massachusetts 01887.
2. Respondent neither admits nor denies any of the allegations in the draft complaint, except as

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specifically stated in this order. Only for purposes of this action, respondent admits the facts necessary to establish jurisdiction.

ORDER**DEFINITIONS**

For purposes of this Order, the following definitions shall apply:

- A. Unless otherwise specified, “respondent” shall mean Charles River Laboratories International, Inc. and its successors and assigns.
- B. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondent and its officers, agents, representatives, and employees, whether acting directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, or sale of any product or service, in or affecting commerce, shall not misrepresent in any manner, expressly or by implication, the extent to which respondent is a member of, adheres to, complies with, is certified by, is endorsed by, or otherwise participates in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework and the U.S.-Swiss Safe Harbor Framework.

II.

IT IS FURTHER ORDERED that respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying, a print or electronic copy of, for a period of five (5) years from the date of preparation or dissemination, whichever is later, all documents relating to compliance with this order, including but not limited to:

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- A. all advertisements, promotional materials, and any other statements containing any representations covered by this order, with all materials relied upon in disseminating the representation; and
- B. any documents, whether prepared by or on behalf of respondent, that call into question respondent's compliance with this order.

III.

IT IS FURTHER ORDERED that respondent shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities relating to the subject matter of this order. Respondent shall deliver this order to such current personnel within thirty (30) days after service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities. For any business entity resulting from any change in structure set forth in Part IV, delivery shall be at least ten (10) days prior to the change in structure. Respondent must secure a signed and dated statement acknowledging receipt of this order, within thirty (30) days of delivery, from all persons receiving a copy of the order pursuant to this section.

IV.

IT IS FURTHER ORDERED that respondent shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including, but not limited to: a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however,* that, with respect to any proposed change in the corporation(s) about which respondent learns fewer than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after

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obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The subject line must begin: *In re Charles River Laboratories International, Inc.*, FTC File No. 1423022.

V.

IT IS FURTHER ORDERED that respondent, and its successors and assigns, within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, it shall submit an additional true and accurate written report.

VI.

This order will terminate on June 19, 2034, or twenty (20) years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. any Part in this order that terminates in fewer than twenty (20) years;
- B. this order's application to any respondent that is not named as a defendant in such complaint; and
- C. this order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld

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on appeal, then the order as to such respondent will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission, Commissioner McSweeney not participating.

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, a consent agreement applicable to Charles River Laboratories International, Inc. (“Charles River Labs”).

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 and take appropriate action or make final the agreement’s proposed order.

This matter concerns alleged false or misleading representations that Charles River Labs made to consumers concerning its participation in the Safe Harbor privacy framework (“Safe Harbor”) agreed upon by the U.S. and the European Union (“EU”) (“U.S.-EU Safe Harbor Framework”). It is among several actions the Commission is bringing to enforce the promises that companies make when they certify that they participate in the Safe Harbor Framework. The Safe Harbor framework allows U.S. companies to transfer data outside the EU consistent with European law. To join the Safe Harbor

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framework, a company must self-certify to the U.S. Department of Commerce (“Commerce”) that it complies with a set of principles and related requirements that have been deemed by the European Commission as providing “adequate” privacy protection. Commerce maintains a public website, www.export.gov/safeharbor, where it posts the names of companies that have self-certified to the Safe Harbor framework. The listing of companies indicates whether their self-certification is “current” or “not current.” Companies are required to re-certify every year in order to retain their status as “current” members of the Safe Harbor framework.

Charles River Labs provides support for research and development of new drugs, devices and therapies. According to the Commission’s complaint, since at least May 2006, Charles River Labs set forth on its website, www.criver.com, privacy policies and statements about its practices, including statements related to its participation in the U.S-EU Safe Harbor Framework.

The Commission’s complaint alleges that Charles River Labs falsely represented that it was a “current” participant in the Safe Harbor when, in fact, from May 2011 until December 2013, Charles River Labs was not a “current” participant in the U.S.-EU Safe Harbor Framework. The Commission’s complaint alleges that in May 2006, Charles River Labs submitted a Safe Harbor self-certification. Charles River Labs did not renew its self-certification in May 2011 and Commerce subsequently updated Charles River Labs status to “not current” on its public website. In December 2013, Charles River Labs renewed its self-certification to the Safe Harbor framework, and its status was changed to “current” on Commerce’s website.

Part I of the proposed order prohibits Charles River Labs from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework.

Parts II through VI of the proposed order are reporting and compliance provisions. Part II requires Charles River Labs to

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retain documents relating to its compliance with the order for a five-year period. Part III requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part IV ensures notification to the FTC of changes in corporate status. Part V mandates that Charles River Labs submit an initial compliance report to the FTC, and make available to the FTC subsequent reports. Part VI is a provision “sunsetting” the order after twenty (20) years, with certain exceptions.

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 complaint or order or to modify the order’s terms in any way.

Complaint

IN THE MATTER OF

DATAMOTION, INC.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4466; File No. 142 3023*
Complaint, June 19, 2014 – Decision, June 19, 2014

This consent order addresses DataMotion, Inc.’s alleged false or misleading representations that DataMotion made to consumers concerning its participation in the Safe Harbor privacy frameworks agreed upon by the U.S. and the European Union and the U.S. and Switzerland. The complaint alleges that DataMotion, through its statements and use of the mark, falsely represented that it was a “current” participant in the Safe Harbor Frameworks when, in fact, from April 2013 until November 2013, DataMotion was not a “current” participant in the Safe Harbor Frameworks. The consent order prohibits DataMotion from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework and the U.S.-Swiss Safe Harbor Framework.

Participants

For the *Commission: Jessica Lyon, Katie Race Brin, and Katherine White.*

For the *Respondent: Bob Bales, CEO, pro se.*

COMPLAINT

The Federal Trade Commission, having reason to believe that DataMotion, Inc., a corporation, 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 DataMotion, Inc., (“DataMotion”) is a Delaware corporation with its principal office or place of business at 35 Airport Road, Suite 120, Morristown, New Jersey 07960.
2. Respondent provides businesses with systems for sending encrypted email and other secure file transport.

Complaint

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.datamotion.com, privacy policies and statements about its practices, including statements related to its participation in the Safe Harbor privacy frameworks agreed upon by the U.S. and the European Union (“U.S.-EU Safe Harbor Framework”) and the U.S. and Switzerland (“U.S.-Swiss Safe Harbor Framework”).

The 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. 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

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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.

8. 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.

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 and the U.S.-Swiss 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 Frameworks.

The U.S.-EU Safe Harbor Framework Certification Mark

10. In 2008, Commerce developed the U.S.-EU Safe Harbor Framework Certification Mark ("the mark"). Upon request, Commerce provides the mark to those organizations that maintain a "current" self-certification to the U.S.-EU Safe Harbor Framework. In addition, Commerce has established certain rules for using the mark, such as requirements relating to the mark's placement on a website and the inclusion of a link to www.export.gov/safeharbor. The mark appears as follows:



Violations of Section 5 of the FTC Act

11. In April 2012, respondent submitted to Commerce a self-certification of compliance with the Safe Harbor Frameworks.

Complaint

12. In April 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. In November 2013, respondent renewed its self-certification to the Safe Harbor Frameworks and respondent's status was changed to "current" on Commerce's website.

13. From at least April 2012, respondent has disseminated or caused to be disseminated privacy policies and statements on the www.datamotion.com website, including, but not limited to, the following statements:

DataMotion 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 from European Union member countries and Switzerland. DataMotion has certified that it adheres 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 DataMotion's certification, please visit www.export.gov/safeharbor (<http://www.export.gov/safeharbor>)

14. From at least April 2012, respondent has displayed the mark on the www.datamotion.com website.

15. Through the means described in Paragraph 13 and 14, respondent represented, expressly or by implication, that it was a "current" participant in the U.S.-EU Safe Harbor and U.S.-Swiss Safe Harbor Frameworks.

16. In truth and in fact, from April 2013 until November 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.

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17. 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 nineteenth day of June, 2014, has issued this complaint against respondent.

By the Commission, Commissioner McSweeney not participating.

DECISION AND ORDER

The Federal Trade Commission (“Commission” or “FTC”), having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45, *et seq.*;

The respondent, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), which includes: a statement by respondent that it neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in the Consent Agreement, and, only for purposes of this action, admits the facts necessary to establish jurisdiction; and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the FTC Act, and that a complaint should issue

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stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following Decision and Order (“Order”):

1. Respondent DataMotion, Inc. (“DataMotion”) is a Delaware corporation with its principal office or place of business at 35 Airport Road, Suite 120, Morristown, NJ 07960.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER**DEFINITIONS**

For purposes of this Order, the following definitions shall apply:

- A. Unless otherwise specified, “respondent” shall mean DataMotion, Inc. and its successors and assigns.
- B. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondent and its officers, agents, representatives, and employees, whether acting directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, or sale of any product or service, in or affecting commerce, shall not misrepresent in any manner, expressly or by implication, the extent to which respondent is a

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member of, adheres to, complies with, is certified by, is endorsed by, or otherwise participates in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework and the U.S.-Swiss Safe Harbor Framework.

II.

IT IS FURTHER ORDERED that respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying, a print or electronic copy of, for a period of five (5) years from the date of preparation or dissemination, whichever is later, all documents relating to compliance with this order, including but not limited to:

- A. all advertisements, promotional materials, and any other statements containing any representations covered by this order, with all materials relied upon in disseminating the representation; and
- B. any documents, whether prepared by or on behalf of respondent, that call into question respondent's compliance with this order.

III.

IT IS FURTHER ORDERED that respondent shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities relating to the subject matter of this order. Respondent shall deliver this order to such current personnel within thirty (30) days after service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities. For any business entity resulting from any change in structure set forth in Part IV, delivery shall be at least ten (10) days prior to the change in structure. Respondent must secure a signed and dated statement acknowledging receipt of this order, within thirty (30) days of delivery, from all persons receiving a copy of the order pursuant to this section.

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IV.

IT IS FURTHER ORDERED that respondent shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including, but not limited to: a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however,* that, with respect to any proposed change in the corporation(s) about which respondent learns fewer than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The subject line must begin: *In re DataMotion, Inc.*, FTC File No. 1423023.

V.

IT IS FURTHER ORDERED that respondent, and its successors and assigns, within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, it shall submit an additional true and accurate written report.

VI.

This order will terminate on June 19, 2034, or twenty (20) years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the

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order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. any Part in this order that terminates in fewer than twenty (20) years;
- B. this order's application to any respondent that is not named as a defendant in such complaint; and
- C. this order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order as to such respondent will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission, Commissioner McSweeney not participating.

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT**

The Federal Trade Commission ("FTC" or "Commission") has accepted, subject to final approval, a consent agreement applicable to DataMotion, Inc. ("DataMotion").

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

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again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter concerns alleged false or misleading representations that DataMotion made to consumers concerning its participation in the Safe Harbor privacy frameworks agreed upon by the U.S. and the European Union ("U.S.-EU Safe Harbor Framework") and the U.S. and Switzerland ("U.S.-Swiss Safe Harbor Framework"). It is among several actions the Commission is bringing to enforce the promises that companies make when they certify that they participate in the U.S.-EU Safe Harbor Framework and/or U.S.-Swiss Safe Harbor Framework ("Safe Harbor Frameworks"). The Safe Harbor Frameworks allow U.S. companies to transfer data outside the EU and Switzerland consistent with European law. To join the Safe Harbor Frameworks, a company must self-certify to the U.S. Department of Commerce ("Commerce") that it complies with a set of principles and related requirements that have been deemed by the European Commission and Switzerland as providing "adequate" privacy protection. These principles include notice, choice, onward transfer, security, data integrity, access, and enforcement. Commerce maintains a public website, www.export.gov/safeharbor, where it posts the names of companies that have self-certified to the Safe Harbor Frameworks. The listing of companies indicates whether their self-certification is "current" or "not current." Companies are required to re-certify every year in order to retain their status as "current" members of the Safe Harbor Frameworks.

In 2008, Commerce developed the U.S.-EU Safe Harbor Framework Certification Mark ("the mark") to allow companies to highlight for consumers their compliance with the Safe Harbor framework. Upon request, Commerce provides the mark to those organizations that maintain a "current" self-certification to the U.S.-EU Safe Harbor Framework. Commerce has established certain rules for using the mark, such as requirements related to the mark's placement on a website and the inclusion of a link to www.export.gov/safeharbor.

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DataMotion provides businesses with systems for sending encrypted email and other secure file transport. According to the Commission's complaint, since at least April 2012, DataMotion has set forth on its website, www.datamotion.com, privacy policies and statements about its practices, including statements related to its participation in the U.S.-EU Safe Harbor Framework and U.S.-Swiss Safe Harbor Framework. In addition, from at least April 2012 until November 2013, DataMotion displayed the mark on its website.

The Commission's complaint alleges that DataMotion, through its statements and use of the mark, falsely represented that it was a "current" participant in the Safe Harbor Frameworks when, in fact, from April 2013 until November 2013, DataMotion was not a "current" participant in the Safe Harbor Frameworks. The Commission's complaint alleges that in April 2012, DataMotion submitted a self-certification to the Safe Harbor Frameworks. DataMotion did not renew its self-certification in April 2013 and Commerce subsequently updated DataMotion's status to "not current" on its public website. In November 2013, DataMotion renewed its self-certification to the Safe Harbor Frameworks and its status was changed to "current" on Commerce's website.

Part I of the proposed order prohibits DataMotion from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework and the U.S.-Swiss Safe Harbor Framework.

Parts II through VI of the proposed order are reporting and compliance provisions. Part II requires DataMotion to retain documents relating to its compliance with the order for a five-year period. Part III requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part IV ensures notification to the FTC of changes in corporate status. Part V mandates that DataMotion submit an initial compliance report to the FTC, and make available to the FTC subsequent reports. Part VI is a

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provision “sunsetting” the order after twenty (20) years, with certain exceptions.

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 complaint or order or to modify the order’s terms in any way.

Complaint

IN THE MATTER OF

DDC LABORATORIES, INC.
D/B/A
DNA DIAGNOSTICS CENTERCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4467; File No. 142 3024*
Complaint, June 19, 2014 – Decision, June 19, 2014

This consent order addresses DDC Laboratories, Inc.'s alleged false or misleading representations that DDC made to consumers concerning its participation in the Safe Harbor privacy framework agreed upon by the U.S. and the European Union. The complaint alleges that DDC, through its statement, falsely represented that it was a "current" participant in the Safe Harbor when, in fact, from November 2011 until November 2013, DDC was not a "current" participant in the Safe Harbor. The consent order prohibits DDC from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework.

Participants

For the *Commission*: Jessica Lyon, Katie Race Brin, and Katherine White.

For the *Respondent*: Jim Fishkin, Dechert LLP.

COMPLAINT

The Federal Trade Commission, having reason to believe that DDC Laboratories, Inc. ("Respondent" or "DDC"), a corporation, 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 DDC Laboratories, Inc., also doing business as DNA Diagnostics Center, is an Ohio corporation with its principal office or place of business at One DDC Way, Fairfield, OH 45014.

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2. Respondent is a leading provider of private DNA testing and focuses primarily on testing to establish paternity and other familial relationships.

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.dnacenter.com, privacy policies and statements about its practices, including a statement related to its adherence to the Safe Harbor privacy framework agreed upon by the U.S. and the European Union (“U.S.-EU Safe Harbor Framework”).

The Safe Harbor Framework

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. Companies under the jurisdiction of the U.S. Federal Trade Commission (“FTC”), as well as the U.S. Department of

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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, or subsequently renew its Safe Harbor certification, may be subject to an enforcement action based on the FTC's deception authority under Section 5 of the FTC Act.

8. 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.

Violations of Section 5 of the FTC Act

9. In November 2007, Respondent submitted to Commerce a self-certification of compliance to the Safe Harbor Framework. Respondent subsequently renewed its self-certification in November 2008, November 2009, and November 2010.

10. In November 2011, Respondent did not renew its self-certification to the Safe Harbor, and Commerce subsequently updated Respondent's status to "not current" on its public website. In November 2013, Respondent renewed its self-certification to the Safe Harbor Framework and Respondent's status was changed to "current" on Commerce's website.

11. Since at least November 2007, Respondent has disseminated or caused to be disseminated a privacy policy and statement on the www.dnacenter.com website, including the following statement:

DDC and its subsidiaries, branches, divisions, and business units in the United States adhere to the Safe Harbor Principles published by the U.S. Department of Commerce with respect to all such data.

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12. Through the means described in Paragraph 11, Respondent represents, expressly or by implication, that it is a “current” participant in the U.S.-EU Safe Harbor Framework.

13. In truth and in fact, from November 2011 until November 2013, Respondent was not a “current” participant in the U.S.-EU Safe Harbor Framework. Therefore, the representation set forth in Paragraph 12 was, false and misleading.

14. 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 nineteenth day of June, 2014, has issued this Complaint against Respondent.

By the Commission, Commissioner McSweeney not participating.

DECISION AND ORDER

The Federal Trade Commission (“Commission” or “FTC”), having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45, *et seq.*;

The respondent, its attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), which includes: a statement by

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respondent that it neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in the Consent Agreement, and, only for purposes of this action, admits the facts necessary to establish jurisdiction; and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent violated the FTC Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed Consent Agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from interested persons pursuant to section 2.34 of its Rules, now in further conformity with the procedure prescribed Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following Order:

1. Respondent DDC Laboratories, Inc., also doing business as DNA Diagnostics Center, is an Ohio corporation with its principal office or place of business at One DDC Way, Fairfield, OH 45014.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER**DEFINITIONS**

For purposes of this Order, the following definitions shall apply:

- A. Unless otherwise specified, "respondent" shall mean DDC Laboratories, Inc., and its successors and assigns.
- B. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

Decision and Order

I.

IT IS ORDERED that respondent and its officers, agents, representatives, and employees, whether acting directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, or sale of any product or service, in or affecting commerce, shall not misrepresent in any manner, expressly or by implication, the extent to which respondent is a member of, adheres to, complies with, is certified by, is endorsed by, or otherwise participates in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework and the U.S.-Swiss Safe Harbor Framework.

II.

IT IS FURTHER ORDERED that respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying, a print or electronic copy of, for a period of five (5) years from the date of preparation or dissemination, whichever is later, all documents relating to compliance with this order, including but not limited to:

- A. all advertisements, promotional materials, and any other statements containing any representations covered by this order, with all materials relied upon in disseminating the representation; and
- B. any documents, whether prepared by or on behalf of respondent, that call into question respondent's compliance with this order.

III.

IT IS FURTHER ORDERED that respondent shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities relating to the subject matter of this order. Respondent shall deliver this order to such current personnel within thirty (30) days after service of this

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order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities. For any business entity resulting from any change in structure set forth in Part IV, delivery shall be at least ten (10) days prior to the change in structure. Respondent must secure a signed and dated statement acknowledging receipt of this order, within thirty (30) days of delivery, from all persons receiving a copy of the order pursuant to this section.

IV.

IT IS FURTHER ORDERED that respondent shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including, but not limited to: a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however,* that, with respect to any proposed change in the corporation(s) about which respondent learns fewer than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The subject line must begin: *In re DDC Laboratories, Inc.*, FTC File No. 1423024.

V.

IT IS FURTHER ORDERED that respondent, and its successors and assigns, within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its compliance with this order. Within ten (10) days of

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receipt of written notice from a representative of the Commission, it shall submit an additional true and accurate written report.

VI.

This order will terminate on June 19, 2034, or twenty (20) years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. any Part in this order that terminates in fewer than twenty (20) years;
- B. this order's application to any respondent that is not named as a defendant in such complaint; and
- C. this order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order as to such respondent will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission, Commissioner McSweeney not participating.

Analysis to Aid Public Comment

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT**

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, a consent agreement applicable to DDC Laboratories, Inc. (“DDC”).

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 and take appropriate action or make final the agreement’s proposed order.

This matter concerns alleged false or misleading representations that DDC made to consumers concerning its participation in the Safe Harbor privacy framework (“Safe Harbor”) agreed upon by the U.S. and the European Union (“EU”) (“U.S.-EU Safe Harbor Framework”). It is among several actions the Commission is bringing to enforce the promises that companies make when they certify that they participate in the Safe Harbor Framework. The Safe Harbor framework allows U.S. companies to transfer data outside the EU consistent with European law. To join the Safe Harbor framework, a company must self-certify to the U.S. Department of Commerce (“Commerce”) that it complies with a set of principles and related requirements that have been deemed by the European Commission as providing “adequate” privacy protection. These principles include notice, choice, onward transfer, security, data integrity, access, and enforcement. Commerce maintains a public website, www.export.gov/safeharbor, where it posts the names of companies that have self-certified to the Safe Harbor framework. The listing of companies indicates whether their self-certification is “current” or “not current.” Companies are required to re-certify every year in order to retain their status as “current” members of the Safe Harbor framework.

DDC is a leading provider of private DNA testing and focuses primarily on testing to establish paternity and other familial relationships. According to the Commission’s complaint, since at

Analysis to Aid Public Comment

least November 2007, DDC has set forth on its website, www.dnacenter.com, a privacy policy and statement about its practices, including a statement related to its participation in the U.S.-EU Safe Harbor Framework.

The Commission's complaint alleges that DDC, through its statement, falsely represented that it was a "current" participant in the Safe Harbor when, in fact, from November 2011 until November 2013, DDC was not a "current" participant in the Safe Harbor. The Commission's complaint alleges that in November 2007, DDC submitted a Safe Harbor self-certification. DDC subsequently renewed its self-certification in November 2008, November 2009, and November 2010. DDC did not renew its self-certification in November 2011 and Commerce subsequently updated DDC's status to "not current" on its public website. In November 2013, DDC renewed its self-certification to the Safe Harbor and its status was changed to "current" on Commerce's website.

Part I of the proposed order prohibits DDC from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework.

Parts II through VI of the proposed order are reporting and compliance provisions. Part II requires DDC to retain documents relating to its compliance with the order for a five-year period. Part III requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part IV ensures notification to the FTC of changes in corporate status. Part V mandates that DDC submit an initial compliance report to the FTC, and make available to the FTC subsequent reports. Part VI is a provision "sunsetting" the order after twenty (20) years, with certain exceptions.

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 complaint or order or to modify the order's terms in any way.

Complaint

IN THE MATTER OF

PDB SPORTS, LTD.
D/B/A
DENVER BRONCOS FOOTBALL CLUB

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket No. C-4468; File No. 142 3025
Complaint, June 19, 2014 – Decision, June 19, 2014

This consent order addresses PDB Sports, Ltd. d/b/a the Denver Broncos Football Club's alleged false or misleading representations that the Denver Broncos made to consumers concerning their participation in the Safe Harbor privacy framework agreed upon by the U.S. and the European Union. The complaint alleges that the Denver Broncos falsely represented that they were a "current" participant in the Safe Harbor when, in fact, from November 2011 until November 2013, the Denver Broncos were not a "current" participant in the U.S.-EU Safe Harbor Framework. The consent order prohibits the Denver Broncos from making misrepresentations about their membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework.

Participants

For the *Commission*: Jessica Lyon, Katie Race Brin, and Katherine White.

For the *Respondents*: John Graubert and Kurt Wimmer, Covington & Burling LLP.

COMPLAINT

The Federal Trade Commission, having reason to believe that PDB Sports, Ltd., doing business as the Denver Broncos Football Club, a limited partnership, 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 PDB Sports, Ltd., doing business as the Denver Broncos Football Club, ("Denver Broncos") is a Colorado

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limited partnership with its principal office or place of business at 13655 Broncos Parkway, Englewood, CO 80112.

2. Respondent is a professional football team and a member of the National Football League.

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.denverbroncos.com, privacy policies and statements about its practices, including statements related to its participation in the Safe Harbor privacy framework agreed upon by the U.S. and the European Union (“U.S.-EU Safe Harbor Framework”).

The Framework

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.

Complaint

7. 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.

8. 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 U.S.-EU Safe Harbor Framework.

Violations of Section 5 of the FTC Act

9. In November 2008, respondent submitted to Commerce a self-certification of compliance to the U.S.-EU Safe Harbor Framework.

10. In November 2011, respondent did not renew its self-certification to the U.S.-EU Safe Harbor Framework, and Commerce subsequently updated respondent’s status to “not current” on its public website.

11. From at least November 2008 until November 2013, respondent disseminated or caused to be disseminated privacy policies and statements on the www.denverbroncos.com website, including, but not limited to, the following statements:

Denver Broncos Football Club complies with the EU Safe Harbor framework as set forth by the Department of Commerce regarding the collection, use, and retention of data from the European Union.

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12. Through the means described in Paragraph 11, respondent represented, expressly or by implication, that it was a “current” participant in the U.S.-EU Safe Harbor Framework.

13. In truth and in fact, from November 2011 until November 2013, respondent was not a “current” participant in the U.S.-EU Safe Harbor Framework. Therefore, the representation set forth in Paragraph 12 is false and misleading.

14. 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 nineteenth day of June, 2014, has issued this complaint against respondent.

By the Commission, Commissioner McSweeney not participating.

DECISION AND ORDER

The Federal Trade Commission (“Commission” or “FTC”), having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45, *et seq.*;

The respondent, its attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), which includes: a statement by

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respondent that it neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in the Consent Agreement, and, only for purposes of this action, admits the facts necessary to establish jurisdiction; and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the FTC Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from interested persons pursuant to section 2.34 of its Rules, now in further conformity with the procedure prescribed in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following Order:

1. Respondent PDB Sports, Ltd., doing business as the Denver Broncos Football Club, is a Colorado limited partnership with its principal office or place of business at 13655 Broncos Parkway, Englewood, CO 80112.
2. Respondent neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in this order. Only for purposes of this action, respondent admits the facts necessary to establish jurisdiction.

ORDER**DEFINITIONS**

For purposes of this Order, the following definitions shall apply:

- A. Unless otherwise specified, "respondent" shall mean PDB Sports, Ltd., doing business as the Denver Broncos Football Club, and its successors and assigns.

Decision and Order

- B. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondent and its officers, agents, representatives, and employees, whether acting directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, or sale of any product or service, in or affecting commerce, shall not misrepresent in any manner, expressly or by implication, the extent to which respondent is a member of, adheres to, complies with, is certified by, is endorsed by, or otherwise participates in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework and the U.S.-Swiss Safe Harbor Framework.

II.

IT IS FURTHER ORDERED that respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying, a print or electronic copy of, for a period of five (5) years from the date of preparation or dissemination, whichever is later, all documents relating to compliance with this order, including but not limited to:

- A. all advertisements, promotional materials, and any other statements containing any representations covered by this order, with all materials relied upon in disseminating the representation; and
- B. any documents, whether prepared by or on behalf of respondent, that call into question respondent’s compliance with this order.

III.

IT IS FURTHER ORDERED that respondent shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees,

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agents, and representatives having responsibilities relating to the subject matter of this order. Respondent shall deliver this order to such current personnel within thirty (30) days after service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities. Respondent must secure a signed and dated statement acknowledging receipt of this order, within thirty (30) days of delivery, from all persons receiving a copy of the order pursuant to this section.

IV.

IT IS FURTHER ORDERED that respondent shall notify the Commission within fourteen (14) days of any change in the partnership(s) that may affect compliance obligations arising under this order, including, but not limited to: a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor company; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the partnership name or address. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The subject line must begin: *In re PDB Sports, Ltd., d/b/a the Denver Broncos Football Club*, FTC File No. 1423025.

V.

IT IS FURTHER ORDERED that respondent, and its successors and assigns, within ninety (90) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, it shall submit an additional true and accurate written report.

Analysis to Aid Public Comment

VI.

This order will terminate on June 19, 2034, or twenty (20) years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. any Part in this order that terminates in fewer than twenty (20) years;
- B. this order's application to any respondent that is not named as a defendant in such complaint; and
- C. this order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order as to such respondent will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission, Commissioner McSweeney not participating.

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission ("FTC" or "Commission") has accepted, subject to final approval, a consent agreement

Analysis to Aid Public Comment

applicable to PDB Sports, Ltd., doing business as the Denver Broncos Football Club (“the Denver Broncos”).

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 and take appropriate action or make final the agreement’s proposed order.

This matter concerns alleged false or misleading representations that the Denver Broncos made to consumers concerning their participation in the Safe Harbor privacy framework (“Safe Harbor”) agreed upon by the U.S. and the European Union (“EU”) (“U.S.-EU Safe Harbor Framework”). It is among several actions the Commission is bringing to enforce the promises that companies make when they certify that they participate in the Safe Harbor Framework. The Safe Harbor framework allows U.S. companies to transfer data outside the EU consistent with European law. To join the Safe Harbor framework, a company must self-certify to the U.S. Department of Commerce (“Commerce”) that it complies with a set of principles and related requirements that have been deemed by the European Commission as providing “adequate” privacy protection. Commerce maintains a public website, www.export.gov/safeharbor, where it posts the names of companies that have self-certified to the Safe Harbor framework. The listing of companies indicates whether their self-certification is “current” or “not current.” Companies are required to re-certify every year in order to retain their status as “current” members of the Safe Harbor framework.

The Denver Broncos are a professional football team and a member of the National Football League. According to the Commission’s complaint, from November 2008 until November 2013, the Denver Broncos set forth on their website, www.denverbroncos.com, privacy policies and statements about their practices, including statements related to their participation in the U.S-EU Safe Harbor Framework.

Analysis to Aid Public Comment

The Commission's complaint alleges that the Denver Broncos falsely represented that they were a "current" participant in the Safe Harbor when, in fact, from November 2011 until November 2013, the Denver Broncos were not a "current" participant in the U.S.-EU Safe Harbor Framework. The Commission's complaint alleges that in November 2008, the Denver Broncos submitted a Safe Harbor self-certification. The Denver Broncos did not renew the self-certification in November 2011, and Commerce subsequently updated the Denver Broncos' status to "not current" on its public website.

Part I of the proposed order prohibits the Denver Broncos from making misrepresentations about their membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework.

Parts II through VI of the proposed order are reporting and compliance provisions. Part II requires the Denver Broncos to retain documents relating to compliance with the order for a five-year period. Part III requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part IV ensures notification to the FTC of changes in corporate status. Part V mandates that the Denver Broncos submit an initial compliance report to the FTC, and make available to the FTC subsequent reports. Part VI is a provision "sunsetting" the order after twenty (20) years, with certain exceptions.

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 complaint or order or to modify the order's terms in any way.

Complaint

IN THE MATTER OF

FANTAGE.COM, INC.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4469; File No. 142 3026*
Complaint, June 19, 2014 – Decision, June 19, 2014

This consent order addresses Fantage.com, Inc.'s alleged false or misleading representations that Fantage made to consumers concerning its participation in the Safe Harbor privacy framework agreed upon by the U.S. and the European Union. The complaint alleges that Fantage falsely represented that it was a "current" participant in the U.S.-EU Safe Harbor Framework when, in fact, from June 2012 until January 2014, Fantage was not a "current" participant in the Safe Harbor Framework. The consent order prohibits Fantage from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework.

Participants

For the *Commission: Jessica Lyon, Katie Race Brin, and Katherine White.*

For the *Respondent: Daniel Jeong, CFO, pro se.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Fantage.com, Inc., a corporation, 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 Fantage.com, Inc. ("Fantage") is a New Jersey corporation with its principal office or place of business at 400 Kelby Street, 19th Floor, Fort Lee, New Jersey 07024.
2. Respondent developed and operates a massively multiplayer online role-playing game directed at children ages 6-16.

Complaint

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.fantage.com, privacy policies and statements about its practices, including statements related to its participation in the Safe Harbor privacy framework agreed upon by the U.S. and the European Union (“U.S.-EU Safe Harbor Framework”).

The Framework

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. 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

Complaint

action based on the FTC's deception authority under Section 5 of the FTC Act.

8. 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.

Violations of Section 5 of the FTC Act

9. In June 2011, respondent submitted to Commerce a self-certification of compliance with the U.S.-EU Safe Harbor Framework.

10. In June 2012, respondent did not renew its self-certification to the U.S.-EU Safe Harbor Framework, and Commerce subsequently updated respondent's status to "not current" on its public website. In January 2014, respondent renewed its self-certification to the Safe Harbor Framework.

11. Since June 2011, except for a one-month period from November to December 2013, respondent has disseminated or caused to be disseminated privacy policies and statements on the www.fantage.com website, including but not limited to, the following statements:

When we collect personal information from residents of the European Union, we follow the privacy principles of the U.S.-EU Safe Harbor Framework, which covers the transfer, collection, use, and retention of personal data from the European Union.

12. Through the means described in Paragraph 11, respondent represents, expressly or by implication, that it is a "current" participant in the U.S.-EU Safe Harbor Framework.

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13. In truth and in fact, from June 2012 until January 2014 respondent was not a “current” participant in the U.S.-EU Safe Harbor Framework. Therefore, the representation set forth in Paragraph 12 was false and misleading.

14. 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 nineteenth day of June, 2014, has issued this complaint against respondent.

By the Commission, Commissioner McSweeney not participating.

DECISION AND ORDER

The Federal Trade Commission (“Commission” or “FTC”), having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45 *et seq.*;

The respondent, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), which includes: a statement by respondent that it neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in the Consent Agreement, and, only for purposes of this action, admits the facts

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necessary to establish jurisdiction; and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the FTC Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following Decision and Order ("Order"):

1. Respondent Fantage.com, Inc. ("Fantage") is a New Jersey corporation with its principal office or place of business at 400 Kelby Street, 19th Floor, Fort Lee, New Jersey 07024.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER**DEFINITIONS**

For purposes of this Order, the following definitions shall apply:

- A. Unless otherwise specified, "respondent" shall mean Fantage.com, Inc. and its successors and assigns.
- B. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

Decision and Order

I.

IT IS ORDERED that respondent and its officers, agents, representatives, and employees, whether acting directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, or sale of any product or service, in or affecting commerce, shall not misrepresent in any manner, expressly or by implication, the extent to which respondent is a member of, adheres to, complies with, is certified by, is endorsed by, or otherwise participates in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework and the U.S.-Swiss Safe Harbor Framework.

II.

IT IS FURTHER ORDERED that respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying, a print or electronic copy of, for a period of five (5) years from the date of preparation or dissemination, whichever is later, all documents relating to compliance with this order, including but not limited to:

- A. all advertisements, promotional materials, and any other statements containing any representations covered by this order, with all materials relied upon in disseminating the representation; and
- B. any documents, whether prepared by or on behalf of respondent, that call into question respondent's compliance with this order.

III.

IT IS FURTHER ORDERED that respondent shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities relating to the subject matter of this order. Respondent shall deliver this order to such current personnel within thirty (30) days after service of this

Decision and Order

order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities. For any business entity resulting from any change in structure set forth in Part IV, delivery shall be at least ten (10) days prior to the change in structure. Respondent must secure a signed and dated statement acknowledging receipt of this order, within thirty (30) days of delivery, from all persons receiving a copy of the order pursuant to this section.

IV.

IT IS FURTHER ORDERED that respondent shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including, but not limited to: a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however,* that, with respect to any proposed change in the corporation(s) about which respondent learns fewer than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The subject line must begin: *In re Fantage.com, Inc.*, FTC File No. 1423026.

V.

IT IS FURTHER ORDERED that respondent, and its successors and assigns, within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its compliance with this order. Within ten (10) days of

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receipt of written notice from a representative of the Commission, it shall submit an additional true and accurate written report.

VI.

This order will terminate on June 19, 2034, or twenty (20) years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. any Part in this order that terminates in fewer than twenty (20) years;
- B. this order's application to any respondent that is not named as a defendant in such complaint; and
- C. this order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order as to such respondent will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission, Commissioner McSweeney not participating.

Analysis to Aid Public Comment

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT**

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, a consent agreement applicable to Fantage.com, Inc. (“Fantage”).

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 and take appropriate action or make final the agreement’s proposed order.

This matter concerns alleged false or misleading representations that Fantage made to consumers concerning its participation in the Safe Harbor privacy framework agreed upon by the U.S. and the European Union (“EU”) (“U.S.-EU Safe Harbor Framework” or “Safe Harbor Framework”). It is among several actions the Commission is bringing to enforce the promises that companies make when they certify that they participate in the Safe Harbor Framework. The Safe Harbor framework allows U.S. companies to transfer data outside the EU consistent with European law. To join the Safe Harbor framework, a company must self-certify to the U.S. Department of Commerce (“Commerce”) that it complies with a set of principles and related requirements that have been deemed by the European Commission as providing “adequate” privacy protection. These principles include notice, choice, onward transfer, security, data integrity, access, and enforcement. Commerce maintains a public website, www.export.gov/safeharbor, where it posts the names of companies that have self-certified to the Safe Harbor framework. The listing of companies indicates whether their self-certification is “current” or “not current.” Companies are required to re-certify every year in order to retain their status as “current” members of the Safe Harbor framework.

Fantage developed and operates a massively multiplayer online role-playing game directed at children ages 6-16.

Analysis to Aid Public Comment

According to the Commission's complaint, since June 2011, except for a one-month period from November to December 2013, Fantage set forth on its website, www.fantage.com, privacy policies and statements about its practices, including statements related to its participation in the U.S.-EU Safe Harbor Framework.

The Commission's complaint alleges that Fantage falsely represented that it was a "current" participant in the U.S.-EU Safe Harbor Framework when, in fact, from June 2012 until January 2014, Fantage was not a "current" participant in the Safe Harbor Framework. The Commission's complaint alleges that in June 2011, Fantage submitted a Safe Harbor self-certification. Fantage did not renew its self-certification in June 2012 and Commerce subsequently updated Fantage's status to "not current" on its public website. In January 2014, Fantage renewed its self-certification to the Safe Harbor Framework, and its status was changed to "current" on Commerce's website.

Part I of the proposed order prohibits Fantage from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework.

Parts II through VI of the proposed order are reporting and compliance provisions. Part II requires Fantage to retain documents relating to its compliance with the order for a five-year period. Part III requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part IV ensures notification to the FTC of changes in corporate status. Part V mandates that Fantage submit an initial compliance report to the FTC, and make available to the FTC subsequent reports. Part VI is a provision "sunsetting" the order after twenty (20) years, with certain exceptions.

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 complaint or order or to modify the order's terms in any way.

Complaint

IN THE MATTER OF

LEVEL 3 COMMUNICATIONS, LLCCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4470; File No. 142 3028*
Complaint, June 19, 2014 – Decision, June 19, 2014

This consent order addresses Level 3 Communications, LLC's alleged false or misleading representations that Level 3 made to consumers concerning its participation in the Safe Harbor privacy frameworks agreed upon by the U.S. and the European Union and the U.S. and Switzerland. The complaint alleges that Level 3 falsely represented that it was a "current" participant in the Safe Harbor Frameworks when, in fact, from June 2012 until November 2013, Level 3 was not a "current" participant in the Safe Harbor Frameworks. The consent order prohibits Level 3 from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework and the U.S.-Swiss Safe Harbor Framework.

Participants

For the *Commission: Jessica Lyon, Katie Race Brin, and Katherine White.*

For the *Respondents: Kristine Devine and Madeleine Findley, Wiltshire & Grannis LLP.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Level 3 Communications, 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 Level 3 Communications, LLC ("Level 3") is a Delaware limited liability company with its principal office or place of business at 1025 Eldorado Boulevard, Broomfield, Colorado 80021.

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2. Respondent is an international communications provider and one of the six largest internet service providers in the world.

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.level3.com, privacy policies and statements about its practices, including statements related to its participation in the Safe Harbor privacy frameworks agreed upon by the U.S. and the European Union (“U.S.-EU Safe Harbor Framework”) and the U.S. and Switzerland (“U.S.-EU Safe Harbor Framework”).

The 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. Companies under the jurisdiction of the U.S. Federal Trade Commission (“FTC”), as well as the U.S. Department of

Complaint

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.

8. 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.

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 Frameworks.

Violations of Section 5 of the FTC Act

10. In June 2001, respondent submitted to Commerce a self-certification of compliance with the Safe Harbor Frameworks.

11. In June 2012, 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.

12. From at least June 2001 until November 2013, respondent disseminated or caused to be disseminated privacy policies and statements on the www.level3.com website, including but not limited to, the following statements:

Transfers of personally identifiable information made by Level 3 are made in compliance with the Safe Harbor principles to which Level 3 has self-certified its adherence to as can be viewed on the [Safe Harbor](http://www.export.gov/safeharbor/) web site at [http://export.gov/safeharbor/](http://www.export.gov/safeharbor/).

Decision and Order

13. Through the means described in Paragraph 12, respondent represented, expressly or by implication, that it was a “current” participant in the U.S.-EU Safe Harbor and U.S.-Swiss Safe Harbor Frameworks.

14. In truth and in fact, from June 2012 until November 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 13 is false and misleading.

15. 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 nineteenth day of June, 2014, has issued this complaint against respondent.

By the Commission, Commissioner McSweeney not participating.

DECISION AND ORDER

The Federal Trade Commission (“Commission” or “FTC”), having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45 *et seq.*;

Decision and Order

The respondent, its attorney and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), which includes: a statement by respondent that it neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in the Consent Agreement, and, only for purposes of this action, admits the facts necessary to establish jurisdiction; and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the FTC Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following Decision and Order (“Order”):

1. Respondent Level 3 Communications, LLC (“Level 3”) is a Delaware limited liability company with its principal office or place of business at 1025 Eldorado Boulevard, Broomfield, Colorado 80021.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER**DEFINITIONS**

For purposes of this Order, the following definitions shall apply:

Decision and Order

- A. Unless otherwise specified, “respondent” shall mean Level 3 Communications, LLC and its successors and assigns.
- B. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondent and its officers, agents, representatives, and employees, whether acting directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, or sale of any product or service, in or affecting commerce, shall not misrepresent in any manner, expressly or by implication, the extent to which respondent is a member of, adheres to, complies with, is certified by, is endorsed by, or otherwise participates in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework and the U.S.-Swiss Safe Harbor Framework.

II.

IT IS FURTHER ORDERED that respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying, a print or electronic copy of, for a period of five (5) years from the date of preparation or dissemination, whichever is later, all documents relating to compliance with this order, including but not limited to:

- A. all advertisements, promotional materials, and any other statements containing any representations covered by this order, with all materials relied upon in disseminating the representation; and
- B. any documents, whether prepared by or on behalf of respondent, that call into question respondent’s compliance with this order.

Decision and Order

III.

IT IS FURTHER ORDERED that respondent shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities relating to the subject matter of this order. Respondent shall deliver this order to such current personnel within thirty (30) days after service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities. For any business entity resulting from any change in structure set forth in Part IV, delivery shall be at least ten (10) days prior to the change in structure. Respondent must secure a signed and dated statement acknowledging receipt of this order, within thirty (30) days of delivery, from all persons receiving a copy of the order pursuant to this section.

IV.

IT IS FURTHER ORDERED that respondent shall notify the Commission at least thirty (30) days prior to any change in the company that may affect compliance obligations arising under this order, including, but not limited to: a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor company; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the company name or address. *Provided, however*, that, with respect to any proposed change in the company about which respondent learns fewer than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The subject line must begin: *In re Level 3 Communications, LLC*, FTC File No. 1423028.

Decision and Order

V.

IT IS FURTHER ORDERED that respondent, and its successors and assigns, within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, it shall submit an additional true and accurate written report.

VI.

This order will terminate on June 19, 2034, or twenty (20) years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. any Part in this order that terminates in fewer than twenty (20) years;
- B. this order's application to any respondent that is not named as a defendant in such complaint; and
- C. this order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order as to such respondent will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission, Commissioner McSweeney not participating.

Analysis to Aid Public Comment

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT**

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, a consent agreement applicable to Level 3 Communications, LLC (“Level 3”).

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 and take appropriate action or make final the agreement’s proposed order.

This matter concerns alleged false or misleading representations that Level 3 made to consumers concerning its participation in the Safe Harbor privacy frameworks agreed upon by the U.S. and the European Union (“EU”) (“U.S.-EU Safe Harbor Framework”) and the U.S. and Switzerland (“U.S.-Swiss Safe Harbor Framework”). It is among several actions the Commission is bringing to enforce the promises that companies make when they certify that they participate in the U.S.-EU Safe Harbor Framework and/or U.S.-Swiss Safe Harbor Framework (“Safe Harbor Frameworks”). The Safe Harbor Frameworks allow U.S. companies to transfer data outside the EU and Switzerland consistent with European law. To join the Safe Harbor Frameworks, a company must self-certify to the U.S. Department of Commerce (“Commerce”) that it complies with a set of principles and related requirements that have been deemed by the European Commission and Switzerland as providing “adequate” privacy protection. These principles include notice, choice, onward transfer, security, data integrity, access, and enforcement. Commerce maintains a public website, www.export.gov/safeharbor, where it posts the names of companies that have self-certified to the Safe Harbor Frameworks. The listing of companies indicates whether their self-certification is “current” or “not current.” Companies are required to re-certify every year in order to retain their status as “current” members of the Safe Harbor Frameworks.

Analysis to Aid Public Comment

Level 3 is an international communications provider and one of the six largest internet service providers in the world. According to the Commission's complaint, from June 2001 until November 2013, Level 3 set forth on its website, www.level3.com, privacy policies and statements about its practices, including statements related to its participation in the U.S.-EU Safe Harbor Framework and the U.S.-Swiss Safe Harbor Framework.

The Commission's complaint alleges that Level 3 falsely represented that it was a "current" participant in the Safe Harbor Frameworks when, in fact, from June 2012 until November 2013, Level 3 was not a "current" participant in the Safe Harbor Frameworks. The Commission's complaint alleges that in June 2001, Level 3 submitted a self-certification to the Safe Harbor Frameworks. Level 3 did not renew its self-certification in June 2012 and Commerce subsequently updated Level 3's status to "not current" on its public website.

Part I of the proposed order prohibits Level 3 from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework and the U.S.-Swiss Safe Harbor Framework.

Parts II through VI of the proposed order are reporting and compliance provisions. Part II requires Level 3 to retain documents relating to its compliance with the order for a five-year period. Part III requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part IV ensures notification to the FTC of changes in company status. Part V mandates that Level 3 submit an initial compliance report to the FTC, and make available to the FTC subsequent reports. Part VI is a provision "sunsetting" the order after twenty (20) years, with certain exceptions.

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 complaint or order or to modify the order's terms in any way.

Complaint

IN THE MATTER OF

REYNOLDS CONSUMER PRODUCTS INC.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4471; File No. 142 3030*
Complaint, June 19, 2014 – Decision, June 19, 2014

This consent order addresses Reynolds Consumer Products Inc.'s alleged false or misleading representations that Reynolds made to consumers concerning its participation in the Safe Harbor privacy framework agreed upon by the U.S. and the European Union. The complaint alleges that Reynolds falsely represented that it was a "current" participant in the Safe Harbor when, in fact, from April 2010 until November 2013, Reynolds was not a "current" participant in the U.S.-EU Safe Harbor Framework with respect to the customer data it handles. The complaint further alleges that, from April 2011 until November 2013, Reynolds was not a "current" participant in the U.S.-EU Safe Harbor Framework with respect to the human resources data it handles. The consent order prohibits Reynolds from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework.

Participants

For the *Commission*: Jessica Lyon, Katie Race Brin, and Katherine White.

For the *Respondents*: C. David Watson, Senior Counsel, Reynolds Consumer Products Inc.

COMPLAINT

The Federal Trade Commission, having reason to believe that Reynolds Consumer Products Inc. 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 Reynolds Consumer Products Inc. ("Reynolds") is a Delaware corporation with its principal office or place of business at 1900 West Field Court, Lake Forest, Illinois 60045.

Complaint

2. Respondent manufactures and sells food wrapping foil and a variety of other household products for cooking, storage, and disposal.

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.reynoldspkg.com, privacy policies and statements about its practices, including statements related to its participation in the Safe Harbor privacy framework agreed upon by the U.S. and the European Union (“U.S.-EU Safe Harbor Framework”).

The Framework

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. Companies under the jurisdiction of the U.S. Federal Trade Commission (“FTC”), as well as the U.S. Department of

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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.

8. 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.

Violations of Section 5 of the FTC Act

9. In April 2009, respondent submitted to Commerce a self-certification of compliance with the U.S.-EU Safe Harbor Framework with respect to the customer data it handles.

10. In April 2009, respondent submitted to Commerce a self-certification of compliance with the U.S.-EU Safe Harbor Framework with respect to the human resources data it handles.

11. In April 2010, respondent did not renew its self-certification to the U.S.-EU Safe Harbor Framework with respect to the customer data it handles, and Commerce subsequently updated respondent's status to "not current" on its public website.

12. In April 2011, respondent did not renew its self-certification to the U.S.-EU Safe Harbor Framework with respect to the human resources data it handles, and Commerce subsequently updated respondent's status to "not current" on its public website.

13. From at least April 2009 until November 2013, respondent disseminated or caused to be disseminated privacy policies and statements on the www.reynoldspkg.com website, including but not limited to, the following statements:

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Due to the global nature of Reynolds' business, transfers of Personal Data across national boundaries may occur. As a result, this Privacy Policy complies with the Safe Harbor Principles as agreed upon by the United States Department of Commerce and the European Commission regarding the collection, use, processing, disclosure, transfer and retention (collectively "Processing") of Personal Data with respect to Personal Data transferred from the European Economic Area (EEA) to the United States.

14. Through the means described in Paragraph 13, respondent represented, expressly or by implication, that it was a "current" participant in the U.S.-EU Safe Harbor Framework.

15. In truth and in fact, from April 2010 until November 2013, respondent was not a "current" participant in the U.S.-EU Safe Harbor Framework with respect to the customer data it handles. Further, from April 2011 until November 2013, respondent was not a "current" participant in the U.S.-EU Safe Harbor Framework with respect to the human resources data in handles. Therefore, the representation set forth in Paragraph 14 is false and misleading.

16. 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 nineteenth day of June, 2014, has issued this complaint against respondent.

By the Commission, Commissioner McSweeney not participating.

Decision and Order

DECISION AND ORDER

The Federal Trade Commission (“Commission” or “FTC”), having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45 *et seq.*;

The respondent, its attorney and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), which includes: a statement by respondent that it neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in the Consent Agreement, and, only for purposes of this action, admits the facts necessary to establish jurisdiction; and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the FTC Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following Decision and Order (“Order”):

1. Respondent Reynolds Consumer Products Inc. (“Reynolds”) is a Delaware corporation with its principal office or place of business at 1900 West Field Court, Lake Forest, Illinois 60045.

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2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER**DEFINITIONS**

For purposes of this Order, the following definitions shall apply:

- A. Unless otherwise specified, “respondent” shall mean Reynolds Consumer Products Inc. and its successors and assigns.
- B. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondent and its officers, agents, representatives, and employees, whether acting directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, or sale of any product or service, in or affecting commerce, shall not misrepresent in any manner, expressly or by implication, the extent to which respondent is a member of, adheres to, complies with, is certified by, is endorsed by, or otherwise participates in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework and the U.S.-Swiss Safe Harbor Framework.

II.

IT IS FURTHER ORDERED that respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying, a print or electronic copy of, for a period of five (5) years from the date of preparation or dissemination, whichever is later, all documents relating to compliance with this order, including but not limited to:

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- A. all advertisements, promotional materials, and any other statements containing any representations covered by this order, with all materials relied upon in disseminating the representation; and
- B. any documents, whether prepared by or on behalf of respondent, that call into question respondent's compliance with this order.

III.

IT IS FURTHER ORDERED that respondent shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities relating to the subject matter of this order. Respondent shall deliver this order to such current personnel within thirty (30) days after service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities. For any business entity resulting from any change in structure set forth in Part IV, delivery shall be at least ten (10) days prior to the change in structure. Respondent must secure a signed and dated statement acknowledging receipt of this order, within thirty (30) days of delivery, from all persons receiving a copy of the order pursuant to this section.

IV.

IT IS FURTHER ORDERED that respondent shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including, but not limited to: a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however,* that, with respect to any proposed change in the corporation(s) about which respondent learns fewer than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after

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obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The subject line must begin: *In re Reynolds Consumer Products Inc.*, FTC File No. 1423030.

V.

IT IS FURTHER ORDERED that respondent, and its successors and assigns, within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, it shall submit an additional true and accurate written report.

VI.

This order will terminate on June 19, 2034, or twenty (20) years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. any Part in this order that terminates in fewer than twenty (20) years;
- B. this order's application to any respondent that is not named as a defendant in such complaint; and
- C. this order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order as to such respondent will terminate

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according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission, Commissioner McSweeney not participating.

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, a consent agreement applicable to Reynolds Consumer Products Inc. (“Reynolds”).

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 and take appropriate action or make final the agreement’s proposed order.

This matter concerns alleged false or misleading representations that Reynolds made to consumers concerning its participation in the Safe Harbor privacy framework agreed upon by the U.S. and the European Union (“EU”) (“U.S.-EU Safe Harbor Framework” or “Safe Harbor framework”). It is among several actions the Commission is bringing to enforce the promises that companies make when they certify that they participate in the Safe Harbor framework. The Safe Harbor framework allows U.S. companies to transfer data outside the EU consistent with European law. To join the Safe Harbor framework, a company must self-certify to the U.S. Department of Commerce (“Commerce”) that it complies with a set of

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principles and related requirements that have been deemed by the European Commission as providing “adequate” privacy protection. These principles include notice, choice, onward transfer, security, data integrity, access, and enforcement. Commerce maintains a public website, www.export.gov/safeharbor, where it posts the names of companies that have self-certified to the Safe Harbor framework. The listing of companies indicates whether their self-certification is “current” or “not current.” Companies are required to re-certify every year in order to retain their status as “current” members of the Safe Harbor framework.

Reynolds manufactures and sells food wrapping foil and a variety of other household products for cooking, storage, and disposal. According to the Commission’s complaint, from April 2009 until November 2013, Reynolds set forth on its website, www.reynoldspkg.com, privacy policies and statements about its practices, including statements related to its participation in the U.S-EU Safe Harbor Framework.

The Commission’s complaint alleges that Reynolds falsely represented that it was a “current” participant in the Safe Harbor when, in fact, from April 2010 until November 2013, Reynolds was not a “current” participant in the U.S.-EU Safe Harbor Framework with respect to the customer data it handles. Further, from April 2011 until November 2013, Reynolds was not a “current” participant in the U.S.-EU Safe Harbor Framework with respect to the human resources data it handles. The Commission’s complaint alleges that in April 2009, Reynolds submitted a Safe Harbor self-certification with respect to the customer data it handles and a Safe Harbor self-certification with respect to the human resources data it handles. Reynolds did not renew its self-certification with respect to the customer data it handles in April 2010 and Commerce subsequently updated Reynolds’ status to “not current” on its public website. Reynolds did not renew its self-certification with respect to the human resources data it handles in April 2011 and Commerce subsequently updated Reynolds’ status to “not current” on its public website.

Analysis to Aid Public Comment

Part I of the proposed order prohibits Reynolds from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework.

Parts II through VI of the proposed order are reporting and compliance provisions. Part II requires Reynolds to retain documents relating to its compliance with the order for a five-year period. Part III requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part IV ensures notification to the FTC of changes in corporate status. Part V mandates that Reynolds submit an initial compliance report to the FTC, and make available to the FTC subsequent reports. Part VI is a provision “sunsetting” the order after twenty (20) years, with certain exceptions.

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 complaint or order or to modify the order’s terms in any way.