



Office of the Secretary

United States of America
FEDERAL TRADE COMMISSION
Washington, D.C. 20580

April 11, 2013

Tim Kelly
Commonwealth of Pennsylvania

*Re: In the Matter of DesignerWare, LLC,
In the Matter of Timothy Kelly and Ronald P. Koller
File No. 112 3151, Docket Nos. C-4390 and C-4391*

Dear Mr. Kelly:

Thank you for your comment regarding the Federal Trade Commission's consent agreements in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

Your comment suggests that the proposed consent orders with DesignerWare, LLC ("DesignerWare"), and its owners, you and Ronald P. Koller, are based on incorrect assumptions. In particular, you assert that DesignerWare's monitoring technology, Detective Mode, could only be installed on rented computers that were reported as "stolen." Although you concede that DesignerWare did not "know about how all its licensees used the Detective Mode program," you claim "it would not make sense for them to use the software" to monitor consumers who were late on their payments.

As you know, the Commission conducted a thorough investigation of this matter, including how DesignerWare's licensees used Detective Mode. The complaint against DesignerWare is based on the Commission's reason to believe that the company engaged in unfair and deceptive practices in violation of Section 5 the Federal Trade Commission Act, 15 U.S.C. § 45. The complaint alleges that DesignerWare did not monitor its collection of or limit its licensees' access to Detective Mode data, which included sensitive consumer information such as screenshots of medical records, Social Security numbers, and financial account statements and webcam photos of individuals engaged in personal activities within the presumed privacy of their own homes. The complaint further alleges that, in numerous instances, RTO stores that licensed Detective Mode used the program where consumers were late in making rental payments and the stores had no reason to believe that the computers had been stolen. As you acknowledge, DesignerWare did not – and, in fact, could not – ensure that Detective Mode data was used only to locate stolen computers.

The Commission believes the proposed orders strike an appropriate balance between protecting consumer privacy and affirming the ability of the RTO store respondents to locate stolen property, using methods that do not place consumers at risk from the disclosure of financial, health, or other confidential consumer information. The proposed orders ban the respondents' use of monitoring technology – such as keystroke logging, taking screenshots of computer users' activities, and photographing anyone in view of the computer's camera – in connection with any covered RTO transaction.¹ However, they permit the limited use of geophysical location tracking technology, provided that consumer renters receive notice of and give their consent to its use, and that computer users receive notice immediately prior to its activation. Further, the proposed orders recognize that geophysical location tracking technology may legitimately help find a stolen computer and, accordingly, expressly allow it to be activated without notifying a computer user where (a) the renter reports that the computer has been stolen or there is otherwise a reasonable basis to believe that the computer has been stolen, and (b) a police report about the stolen computer has been filed.

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decisions and Orders in final form without any modifications. The final Decisions and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Wright not participating.

Donald S. Clark
Secretary

¹ The proposed orders define “covered rent-to-own transaction” as “any transaction where a consumer enters into an agreement for the purchase or rental of a computer and the consumer’s contract or rental agreement provides for payments over time and an option to purchase the computer.” The prohibition on monitoring does not include consumers’ rental of laptops outside the RTO context, or any business’s use or rental of laptops, and also does not cover the use of monitoring technology for non-commercial purposes by private persons (e.g., parents monitoring their children’s computer use).