

Analysis of Proposed Consent Orders to Aid Public Comment
In the Matter of Apperian, Inc., File No. 142 3017

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 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-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.