

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Timothy J. Muris, Chairman
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary
Pamela Jones Harbour

_____)	
In the Matter of)	
)	
MTS, INC., d/b/a TOWER)	DECISION AND ORDER
RECORDS/BOOKS/VIDEO,)	
a corporation,)	Docket No. C-4110
)	
and)	
)	
TOWER DIRECT, LLC, d/b/a)	
TOWERRECORDS.COM,)	
a corporation.)	
_____)	

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Respondents named in the caption hereof, and the Respondents 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 Respondents with violation of the Federal Trade Commission Act, 15 U.S.C. § 45 et seq;

The Respondents, their attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), an admission by the Respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, 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 Respondents have violated the said 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, now in further conformity with the procedure described in Section 2.34 of its Rules, the Commission hereby issues its Complaint, makes the following jurisdictional findings and enters the following Order:

1. Respondent MTS, Inc., d/b/a Tower Records/Books/Video, is a California corporation with its principal office or place of business at 2500 Del Monte, West Sacramento, California 95691.

2. Respondent Tower Direct, LLC, d/b/a TowerRecords.com, is a Delaware limited liability company and a subsidiary of Respondent MTS, Inc. Its principal office or place of business is also at 2500 Del Monte, West Sacramento, California 95691.

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

ORDER

DEFINITIONS

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

1. “Personal information” shall mean individually identifiable information from or about an individual consumer including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or a screen name that reveals an individual’s email address; (d) a telephone number; (e) a Social Security number; (f) a persistent identifier, such as a customer number held in a “cookie” or processor serial number, that is combined with other available data that identifies an individual consumer; or (g) any other information from or about an individual consumer that is combined with (a) through (f) above.

2. Unless otherwise specified, “Respondents” shall mean MTS, Inc., and its successors and assigns (including the reorganized debtor or any entity in which property of the bankruptcy estate vests pursuant to any confirmed plan) officers, agents, representatives, and employees; Tower Direct, LLC, and its successors and assigns (including the reorganized debtor or any entity in which property of the bankruptcy estate vests pursuant to any confirmed plan), officers, agents, representatives, and employees; and both of them and their successors and assigns, officers, agents, representatives, and employees.

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

I.

IT IS ORDERED that Respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the online 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 Respondents maintain and protect the privacy, confidentiality, or security of any personal information collected from or about consumers.

II.

IT IS FURTHER ORDERED that Respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the online advertising, marketing, promotion, offering for sale, or sale of any product or service, in or affecting commerce, shall, no later than the date of service of this order, establish and implement, and thereafter maintain, a comprehensive information security program that is reasonably designed to protect the security, confidentiality, and integrity of personal information collected from or about consumers. Such program, the content and implementation of which must be fully documented in writing, shall contain administrative, technical, and physical safeguards appropriate to Respondents' size and complexity, the nature and scope of Respondents' activities, and the sensitivity of the personal information collected from or about consumers, including:

A. the designation of an employee or employees to coordinate and be accountable for the information security program.

B. the identification of material internal and external risks to the security, confidentiality, and integrity of personal information that could result in the unauthorized disclosure, misuse, loss, alteration, destruction, or other compromise of such information, and assessment of the sufficiency of any safeguards in place to control these risks. At a minimum, this risk assessment should include consideration of risks in each area of relevant operation, including, but not limited to: (1) employee training and management; (2) information systems, including network and software design, information processing, storage, transmission, and disposal; and (3) prevention, detection, and response to attacks, intrusions, or other systems failures.

C. the design and implementation of reasonable safeguards to control the risks identified through risk assessment, and regular testing or monitoring of the effectiveness of the safeguards' key controls, systems, and procedures.

D. the evaluation and adjustment of Respondents' information security program in light of the results of the testing and monitoring required by subparagraph C, any material changes to Respondents' operations or business arrangements, or any other circumstances that Respondents know or have reason to know may have a material impact on the effectiveness of their information security program.

III.

IT IS FURTHER ORDERED that Respondents obtain an assessment and report (an "Assessment") from a qualified, objective, independent third-party professional, using procedures and standards generally accepted in the profession, within one hundred and eighty (180) days after service of the order, and biannually thereafter for ten (10) years after service of the order that:

A. sets forth the specific administrative, technical, and physical safeguards that Respondents have implemented and maintained during the reporting period;

B. explains how such safeguards are appropriate to Respondents' size and complexity, the nature and scope of Respondents' activities, and the sensitivity of the personal information collected from or about consumers;

C. explains how the safeguards that have been implemented meet or exceed the protections required by Paragraph II of this order; and

D. certifies that Respondents' security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of personal information is protected and, for biannual reports, has so operated throughout the reporting period.

Each Assessment shall be prepared by a person qualified as a Certified Information System Security Professional (CISSP) or holding Global Information Assurance Certification from the SysAdmin, Audit, Network, Security Institute, or by a similarly qualified person or organization approved by the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission.

Respondents shall provide the first Assessment, as well as all: plans, reports, studies, reviews, audits, audit trails, policies, training materials, and assessments, whether prepared by or on behalf of Respondents, relied upon to prepare such Assessment to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, within ten (10) days after the Assessment has been prepared. All subsequent biannual Assessments shall be retained by the Respondents until the order is terminated and provided to the Associate Director of Enforcement within ten (10) days of request.

IV.

IT IS FURTHER ORDERED that Respondents shall maintain, and upon request make available to the Federal Trade Commission for inspection and copying, a print or electronic copy of each document relating to compliance, including but not limited to:

A. for a period of five (5) years:

1. a sample copy of each different print, broadcast, cable, or Internet advertisement, promotion, information collection form, Web page, screen, email message, or other document containing any representation regarding Respondents' online collection, use, and security of personal information from or about consumers. Each Web page copy shall be dated and contain the full URL of the Web page where the material was posted online. Electronic copies shall include all text and graphics files, audio scripts, and other computer files used in presenting the information on the Web. *Provided, however,* that after creation of any Web page or screen in compliance with this order, Respondents shall not be required to retain a print or electronic copy of: (1) any amended Web page or screen to the extent that the amendment does not affect Respondents' compliance obligations under this order; or (2) any Web page or screen that contains a hypertext link to Respondents' privacy policy, but otherwise does not relate to Respondents' compliance obligations under this order.

2. any documents, whether prepared by or on behalf of Respondents, that contradict, qualify, or call into question Respondents' compliance with this order; and

B. for a period of three (3) years after the date of preparation of each biannual Assessment required under Paragraph III of this order: all plans, reports, studies, reviews, audits, audit trails, policies, training materials, and assessments, whether prepared by or on behalf of Respondents, relating to Respondents' compliance with Paragraphs II and III of this order for the compliance period covered by such biannual Assessment.

V.

IT IS FURTHER ORDERED that Respondents 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 managerial responsibilities relating to the subject matter of this order. Respondents 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.

VI.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any change in either corporation 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 following the dismissal or closing of the current bankruptcy cases; or a change in either corporate name or address. *Provided, however*, that, with respect to any proposed change in either corporation about which either Respondent learns less than thirty (30) days prior to the date such action is to take place, Respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Paragraph shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

VII.

IT IS FURTHER ORDERED that Respondents shall, within one hundred and eighty (180) days after service of this order, and at such other times as the Commission may require, file with the Commission an initial report, in writing, setting forth in detail the manner and form in which they have complied with this order.

VIII.

This order will terminate on May 28, 2024, 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:

- A. any Paragraph in this Order that terminates in less 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 Paragraph.

Provided, further, that if such complaint is dismissed or a federal court rules that the Respondents 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 Paragraph 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.

Donald S. Clark
Secretary

SEAL:
ISSUED: May 28, 2004