

Analysis of Proposed Consent Orders to Aid Public Comment
In the Matter of Onyx Graphics, Inc., File No. 092-3139

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

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 Onyx Graphics 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”). It is among the Commission’s first cases to challenge deceptive claims about the Safe Harbor. The Safe Harbor provides a mechanism for U.S. companies to transfer data outside the EU consistent with European law. To join the Safe Harbor, a company must self-certify to the U.S. Department of Commerce (“Commerce”) that it complies with seven principles and related requirements. Commerce maintains a public website, www.export.gov/safeharbor, where it posts the names of companies that have self-certified to the Safe Harbor. 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.

_____ Onyx Graphics develops and markets commercial printing software and solutions for the digital color printing marketplace, including through a website (www.onyxgfx.com). According to the Commission’s complaint, since at least October 2006, Onyx Graphics has set forth on its website privacy policies and statements about its practices, including statements that it is a current participant in the Safe Harbor.

The Commission’s complaint alleges that Onyx Graphics falsely represented that it was a current participant in the Safe Harbor when, in fact, from August 2007 until July 2009, Onyx Graphics was not a current participant in the Safe Harbor. The Commission’s complaint alleges that in August 2006, Onyx Graphics submitted a self-certification to Commerce, which it did not renew in August 2007. Commerce then updated the company’s status to “not current” on the Commerce public website. Onyx Graphics remained in “not current” status until it submitted a self-certification to Commerce in July 2009.

The proposed order applies to Onyx Graphics’s representations about its membership in any privacy, security, or any other compliance program sponsored by the government or any other third party. It contains provisions designed to prevent Onyx Graphics from engaging in the future in practices similar to those alleged in the complaint.

Part I of the proposed order prohibits Onyx Graphics from making misrepresentations about its membership in any privacy, security, or any other compliance program sponsored by the government or any other third party.

Parts II through VI of the proposed order are reporting and compliance provisions. Part II requires Onyx Graphics 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 Onyx Graphics 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 the analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.