

Analysis of Proposed Consent Orders to Aid Public Comment
In the Matter of Progressive Gaitways, Inc., File No. 092-3141

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

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 Progressive Gaitways 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.

_____ Progressive Gaitways sells medical equipment, including through two websites (www.theratogs.com and www.gaitways.com). According to the Commission’s complaint, from at least December 2008 until June 2009, Progressive Gaitways’ www.theratogs.com website set forth privacy policies and statements about its practices, including statements related to its participation in the Safe Harbor. From at least June 2007 until June 2009, respondent has set forth on its website, www.gaitways.com, the same privacy policies and statements, including the statements related to participation in the Safe Harbor.

The Commission’s complaint alleges that until June 2009, Progressive Gaitways falsely represented that it was a current participant in the Safe Harbor when, in fact, Progressive Gaitways has not been a current participant in the Safe Harbor since November 2006 for its www.theratogs.com website, and had never been a participant in the Safe Harbor for its www.gaitways.com website. The Commission’s complaint alleges that Progressive Gaitways submitted a Safe Harbor self-certification on behalf of its www.theratogs.com website in November 2004 and renewed it in November 2005. It did not renew the self-certification in November 2006, at which point Commerce updated its status to “not current” on the Commerce public website. To date, Progressive Gaitways has not renewed its self-certification to the Safe Harbor on behalf of www.theratogs.com. The Commission’s proposed complaint also alleges that Progressive Gaitways has never filed a Safe Harbor self-certification on behalf of its www.gaitways.com website.

The proposed order applies to Progressive Gaitways'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 Progressive Gaitways from engaging in the future in practices similar to those alleged in the complaint.

Part I of the proposed order prohibits Progressive Gaitways 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 Progressive Gaitways 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 Progressive Gaitways 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.