

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Jon Leibowitz, Chairman**
 Pamela Jones Harbour
 William E. Kovacic
 J. Thomas Rosch

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In the Matter of)	
PROGRESSIVE GAITWAYS LLC,)	DOCKET NO. C-4271
a limited liability company.)	
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)	

COMPLAINT

The Federal Trade Commission, having reason to believe that Progressive Gaitways LLC (“respondent”) has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Progressive Gaitways LLC (“Progressive Gaitways”) is a Colorado company with its principal office or place of business at 305 Society Drive, #C-3, Telluride, Colorado 81435.
2. Respondent is in the business of selling medical equipment, including through two websites (www.theratogs.com and www.gaitways.com).
3. The acts and practices of respondent as alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.
4. Since at least December 2008, respondent has set forth on its website, www.theratogs.com, privacy policies and statements about its practices, including statements related to its participation in the Safe Harbor privacy framework agreed upon by the U.S. and the European Union (“U.S.-EU Safe Harbor Framework” or “Safe Harbor”). Since at least June 2007, 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.

U.S.-EU SAFE HARBOR FRAMEWORK

5. The U.S.-EU Safe Harbor Framework provides a method for U.S. companies to transfer personal data outside of Europe that is consistent with the requirements of the European Union Directive on Data Protection (“Directive”). Enacted in 1995, the Directive sets forth European Union (“EU”) requirements for privacy and the protection of personal data. Among other things, it requires EU Member States to implement legislation that prohibits the transfer of personal data outside the EU, with exceptions, unless the European Commission (“EC”) has made a determination that the recipient jurisdiction’s laws ensure the protection of such personal data. *See* Directive 95/46/EC of the European Parliament and of the Council (Oct. 24, 1995), *available at* <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0046:EN:HTML>. This determination is commonly referred to as meeting the EU’s “adequacy” standard.
6. To satisfy the EU adequacy standard for certain commercial transfers, the U.S. Department of Commerce (“Commerce”) and the EC negotiated the U.S.-EU Safe Harbor Framework, which went into effect in 2000. The Safe Harbor allows U.S. companies to transfer personal data lawfully from the EU. To join the Safe Harbor, a company must self-certify to Commerce that it complies with seven principles and related requirements that have been deemed to meet the EU’s adequacy standard.
7. Companies under the jurisdiction of the U.S. Federal Trade Commission (“FTC”), as well as the U.S. Department of Transportation, are eligible to join the Safe Harbor. A company under the FTC’s jurisdiction that self-certifies to the Safe Harbor principles but fails to implement them may be subject to an enforcement action based on the FTC’s deception authority under Section 5 of the Federal Trade Commission Act.
8. 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. According to the Safe Harbor website, “Organizations should notify the Department of Commerce if their representation to the Department is no longer valid. Failure to do so could constitute a misrepresentation.” *See* Safe Harbor List, *available at* <http://web.ita.doc.gov/safeharbor/shlist.nsf/webPages/safe+harbor+list>.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

9. In November 2004, respondent submitted to Commerce a self-certification to the Safe Harbor on behalf of its www.theratogs.com website. Respondent renewed that self-certification in November 2005.
10. In November 2006, respondent did not renew its self-certification to the Safe Harbor for the www.theratogs.com website, and Commerce updated respondent's status to "not current" on its public website. To date, respondent has not renewed its self-certification to the Safe Harbor and remains in "not current" status on Commerce's website. (Exhibit A, Declaration of Damon C. Greer).
11. From at least December 2008 until June 2009, respondent has disseminated or caused to be disseminated privacy policies and statements on the www.theratogs.com website, including, but not limited to, the following statements:

TheraTogs is a participant in the Safe Harbor program developed by the U.S. Department of Commerce and the European Union. We have certified that we adhere to the Safe Harbor Privacy Principles agreed upon by the U.S. and the European Union. For more information about the Safe Harbor and to view our certification, visit the U.S. Department of Commerce's Safe Harbor website at <http://www.export.gov/safeharbor>.

Exhibit B, December 2008 Privacy Policy

12. Through the means described in Paragraph 11, respondent represented, expressly or by implication, that it is a current participant in the Safe Harbor.
13. In truth and in fact, since November 2006, respondent has not been a current participant in the Safe Harbor. Therefore, the representations set forth in Paragraph 11 were, and are, false or misleading.
14. From at least June 2007 until June 2009, respondent has disseminated or caused to be disseminated privacy policies and statements on the www.gaitways.com website, including, but not limited to, the following statements:

PGW [Progressive Gaitways] is a participant in the Safe Harbor program developed by the U.S. Department of Commerce and the European Union. We have certified that we adhere to the Safe Harbor Privacy Principles agreed upon by the U.S. and the European Union. For more information about the Safe Harbor and to view our certification, visit the U.S. Department of Commerce's Safe Harbor website at <http://www.export.gov/safeharbor>.

Exhibit C, December 2008 Privacy Policy.

15. Respondent has never submitted a self-certification to the Safe Harbor on behalf of its www.gaitways.com website. (Exhibit A, Declaration of Damon C. Greer).
16. Through the means described in Paragraph 14, respondent represented, expressly or by implication, that it is a current participant in the Safe Harbor.
17. In truth and in fact, respondent has never self-certified to the Safe Harbor for its www.gaitways.com website. Therefore, the representations set forth in Paragraph 14 were, and are, false or misleading.
18. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this ninth day of November, 2009, has issued this complaint against respondent.

By the Commission.

Donald S. Clark
Secretary