



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

November 12, 2010

Ms. Pam Dixon
Executive Director
World Privacy Forum
State of California

Re: In the Matter of Rite Aid Corporation, File No. 072-3121, Docket No. C-4309

Dear Ms. Dixon:

Thank you for your letter commenting on the Federal Trade Commission's consent agreement in the above-entitled proceeding. Your letter was placed on the public record pursuant to Rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and was given serious consideration by the Commission.

You refer to comments you filed earlier in *In the Matter of CVS Caremark Corporation* ("CVS Caremark") and present comments and recommendations that the Commission addresses below.

Your letter states that, as in CVS Caremark, the complaint does not provide enough information about the dumpster incidents to permit you to assess whether the proposed order is reasonable. You therefore ask the Commission to revise the complaint to add information about the extent and duration of the incidents, including consumer injury. The Commission believes that the complaint provides appropriate guidance to the public of the alleged violations and the related circumstances, including specific allegations about the consumer and employee information Rite Aid Corporation ("Rite Aid") pharmacies disposed of in unsecured, publicly-accessible dumpsters, the geographical extent of the dumpster incidents,¹ and consumer harms that could result from misuse of the discarded information. Importantly, the FTC Act law violation alleged in the complaint involves Rite Aid's lack of appropriate policies and

¹ To the extent you are seeking information on the specific cities in which personal information was disposed of inappropriately by Rite Aid, according to public news reports, personal information was found in unsecured dumpsters used by Rite Aid pharmacies in Cleveland, Denver, Detroit, Louisville, Philadelphia, Hampton Roads, Virginia, and La Mirada, California. See *Drugstores Where 13 Investigates Found Customers' Personal Information in Unsecured Dumpsters*, 13 Eyewitness News WTHR, <http://wthr.images.worldnow.com/images/incoming/html/wherewefoundit.htm> (last visited August 24, 2010); Lori Crouch, *10 On Your Side Investigates: Prescription for Deception*, WAVY TV 10 (April 30, 2007); Tracy Garcia, *Job Applications Found in Trash*, Whittier Daily News (September 24, 2008).

procedures related to the disposal of personal information for all of its pharmacies, and is not specific to those in which personal information was found in unsecured dumpsters. Thus, the Commission believes the information set out in the complaint provides a sufficient basis to assess the relief in the proposed order.

Your letter notes that the Commission did not impose a civil monetary penalty in this case or in the prior case against CVS Caremark. The complaints against both companies allege violations of Section 5 of the Federal Trade Commission Act, which does not authorize civil monetary penalties.² Importantly, the Commission has recommended that Congress provide the Commission with civil penalty authority in data security cases to further enhance its enforcement efforts.³ In this case, however, the Commission believes that, taken together, the OCR settlement and the Commission's consent agreement provide appropriate relief. Should Rite Aid violate the terms of the Commission's final order, however, it would be liable for civil monetary penalties of up to \$16,000 per violation, pursuant to Section 5(l) of the FTC Act. Such penalties would serve to deter future violations.

Finally, you question why the consent order does not offer any remedy to consumers who may have been injured by Rite Aid's practices, such as notification to those consumers whose information was discarded in the incidents. The Commission considers a variety of factors in deciding whether notice to consumers is an appropriate remedy in a particular case, such as whether consumer victims are reasonably identifiable and whether the notice would be likely to benefit consumers under the circumstances. In this case, consumers whose information was found in the dumpsters are not reasonably identifiable, because most of the documents have been destroyed and the Commission did not have access to all of the documents in the first place. Thus, we do not currently have information that would enable us to identify the affected consumers. Consumers who are concerned about Rite Aid's practices may wish to contact the company directly to request a listing of those pharmacies in which personal information was disposed of inappropriately.

In any event, the Commission believes that the proposed order will ensure that Rite Aid uses reasonable and appropriate procedures to protect its customers' and employees' personal information going forward. Among other things, the proposed consent order requires Rite Aid to implement and maintain a comprehensive information security program reasonably designed to protect the security, confidentiality, and integrity of personal information and obtain independent assessments of the program's effectiveness every other year for 20 years. Further, the

² Your letter also seeks information explaining the different resolution amounts obtained by the Office for Civil Rights ("OCR") of the Department of Health and Human Services in its separate settlements with Rite Aid and CVS Caremark. We encourage you to contact OCR directly regarding this issue.

³ See, e.g., Prepared Statement of the Federal Trade Commission on "Legislative Hearing on H.R. 2221, the Data Accountability and Protection Act, and H.R. 1319, the Informed P2P User Act" Before the Committee on Energy and Commerce Subcommittee on Commerce, Trade, and Consumer Protection, United States House of Representatives (May 5, 2009), at 12, available at <http://www.ftc.gov/os/2009/05/P064504peertopeertestimony.pdf>.

Commission will monitor Rite Aid's compliance with the order, and, as noted earlier, if the company is found in violation, it could be subject to civil monetary penalties of up to \$16,000 per violation.

After considering your comments, the Commission has determined that the public interest would be best served by accepting the consent order. Thank you again for your letter.

By direction of the Commission.

Donald S. Clark
Secretary