



Office of the Secretary

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

March 2, 2011

Mr. John Hale
State of Arizona

Re: In the Matter of Twitter, Inc., File No. 092 3093, Docket No. C-4316

Dear Mr. Hale:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment 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 has given it serious consideration.

Your comment expresses several concerns with the Commission's enforcement action against Twitter. First, your comment states that, because Twitter provides a free service and because no "money and/or material of value of any kind was lost" as a result of the security breaches described in the Commission's complaint, it is inappropriate for the Commission to take action against Twitter for its alleged violation of Section 5 of the FTC Act. Second, your comment suggests that the Commission's decision to take action in this case was motivated by the fact that one of the hijacked accounts belonged to President Obama. Third, you suggest that Twitter's online service does not fall within the Commission's jurisdiction.

In response, the Commission notes that deceptive acts and practices are prohibited by Section 5 of the FTC Act regardless of whether the service in question is a paid service. If a company promises consumers that it will take reasonable and appropriate measures to prevent unauthorized access to nonpublic user information and to honor the privacy choices exercised by users, it must do so, regardless of whether it charges consumers for its service. Indeed, the Commission previously has taken action against companies providing free services for deceptive practices under Section 5 of the FTC Act.¹ Further, the Commission believes that the nonpublic user information subject to unauthorized access as a result of the breaches described in its complaint did have value to Twitter users, especially the information users deliberately designated as private.

¹ See, e.g., *In re Educ. Research Ctr. of America, Inc.*, 135 F.T.C. 578 (2003) (consent order); *In re Microsoft Corp.*, 134 F.T.C. 709 (2002) (consent order). The Commission notes that it has jurisdiction over companies that are organized for their own profit or that of their members, regardless of whether such profits materialize or derive from consumers directly. See Section 4 of the FTC Act, 15 U.S.C. § 45.

In response to your comment about political motivation, the Commission assures you that its decision to bring this action against Twitter was not political. The Commission is an independent, bipartisan agency and it initiates law enforcement actions only where it has reason to believe that the law has been violated and that enforcement is in the public interest.

Finally, in response to your comment that the Commission does not have jurisdiction over Twitter, the Commission notes that its jurisdiction under Section 5 of the FTC Act extends to unfair and deceptive acts and practices in or affecting “commerce,” which is defined to include commerce among the states and with foreign nations. 15 U.S.C. §§ 44, 45. A service provided by a United States company that enables the passage of messages over the Internet from one state to another, or from one state to a foreign nation, such as Twitter’s, is in or affecting commerce under the FTC Act, and thus is subject to Section 5 of the Act and FTC enforcement.

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and it thanks you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary