



Office of the Secretary

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

March 2, 2011

Mr. Eric Silverberg
State of New York

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

Dear Mr. Silverberg:

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 asks that the Commission clarify the impact of the proposed settlement on small websites. Your comment also poses a hypothetical in which the security of a small online message board is breached and asks whether the Commission would fine the operator of the message board.

In response, the Commission notes that its complaint against Twitter alleges that the company engaged in deceptive acts or practices, in violation of Section 5(a) of the FTC Act, by falsely representing that it used reasonable and appropriate measures to protect its users' nonpublic information from unauthorized access and honor the privacy choices exercised by its users. The Commission notes that the failure of any company to keep such promises made to consumers concerning the privacy and security of their personal information may violate the FTC Act's prohibition on deceptive acts or practices, regardless of the size of the company. The Commission has, however, adopted a flexible approach to data security, taking into account the nature of the business and the risks involved in determining whether security measures are reasonable or enforcement is warranted. The Commission has developed guidance for businesses on data security measures which may be useful to you. This guidance can be found at <http://www.business.ftc.gov/>.

Whether a breach such as the one described in your comment gives rise to a law violation is beyond the scope of the complaint and order in this case and cannot be determined given the limited information provided. We note, however, that the fact of a breach does not mean that a company has failed to honor a promise to maintain reasonable security. The Commission recognizes that there cannot be "perfect" security, and that data breaches can occur even when a company maintains reasonable precautions to prevent them. Finally, with respect to whether a fine is possible, the Commission notes that it currently does not have authority to impose civil monetary penalties for violations of Section 5(a) of the FTC Act.

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