



UNITED STATES OF AMERICA

FEDERAL TRADE COMMISSION

WASHINGTON, D.C. 20580

Office of the Secretary

August 17, 2011

Mr. Stuart K. Pratt  
Consumer Data Industry Association  
1090 Vermont Ave, NW, Suite 200  
Washington, DC 20005

*Re: In the Matter of SettlementOne Credit Corporation, File No. 082 3209  
In the Matter of ACRAnet, Inc., File No. 092 3088  
In the Matter of Statewide Credit Services, File No. 092 3089*

Dear Mr. Pratt:

Thank you for your letter on behalf of the Consumer Data Industry Association (“CDIA”) commenting on the Federal Trade Commission’s proposed consent agreements in the above-referenced proceedings. 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 raises several concerns. First, your comment expresses a concern that the Commission is imposing “potentially very significant new obligations” on consumer reporting agencies. Specifically, CDIA objects to the Commissioners’ statement that the FTC holds the resellers in these three cases “responsible for downstream data protection failures.” It further asserts that resellers “cannot be held responsible for the failure of end-users’ security programs.”

The Commission agrees that resellers should not be strictly liable for end user security breaches. In these three cases, the Commission has applied the standard that is consistent with its other data security cases – that of reasonable security. This reasonableness standard is flexible and recognizes that there is no such thing as perfect security. However, consumer reporting agencies that provide end users with online access to consumer report information must take into account the risks posed in providing such access, and must take reasonable steps to ameliorate these risks. This means that resellers should take reasonable steps to ensure that the end users’ systems for accessing the online portal are secure.

Also, your letter asserts that the law does not require resellers to monitor end users’ security programs since end users have “specific and separate” legal duties under the Fair Credit Reporting Act (FCRA). The Commission acknowledges that end users such as mortgage lenders have independent responsibilities to ensure the security of the data they obtain, and the

Commission has brought actions against such companies that allegedly failed to provide reasonable security to protect sensitive consumer data.<sup>1</sup> The fact that these end users have independent responsibilities under the law, however, does not relieve resellers of their responsibility to ensure the security of the consumer information to which they sell access.

Your letter further objects to the language in the Commissioners' statement indicating that the Commission should not hesitate to seek civil penalties against similarly situated resellers in the future. The FCRA requires that consumer reports be furnished only to those with a specified permissible purpose. Hackers do not have such a permissible purpose. Thus, when resellers' failures lead to the furnishing of consumer reports to hackers, we believe such conduct may violate the FCRA and subject resellers to civil penalties in appropriate circumstances.

Finally, your letter takes issue with the wording of certain statements in the press release, complaint and Commissioners' statement. The Commission notes that the consent orders are what govern the conduct of the three resellers going forward, not the statements cited in the documents you mention.

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decisions and Orders in final form. The final Decisions and Orders 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 we thank you again for your letter.

By direction of the Commission.

Donald S. Clark  
Secretary

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<sup>1</sup> *In re Premier Capital Lending, Inc., et al.*, FTC File No. 072 3004 (Dec. 16, 2008) (holding end user liable for failing to adequately secure its online portal for accessing consumer reports.)