



Office of the Secretary

United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

April 11, 2013

Marc Rotenberg, Executive Director
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Washington, DC 20009

*In the Matter of DesignerWare, LLC; Timothy Kelly and Ronald P. Koller; Aspen Way Enterprises, Inc.; B. Stamper Enterprises, Inc.; C.A.L.M. Ventures, Inc.; J.A.G. Rents, LLC; Red Zone, Inc.; Showplace, Inc.; and Watershed Development Corp.
File No. 112 3151, Docket No. C-4390 Through Docket No. C-4398*

Dear Mr. Rotenberg, Mr. Jacobs, and Ms. Horowitz:

Thank you for your comment, on behalf of the Electronic Privacy Information Center (“EPIC”), regarding the Federal Trade Commission’s consent agreements 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.

The Commission appreciates your interest in this matter and support of the proposed consent agreements with DesignerWare, LLC, and other above-referenced respondents (collectively “the Companies”). The Commission is committed to protecting consumer privacy and believes the proposed orders will substantially protect consumers and promote effective deterrence regarding the use of monitoring and/or tracking technology by rent-to-own companies (“RTO stores”). The proposed orders with DesignerWare and its owners ban them from using or providing third parties with technology that allows RTO stores to monitor consumer use of rented computers. The proposed RTO store orders similarly ban the stores from using such technology in connection with covered RTO transactions. The proposed orders also prohibit the Companies from using geographical tracking technology to gather information from any rented computer without providing clear and prominent notice to and obtaining affirmative express consent from the computer’s renter at the time the computer is rented. Computer users must also receive clear and prominent notice immediately prior to each activation of tracking technology.

Your comment makes three recommendations, two regarding the terms of the proposed orders and one broader proposal about additional Commission action to protect the privacy interests of low-income consumers. With respect to your recommendations concerning the proposed orders, EPIC suggests that the Companies be required to implement Fair Information

Practices (“FIPs”) similar to those set forth in the White House’s Consumer Privacy Bill of Rights (“CPBR”). You also recommend that the final orders make publicly available the Companies’ compliance reports.

EPIC acknowledges that the terms of the proposed orders do much to inhibit future instances of the “commercial surveillance” practices in which the Companies engaged. However, you recommend that the orders will better protect consumer privacy if they require the Companies to implement FIPs, including Respect for Context; Security; Access and Accuracy; and Accountability. The proposed orders already contain provisions that will prohibit the gathering of consumer data using the monitoring practices challenged in the Commission’s complaints, limit the use of geophysical location tracking technology, and require the destruction of illegally collected information. The orders effectively curtail the unlawful conduct alleged in the Commission’s complaints and broadly prohibit misrepresentations about privacy to consumers in connection with covered RTO transactions. We believe that these protections will adequately deter the Companies from engaging in the alleged unlawful conduct. As the Commission has noted previously, the orders are designed to address specific conduct alleged in the complaints and not to impose obligations that may not be tied to such conduct.¹

You also ask the Commission to make public the compliance reports required by the orders to the greatest extent possible. As the Commission has noted previously, it recognizes the public interest in transparency regarding a company’s compliance with an FTC order.² The public may seek access to the compliance reports required by these orders by making a request under the Freedom of Information Act.³ However, the compliance reports may contain trade secrets or other confidential commercial or financial information, or information about consumers or other third parties, that the Commission may not publicly disclose.⁴ Upon receipt of a request for confidential treatment of all or part of any compliance reports, the Commission will conduct a careful review to determine whether confidential treatment is warranted, and make every effort to be transparent, consistent with applicable law. If the Commission determines that the reports have been frequently requested or are likely to be frequently requested because of their subject matter, the agency will post such portions as may be released to the public on the FTC’s website.

¹ Letter from Donald S. Clark, Secretary, Fed. Trade Comm’n, to Marc Rotenberg et. al (Aug. 30, 2012), available at <http://ftc.gov/os/caselist/1023058/120911myspaceletterepic.pdf>.

² *Id.*

³ 5 U.S.C. § 552 *et seq* (“FOIA”). As you note, the Commission has approved FOIA requests for reports submitted pursuant to consent agreements entered in other matters. *See, e.g.*, Letter from Sarah Mathias, Associate General Counsel, Fed. Trade Comm’n, to Ginger McCall, Director, EPIC Open Gov’t Program (Feb. 15, 2012), available at <https://epic.org/privacy/ftc/google/EPIC-FTC-Google-Compliance-Reply-02-17-12.pdf>.

⁴ *See* 15 U.S.C. § 46(f) (“the Commission shall not have any authority to make public any trade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential”); Commission Rule of Practice § 4.10.

Finally, you note that “[RTO] companies are debt traps for low-income and disadvantaged consumers,” and request that the Commission further investigate the connection between privacy and poverty. We are cognizant of the consumer protection issues associated with RTO transactions, and the Commission’s complaints against DesignerWare and the RTO stores acknowledge and address the connection between their allegedly privacy-invasive conduct and their collection practices.⁵ You specifically recommend that the Commission convene a workshop to explore how industry privacy practices may disproportionately affect low-income consumers. The Commission appreciates your attention to these issues. Protecting economically disadvantaged consumers and fighting the “last-dollar frauds” that target them are important priorities for the Commission, as evidenced by our enforcement actions in numerous areas, including privacy,⁶ debt collection,⁷ loan modifications,⁸ and business opportunities.⁹ We will continue to vigorously protect our nation’s most vulnerable consumers. Considerations regarding the privacy implications of business practices that affect these populations are an important component of our efforts.

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 without modifications.

⁵ The RTO store complaints allege that their use of information improperly gathered from consumers to collect on rental contracts was unfair, while the DesignerWare complaint alleges that the company and its principals provided their licensees with the means to engage in this unfair conduct.

⁶ See, e.g., *United States v. PLS Fin. Serv.*, Case No. 1:12-cv-08334 (N.D. Ill. settlement filed Oct. 26, 2012) (data security and disposal practices of a consumer finance company whose services included payday loans, check cashing, automobile title loans, and phone cards); *Equifax Information Servs. LLC*, FTC Docket No. C-4387 (Mar. 5, 2013) (final consent order) (improper sale of prescreened lists of homeowners delinquent on mortgage payments that marketers then used to pitch debt relief and loan modification programs to these financially distressed consumers); *United States v. Direct Lending Source, Inc.*, Case No. 12-CV-2441-DMS-BLM (S.D. Cal. settlement filed Oct. 11, 2012) (same).

⁷ See, e.g., *FTC v. Forensic Case Mgmt. Servs., Inc.*, Case No. CV-11-7484 (C.D. Cal. settlement filed Jan. 4, 2013) (illegal debt collection practices, including the improper disclosure of consumers’ debts to their employers, neighbors, and other third parties); *FTC v. Asset Acceptance LLC*, Case No. 9:12-CV-182-T-27EAJ (M.D. Fla. consent decree filed Jan. 12, 2012) (collection of time-barred debts and other debt collection practices).

⁸ See, e.g., *FTC v. Consumer Advocates Group Experts, LLC*, Case No. CV12-04736 DDP (C.D. Cal. settlement filed Feb. 7, 2013) (bogus mortgage modification and forensic audit services marketed to vulnerable homeowners); *FTC v. Freedom Cos. Mktg.*, Case No. 12cv5743 (N.D. Ill. filed July 23, 2012) (nationwide mortgage assistance relief scam targeting Spanish-speaking homeowners).

⁹ For example, the FTC recently announced seven cases against deceptive business opportunity schemes as part of a coordinated group of more than seventy actions brought by federal and state law enforcement agencies. See <http://www.ftc.gov/opa/2012/11/lostopp.shtm>.

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. The Commission thanks you again for your comment.

By direction of the Commission, Commissioner Wright not participating.

Donald S. Clark
Secretary