

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright

In the Matter of)
)
Baker Tilly Virchow Krause, LLP,)
a limited liability partnership.)
)
_____)

DOCKET NO.

COMPLAINT

The Federal Trade Commission, having reason to believe that Baker Tilly Virchow Krause, LLP, a limited liability partnership, has violated the Federal Trade Commission Act (“FTC Act”), and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Baker Tilly Virchow Krause, LLP, (“Baker Tilly”) is an Illinois limited liability partnership with its principal office or place of business at 205 North Michigan Avenue, Chicago, IL 60601.
2. Respondent is an accounting and advisory services firm.
3. The acts and practices of respondent as alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act.
4. Respondent has set forth on its website, www.bakertilly.com, privacy policies and statements about its practices, including statements related to its participation in the Safe Harbor privacy framework agreed upon by the U.S. and the European Union (“U.S.-EU Safe Harbor Framework”).

The Framework

5. The U.S.-EU Safe Harbor Framework provides a method for U.S. companies to transfer personal data outside of Europe that is consistent with the requirements of the European Union Directive on Data Protection (“Directive”). Enacted in 1995, the Directive sets forth European Union (“EU”) requirements for privacy and the protection of personal data. Among other things, it requires EU Member States to implement legislation that prohibits the transfer of personal data outside the EU, with exceptions, unless the European Commission (“EC”) has made a determination that the recipient jurisdiction’s laws ensure the protection

of such personal data. This determination is referred to commonly as meeting the EU’s “adequacy” standard.

6. To satisfy the EU adequacy standard for certain commercial transfers, the U.S. Department of Commerce (“Commerce”) and the EC negotiated the U.S.-EU Safe Harbor Framework, which went into effect in 2000. The U.S.-EU Safe Harbor Framework allows U.S. companies to transfer personal data lawfully from the EU. To join the U.S.-EU Safe Harbor Framework, a company must self-certify to Commerce that it complies with seven principles and related requirements that have been deemed to meet the EU’s adequacy standard.
7. Companies under the jurisdiction of the U.S. Federal Trade Commission (“FTC”), as well as the U.S. Department of Transportation, are eligible to join the U.S.-EU Safe Harbor Framework. A company under the FTC’s jurisdiction that claims it has self-certified to the Safe Harbor principles, but failed to self-certify to Commerce, or subsequently renew its Safe Harbor certification, may be subject to an enforcement action based on the FTC’s deception authority under Section 5 of the FTC Act.
8. Commerce maintains a public website, www.export.gov/safeharbor, where it posts the names of companies that have self-certified to the U.S.-EU Safe Harbor Framework. The listing of companies indicates whether their self-certification is “current” or “not current” and a date when recertification is due. Companies are required to re-certify every year in order to retain their status as “current” members of the Safe Harbor Framework.

The U.S.-EU Safe Harbor Framework Certification Mark

9. In 2008, Commerce developed the U.S.-EU Safe Harbor Framework Certification Mark (“the mark”). Upon request, Commerce provides the mark to those organizations that maintain a “current” self-certification to the U.S.-EU Safe Harbor Framework. In addition, Commerce has established certain rules for using the mark, such as requirements relating to the mark’s placement on a website and the inclusion of a link to www.export.gov/safeharbor. The mark appears as follows:



Violations of Section 5 of the FTC Act

10. In June 2010, respondent submitted to Commerce a self-certification of compliance with the Safe Harbor.
11. In June 2011, respondent did not renew its self-certification to the Safe Harbor, and Commerce subsequently updated respondent's status to "not current" on its public website. In December 2013, respondent renewed its self-certification to the Safe Harbor Framework, and respondent's status was changed to "current" on Commerce's website.
12. Since at least June 2010, respondent has disseminated or caused to be disseminated privacy policies and statements on the www.bakertilly.com website, including, but not limited to, the following statements:

Baker Tilly Virchow Krause, LLP, whose principal office is located in the State of Illinois, United States of America (the "United States") controls and operates the following data processing systems (referred to herein as the "Systems") that are certified under the voluntary U.S.-EU Safe Harbor program...
13. From at least June 2010, respondent has displayed the mark on the www.bakertilly.com website.
14. Through the means described in Paragraphs 12 and 13, respondent represents, expressly or by implication, that it is a "current" participant in the U.S.-EU Safe Harbor Framework.
15. In truth and in fact, from June 2011 until December 2013, respondent was not a "current" participant in the U.S.-EU Safe Harbor Framework. Therefore, the representation set forth in Paragraph 14 was false and misleading.
16. The acts and practices of respondent as alleged in this complaint constitute deceptive acts or practices, in or affecting commerce, in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this ___ day of ____ 2014, has issued this complaint against respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: