



February 18, 2011

***VIA ONLINE SUBMISSION***

Federal Trade Commission  
Office of the Secretary  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580

**Re: Protecting Consumer Privacy in an Era of Rapid Change: A Proposed Framework.**

Avery Dennison Corporation appreciates this opportunity to provide comments to the Federal Trade Commission (“FTC”) in response to the Preliminary FTC Staff Report entitled “Protecting Consumer Privacy in an Era of Rapid Change: A Proposed Framework for Business and Policymakers” (the “Staff Report”). Avery Dennison Corporation is a FORTUNE 500 company with sales of \$6.5 billion in 2010, and a global leader in pressure-sensitive technology and materials, retail branding and information solutions, and organization and identification products for offices and consumers. We submit these comments on behalf of the Avery Dennison RFID Division, based in Flowery Branch, Georgia, which is the world’s largest producer of UHF RFID inlays.

In short, Avery Dennison has long supported privacy by design, consumer education, transparency, and industry self-regulation as the foundation for ensuring consumer trust in the use of RFID technology. With these consumer protections in place, the additional regulatory proposals contained in the Staff Report are generally unnecessary for RFID.

**About the Avery Dennison RFID Division**

Avery Dennison’s RFID Division is a leader in the global UHF RFID marketplace, manufacturing the inlays, usually for use in conjunction with labels, to create RFID tags for retail, aviation, supply chain, healthcare and government applications. Typically, our RFID tags are used by our customers to track inventory in the product supply chain. Avery Dennison is committed to protecting consumer privacy in its use of RFID technology, and works closely with its commercial customers to that end.

**What Is RFID?**

Radio Frequency Identification, commonly known by the acronym RFID, is an exceptionally useful technology that has been in use for decades in applications such as toll

passes, subway fare cards, payment cards, key cards, and passports. RFID technology can trace its early origins to World War II, where radio tags were used to identify returning fighter planes. RFID is an automatic identification method that stores and remotely retrieves data via a RFID tag or transponder. A RFID tag is composed of a tiny microchip coupled to an antenna that is contained within a tag. The chip is encoded with product information (a series of “1”s and “0”s), which can be retrieved by a RFID reader that works on the same protocol as the tag, and then correlated with information in a remote database.

Avery Dennison’s RFID tags typically are encoded with numeric Electronic Product Codes (“EPCs”) and embedded in pressure-sensitive labels or tags that can be affixed to pallets, cartons, or individual products, such as by a hang tag attached to a garment. EPCs are not unlike the ubiquitous Universal Product Codes (UPCs) currently used with bar code technology, which allow for identification of goods containing a bar code label. RFID tags and labels work much like bar codes today, but do not require the code to be visible or in a particular orientation in order to read the information contained in the code. For example, we have all experienced a cashier at a checkout reorienting a product having a bar code label in order to try and get a scanner to read the bar code. This process is frustrating and causes delays to both the consumer and retailer. RFID eliminates the need to have a product facing a scanner in a particular position. Like a bar code, RFID tags do not have any directly interpretable information.

Recently, through advances that have reduced both the size and cost of RFID tags, it has become possible to apply this technology to identify individual items in the retail supply chain using EPCs. Adoption has been rapid, spurred by the significant improvements RFID item-level tagging makes to retail operations, with inventory accuracy increasing up to 99%, compared to 70-80% previously.

### **Why Do Companies Use RFID Tags?**

In addition to better inventory accuracy, EPC enables Avery Dennison’s customers to provide consumers with a number of benefits, including:

- Validating that items are genuine, not counterfeit;
- Ensuring that items are kept in stock;
- Locating items within a retail or supply chain environment to avoid loss and or theft;
- Providing real-time pricing updates, such as when items go on sale;
- Allowing expired or recalled items to be promptly removed from inventory;
- Speeding the checkout process, and expediting returns; and
- Making the supply chain more efficient, so that products can be delivered to consumers at lower cost.

### **How Does RFID Work?**

RFID systems have three key elements: the RFID tag (which includes a chip and antenna); the reader; and, the database. The chip used in Avery Dennison's RFID tags typically is encoded with a numeric Electronic Product Code (EPC) that uniquely identifies the item to which the tag or label is attached. The chip also has an antenna, which is used to communicate with a reader when the tag or label is within the read range of the reader. The reader has its own antenna to enable the reader to communicate with the chip.

To function, a reader must employ the same protocol as the chip in the RFID tag, and be in close proximity to the tag, usually within a matter of feet or inches. The reader communicates with the RFID tag, and then the RFID tag responds, and transmits the EPC encoded information on the chip back to the reader. Then, the transmitted EPC can be used to retrieve information about the item from a database. If the information being sought by the reader is not what is contained on the tag, the tag will not respond. In order for the information encoded on the chip in the RFID tag to be useful, access to both an appropriate reader and the corresponding database are necessary.

### **The Importance of Consumer Education Regarding RFID Privacy**

In the FTC's 2005 Staff report entitled "Radio Frequency Identification: Applications and Implications for Consumers," it was noted that consumers who are familiar with RFID technology are less likely to be concerned about the privacy implications than those who are not. Indeed, while consumers generally appreciate the benefits of RFID, some have expressed concern that the use of item-level RFID tags on retail goods could affect their privacy. This concern arises because it is possible, at least in theory, for a RFID tag to be read (if someone in close proximity has a RFID reader that works on the same protocol and access to the associated database) while it is in the consumer's possession after he or she leaves the store, if the RFID device is not removed or disabled. With more information, consumers' privacy concerns usually are alleviated, because it is highly unlikely that a retail RFID tag could yield information about an individual consumer.

### **What Are Avery Dennison And Its Customers Doing To Address Consumers' Privacy Concerns?**

Notwithstanding that Avery Dennison's RFID tags are rarely (if ever) used in a way that implicates consumers' personally identifiable information, consumers' privacy concerns about RFID tags are being addressed by Avery Dennison and its customers in several ways, including both technology solutions and business best practices. More globally in the RFID industry, in those applications where personally identifiable tracking does occur, normally it is with the awareness of the consumer and some level of consumer "opt in" or consent by the individual, as is the case with loyalty programs, passports, transit passes or building access cards.

#### Technology Solutions -

RFID tags may be visible and easily detectable, as the tags are normally included as part of disposable packaging, and therefore are quite easy for the consumer to discard, disable, or destroy. The consumer can remove the tag and throw it away, tear it, or cut it with a scissors so that the electronic component of the RFID tag is no longer readable.

To facilitate disabling the RFID tag once it is in the consumer's hands, Avery Dennison is developing with its customers a variety of innovative options. For example, Avery Dennison is developing application-specific tags for garments that will stop working after several washings, and tags that may be broken through repeated use. In particular, Avery Dennison is working hard to develop solutions that protect consumer privacy while also retaining the benefits of EPCs – for example, Avery Dennison is developing tags with perforated break lines that will show the consumer where to tear or cut the tag so that the antenna that communicates with the reader is cut in two. In this way, the tag is degraded so that it cannot be read from a distance of more than a few inches, but retains the EPC information in order to facilitate merchandise returns.

Retailers can also elect to “kill” the RFID tag when it leaves the store, electronically disabling the tag at the point of purchase. When this is done, the consumer does not need to take any other steps to disable the tag. However, this solution can be inconvenient when consumers want to return an item, since the product tag can no longer be read electronically.

While there are some instances where RFID tags are intended to be durable and survive harsh handling conditions, these again are done only in certain applications such as commercial laundering of mats, uniforms and the like to make sure they are returned to the location from which they were collected. However, even in these instances, the RFID tag does not contain information as to who used the uniform, but only that the uniform has to be returned to a particular location.

#### Business Best Practices -

Avery Dennison, like many of the major retailers that use our RFID tags, is committed to promoting business best practices that protect consumer privacy. Through organizations such as GS1<sup>1</sup> and its subsidiary, EPCglobal Inc.<sup>2</sup>, leaders in the consumer packaged goods and retail

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<sup>1</sup> GS1 is a neutral, not-for-profit organization dedicated to the design and implementation of global standards and solutions to improve the efficiency and visibility in supply chains. GS1 is driven by more than a million companies, who execute more than five billion transactions a day with the GS1 System of Standards. This makes it the most widely used supply chain standards system in the world. GS1 EPCglobal standards are a set of integrated industry-driven standards which have been developed to meet user requirements enabling the identification of objects, data capture and sharing of information among partners throughout the supply chain. These standards are developed within the framework of EPCglobal Inc.

<sup>2</sup> EPCglobal Inc is a subsidiary of the global not-for-profit standards organization GS1, and supports the global adoption of the Electronic Product Code as industry-driven standards to enable accurate, immediate and cost-effective visibility of information throughout the supply chain. See: <http://www.gs1.org/epcglobal>.

industries, as well as major RFID manufacturers, have come together to develop agreed-upon standards for EPC-enabled RFID. Accepted standards have been developed to mitigate privacy concerns associated with the use of RFID technology. The EPCglobal privacy guidelines and other accepted RFID standards have four important principles in common.

*Consumer Notice:* Avery Dennison supports use of the EPC logo on all products, packages, and tags where RFID is being used. Many of Avery Dennison's customers also post signage in their retail locations to alert consumers that EPC is in use.

*Consumer Choice:* Avery Dennison encourages its customers to make it easy for consumers to identify and remove or disable RFID tags once the product has been purchased, including through tags that contain break lines or self-destruct when the product is used.

*Consumer Education:* Avery Dennison works with its customers to promote consumer education about RFID and EPC by providing information on its website, promoting the EPC logo, and supporting its customers' consumer education campaigns.

*Data Use, Retention, and Security:* Avery Dennison does not collect or have access to any personally identifiable information about retail consumers that purchase items with RFID tags manufactured by Avery Dennison, nor does Avery Dennison track such tags. Although RFID tags used for EPCs typically do not include any personally identifiable information, Avery Dennison encourages its commercial customers to inform consumers in the event any personally identifiable information will be associated with a RFID tag, and to publish their policies with regard to the use, retention, and security of any such information.

### **The RFID Self-Regulatory Framework Is Driven By the Desire to Ensure Consumer Trust**

As demonstrated by the foregoing discussion, Avery Dennison and its commercial customers are working hard to ensure consumer trust in the use of RFID tags, through privacy by design, consumer education, transparency, and industry self-regulation. We expect this effort to drive a "virtuous circle" that is decidedly pro-consumer. It has been our experience that our commercial customers are committed to educating their retail consumers about the use of RFID tags, and to being transparent about how RFID technology is being used. As consumers become better educated, we expect most privacy concerns regarding RFID will dissipate. Educated consumers also can be expected to demand that the retailers with which they do business conform with industry best practices and applicable self-regulatory regimes. In addition, we are working on our customers' behalf to make it ever-easier for consumers to identify and – if they so desire – to disable retail RFID tags when they complete their purchase. Again, as consumers learn about these options, they will be empowered to make and implement informed privacy choices on their own behalf.

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**RFID Tagging of Tangible Things Is Non-Controversial, and Should Be Deemed a “Commonly Accepted Practice”**

Avery Dennison’s RFID tags are rarely (if ever) encoded with personally identifiable information. Thus, even in the unlikely event that a retail consumer with a RFID-tagged item encounters someone in close proximity who has both a RFID reader that works on the same protocol and access to the associated database, it is unlikely that personal information would be compromised. Moreover, consumers concerned with this eventuality can simply disable the tag when they leave the store.

As the use of RFID tags for item-level inventory control becomes even more prevalent, consumers can be expected to understand and exercise their options with respect to the technology. Accordingly, consistent with the Staff Report’s recommendation that a limited set of “commonly accepted practices” be identified, for which companies should not be required to seek consent once the consumer elects to use the product or service in question, Avery Dennison respectfully submits that use of RFID tags for item-level inventory control be expressly included in this exempt category.

**Consumer Access to Data Associated With RFID Tags Is Unnecessary**

Avery Dennison submits, further, that database information associated with item-level inventory control applications of RFID should be expressly exempted from the scope of the Staff Report’s recommendation that consumers be given access to companies’ consumer data. Generally, any consumer data associated with RFID tags would necessarily be collected by a consumer-facing entity – a category that the Staff Report suggests should potentially be differentiated, based on the assumption that consumers generally will be aware that a customer-facing entity has collected information about them, and likely will have consented to such data collection. For example, there have been and likely will be in the future the continuation of “loyalty” or “reward” cards or programs, in which a number is associated with an individual consumer and then linked in a database with items purchased by that individual, to track consumer purchasing information in order to generate promotional offers or advertising. Consumers consent to this information collection when they sign up for the loyalty or reward card or program and accept its benefits. For this purpose, either bar codes or EPCs could be used to identify in the database the products that have been purchased. The presence of a bar code on an item does not trigger a right of access by the consumer to the retailer’s database – the presence of a RFID tag likewise should not, by itself, trigger any access rights.

Of course, in the event that a retailer associated either EPC or bar code information with information about an individual consumer for a purpose other than processing the consumer’s transaction with the retailer or the purpose of a loyalty or reward program, industry best practices and the FTC’s guidance require notice and consent. Likewise, if EPC-derived or bar-code-derived information is collected and provided to a non-consumer-facing entity, such as a data broker, the same notice, consent, and access rules applicable to other types of aggregated data would apply. In that circumstance, the original association with the RFID tag or bar code has long since ended, and the database involved is of an entirely different type.

### **Conclusion**

The use of RFID technology for inventory control raises minimal privacy concerns, which the industry is pro-actively addressing through privacy by design, consumer education, transparency, and industry self-regulation. To the extent that RFID tags do not contain and are not typically associated with personally identifiable information, arguably the regulatory recommendations in the Staff Report are simply inapplicable to RFID. Nonetheless, insofar as RFID-related privacy concerns have been raised at the FTC and elsewhere, Avery Dennison welcomes regulatory clarity regarding the privacy obligations of entities that use RFID for item-level tagging and inventory tracking.

For this reason, Avery Dennison respectfully submits to the FTC that, consistent with the laudable consumer protection objectives identified in the Staff Report, RFID tagging of tangible things should be deemed an exempt “commonly accepted practice,” and database information associated with item-level inventory control applications of RFID should be expressly exempted from any requirement that consumers be given access to companies’ consumer data.

Avery Dennison will be pleased to make its personnel available to answer any questions you may have regarding our RFID technology, or the views expressed in these comments.

Sincerely,

Jack Farrell  
Vice President and General Manager  
Avery Dennison RFID Company