

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, 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.

Violations of Section 5 of the FTC Act

9. In June 2011, respondent submitted to Commerce a self-certification of compliance with the U.S.-EU Safe Harbor Framework.
10. In June 2012, respondent did not renew its self-certification to the U.S.-EU Safe Harbor Framework, and Commerce subsequently updated respondent’s status to “not current” on its public website. In January 2014, respondent renewed its self-certification to the Safe Harbor Framework.
11. Since June 2011, respondent has disseminated or caused to be disseminated privacy policies and statements on the www.fantage.com website, including but not limited to, the following statements:

When we collect personal information from residents of the European Union, we follow the privacy principles of the U.S.-EU Safe Harbor Framework, which covers the transfer, collection, use, and retention of personal data from the European Union.

12. Through the means described in Paragraph 11, respondent represents, expressly or by implication, that it is a “current” participant in the U.S.-EU Safe Harbor Framework.
13. In truth and in fact, from June 2012 until January 2014 respondent was not a “current” participant in the U.S.-EU Safe Harbor Framework. Therefore, the representation set forth in Paragraph 12 was false and misleading.
14. 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: