



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Office of the Secretary

March 12, 2015

Eric G. Null
Angela J. Campbell
Camille C. Fischer
Institute for Public Representation
Georgetown University Law Center

Re: In the Matter of TRUSTe, Inc., File No. 1323219

Thank you for your comment on behalf of the Center for Digital Democracy, American Academy of Child and Adolescent Psychiatry, Campaign for a Commercial Free Childhood, Consumer Action, Consumer Federation of America, Consumer Watchdog, and The Rudd Center for Food Policy and Obesity ("CDD, et al.") regarding the Federal Trade Commission's ("Commission" or "FTC") consent agreement 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's complaint against Respondent TRUSTe, Inc. ("TRUSTe") includes two counts alleging violations of Section 5 of the Federal Trade Commission Act ("FTC Act"). Count One alleges that TRUSTe misrepresented to consumers the frequency with which it reviews and verifies the practices of companies displaying its web-based and mobile seals. Count Two alleges that TRUSTe provided to its sealholders the means and instrumentalities to misrepresent that TRUSTe is a non-profit corporation.

The proposed order contains provisions designed to prevent TRUSTe from committing future violations similar to those alleged in the complaint. Part I of the proposed order prohibits TRUSTe from misrepresenting (1) the steps TRUSTe takes to evaluate, certify, review, or recertify a company's privacy practices; (2) the frequency with which TRUSTe evaluates, certifies, reviews, or recertifies a company's privacy practices; (3) the corporate status of TRUSTe and its independence; and (4) the extent to which any person or entity is a member of, adheres to, complies with, is certified by, is endorsed by, or otherwise participates in any privacy program sponsored by TRUSTe. Part II of the proposed order also prohibits TRUSTe from providing to any person or entity the means and instrumentalities (including any required or model language for use in any privacy policy or statement) to misrepresent any of the same items in Part I. Parts III and IV of the proposed order contain additional reporting and recordkeeping requirements, beyond those required under the rule implementing the Children's Online Privacy Protection Act ("COPPA"), with respect to TRUSTe's COPPA/Children's Privacy seal. The proposed order, which terminates after 20 years, includes standard recordkeeping and service provisions, as well as requirements for TRUSTe to file compliance reports with the Commission.

Your comment expresses CDD et al.'s general support of the complaint and the proposed consent order's directives, but urges the Commission to (1) revise the amount of disgorgement; and (2) extend the duration of additional recordkeeping and reporting requirements, and make all reporting filed by TRUSTe public. Your comment additionally requests that the Commission make public all COPPA safe harbor annual reports.

First, your comment states that the proposed \$200,000 disgorgement is "too little to deprive TRUSTe of its unjust enrichment" and is unlikely to deter other safe harbors from similar behavior. Your comment also describes the disgorgement amount as much lower than civil penalties against other companies alleged to have violated COPPA. At the outset, we note that most of TRUSTe's failures to recertify involved seal programs unrelated to COPPA. In deciding whether the amount and type of monetary remedy in this or any other consent order is appropriate in relation to the alleged violations, the Commission carefully considers a variety of factors, including the type of monetary relief authorized by law, the specific facts at issue, and the alleged violations of the law. The complaint alleges that the company violated Section 5 of the FTC Act, which, unlike COPPA, does not authorize the Commission to seek civil penalties for an initial violation. Section 5 does allow the Commission to seek equitable relief; accordingly, one of the remedies in the proposed order is disgorgement of \$200,000 in ill-gotten gains. The \$200,000 figure reflects a significant portion of the monies that TRUSTe received from its business clients for the annual reviews that it failed to conduct, despite representations to consumers that it recertified sealholders annually. Further, should TRUSTe violate any term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

Second, you recommend that the Commission require public disclosure of all TRUSTe order compliance reporting, as well as all COPPA safe harbor reports mandated by 16 C.F.R. § 312.11(d). The Commission agrees that there is a public benefit to providing transparency regarding a company's compliance with the provisions of an order, or a rule such as the COPPA Rule. As the Commission has noted in the past, the public may seek access to such information by making a request under the Freedom of Information Act. We refer you to these previous statements, recognizing, as you note, that there is ongoing litigation involving the disclosure of reports that COPPA safe harbors are required to provide the Commission under 16 C.F.R. §312.11(d). The Commission has produced these reports with appropriate redactions to protect confidential commercial information. See 5 U.S.C. § 552(b)(4); 15 U.S.C. § 46(f).

Relatedly, as to the duration of the reporting and recordkeeping requirements under Parts III and IV, we believe that the 10-year time period is appropriate. The additional requirements under Parts III and IV supplement the annual reporting requirements for approved safe harbor programs in the COPPA rule itself, which would continue to apply to TRUSTe for as long as TRUSTe remains an approved safe harbor program under COPPA, or until the order expires, whichever comes first. Provisions in Commission orders that require respondents to create or file additional reports vary in duration, and some recent Commission orders require reporting and recordkeeping for less than the 10 years required by the proposed order. It is important to note that Section IX of the proposed order requires TRUSTe, throughout the term of the order, to respond within 10 days to any Commission request for a report on compliance with the order.

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in the above-titled proceeding in final form without any modifications. The final Decision and Order 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 it thanks you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



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James P. Steyer
CEO and Founder
Common Sense Media

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Your comment urges the Commission to revoke TRUSTe's COPPA safe harbor status, partly because of your concern that TRUSTe did not comply with COPPA's safe harbor provisions. Under the revised COPPA Rule, which went into effect on July 1, 2013, safe harbor programs must conduct an annual certification. We note that prior to that date, the COPPA Rule

required safe harbor programs to have a mechanism for assessing compliance, but it did not contain an annual certification requirement for safe harbor programs.

The Commission regards the ability to revoke an organization's safe harbor status as an important mechanism to ensure the integrity of the program. However, the Commission does not consider this action warranted in every instance, nor the only means of addressing shortcomings in a safe harbor program's processes. In this case, we note that TRUSTe's failure to conduct the promised annual certifications affected only a subset of TRUSTe's business clients, and most of TRUSTe's failures to recertify involved seal programs unrelated to COPPA.

Nonetheless, the Commission agrees that the COPPA safe harbor program requires strong FTC oversight. Accordingly, the proposed order contains provisions designed to prevent TRUSTe from committing future violations similar to those alleged in the complaint. The proposed order also imposes additional reporting and recordkeeping requirements on TRUSTe, beyond those required under the COPPA Rule. It is important to note that Section IX of the proposed order requires TRUSTe, throughout the term of the order, to respond within 10 days to any Commission request for a report on compliance with the order. Once the order becomes final, TRUSTe will risk civil penalties of up to \$16,000 per violation per day (as provided by Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c)).

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in the above-titled proceeding in final form without any modifications. The final Decision and Order 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 it thanks you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary