

**Analysis of Proposed Consent Order to Aid Public Comment**  
***In the Matter of TES Franchising, LLC***  
***File No. 152 3015***

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, a consent agreement applicable to TES Franchising, LLC (“TES”).

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter concerns alleged false or misleading representations that TES made to consumers concerning its participation in the Safe Harbor privacy frameworks agreed upon by the U.S. and the European Union and the U.S. and Switzerland (collectively, “Safe Harbor Frameworks”) and concerning the handling of consumer disputes relating to the Safe Harbor Frameworks. The proposed complaint also alleges that TES made false or misleading representations to the effect that it was a current licensee of the TRUSTe self-regulatory program.

The Safe Harbor Frameworks allow U.S. companies to transfer data outside the EU and Switzerland consistent with European law. To join the Safe Harbor Frameworks, a company must self-certify to the U.S. Department of Commerce (“Commerce”) that it complies with a set of principles and related requirements that have been deemed by the European Commission and Switzerland as providing “adequate” privacy protection. These principles include notice, choice, onward transfer, security, data integrity, access, and enforcement. Among other things, the enforcement principle requires companies to provide a readily available and affordable independent recourse mechanism to investigate and resolve an individual’s complaints and disputes. Commerce maintains a public website, [www.export.gov/safeharbor](http://www.export.gov/safeharbor), where it posts the names of companies that have self-certified to the Safe Harbor Frameworks. The listing of companies indicates whether their self-certification is “current” or “not current.” Companies are required to re-certify every year in order to retain their status as “current” members of the Safe Harbor Frameworks.

TES provides business coaching services to franchisees. According to the Commission's complaint, TES has set forth on its website, [www.entrepreneursource.com](http://www.entrepreneursource.com), privacy policies and statements about its practices, including (1) statements related to its participation in the Safe Harbor Frameworks and (2) statements indicating that it is a licensee of the TRUSTe Privacy Program.

The Commission's complaint alleges that from March 2013 until February 2015 TES falsely represented that it was a “current” participant in the Safe Harbor Frameworks when, in fact, the company’s self-certifications had lapsed. The

Commission's complaint also alleges that during this same time period TES represented that all Safe Harbor-related disputes would be settled by an "arbitration administered agency" such as the American Arbitration Association, that hearings would take place in Connecticut, and that the costs of arbitration would be shared equally by the parties. In fact, the independent recourse mechanism authorized under TES's Safe Harbor certification was the European data protection authorities, which resolve Safe Harbor-related disputes at no cost to consumers and do not require in-person hearings. The Commission's complaint alleges that these false representations are likely to deter EU and Swiss citizens from attempting to take advantage of the dispute resolution services offered by the company.

The Commission's complaint further alleges that until February 2015, TES represented through statements in its online privacy policy that it was a current licensee of the TRUSTe Privacy Program, when, in fact, it was not a current licensee.

Part I of the proposed order prohibits TES from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework, the U.S.-Swiss Safe Harbor Framework, and the TRUSTe privacy programs. Part II of the proposed order also prohibits TES from misrepresenting in any manner, its participation in, or the rules, processes, policies, or costs of, any alternative dispute resolution process or service, including but not limited to, arbitration, mediation, or other independent recourse mechanism.

Parts III through VII of the proposed order are reporting and compliance provisions. Part III requires TES to retain documents relating to its compliance with the order for a five-year period. Part IV requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part V ensures notification to the FTC of changes in corporate status. Part VI mandates that TES submit an initial compliance report to the FTC, and make available to the FTC subsequent reports. Part VII is a provision "sunsetting" the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed complaint or order or to modify the order's terms in any way.