

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Julie Brill
Maureen K. Ohlhausen
Terrell McSweeney

In the Matter of)
)
Jubilant Clinsys, Inc.,)
a corporation.)
)
_____)

DOCKET NO. C-4549

COMPLAINT

The Federal Trade Commission, having reason to believe that Jubilant Clinsys, Inc., a corporation, 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 Jubilant Clinsys, Inc. is a New Jersey corporation with its principal office or place of business at One Crossroads Drive, Building A, Second Floor, Bedminster, New Jersey 07921.
2. Respondent is a research organization that provides pharmaceutical, biotechnology and medical device companies with services in support of drug and device development.
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, http://www.clinsys.com/index.php?option=com_content&view=article&id=8&Itemid=19, 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, 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 U.S.-EU Safe Harbor Framework.

Violations of Section 5 of the FTC Act

9. In November 2007, respondent submitted to Commerce a self-certification of compliance to the U.S.-EU Safe Harbor Framework.
10. In November 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.
11. Since at least November 2007, respondent has disseminated or caused to be disseminated privacy policies and statements on the http://www.clinsys.com/index.php?option=com_content&view=article&id=8&Itemid=19 website. In certain instances, these policies and statements reference the U.S.-EU Safe Harbor Framework in the context of Clinsys employees. However, all of the policies and statements appear on the company’s publicly available website, and, therefore, are conveyed to all consumers. The privacy policies and statements include, but are not limited to, the following:

This policy's purpose is to inform employees of the principles under with [sic] Clinsys processes personal information received

from countries belonging to the European Union (EU). This policy complies with the U.S. Department of Commerce Safe Harbor framework, which has been approved by the EU as an adequate way for Clinsys to demonstrate that it complies with the protections outlined in the EU Directive on Data Privacy. More information about the Safe Harbor Program is available at: <http://export.gov/safeharbor/>. . .

Data subjects may contact compliance@clinsys.com to register complaints, access requests or address any other issues arising under Safe Harbor Principles. . .

Clinsys conducts an annual self-assessment in order to verify that this Policy on Data Protection and Privacy of Personal Information is published and implemented within Clinsys and that it conforms to the Safe Harbor Principles.

In addition, Clinsys self-certifies annually with the U.S. Department of Commerce as a data controller.

12. Through the means described in Paragraph 11, respondent has represented, 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 November 2012 through April 2015, respondent has not been a “current” participant in the U.S.-EU Safe Harbor Framework. Therefore, the representation set forth in Paragraph 12 is, and 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 twenty-ninth day of September 2015, has issued this complaint against respondents.

By the Commission.

Donald S. Clark
Secretary

SEAL: