

**Analysis of Proposed Consent Order to Aid Public Comment
In the Matter of SmartStart Employment Screening, Inc., File No. 1823154**

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, a consent agreement applicable to SmartStart Employment Screening, Inc. (“SmartStart” or “the company”).

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 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 SmartStart made to consumers concerning its participation in the Privacy Shield framework agreed upon by the U.S. and the European Union (“EU”). The Privacy Shield framework allows U.S. companies to transfer data outside the EU consistent with EU law. To join the EU-U.S. Privacy Shield framework, 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 as providing “adequate” privacy protection. The principles include notice; choice; accountability for onward transfer; security; data integrity and purpose limitation; access; and recourse, enforcement, and liability. The related requirements include, for example, securing an independent recourse mechanism to handle any disputes about how the company handles information about EU citizens. Commerce reviews these applications for self-certification and maintains a public website, <https://www.privacyshield.gov/list>, where it posts the names of companies that have self-certified to the EU-U.S. Privacy Shield framework and completed the requirements for certification. The listing of companies indicates whether their self-certification is current. Companies are required to re-certify every year in order to retain their status as current members of the EU-U.S. Privacy Shield framework.

SmartStart offers background and employment screening services. According to the Commission’s complaint, the company has set forth on its website, <http://www.smartstartemploymentscreeninginc.com>, privacy policies and statements about its practices, including statements related to the status of its participation in the EU-U.S. Privacy Shield framework.

The Commission’s complaint alleges that SmartStart deceptively represented that it was a current participant in the EU-U.S. Privacy Shield framework when, in fact, it was not. The complaint also alleges that the company deceptively represented that it would abide by the EU-U.S. Privacy Shield framework principles, but did not do so. The principles include a requirement that if a company ceases to participate in the EU-U.S. Privacy Shield framework, it must affirm to Commerce that it will continue to apply the principles to personal information that it received during the time it participated in the program, but according to the complaint, SmartStart did not make such an affirmation.

Part I of the proposed order prohibits the company 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 EU-U.S. Privacy Shield framework and the Swiss-U.S. Privacy Shield framework. Because the company had a certification that had lapsed, Part II requires the company to comply with the Privacy Shield requirement to continue to protect, on a going forward basis, personal information it had received while in the program, or return or delete the information.

Parts III through VII of the proposed order are reporting and compliance provisions. Part III requires acknowledgement of the order and dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part IV ensures notification to the FTC of changes in corporate status and mandates that the company submit an initial compliance report to the FTC. Part V requires the company to retain documents relating to its compliance with the order for a five-year period.

Part VI mandates that the company make available to the FTC information or subsequent compliance reports, as requested. 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.