



Office of the Secretary

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

July 27, 2017

Hilary M. Wandall, Esq.
General Counsel and Chief Data Governance Officer
TRUSTe LLC
835 Market Street, Suite 800
San Francisco, CA 94103

Re: Application of TRUSTe for Approval of Modifications to its Children's Online Privacy Protection Rule¹ Safe Harbor Program

Dear Ms. Wandall:

This letter is to inform you that the Federal Trade Commission ("FTC" or "Commission") has approved the application of TRUSTe LLC ("TRUSTe" or the "Company"), an affiliate of TrustArc, Inc.,² to modify its Commission-approved Children's Online Privacy Protection Act ("COPPA")³ safe harbor program.

The Commission approved TRUSTe's original COPPA safe harbor program on May 21, 2001, and its revised program, to comply with the 2012 amendments to the COPPA Rule, on July 1, 2013. TRUSTe submitted this application to modify its existing safe harbor program ("TRUSTe Modified Program") on March 22, 2017. The Commission announced TRUSTe's request to modify its safe harbor program on April 19, 2017, and received public comment on the application through May 24, 2017.

The TRUSTe Modified Program makes several structural changes to better align the program with the Company's Enterprise Privacy Certification Standards. For example, the Modified Program uses the term "seal" rather than "trustmark" and "Privacy Notice" rather than "Privacy Statement." Moreover, the TRUSTe Modified Program includes additional data security requirements and adds personnel training requirements for program participants.

In addition to these structural changes, the TRUSTe Modified Program has substantive program requirement changes related to third party tracking technologies and seal removal. With respect to third party tracking technologies, the Modified Program requires, among other things, that participants conduct, at least annually, a comprehensive internal assessment to identify all third parties and service providers collecting personal information from children on their websites or online services. With respect to seal removal, the TRUSTe Modified Program

¹ 16 C.F.R. Part 312.

² On June 7, 2017, TRUSTe announced that it was changing its name to TrustArc, but that the TRUSTe brand name would continue to be used for certification offerings, including the Company's safe harbor program.

³ 15 U.S.C. §§ 6501-6506.

requires that a participant's seal be removed where it has not had its annual review and any remediation completed by the anniversary date of the prior year certification, or where it is in material breach of the program requirements.⁴

The Commission received six comments addressing the TRUSTe application. Two comments supported Commission approval of the TRUSTe Modified Program. One comment was neutral as to TRUSTe's proposed changes, but asked that the Commission consider removing online payment methods from the COPPA Rule's list of approved verifiable parental consent methods. Two other comments were also neutral as to the TRUSTe Modified Program, but expressed concerns about the COPPA Rule in general. Finally, one commenter was neutral as to the TRUSTe Modified Program, but requested that the FTC conduct an investigation to determine whether TRUSTe had violated its 2015 consent decree with the Commission.

For Commission approval, self-regulatory guidelines must include: (1) a requirement that participants in the safe harbor program implement substantially similar requirements that provide the same or greater protections for children as those contained in the Rule; (2) an effective mandatory mechanism for the independent assessment of the safe harbor program participants' compliance with the guidelines; and (3) disciplinary actions for noncompliance by safe harbor participants.⁵ Based on its analysis, the Commission has determined that the TRUSTe Modified Program satisfies these criteria. The Commission notes that the Modified Program requires TRUSTe to take a number of additional measures to verify participants' compliance with COPPA – particularly with respect to monitoring of third party tracking – and to improve TRUSTe's own policies and procedures, such as with respect to promptly removing a participant's seal when it is in material breach of the TRUSTe Modified Program. Moreover, as noted above, the public comments either supported approval of the Modified Program or were neutral on that issue – none of the comments opposed approval of the Modified Program itself.⁶

For the reasons stated above, the Commission has determined that the TRUSTe Modified Program satisfies the Rule criteria, and, therefore, approves your request.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ The Company explained in its application that it had agreed to make changes to its operational and technical processes related to scanning for third party tracking technologies on participants' websites and online services as part of a settlement with the New York State Office of the Attorney General. At the same time it was making these changes, it plans to make various structural changes to align its COPPA safe harbor program with its Enterprise Privacy Certification Standards.

⁵ 16 C.F.R. § 312.11(b).

⁶ The comments expressing general concerns about the COPPA Rule requirements are beyond the scope of the current inquiry into the TRUSTe Modified Program, and the Commission declines to address them in this proceeding. The Commission does take such comments into account when it periodically considers revisions to its Rules. As to the comment suggesting that the FTC conduct an investigation into TRUSTe, Commission rules prevent us from commenting on whether we have an existing investigation into a specific company or plan to open one. We do note, however, that we have a robust monitoring program to ensure compliance with our orders, and take public comments on these issues seriously.