



Jessica L. Rich
Office of the Director
Bureau of Consumer Protection

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

May 22, 2014

The Honorable Shelley C. Chapman
United States Bankruptcy Judge
Bankruptcy Court for the Southern District of New York
One Bowling Green
New York, NY 10004-1408

Re: *ConnectEdu, Inc.*, No. 14-11238 (Bankr. S.D.N.Y.)

Dear Judge Chapman:

The Federal Trade Commission (“FTC”), is the United States’ leading consumer protection authority. Among other laws, the FTC enforces Section 5 of the Federal Trade Commission Act, which prohibits unfair or deceptive acts or practices.

I am the Director of the FTC’s Bureau of Consumer Protection (BCP) and am writing to express BCP’s concerns about the ConnectEDU matter referenced above. It is our understanding, based on publicly available information, that ConnectEDU and its subsidiaries, including Academic Management Systems, Inc., have filed for Chapter 11 bankruptcy protection and have proposed selling substantially all of their assets, potentially including personal information about individuals. *In re ConnectEdu, Inc.*, No. 14-11238 (Bankr. S.D.N.Y.). Further, it is our understanding that this information (hereafter “ConnectEDU PI”) was collected over 12 years from users of the www.ConnectEDU.com and affiliated websites and services operated under the ConnectEDU brand name. We are writing to express our concern that a sale that includes ConnectEDU PI may violate Section 363(b)(1)(A) of the Bankruptcy Code, as well as the prohibition on deceptive practices under the Federal Trade Commission Act, 15 U.S.C. § 45(a).

ConnectEDU and Its Privacy Practices

ConnectEDU is an education technology company that has operated in the United States since 2002. ConnectEDU has operated the website ConnectEDU.com, which features interactive tools to assist students, parents, and school counselors in career planning. According to ConnectEDU’s website, ConnectEDU “prepares and transitions 21st Century Learners on their pathways from school to college to career, helping them realize their potential, achieve a secure financial future, and ultimately connect to life’s possibilities.” On the ConnectEDU website, students have built personal listings of their academic and personal interests, honors and awards,

and work experience; employed resume builders, test preparation, and financial literacy tools; and engaged with networks of teachers, mentors, and potential employers. ConnectEDU has registered more than 20 million students, 5,000 educational institutions, and 140,000 employers, from more than 40 countries.

During the time it was in operation, the ConnectEDU website collected a substantial amount of personal information from its user base, including high school and college students. This personal information includes name, date of birth, address, e-mail address, telephone number, grade level, and additional information required to provide services to users. ConnectEDU also collected personal information in the form of student records made available by contracting with high schools and community colleges.

It is our understanding that since its inception, the ConnectEDU Privacy Policy has informed potential and current users that “the personally identifiable data you submit to ConnectEDU (or that ConnectEDU obtains from your school) is not made available or distributed to third parties, except with your express consent and at your direction,” and “In particular, the Company will not give, sell or provide access to your personal information to any company, individual or organization for its use in marketing or commercial solicitation or for any other purpose, except as is necessary for the operation of this site.” (*See Attachment A*)

The ConnectEDU Privacy Policy also describes what will happen to user information in the event of a company sale. ConnectEDU has expressly represented “***In the event of sale or intended sale of the Company, ConnectEDU will give users reasonable notice and an opportunity to remove personally identifiable data from the service.*** In any event, any purchaser of ConnectEDU’s assets will abide by the terms of this Privacy Policy in the form effective as of any transfer.” (Emphasis added).

Many users would likely consider the protection of their personal information to be very important. In addition, information about teens is particularly sensitive and may warrant even greater privacy protections than those accorded to adults. These users as well as their parents would likely be concerned if their information transferred without restriction to a purchaser for unknown uses.

Transfers and Uses of ConnectEDU Personal Information

We understand that ConnectEDU is proposing to sell its assets through a bankruptcy proceeding. *See In re ConnectEdu, Inc.*, ECF Nos. 55, 72, 76, 82 (May 9-14, 2014) (motion to approve bidding procedures and sale of substantially all assets, emergency motion to authorize private sale). The sale may include the transfer of ConnectEDU PI to one or more purchasers, including North Atlantic Capital, which, according to its public website, manages investment funds.

If the sale includes the transfer of personal information, ConnectEDU must comply with Section 363(b)(1)(A) of the Bankruptcy Code, which states that a debtor may not sell personally identifiable information about an individual covered by a privacy policy prohibiting the transfer of that information to a third party, ***unless the sale is consistent with the policy.*** *See* 11 U.S.C.

§ 353(b)(1)(A). Alternatively, a consumer privacy ombudsman must be appointed to assist the court in determining whether the sale would violate applicable nonbankruptcy law. *See* 11 U.S.C. §§ 332, 363(b)(1)(B).

We believe that any sale of the personal information of ConnectEDU's customers would be inconsistent with ConnectEDU's privacy policy, unless ConnectEDU provides those customers with notice and an opportunity to delete the information. As described above, ConnectEDU's privacy policy has stated that it would not sell customers' personal information without notifying them and giving them an opportunity to remove their personal information. Thus, a sale of ConnectEDU PI without reasonable notice to users and an opportunity to remove personal information would contradict the privacy statements originally made to users. Such a sale would appear to violate the relevant Bankruptcy Code provision, as well as the FTC's prohibition against "deceptive acts or practices in or affecting commerce." 15 U.S.C. § 45(a).

The Commission has brought many cases alleging that the failure to adhere to promises about information privacy constitute a deceptive practice under the FTC Act.¹ These cases include *FTC v. Toysmart*² in which the Commission sued an online toy retailer that had filed for bankruptcy and sought to auction the personal information it collected from its customers. The Commission alleged that the offer for sale constituted a deceptive practice because the company had represented in its privacy policy that such information would never be shared with third parties.³

It is our understanding that bankruptcy filings contemplate that any potential acquirer will fully comply with the ConnectEDU Privacy Policy. The relevant language states, "To the extent that the Purchased Assets include personally identifiable information, the Buyers shall either comply with the Debtors' existing privacy policy or such other privacy policy provided that such other privacy policy is no less protective than the Debtors' existing privacy policy." *See, e.g.,*

¹ *See Snapchat, Inc.*, File No. 132-3078 (F.T.C. May 8, 2014) (proposed consent agreement), available at <http://www.ftc.gov/enforcement/cases-proceedings/132-3078/snapchat-inc-matter>; *Facebook, Inc.*, No. 092 3184 (F.T.C. Nov. 29, 2011), available at <http://www.ftc.gov/os/caselist/0923184/index.shtm>; *Google, Inc.*, No. C-4336 (F.T.C. Oct. 13, 2011) (consent order), available at <http://www.ftc.gov/os/caselist/1023136/index.shtm>; *Chitika, Inc.*, No. C-4324 (F.T.C. June 7, 2011) (consent order), available at <http://www.ftc.gov/os/caselist/1023087/index.shtm>.

² First Amended Complaint for Permanent Injunction and Other Equitable Relief, No. 00-11341-RGS (D. Mass. July 21, 2000), available at <http://www.ftc.gov/os/2000/07/toysmartcomplaint.htm>.

³ Since the *Toysmart* case, the Bureau has sent letters similar to this one, advocating on behalf of consumers whose personal information was subject to potential transfer or sale in bankruptcy proceedings. *See* Letter from David C. Vladeck, Director, FTC's Bureau of Consumer Protection to Michael St. Patrick Baxter, Esq., et al. (Sept. 14, 2011), available at http://www.ftc.gov/sites/default/files/documents/public_statements/protection-personal-customer-information-held-borders-group/110914bordersletter.pdf (letter to bankruptcy court-appointed Consumer Privacy Ombudsman noting potential Section 5 concerns associated with selling personal information in a manner inconsistent with privacy policy representations); Letter from David C. Vladeck, Director, FTC's Bureau of Consumer Protection to Peter Larson, et al. (July 1, 2010), available at <http://www.ftc.gov/os/closings/100712xy.pdf> (setting forth concerns about the transfer of personal information about subscribers to gay male youth-oriented XY Magazine to a new owner of the business).

(Proposed) Order Authorizing Private Sale at 20. ECF No. 76-1. Such a term of sale would partially address the privacy concerns raised but still would not cure the potential deception in the privacy policy, which informed consumers that they would be notified and allowed to request deletion of their personal information in the event of a transfer of their information to a third party.

Our concerns about the sale, transfer, or use of users' personal information inconsistent with privacy promises would be greatly diminished if ConnectEDU: (1) provided users with notice of the sale of their personal information and opportunity for its removal; or (2) destroyed the personal information. Alternatively, under Section 363(b)(1)(B), the Court could appoint a privacy ombudsman to ensure that the privacy interests of ConnectEDU's customers are protected.

Thank you for your attention. If you have any additional questions about this matter, please contact Michael Mora at (202) 326-3373 or mmora@ftc.gov.

Respectfully Submitted,

Jessica L. Rich

cc: Sharon L. Levine, Esq., Lowenstein Sandler LLP
Wojciech F. Jung, Esq., Lowenstein Sandler LLP
Nicole Stefanelli, Esq., Lowenstein Sandler LLP
Mark Podgainy, Managing Director, Getzler Henrich & Associates LLC
David Coit, Managing Director, North Atlantic Capital