



Office of the Secretary

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

March 2, 2011

Mr. Russ Smith
State of New Jersey

Re: In the Matter of Twitter, Inc., File No. 092 3093, Docket No. C-4316

Dear Mr. Smith:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

Your comment expresses several criticisms of the complaint and order in this proceeding. First, your comment states that the complaint and order involve "best practices" relating to data security and the Commission lacks the legal authority to enforce such best practices. In response, the Commission notes that its complaint against Twitter alleges that Twitter engaged in deceptive acts or practices, in violation of Section 5(a) of the FTC Act, by falsely representing to consumers that it used reasonable and appropriate measures to prevent unauthorized access to users' nonpublic information and honor users' privacy choices. The Commission is duly authorized by Congress to enforce Section 5(a) of the FTC Act, *see* 15 U.S.C. §§ 45(a)(2), 45(b), and its action against Twitter is consistent with this authority.

Your comment also states that Commission staff lack the expertise necessary to understand data security best practices. In response, the Commission notes that it has expertise in data security matters through its long-standing enforcement and research activities. The Commission has, with the support of data security experts, examined numerous commercial data security vulnerabilities over the past decade and taken action to address them.¹ The Commission has also conducted workshops and prepared reports on a variety of data security issues.² The Commission is confident that it has the expertise required to assess the reasonableness of security measures implemented by Twitter.

¹ *See* http://www.ftc.gov/privacy/privacyinitiatives/promises_enf.html (listing data security consent orders).

² The Commission's expertise in this area is described in the recent staff report, *Protecting Consumer Privacy in an Era of Rapid Change, A Proposed Framework for Businesses and Policymakers* (Dec. 1., 2010), at <http://www.ftc.gov/opa/2010/12/privacyreport.shtm>.

In addition, your comment expresses concern that the Commission's complaint does not contain adequate detail regarding the measures necessary for a comprehensive information security program. The proposed complaint, however, sets forth the basis for the alleged legal violations and is not intended to prescribe the specific requirements of a reasonable information security program. The proposed order broadly imposes those requirements and is purposely flexible; Twitter must establish administrative, technical, and physical safeguards appropriate to its size and complexity, the nature and scope of its activities, and the sensitivity of the information it handles. Thus, the order requires Twitter to assess its security needs as its practices change and respond accordingly, rather than specifying individual security measures that may become quickly outdated.

Finally, your comment raises a number of issues that are not related to the complaint and order in this case, including concerns about the Commission's coordination with other federal agencies, the Commission's own privacy practices, its relationship with TRUSTe, its use of social media services, and the legal status of privacy policies in general. Because these concerns do not relate to the merits of the proposed complaint and order, we do not address them here.

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and it thanks you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary