



Office of the Secretary

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

March 7, 2006

Ms. Kathryn D. Kohler  
Assistant General Counsel  
Bank of America  
Legal Department  
NC1-002-29-01  
101 South Tryon Street  
Charlotte, North Carolina 28255

Re: DSW Inc.  
Matter No. 0523096

Dear Ms. Kohler:

This acknowledges your letter commenting on the Federal Trade Commission's consent agreement in the above-entitled proceeding. Your letter was placed 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 was given serious consideration by the Commission.

Your comment states that the information security program required by the consent order is unduly burdensome because it covers "personal information," which includes publicly available information, instead of "customer information" as defined in the Gramm-Leach-Bliley ("GLB") Act.

The Commission does not believe that the GLB Act definitions, which relate to the kinds of information that financial institutions must safeguard, are controlling in a case brought against an alleged wrongdoer under the Federal Trade Commission Act. In this case, as in prior Commission data security cases, the inclusion of publicly available information within the ambit of the order is warranted as fencing-in relief.<sup>1</sup> Certain publicly available records, such as court records, contain Social Security numbers and other highly sensitive information that can be used to perpetrate identity theft. It is appropriate that the order require DSW to have reasonable procedures to protect such information when it collects and maintains it. The Commission notes

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<sup>1</sup> Fencing-in remedies are designed to prevent future unlawful conduct. Such provisions are often broader in scope than the conduct that is declared unlawful in a particular case. *See, e.g., Superior Mortgage Corp.*, Docket No. C-4153 (Dec. 14, 2005); *BJ's Wholesale Club, Inc.*, Docket No. C-4148 (Sept. 20, 2005); *Petco Animal Supplies, Inc.*, Docket No. C-4133 (Mar. 4, 2005).

that the safeguards requirements in the order are designed to be flexible and to take into account “the sensitivity of the personal information collected from or about consumers.” Particularly sensitive data that presents a greater risk of harm to consumers, such as Social Security numbers, would therefore require more stringent security procedures.

After reviewing your comment, and the other submitted comment, the Commission has determined that the public interest would best be served by according final approval to the consent order. Thank you again for your comment.

By direction of the Commission.

Donald S. Clark  
Secretary