



Office of the Secretary

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

June 19, 2014

Chris Connolly
Bath, United Kingdom

Re: In the Matter of Apperian, Inc., File No. 1423017; Atlanta Falcons Football Club LLC, File No. 1423018; Baker Tilly Virchow Krause, LLP, File No. 1423019; BitTorrent, Inc., File No. 1423020; Charles River Laboratories International, Inc., File No. 1423022; DataMotion, Inc., File No. 1423023; DDC Laboratories, Inc., File No. 1423024; Fantage.com, Inc., File No. 1423026; Level 3 Communications, LLC, File No. 1423028; PDB Sports, Ltd. d/b/a Denver Broncos Football Club, File No. 1423025; Reynolds Consumer Products Inc., File No. 1423030; The Receivable Management Services Corporation, File No. 1423031; and Tennessee Football, Inc., File No. 1423032.

Dear Mr. Connolly:

Thank you for your comments regarding the Federal Trade Commission's ("Commission" or "FTC") consent agreements in the above-entitled proceedings. The Commission has placed your comments 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 them serious consideration.

In these 13 cases, the proposed complaints allege that the Respondents engaged in deceptive practices by falsely representing, either expressly or by implication, that they were current participants in the U.S.-EU Safe Harbor framework and/or the U.S.-Swiss Safe Harbor Framework (collectively "Safe Harbor framework") when, in fact, each company had allowed its self-certification to lapse. In some cases the proposed complaints also allege that those companies deceptively displayed the Safe Harbor Certification Mark. The proposed orders prohibit each company from misrepresenting the extent to which each is a member of, adheres to, complies with, is certified by, is endorsed by, or otherwise participates 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 Safe Harbor framework.

In your comments, you: (1) inquire whether several of the Respondents have been the subject of previous action by the Commission and if so, recommend that sanctions against those Respondents be strengthened; (2) urge the Commission to take action with respect to True Ultimate Standards Everywhere, Inc. ("TRUSTe") because some Respondents participated in TRUSTe's U.S.-EU Safe Harbor program and were re-certified by TRUSTe although their privacy policies included false statements about their participation in the Safe Harbor framework; (3) suggest that the Commission require certain Respondents to identify the dispute resolution provider they have chosen; (4) urge the Commission to strengthen the sanctions against Respondent DDC Laboratories,

Inc. (“DDC”); and (5) ask the Commission to correct inaccuracies in a press release issued by Respondent Apperian, Inc. (“Apperian”).

In several of your comments, you inquire whether certain Respondents have been the subject of previous action by the Commission and if so, you recommend that sanctions against those Respondents be strengthened. Specifically, you inquire whether the Commission has taken action before against Respondent Atlanta Falcons Football Club, LLC (“Atlanta Falcons”) or against Respondent BitTorrent, Inc. (“BitTorrent”). All FTC enforcement actions are made part of the public record. The above-entitled proceedings are the first enforcement actions the Commission has taken against the Atlanta Falcons and against BitTorrent.

While we do not believe there is a basis to impose heightened sanctions on either Respondent at this time, the Commission does share your concern with respect to continuing violations. Please note that if any of the Respondents misrepresent the extent to which it is a member of, adheres to, complies with, is certified by, is endorsed by, or otherwise participates in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization or violates any other term of the final order, it could be liable for civil monetary penalties of up to \$16,000 per violation, or up to \$16,000 per day in the case of continuing violations (as provided by Section 5(l) of the FTC Act).

In several comments, you also urge the Commission to take action with respect to TRUSTe because some Respondents participated in TRUSTe’s U.S.-EU Safe Harbor program and were re-certified by TRUSTe although their privacy policies included false statements about their participation in the Safe Harbor framework. We appreciate your comments. We also note that you have previously filed a complaint with the Commission regarding TRUSTe. The Commission cannot comment on whether it is investigating any particular companies or allegations. However, the Commission takes seriously the role of self-regulatory privacy programs that certify company compliance with the Safe Harbor framework, such as TRUSTe. Ensuring the effective operation of the Safe Harbor framework is an important component of the Commission’s mission.

On two occasions, your comments assert that the Safe Harbor framework requires that organizations identify an independent dispute resolution provider in their privacy policies and provide consumers with contact information for that service. In one comment, you note that Respondent DataMotion has not provided identifying information for its dispute resolution provider in its privacy policy and ask that the Commission require DataMotion to do so. However, while organizations are encouraged to include this information in their privacy policies, to satisfy the requirements of self-certification, laid out in FAQ 6 at http://export.gov/safeharbor/eu/eg_main_018388.asp, organizations need only identify the independent dispute resolution provider they use in the certification they file with the Department of Commerce (“DOC”). The DOC maintains a website, available to the public, at www.export.gov/safeharbor, where it posts the certifications filed by companies that have self-certified to the Safe Harbor framework. Consumers may consult this website not only to determine whether a company is a “current” member of the Safe Harbor framework, but also to determine which independent dispute resolution provider the company has chosen.

In November 2013, the European Commission (“EC”) released a report on Safe Harbor in which it recommended that the Safe Harbor framework be strengthened by requiring that the privacy policies on organizations’ websites include a link to the independent dispute resolution provider the organization has chosen. The EC noted that since March 2013, the DOC has more explicitly recommended that organizations take this step in the guidance it provides to organizations and on the Safe Harbor website. The DOC continues to explore ways to help citizens better understand the rights and recourse available to them under the Safe Harbor framework.¹

In a second related comment, you note that Respondent Baker Tilly Virchow Krause, LLP’s (“Baker Tilly”) privacy policy includes inconsistent information about the independent dispute resolution provider it uses. Baker Tilly has since clarified its privacy policy to conform with the information in its DOC certification, both of which now state that disputes will be resolved in Europe by the EU Data Protection Authority Panel.

Further, you request that the Commission strengthen the sanctions against Respondent DDC Laboratories due to the type of consumer data that DDC collects. You state that the proposed consent order “merely requires the company to comply with a framework that it should have already been applying in its daily work.” It is important to reiterate that the proposed complaint against DDC alleges that the company misrepresented that it was a current participant in the Safe Harbor framework, when, in fact, its self-certification had lapsed. There is no allegation that DDC substantively violated any of the privacy principles of the Safe Harbor framework or that personal data was at risk. Still, this order, and the orders with all the other Respondents, has the effect of requiring the companies to abide by the substantive Safe Harbor principles for as long as they choose to represent that they comply with the Safe Harbor Framework. In addition, if one of the Respondent companies chooses to leave Safe Harbor, it must continue to apply the Safe Harbor principles to the covered data it collected while participating in the program for as long as it stores, uses, or discloses that data. Accordingly, the Commission believes that the proposed order appropriately addresses the conduct at issue and demonstrates that the Commission takes seriously misrepresentations about membership in the Safe Harbor framework.

Finally, you urge the Commission to correct inaccuracies contained in a press release issued by Respondent Apperian which stated that the company was “only a few weeks late” to recertify to the Safe Harbor framework. The FTC’s proposed complaint against Apperian outlines the time frame during which the company allegedly misrepresented its adherence to the Safe Harbor framework and deceptively displayed the Safe Harbor Certification Mark. In addition, the Commission has confirmed that Apperian has taken down the inaccurate statements at issue. The Commission urges consumers who have questions about the details of any FTC case or settlement to review the pleadings, which are posted on the FTC website at <http://www.ftc.gov>, and refer to any

¹ The FTC, as the enforcer of Safe Harbor certifications, welcomes the EC’s November 2013 recommendations concerning Safe Harbor, and is committed to a productive dialogue with the EC on the issue. See Letter from Chairwoman Ramirez to Vice-President Reding (Nov. 13, 2013), available at http://www.ftc.gov/sites/default/files/documents/public_statements/letter-chairwoman-edith-ramirez-expressing-federal-trade-commissions-commitment-protecting-consumer/131112europeanvivaneredingletter.pdf; FTC Staff Comments to European Commission Review of the U.S.-EU Safe Harbor Framework, available at http://www.ftc.gov/sites/default/files/documents/public_statements/privacy-enforcement-safe-harbor-comments-ftc-staff-european-commission-review-u.s.eu-safe-harbor-framework/131112europeancommissionsafeharbor.pdf.

corresponding FTC press release for a summary of the allegations and the terms of the order to which a Respondent is bound.

In light of the considerations discussed above, the Commission has determined that the public interest would best be served by issuing the Decision and Orders in the above-entitled proceedings in final form without any modifications. The final Decision and Orders 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, Commissioner McSweeney not participating.

Donald S. Clark
Secretary