PUBLIC

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of	)	
RagingWire Data Centers, Inc.	)	Docket No. 9386
a corporation,	)	
Respondent.	)	

ORDER DENYING COMPLAINT COUNSEL'S MOTION FOR RECONSIDERATION

I.

On February 11, 2020, Federal Trade Commission ("FTC" or "Commission") Complaint Counsel filed a Motion for Reconsideration ("Motion for Reconsideration"). Complaint Counsel requests reconsideration of the ruling in the Order on Complaint Counsel's Motion to Compel, dated February 7, 2020 ("February 7 Order"), that Respondent does not have to produce responsive documents related to the European Union's General Data Protection Regulation ("GDPR") in response to Requests 1-4 in Complaint Counsel's First Set of Document Requests. Respondent RagingWire Data Centers, Inc. ("Respondent" or "RagingWire") filed an opposition on February 18, 2020 ("Opposition"). Having fully considered the Motion for Reconsideration and the Opposition, and as further explained below, the Motion for Reconsideration is DENIED.[1]

II.

The February 7 Order held: "As alleged in the Complaint, the EU's GDPR took effect as of May 25, 2018. Complaint ¶ 6.[2] Thus, GDPR did not go into effect until two years after RagingWire began participating in Privacy Shield and more than a year after the alleged misrepresentation about Privacy Shield began." February 7 Order at 4-5. Accordingly, Respondent was not required to produce documents referencing GDPR unless those documents also referenced Privacy Shield. Complaint Counsel seeks reconsideration of this ruling.

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[1] Complaint Counsel's request for a hearing on its motion is also DENIED.

[2] The Complaint contains no allegations on the date of the enactment of GDPR.

The standard for a motion for reconsideration is as follows:

> A motion for reconsideration of a decision may be made only on the grounds of: (a) a material difference in fact or law from that presented to the Administrative Law Judge before such decision, that in the exercise of reasonable diligence could not have been known to the party moving for reconsideration at the time of such decision; (b) the emergence of new material facts or a change of law occurring after the time of such decision; or (c) a manifest showing of a failure to consider material facts presented to the Administrative Law Judge before such decision. . . . Reconsideration motions are not intended to be opportunities "to take a second bite at the apple" and relitigate previously decided matters. . . .
>
> [S]uch motions should be granted only sparingly. Courts have granted motions to reconsider where it appears the court mistakenly overlooked facts or precedent which, had they been considered, might reasonably have altered the result, or where reconsideration is necessary to remedy a clear error or to prevent manifest injustice.

In re McWane, Dkt. No. 9351 (F.T.C. Jul. 12, 2012), available at https://www.ftc.gov/sites/default/files/documents/cases/2012/07/120711aljorderrespmoreconsid.pdf (quoting *In re Intel Corp.*, 2010 FTC LEXIS 47, *4-6 (May 28, 2010) (internal citations omitted)).

III.

Complaint Counsel argues that reconsideration is warranted because there is a material difference in fact that was not presented to the Administrative Law Judge, which if presented reasonably might have altered the result, and that reconsideration will prevent a clear error or manifest injustice.[3] Specifically, Complaint Counsel asserts that the material difference in fact that was not presented to the Administrative Law Judge is that, while GDPR's requirements became effective as of May 2018, GDPR was enacted into law two years earlier, in April 2016. Complaint Counsel asserts that Privacy Shield was adopted two months after GDPR was enacted, in July 2016, that Privacy Shield is a tool for complying with GDPR, and that the two-year gap between the 2016 enactment of GDPR and its effective date in 2018 was in order to give companies the time necessary to bring their privacy practices into full compliance with GDPR. Thus, Complaint Counsel argues, documents in Respondent's possession regarding GDPR, and firms' efforts to become GDPR-compliant, such as by contracting with vendors that were Privacy Shield participants, are relevant, even if the documents do not also reference Privacy Shield. Complaint Counsel requests that the Administrative Law Judge reconsider the February 7 ruling to determine whether this new information alters the ruling.

Respondent argues that there is no material difference in fact from that presented to the Administrative Law Judge before the decision that in the exercise of reasonable diligence could

[3] Complaint Counsel does not assert that there is the emergence of new material facts or a change of law occurring after the time of such decision or a manifest showing of a failure to consider material facts presented to the Administrative Law Judge before such decision.

not have been known to Complaint Counsel at the time it filed its motion to compel. Furthermore, Respondent asserts, because the ruling in the February 7 Order regarding GDPR was correctly decided, reconsideration is not necessary to remedy a clear error or to prevent manifest injustice.

Complaint Counsel does not argue that it was unaware of the foregoing information prior to the issuance of the February 7 Order. Indeed, Complaint Counsel acknowledges that it was aware of the date of GDPR's enactment when it filed its motion to compel, but argues that it had no reason to highlight the date of GDPR's enactment because Respondent did not raise any timing issues with respect to GDPR during meet and confer discussions and raised the issue for the first time in Respondent's opposition to the motion to compel. Complaint Counsel fails to explain why it did not seek leave to reply to Respondent's alleged new argument. Based on the foregoing, Complaint Counsel has failed to demonstrate that the asserted material difference of fact is one which, in the exercise of reasonable diligence, could not have been known to (or asserted by) Complaint Counsel prior to the issuance of the February 7 Order. Having failed to satisfy a fundamental requirement for obtaining reconsideration, it is not necessary to resolve whether consideration of the asserted material difference in fact reasonably might have altered the result, or whether reconsideration is necessary to prevent manifest injustice.

IV.

After full consideration of Complaint Counsel's Motion for Reconsideration and Respondent's Opposition thereto, and for all the foregoing reasons, Complaint Counsel's Motion for Reconsideration is DENIED.

ORDERED:

D M Chappell

D. Michael Chappell
Chief Administrative Law Judge

Date: February 20, 2020