

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



Office of the Secretary

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Re:

its system, including its weak employee password policies, and thus were not reasonably avoidable by consumers.

In addition, your comment questions whether the Commission has authority over websites, or over website operation protocols, or the data protection measures used by website and social network operators. The Commission notes that its jurisdiction under Section 5 of the FTC Act extends to unfair and deceptive acts and practices in or affecting commerce, which is defined to include commerce among the states and with foreign nations. 15 U.S.C. §§ 44, 45(a). A service provided by a United States company that enables the passage of messages over the internet from one state to another, such as Twitter's, is in or affecting commerce under the FTC Act, and thus is subject to Section 5 of the Act and the FTC's enforcement of its prohibitions.

Further, your comment expresses concern that the order constitutes an attempt to impose on social network operators the requirements of the Commission's Standards for Safeguarding Customer Information Rule (Safeguards Rule), 16 C.F.R. Part 314, issued pursuant to the Gramm-Leach-Bliley Act, which applies only to financial institutions. Your comment suggests that imposition of safeguards requirements on non-financial institutions constitutes *de facto* rulemaking by the Commission that fails to comply with the Administrative Procedure Act and exceeds and is not in the public interest.

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<sup>1</sup> See, e.g., *In re Life is good, Inc.*, 2008 FTC LEXIS 46 (Apr. 16, 2008) (consent order); *In re Guidane Software, Inc.*, 2007 FTC LEXIS 35 (Mar. 30, 2007) (consent order); *In re P&G Animal Supplies, Inc.*, 139 F.T.C. 102 (2005) (consent order); *In re MTS Inc.*, 137 F.T.C. 444 (2004) (consent order); *In re Guess?, Inc.*, 2003 FTC LEXIS 123 (July 30, 2003) (consent order); *In re Microsoft Corp.*, 134 F.T.C. 109 (2002) (consent order). With respect to the consent orders cited on page two of your comment (*In re CardSystem Solutions, Inc.*, 2005 FTC LEXIS 176 (Sept. 5, 2006) (consent order), *In re CVS Caremark Corp.*, 2009 FTC LEXIS 136 (June 18, 2009) (consent order), and *In re The TJX Cos.*, 2008 FTC LEXIS 75 (July 29, 2008) (consent order)), the Commission notes that these respondent companies were not financial institutions subject to the requirements of the Safeguards Rule, as your comment states. The Commission's complaint in each of these cases alleged violations of Section 5 of the FTC Act only.

