



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

Office of the Secretary

June 19, 2014

Marc Rotenberg, Executive Director
Julia Horwitz, Consumer Protection Counsel
Khaliah Barnes, Administrative Law Counsel
Electronic Privacy Information Center
1718 Connecticut Avenue, NW
Suite 200
Washington, D.C. 20009

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; 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. Rotenberg, Ms. Horwitz, and Ms. Barnes:

Thank you for your comment on behalf of the Electronic Privacy Information Center (“EPIC”) regarding the Federal Trade Commission’s (“Commission” or “FTC”) consent agreements in the above-entitled proceedings. 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.

In these 12 cases, the Commission alleges that Respondents violated Section 5 of the Federal Trade Commission Act (“FTC Act”) by misrepresenting that they were current participants in the U.S.-EU Safe Harbor framework and/or U.S.-Swiss Safe Harbor framework (collectively “Safe Harbor framework”) when in fact each company allowed its self-certification to lapse. In addition, the proposed complaints against Apperian, Inc., Baker Tilly Virchow Krause, LLP, DataMotion, Inc., and the Receivable Management Services Corporation allege that these companies deceptively displayed the Safe Harbor Certification Mark. The complaints do not allege that any Respondent committed any substantive violations of the privacy principles of the Safe Harbor framework.

The proposed orders prohibit each company from misrepresenting the extent to which

regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework or the U.S.-Swiss Safe Harbor Framework to directly address the complaint allegations in these cases. The proposed orders, which terminate after 20 years, include standard record-keeping and service provisions, as well as requirements for each Respondent to file a compliance report with the Commission.

These cases reflect an ongoing effort by the Commission to enforce compliance with the Safe Harbor framework. The Commission brought 10 previous cases against companies for misrepresentations related to Safe Harbor. From late 2009 through early 2010, the Commission brought a series of cases against six companies that violated Section 5 by falsely representing on their websites that they held current self-certifications to the Safe Harbor Framework.¹ In addition, in 2011, the Commission's action against Balls of Kryptonite included a count alleging the respondent violated Section 5 by misrepresenting its status with Safe Harbor.² Finally, the FTC has brought Section 5 cases against Google, Facebook and Myspace that included counts relating to substantive noncompliance with the Safe Harbor principles.³

Your comment notes EPIC's support of the 12 proposed consent orders but urges the Commission to make a number of revisions to the orders. Specifically, you request that the Commission: (1) require Respondents to comply with the President's Consumer Privacy Bill of

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Finally, you reference past comments that EPIC has submitted to the Commission regarding 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