

United States of America  
FEDERAL TRADE COMMISSION  
WASHINGTON, DC 20580

Office of the Secretary

March 12, 2015

Eric G. Null  
Angela J. Campbell  
Camille C. Fischer  
Institute for Public Representation  
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Re: In the Matter of TRUSTe, Inc., File No. 1323219

Thank you for your comment on behalf of the Center for Digital Democracy, American Academy of Child and Adolescent Psychiatry, Campaign for a Commercial Free Childhood, Consumer Action, Consumer Federation of America, Consumer Watchdog, and The Rudd Center for Food Policy and Obesity (“CDD, et al.”) regarding the Federal Trade Commission’s (“Commission” or “FTC”) consent agreement in the above-captioned proceeding. 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)(ii), and has given it serious consideration.

The Commission’s complaint against Respondent TRUSTe, Inc. (“TRUSTe”) includes two counts alleging violations of Section 5 of the Federal Trade Commission Act (“FTC Act”). Count One alleges that TRUSTe misrepresented to consumers the frequency with which it reviews and verifies the practices of companies displaying its web and mobile seals. Count Two alleges that TRUSTe provided to its sealholders the means and instrumentalities to misrepresent that TRUSTe is a nonprofit corporation.

The proposed order contains provisions designed to prevent TRUSTe from committing future violations similar to those alleged in the complaint. Part I of the proposed order prohibits TRUSTe from misrepresenting (1) the steps TRUSTe takes to evaluate, certify, review, or recertify a company’s privacy practices; (2) the frequency with which TRUSTe evaluates, certifies, reviews, or recertifies a company’s privacy practices; (3) the corporate status of TRUSTe and its independence; and (4) the extent to which any person or entity is a member of, adheres to, complies with, is certified by, is endorsed by, or otherwise participates in any privacy program sponsored by TRUSTe. Part II of the proposed order also prohibits TRUSTe from providing to any person or entity the means and instrumentalities (including any required or model language for use in any privacy policy or statement) to misrepresent any of the same items in Part I. Parts III and IV of the proposed order contain additional reporting and recordkeeping requirements, beyond those required under the rule implementing the Children’s Online Privacy Protection Act (“COPPA”), with respect to TRUSTe’s COPPA/Children’s Privacy seal. The proposed order, which terminates after two years, includes standard recordkeeping and service provisions, as well as requirements for TRUSTe to file compliance reports with the Commission.

Your comment expresses CDD et al.'s general support of the complaint and the proposed consent order's directives, but urges the Commission to (1) revise the amount of disgorgement; and (2) extend the duration of additional recordkeeping and reporting requirements, and make all reporting filed by TRUSTe public. Your comment additionally requests that the Commission make public all COPPA safe harbor annual reports.

First, your comment states that the proposed \$200,000 disgorgement is "too little to deprive TRUSTe of its unjust enrichment" and is unlikely to deter other safe harbors from similar behavior. Your comment also describes the disgorgement amount as much lower than civil penalties against other companies alleged to have violated COPPA. At the outset, we note that most of TRUSTe's failures to recertify involved seal programs unrelated to COPPA. In deciding whether the amount and type of monetary remedy in this or any other consent order is appropriate in relation to the alleged violations, the Commission carefully considers a variety of factors, including the type of monetary relief authorized by the specific facts at issue, and the alleged violations of the law. The complaint alleges that the company violated Section 5 of the FTC Act, which, unlike COPPA, does not authorize the Commission to seek civil penalties for an initial violation. Section 5 does allow the Commission to seek equitable relief; accordingly, one of the remedies in the proposed order is disgorgement of \$200,000 of net gains. The \$200,000 figure reflects a significant portion of the monies that TRUSTe received from its business clients for the annual reviews that it failed to conduct, despite representations to consumers that it recertified sealholders annually. Further, should TRUSTe violate any term of the final order, it could be liable for civil monetary penalties up to \$16,000 per violation per day (pursuant to Section 5(l) of the FTC Act).

Second, you recommend that the Commission require public disclosure of all TRUSTe order compliance reporting, as well as all COPPA safe harbor reports mandated by 16 C.F.R. § 312.11(d). The Commission agrees that there is a public benefit to providing transparency regarding a company's compliance with the provisions of an order, or a rule such as the COPPA Rule. As the Commission has noted in the past, the public may access to such information by making a request under the Freedom of Information Act. We refer you to these previous statements, recognizing, as you note, that there is ongoing litigation involving the disclosure of reports that COPPA safe harbors are required to provide the Commission under 16 C.F.R. §312.11(d). The Commission has produced these reports with appropriate redactions to protect confidential commercial information. See 5 U.S.C. § 552(b)PP65 U.S.C. § 552(b)eP65 U.S.C46(b)) ID

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in the ~~above~~ proceeding in final form without any modifications. The final Decision and Order 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.

Donald S. Clark  
Secretary

United States of America

-based and mobile seals.

Group. Even though TRUSTUS is a provider of products and services, it does not have the means and instrumentalities to

recertify a company's privacy

required safe harbor programs to have a mechanism for assessing compliance, but it did not contain an annual certification requirement for safe harbor programs.

The Commission regards the ability to revoke an organization's safe harbor status as an important mechanism to ensure the integrity of the program. However, the Commission does not consider this action warranted in every instance, nor the only means of addressing shortcomings in a safe harbor program's processes. In this case, we note that TRUSTe's failure to conduct the promised annual certifications affected only a subset of TRUSTe's business clients, and most of TRUSTe's failures to recertify involved seal programs unrelated to COPPA.