

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright
Terrell McSweeney

In the Matter of)
)
TES Franchising, LLC,)
a limited liability company.)
)
)
_____)

DOCKET NO. C-4525

COMPLAINT

The Federal Trade Commission, having reason to believe that TES Franchising, LLC, a limited liability company, has violated the Federal Trade Commission Act (“FTC Act”), and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent TES Franchising, LLC (“TES”) is a Connecticut limited liability company with its principal office or place of business at 900 Main Street South, Building 2, Southbury, CT 06484.
 2. Respondent provides business coaching services to franchisees.
 3. The acts and practices of respondent as alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act.
 4. Respondent has set forth on its website, www.entrepreneursource.com, privacy policies and statements about its practices, including (1) statements related to its participation in the Safe Harbor privacy frameworks agreed upon by the U.S. and the European Union and the U.S. and Switzerland (collectively, “the Safe Harbor Frameworks”), and (2) statements indicating that it is a licensee of the TRUSTe Privacy Program.
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Among other things, it requires EU Member States to implement legislation that prohibits the transfer of personal data outside the EU, with exceptions, unless the European Commission (“EC”) has made a determination that the recipient jurisdiction’s laws ensure the protection of such personal data. This determination is referred to commonly as meeting the EU’s “adequacy” standard.

6. To satisfy the EU adequacy standard for certain commercial transfers, the U.S. Department of Commerce (“Commerce”) and the EC negotiated the U.S.-EU Safe Harbor Framework, which went into effect in 2000. The U.S.-EU Safe Harbor Framework allows U.S. companies to transfer personal data lawfully from the EU. To join the U.S.-EU Safe Harbor Framework, a company must self-certify to Commerce that it complies with seven principles and related requirements that have been deemed to meet the EU’s adequacy standard.
7. The seven principles are: notice, choice, onward transfer, security, data integrity, access, and enforcement. Among other things, the enforcement principle requires companies to provide a readily available and affordable independent recourse mechanism to investigate and resolve an individual’s complaints and disputes.
8. Companies under the jurisdiction of the U.S. Federal Trade Commission (“FTC”), as well as the U.S. Department of Transportation, are eligible to join the U.S.-EU Safe Harbor Framework. A company under the FTC’s jurisdiction that claims it has self-certified to the Safe Harbor principles, but failed to self-certify to Commerce, may be subject to an enforcement action based on the FTC’s deception authority under Section 5 of the FTC Act.
9. Commerce maintains a public website, www.export.gov/safeharbor, where it posts the names of companies that have self-certified to the U.S.-EU Safe Harbor Framework. The listing of companies indicates whether their self-certification is “current” or “not current” and a date when recertification is due. Companies are required to re-certify every year in order to retain their status as “current” members of the Safe Harbor Framework.
10. The U.S.-Swiss Safe Harbor Framework is identical to the U.S.-EU Safe Harbor Framework and is consistent with the requirements of the Swiss Federal Act on Data Protection.

Violations of Section 5 of the FTC Act

Misrepresentations Regarding Safe Harbor Participation

11. In March 2011, respondent submitted to Commerce a self-certification of compliance with the Safe Harbor Frameworks, which is publicly available at the www.export.gov/safeharbor website.
12. In its self-certification, respondent identified the European data protection authorities as its chosen independent recourse mechanism.

24. The acts and practices of respondent as alleged in this complaint constitute deceptive acts or practices, in or affecting commerce, in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this twentieth day of May, 2015, has issued this complaint against respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL: