

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

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

In the Matter of)
)
IOActive, Inc.,)
a corporation .)
)
)
)
_____)

DOCKET NO.

COMPLAINT

The Federal Trade Commission, having reason to believe that IOActive, Inc., a corporation, 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 IOActive, Inc. is a Washington corporation with its principal office or place of business at 701 5th Avenue, Suite 6850, Seattle, Washington.
2. Respondent describes itself as providing security consulting services
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.ioactive.com privacy policy statements about its practices, including statements related to its participation in the Safe Harbor privacy framework agreed upon by the U.S. and the European Union (the U.S.-EU Safe Harbor Framework).

The Safe Harbor Framework

5. The U.S.-EU Safe Harbor Framework provides a method for U.S. companies to transfer personal data outside of Europe that is consistent with the requirements of the European Union Directive on Data Protection ("Directive"). Enacted in 1995, the Directive sets forth European Union ("EU") requirements for privacy and the protection of personal data. 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 EU Safe Harbor Framework, which

Violations of Section 5 of the FTC Act

Misrepresentations Regarding Safe Harbor Participation

10. In May 2009, respondent submitted to Commerce a self-certification of compliance with the U.S.-EU Safe Harbor Framework which is publicly available at the www.export.gov/safeharbor website
11. In May 2012, respondent did not renew its self-certification to the U.S.-EU Safe Harbor Framework and Commerce subsequently updated respondent's status to "not current" on its public website.
12. Since at least May 2009 until May 2015, respondent disseminated or caused to be disseminated privacy policies and statements on its website www.ioactive.com/privacy-policy.html, including but not limited to, the following privacy policy statement and display of the mark:
 13. Through the means described in Paragraph 12, respondent represented, expressly or by implication, that it was a current participant in the U.S.-EU Safe Harbor Framework.
 14. In truth and in fact, beginning in 2012, respondent was not a current participant in the U.S.-EU Safe Harbor Framework. Therefore, the representation set forth in Paragraph 13 is false and misleading.
 15. The acts and practices of respondent as alleged in this complaint constitute deceptive acts

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

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: