

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Joseph J. Simons, Chairman
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter
Christine S. Wilson

In the Matter of)
) DOCKET NO.
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EmpiriStat, Inc.)
a corporation.) DECISION AND ORDER
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DECISION

The Federal Trade Commission (“Commission”) initiated an investigation of certain acts and practices of the Respondent named above in the caption. The Commission’s Bureau of Consumer Protection (“BCP”) prepared and furnished to Respondent a draft Complaint. BCP proposed to present the draft Complaint to the Commission for its consideration. If issued by the Commission, the draft Complaint would charge Respondent with violation of the Federal Trade Commission Act.

Respondent and BCP thereafter executed an Agreement Containing Consent Order (“Consent Agreement”). The Consent Agreement includes: 1) statements by Respondent that it neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Decision and Order, and that only for purposes of this action, it admits the facts necessary to establish jurisdiction; and 2) waivers and other provisions as required by the Commission’s Rules.

The Commission considered the matter and determined that it had reason to believe that Respondent has violated the Federal Trade Commission Act, and that a Complaint should issue stating its charges in that respect. The Commission accepted the executed Consent Agreement and placed it on the public record for a period of thirty (30) days for the receipt and consideration of public comments. The Commission duly considered any comments received from interested persons pursuant to Section 2.34 of its Rules, 16 C.F.R. § 2.34. Now, in further conformity with the procedure prescribed in Rule 2.34, the Commission issues its Complaint, makes the following Findings, and issues the following Order:

Findings

1. Respondent EmpiriStat, Inc. is a Delaware corporation with its principal office or place of business at 327 East Ridgeville Boulevard #122, Mount Airy, MD 21771.
2. The Commission has jurisdiction over the subject matter of this proceeding and over Respondent, and the proceeding is in the public interest.

ORDER

Definitions

For purposes of this Order, the following definition applies:

1. "Respondent" means EmpiriStat, Inc., a corporation, and its successors and assigns.

Provisions

I. Prohibition against Misrepresentations about Participation in or Compliance with Privacy Programs

IT IS ORDERED that Respondent and its officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, or sale of any product or service must not misrepresent in any manner, expressly or by implication, the extent to which Respondent is a member of, adheres to, complies with, is certified by, is endorsed by, or otherwise participates in any privacy or security program sponsored by government or any self-regulatory or standards-setting organization, including but not limited to the EU-U.S. Privacy Shield framework and the Swiss-U.S. Privacy Shield framework.

II. Requirement to Meet Continuing Obligations Under Privacy Shield

IT IS ORDERED that Respondent and its officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, or sale of any product or service, must:

A. affirm to the Department of Commerce, within ten (10) days after the effective date of this Order and on an annual basis thereafter for as long as it retains such information, that it will

1. continue to apply the EU-U.S. Privacy Shield framework principles to the personal information it received while it participated in the Privacy Shield; or

2. protect the information by another means authorized under EU (for the EU-U.S. Privacy Shield framework) or Swiss (for the Swiss-U.S. Privacy Shield framework) law, including by using a binding corporate rule or a contract that fully reflects the requirements of the relevant standard contractual clauses adopted by the European Commission; or
- B. return or delete the information within ten (10) days after the effective date of this Order.

II I. Acknowledgments of the Order

IT IS FURTHER ORDERED that Respondent obtain acknowledgments of receipt of this Order:

- A. Respondent, within ten (10) days after the effective date of this Order, must submit to the Commission an acknowledgment of receipt of this Order.
- B. For ten (10) days after the effective date of this Order, Respondent shall maintain a record of all information received from the Commission and shall make such information available to the Commission upon request.

each Acknowledgment of the Order obtained pursuant to this Order, unless previously submitted to the Commission.

- B. Respondent must submit a compliance notice, sworn under penalty of perjury, within fourteen (14) days of any change in the following: (1) a designated point of contact; or (2) the structure of Respondent or any entity that Respondent has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.
- C. Respondent must submit notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against Respondent within fourteen (14) days of its filing.
- D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____" and supplying the date, signatory's full name, title (if applicable), and signature.
- E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to Debrief@ftc.gov by overnight courier (not the U.S. Postal Service) to: Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The subject line must be re EmpiriStat, Inc, FTC File No.1823195.

V. Recordkeeping

IT IS FURTHER ORDERED that Respondent must create certain records for ~~(10)~~ **five (5)** years after the issuance date of the Order, and retain each such record ~~for~~ **five (5)** years. Specifically, Respondent must create and retain the following records:

- A. accounting records showing the revenues from all goods or services sold;
- B. personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. all records necessary to demonstrate full compliance with ~~pro~~ **pro**vision of this Order, including all submissions to the Commission; and
- D. a copy of each widely disseminated representation by Respondent ~~making a~~

