

Complaint

IN THE MATTER OF

ONYX GRAPHICS, INC.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4270; File No. 092 3139**Complaint November 9, 2009 - Decision, November 9, 2009*

This consent order addresses respondent Onyx Graphics, providers of software and consulting services to businesses with employees residing outside of origin. Respondent manages tax and payroll issues for employees that work outside their country of residence. The complaint alleges the respondent violated Section 5 of the FTC Act by making false and misleading representations concerning Onyx Graphics' participation in the Safe Harbor privacy framework. Safe Harbor is an international program for international data transfer between the U.S. and the European Union. Respondent advertised an incorrect status as to its compliance with the program. The order prohibits Onyx Graphics from making misrepresentations about its membership in any privacy, security, or any other compliance program sponsored by the government or any other third party.

Participants

For the *Commission*: Molly Crawford and Katie Ratté

For the *Respondent*: Jeb Hurley, Chief Executive Officer, *pro se*.

COMPLAINT

The Federal Trade Commission, having reason to believe that Onyx Graphics, Inc. ("respondent") has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Onyx Graphics, Inc. ("Onyx Graphics") is a Delaware corporation with its principal office or place of business at 6915 South High Tech Drive, Salt Lake City, Utah 84101.
2. Respondent is in the business of developing and marketing commercial printing software and solutions for the digital color

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printing marketplace, including through a website (www.onyxgfx.com).

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 Federal Trade Commission Act.

4. Since at least October 2006, respondent has set forth on its website, www.onyxgfx.com, privacy policies and 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 (“U.S.-EU Safe Harbor Framework” or “Safe Harbor”).

U.S.-EU 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. *See* Directive 95/46/EC of the European Parliament and of the Council (Oct. 24, 1995), *available at* <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0046:EN:HTML>. This determination is commonly referred to 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 Safe Harbor allows U.S. companies to transfer personal data lawfully from the EU. To join the Safe Harbor, 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.

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7. 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 Safe Harbor. A company under the FTC’s jurisdiction that self-certifies to the Safe Harbor principles but fails to implement them may be subject to an enforcement action based on the FTC’s deception authority under Section 5 of the Federal Trade Commission Act.

8. Commerce maintains a public website, www.export.gov/safeharbor, where it posts the names of companies that have self-certified to the Safe Harbor. The listing of companies indicates whether their self-certification is “current” or “not current.” Companies are required to re-certify every year in order to retain their status as “current” members of the Safe Harbor framework. According to the Safe Harbor website, “Organizations should notify the Department of Commerce if their representation to the Department is no longer valid. Failure to do so could constitute a misrepresentation.” See Safe Harbor List, *available at* <http://web.ita.doc.gov/safeharbor/shlist.nsf/webPages/safe+harbor+list>.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

9. In August 2006, respondent submitted to Commerce a self-certification to the Safe Harbor.

10. In August 2007, respondent did not renew its self-certification to the Safe Harbor, and Commerce updated respondent’s status to “not current” on its public website. Until July 2009, respondent did not renew its self-certification to the Safe Harbor and was in “not current” status on Commerce’s website. (Exhibit A, Declaration of Damon C. Greer).

11. Since at least October 2006 to the present, respondent has disseminated or caused to be disseminated privacy policies and statements on the www.onyxgfx.com website, including, but not limited to, the following statements:

Safe Harbor Certified
ONYX is Safe Harbor [sic] Certified. For
ONYX Safe Harbor Agreement, click here.

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For more information on being Safe Harbor Compliant, click [here](#).

Exhibit B, Privacy Policy.

Onyx has self-certified its privacy practices as consistent with the U.S.-E.U. Safe Harbor principles as published by the US Department of Commerce (the “Principles”). These include: Notice, Choice, Onward Transfer, Access and Accuracy, Security, and Oversight/Enforcement. More information about the U.S. Department of Commerce Safe Harbor Program can be found at <http://www.export.gov/safeharbor/>.

Exhibit C, Onyx Safe Harbor Statement.

12. Through the means described in Paragraph 11, respondent represented, expressly or by implication, that it is a current participant in the Safe Harbor.

13. In truth and in fact, from August 2007 to July 2009, respondent was not a current participant in the Safe Harbor. Therefore, the representations set forth in Paragraph 11 were, and are, false or misleading.

14. The acts and practices of respondents as alleged in this complaint constitute unfair or 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 ninth day of November, 2009, has issued this complaint against respondent.

By the Commission.

FEDERAL TRADE COMMISSION DECISIONS
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Exhibit A

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of

ONYX GRAPHICS, INC.,
a corporation.

DOCKET NO.

DECLARATION OF DAMON C. GREER

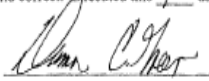
I, Damon C. Greer, based upon my personal knowledge concerning matters to which I am competent to testify, hereby declare as follows:

1. I am the Associate Director for Electronic Commerce in the Office of Technology and Electronic Commerce at the U.S. Department of Commerce ("Commerce"), and I am the lead administrator of the U.S.-E.U. Safe Harbor Framework.
2. Commerce is not a party to the captioned matter.
3. Commerce is responsible for developing and overseeing the U.S.-EU Safe Harbor Framework ("Safe Harbor"), a voluntary program that provides U.S. companies with a method for receiving personal data lawfully from the European Union. To join the Safe Harbor, a company must self-certify to Commerce that it complies with a set of principles that have been deemed to meet the EU's adequacy standard.
4. As Associate Director, I am responsible for maintaining an accurate list of those companies that self-certify to Commerce that they comply with the Safe Harbor principles. As part of my responsibilities, I oversee a public website, www.export.gov/safeharbor, where I post the names of companies that have self-certified. The listing of companies indicates, among other things, whether their self-certification is "current" or "not current." Companies are required to re-certify every year on the anniversary of the date they first self-certified in order to retain their status as "current" members of the Safe Harbor framework.
5. In August 2006, Onyx Graphics, Inc. ("Onyx") submitted a self-certification to Commerce. Onyx's next self-certification was due in August 2007.
6. Onyx did not submit a self-certification by the August 2007 deadline, and as a result I updated Onyx's status to "not current" on Commerce's public website. To date, I have

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not received any documents or information from Onyx to renew its self-certification.
Onyx is still in "not current" status on the Commerce website.

I declare under penalty of perjury under the Laws of the United States of America that
the foregoing is true and correct. Executed this 14 day of June, 2009, in Washington, D.C.



Damon C. Greer
Associate Director for Electronic Commerce
Office of Technology and Electronic Commerce
U.S. Department of Commerce

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Exhibit B

ONYX Graphics, Inc. - PosterShop inkjet RIP software and other leading RIP and Print w... Page 1 of 1



PARTNER PORTAL - LOCATE A RESSELLER - PARTNERS

[About ONYX](#)
[Products](#)
[Technology Solutions](#)
[Business Alliances](#)
[Training](#)
[Support](#)
[Contact Us](#)

[Subscribe To The ONYX THREAT](#)
[Intelligence](#)

[Product Demo Video](#)
[Video](#)

ONYX Graphics, Inc. Legal, Online Privacy and Security statements

ONYX Graphics, Inc. understands that you may have concerns with how information we obtain about you is used and shared, as well as the security of this information. We would like to assure you that we will use any information you provide us with care. Because we gather certain types of information about the users on the ONYX Graphics, Inc. website, we feel you should fully understand the terms and conditions surrounding our acquisition and use of that information. ONYX Graphics, Inc. is committed to protecting your privacy on our website and has created this privacy statement in order to demonstrate our firm commitment. The following information describes our information gathering process, how we use the information, and what we do to secure it.

Copyright
All Web site materials, including, without limitation, the ONYX logo, design, text, graphics, other files, and the selection and arrangement thereof are ALL RIGHTS RESERVED Copyright © ONYX Graphics Inc. You may electronically copy and print to hard copy portions of this Web site for the sole purpose of using materials it contains for informational and non-commercial, personal use only. Any other use of the materials on this Web site including any commercial use, reproduction for purposes other than described above, modification, distribution, republishing, display, or performance without the prior written permission of ONYX Graphics, Inc. is strictly prohibited.

Logos, Trademarks and Registered Trademarks
ONYX, and specific ONYX Graphics, Inc. products referenced herein, are trademarks of ONYX Graphics, Inc. and may be registered in certain jurisdictions. Other product names, company names, marks, signs, and symbols referenced herein may be the trademarks or registered trademarks of their respective owners.

Information Automatically Logged
We use your IP address to help diagnose problems with our server and to administer our Web site.

Use of Cookies
A cookie is a file held to your computer when you visit a certain website. Should you return to the same site, the cookie allows the website to identify you as a return visitor. The ONYX Graphics, Inc. website uses cookies to save your password so you don't have to re-enter it each time you visit our site (where applicable). We also use cookies to track traffic to our website and for a variety of useful Internet applications. While you can disable cookies in your browser, we recommend that you leave them turned on to best experience our website and much of the Internet.

Your Information
Our online registration form requires you to provide us with your contact information (such as your name, email, and postal address), and demographic information (such as your age, gender, age, or income level). The contact information we obtain from our form is used to ship purchases and to get in touch with you when necessary. You may opt-out of receiving future mailings - see the [choosing-out](#) section below. Financial information that is collected is used to bill the user for products and services.

Please note that we do not sell, rent, and we do not provide your information to third parties.

External Links
This site contains links to other sites. ONYX Graphics, Inc. is not responsible for the privacy practices or the content of such Web sites.

Choose Opt Out
Our site provides you the opportunity to opt-out of receiving promotional/marketing information from us.

Data Quality/Access
This site gives you the following options for changing and modifying information you previously provided:

- You can send mail to the following postal address: webmaster@onyxgfx.com
- You can call the following telephone number: 801-555-0000 and ask to speak to the Web Master.

Contacting the Web Site
If you have any questions about this privacy statement, the practices of this site, or your dealings with this Web site, you can contact webmaster@onyxgfx.com or via phone at 801-555-0000.

Safe Harbor Certified
ONYX is Safe Harbor Certified. For ONYX Safe Harbor Agreement, click [here](#). For more information on being Safe Harbor Compliant, click [here](#).

Contacting the Web Site
If you have any questions about this privacy statement, the practices of this site, or your dealings with this Web site, you can contact webmaster@onyxgfx.com.

USA - Latin America - Australia - Belgium - Australia - Japan
© Copyright ONYX Graphics Inc. All rights reserved. PRIVACY & LEGAL

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Exhibit C

Onyx Safe Harbor Statement - Rev C (Final Sep 1 2006-Corrected Aug 3, 2007)

Introduction

Onyx Graphics, Inc. is strongly committed to protecting the privacy of those who entrust us with their personal information. Our customers and workers have certain expectations and trust in relation to the way we protect their personal information. We are pleased to provide you with this information to inform you of the Onyx' practices with respect to the collection and use of personal information received from the European Economic Area (EEA) and the transfer of such information from countries in the EEA to the United States.

Onyx has self-certified its privacy practices as consistent with U.S.-E.U. Safe Harbor principles as published by the US Department of Commerce (the "Principles"). These include: Notice, Choice, Onward Transfer, Access and Accuracy, Security, and Oversight/Enforcement. More information about the U.S. Department of Commerce Safe Harbor Program can be found at <http://www.export.gov/safeharbor/>.

Personal Data

This statement applies to all personal information we handle (except as noted below), including on-line, off-line, and manually processed data. For purposes of this statement, "personal information" means information that:

- is transferred from the EU to the United States;
- is recorded in any form;
- is about, or pertains to, a specific individual; and
- can be linked to that individual.

It does not include information that pertains to a specific individual, but from which that individual could not reasonably be identified. This is known as "aggregate data" and is not tied to a specific individual.

Principles Protecting Individuals' Privacy*Notice and Choice*

In accordance with Safe Harbor principles, we may process personal information in the course of providing professional services to our customers without the knowledge of individuals involved. Where we collect personal information directly from individuals in the E.U., we inform them about the types of personal information we collect from them, the purposes for which we collect and use it, and the types of non-agent third parties to which we disclose that information. We also inform those individuals about the choices and means, if any, we offer individuals for limiting the use or disclosure of their information.

Disclosures and Transfers

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ONYX will not disclose an individual's personal information to third parties, except when one or more of the following conditions is true:

- We have the individual's permission to make the disclosure;
- The disclosure is required by law or professional standards;
- The disclosure is reasonably related to the sale or disposition of all or part of our business;
- The information in question is publicly available;
- The disclosure is reasonably necessary for the establishment or defense of legal claims; or
- The disclosure is to another Onyx entity or to persons or entities providing services on our or the individual's behalf (each a "transferee"), consistent with the purpose for which the information was obtained, if the transferee, with respect to the information in question:
 - is subject to law providing an adequate level of privacy protection; or,
 - has agreed in writing to provide an adequate level of privacy protection; or
 - subscribes to the Principles.

Permitted transfers of information, either to third parties or within Onyx include the transfer of data from one jurisdiction to another, including transfers to and from the United States of America. Because privacy laws vary from one jurisdiction to another, personal information may be transferred to a jurisdiction where the laws provide less or different protection than the jurisdiction in which the information originated.

Data Security

Onyx takes your security seriously and takes reasonable steps to protect your information. To prevent unauthorized access or disclosure, maintain data accuracy, and ensure the appropriate use and confidentiality of information, either for its own purposes or on behalf of our customers, Onyx has put in place appropriate physical, electronic, and managerial procedures to safeguard and secure the information we process. However, we cannot guarantee the security of information on or transmitted via the Internet.

Data Integrity

We process personal information only in ways compatible with the purpose for which it was collected or subsequently authorized by the individual. To the extent necessary for such purposes, we take reasonable steps to make sure that personal information is accurate, complete, current, and otherwise reliable with regard to its intended use.

Access and Correction

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If an individual becomes aware that information we maintain about that individual is inaccurate, or if an individual would like to update or review his or her information, the individual may contact us using the contact information below. We will take reasonable steps to permit individuals to correct, amend, or delete information that is demonstrated to be inaccurate. The individual will need to provide sufficient identifying information, such as name, address, birth date, and/or a password. We may request additional identifying information as a security precaution. In addition, we may limit or deny access to personal information where providing such access would be unreasonably burdensome or expensive in the circumstances, or where we are otherwise permitted by the Safe Harbor Principles to do so. In some circumstances, we may charge a reasonable fee, where warranted, for access to personal information.

Enforcement and Dispute Resolution

Onyx utilizes the self-assessment approach to assure its compliance with our privacy statement. Onyx periodically verifies that the policy is accurate, comprehensive for the information intended to be covered, prominently displayed, completely implemented, and in conformity with the Principles. We encourage interested persons to raise any concerns with us using the contact information below. We will investigate and attempt to resolve complaints and disputes regarding use and disclosure of personal information in accordance with the principles contained in this policy.

With respect to any complaints relating to this policy that cannot be resolved through our internal processes, we have agreed to participate in the dispute resolution procedures of the panel established by the EU data protection authorities to resolve disputes pursuant to the Safe Harbor Principles. In the event that we or such authorities determine that we did not comply with this policy, we will take appropriate steps to address any adverse effects and to promote future compliance.

Privacy Statement Changes

This privacy statement may be changed from time to time, consistent with the requirements of the Safe Harbor. We will post any revised policy on this Web site, or a similar Web site that replaces this Web site.

Information Subject to Other Policies

We are committed to following the Principles for all personal information within the scope of the Safe Harbor Agreement. However, certain information is subject to policies of the company that may differ in some respects from the general policies set forth in this statement.

Information obtained from or relating to customers or former customers is further subject to the terms of any privacy notice to the customer, any engagement letter or letters with the customer, and applicable laws and professional standards.

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How to Contact Us

Questions, comments or complaints about Onyx's Safe Harbor Data Privacy Statement or data collection and processing practices can be e-mailed to privacyoffice@onyxgfx.com, mailed to Privacy Office, Onyx Graphics, 6915 High Tech Drive, Salt Lake City, UT, 84047.

EFFECTIVE DATE: September 1 2006

Decision and Order

DECISION AND ORDER

The Federal Trade Commission, having initiated an investigation of certain acts and practices of the Respondent named in the caption hereof, and the Respondent having been furnished thereafter with a copy of a draft of Complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued, would charge the Respondent with violation of the Federal Trade Commission Act; and

The Respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the Respondent of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by the Respondent that the law has been violated as alleged in such complaint, or that any of the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the Respondent has violated the Federal Trade Commission Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, 16 C.F.R. § 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Onyx Graphics, Inc. is a Delaware corporation with its principal office or place of business at 6915 High Tech Drive, Salt Lake City, Utah 84047.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the

Decision and Order

Respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this Order, the following definitions shall apply:

- A. Unless otherwise specified, “respondent” shall mean Onyx Graphics, Inc. and its subsidiaries, divisions, affiliates, successors and assigns.
- B. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondent and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, website, or other device, in connection with the advertising, marketing, promotion, offering for sale, or sale of any product or service, in or affecting commerce, shall 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, security, or any other compliance program sponsored by the government or any other third party.

II.

IT IS FURTHER ORDERED that respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying, a print or electronic copy of, for a period of five (5) years from the date of preparation or dissemination, whichever is later, all documents relating to compliance with this order, including but not limited to:

- A. all advertisements, promotional materials, and any other statements containing any representations

Decision and Order

covered by this order, with all materials relied upon in disseminating the representation; and

- B. any documents, whether prepared by or on behalf of respondent, that calls into question respondent's compliance with this order.

III.

IT IS FURTHER ORDERED that respondent shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities relating to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to such current personnel within thirty (30) days after service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities.

IV.

IT IS FURTHER ORDERED that respondent shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including, but not limited to: a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however,* that, with respect to any proposed change in the corporation(s) about which respondent learns fewer than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

Decision and Order

V.

IT IS FURTHER ORDERED that respondent shall, within sixty (60) days after service of this order, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

VI.

This order will terminate on November 9, 2029, or twenty (20) years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. any Part in this order that terminates in fewer than twenty (20) years;
- B. this order's application to any respondent that is not named as a defendant in such complaint; and
- C. this order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order as to such respondent will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Analysis to Aid Public Comment

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, a consent agreement from Onyx Graphics, Inc. (“Onyx Graphics”).

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement’s proposed order.

This matter concerns alleged false or misleading representations that Onyx Graphics made to consumers concerning its participation in the Safe Harbor privacy framework (“Safe Harbor”) agreed upon by the U.S. and the European Union (“EU”). It is among the Commission’s first cases to challenge deceptive claims about the Safe Harbor. The Safe Harbor provides a mechanism for U.S. companies to transfer data outside the EU consistent with European law. To join the Safe Harbor, a company must self-certify to the U.S. Department of Commerce (“Commerce”) that it complies with seven principles and related requirements. Commerce maintains a public website, www.export.gov/safeharbor, where it posts the names of companies that have self-certified to the Safe Harbor. The listing of companies indicates whether their self-certification is “current” or “not current.” Companies are required to re-certify every year in order to retain their status as “current” members of the Safe Harbor framework.

Onyx Graphics develops and markets commercial printing software and solutions for the digital color printing marketplace, including through a website (www.onyxgfx.com). According to the Commission’s complaint, since at least October 2006, Onyx Graphics has set forth on its website privacy policies and statements about its practices, including statements that it is a current participant in the Safe Harbor.

Analysis to Aid Public Comment

The Commission's complaint alleges that Onyx Graphics falsely represented that it was a current participant in the Safe Harbor when, in fact, from August 2007 until July 2009, Onyx Graphics was not a current participant in the Safe Harbor. The Commission's complaint alleges that in August 2006, Onyx Graphics submitted a self-certification to Commerce, which it did not renew in August 2007. Commerce then updated the company's status to "not current" on the Commerce public website. Onyx Graphics remained in "not current" status until it submitted a self-certification to Commerce in July 2009.

The proposed order applies to Onyx Graphics's representations about its membership in any privacy, security, or any other compliance program sponsored by the government or any other third party. It contains provisions designed to prevent Onyx Graphics from engaging in the future in practices similar to those alleged in the complaint.

Part I of the proposed order prohibits Onyx Graphics from making misrepresentations about its membership in any privacy, security, or any other compliance program sponsored by the government or any other third party.

Parts II through VI of the proposed order are reporting and compliance provisions. Part II requires Onyx Graphics to retain documents relating to its compliance with the order for a five-year period. Part III requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part IV ensures notification to the FTC of changes in corporate status. Part V mandates that Onyx Graphics submit an initial compliance report to the FTC, and make available to the FTC subsequent reports. Part VI is a provision "sunsetting" the order after twenty (20) years, with certain exceptions.

The purpose of the analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Complaint

IN THE MATTER OF

PROGRESSIVE GAITWAYS LLCCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4271; File No. 092 3141**Complaint, November 9, 2009 - Decision, November 9, 2009*

This consent order addresses respondent Progressive Gaitways LLC, providers of software and consulting services to businesses with employees residing outside of origin. Respondent manages tax and payroll issues for employees that work outside their country of residence. The complaint alleges the respondent violated Section 5 of the FTC Act by making false and misleading representations concerning Progressive Gaitways, LLC's participation in the Safe Harbor privacy framework. Safe Harbor is an international program for international data transfer between the U.S. and the European Union. Respondent advertised an incorrect status as to its compliance with the program. The order prohibits Progressive Gaitways, LLC from making misrepresentations about its membership in any privacy, security, or any other compliance program sponsored by the government or any other third party.

Participants

For the *Commission*: Molly Crawford and Katie Ratté

For the *Respondent*: Sheila Heidmiller, Macheledt Bales & Heidmiller LLP.

COMPLAINT

The Federal Trade Commission, having reason to believe that Progressive Gaitways LLC ("respondent") has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Progressive Gaitways LLC ("Progressive Gaitways") is a Colorado company with its principal office or place of business at 305 Society Drive, #C-3, Telluride, Colorado 81435.