

Complaint

IN THE MATTER OF

TENNESSEE FOOTBALL, INC.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket No. C-4473; File No. 142 3032
Complaint, June 19, 2014 – Decision, June 19, 2014

This consent order addresses Tennessee Football, Inc.’s (“the Tennessee Titans”) alleged false or misleading representations that the Tennessee Titans made to consumers concerning their participation in the Safe Harbor privacy framework agreed upon by the U.S. and the European Union. The complaint alleges that the Tennessee Titans falsely represented that they were a “current” participant in the Safe Harbor when, in fact, from August 2009 until November 2013, the Tennessee Titans were not a “current” participant in the U.S.-EU Safe Harbor Framework. The consent order prohibits the Tennessee Titans from making misrepresentations about their membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework.

Participants

For the *Commission*: Jessica Lyon, Katie Race Brin, and Katherine White.

For the *Respondents*: John Graubert and Kurt Wimmer, Covington & Burling LLP.

COMPLAINT

The Federal Trade Commission, having reason to believe that Tennessee Football, 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 Tennessee Football, Inc., which owns and operates the Tennessee Titans football team (“Tennessee Titans”), is a Delaware corporation with its principal office or place of business at 460 Great Circle Road, Nashville, TN 37228.

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2. Respondent is a professional football team and a member of the National Football League.

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.titansonline.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”).

The 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 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. 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

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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.

8. 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 U.S.-EU Safe Harbor Framework.

Violations of Section 5 of the FTC Act

9. In August 2005, respondent submitted to Commerce a self-certification of compliance to the U.S.-EU Safe Harbor Framework.

10. In August 2009, 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.

11. From at least August 2005 until November 2013, respondent disseminated or caused to be disseminated privacy policies and statements on the www.titansonline.com website, including, but not limited to, the following statements:

The Website complies with [the] EU Safe Harbor framework as set forth by the Department of Commerce regarding the collection, use, and retention of data from the European Union.

12. Through the means described in Paragraph 11, respondent represented, expressly or by implication, that it was a "current" participant in the U.S.-EU Safe Harbor Framework.

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13. In truth and in fact, from August 2009 until November 2013, respondent was not a “current” participant in the U.S.-EU Safe Harbor Framework. Therefore, the representation set forth in Paragraph 12 is false and misleading.

14. 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 nineteenth day of June, 2014, has issued this complaint against respondent.

By the Commission, Commissioner McSweeney not participating.

DECISION AND ORDER

The Federal Trade Commission (“Commission” or “FTC”), 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 complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45 *et seq.*;

The respondent, its attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), which includes: a statement by respondent that it neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in the Consent Agreement, and, only for purposes of this action, admits the facts

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necessary to establish jurisdiction; 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 FTC 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, and having duly considered the comments received from interested persons pursuant to section 2.34 of its Rules, now in further conformity with the procedure prescribed in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following Order:

1. Respondent Tennessee Football, Inc., which owns and operates the Tennessee Titans football team, is a Delaware corporation with its principal office or place of business at 460 Great Circle Road, Nashville, TN 37228.
2. Respondent neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in this order. Only for purposes of this action, respondent admits the facts necessary to establish jurisdiction.

ORDER**DEFINITIONS**

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

- A. Unless otherwise specified, "respondent" shall mean Tennessee Football, Inc. and its successors and assigns.
- B. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

Decision and Order

I.

IT IS ORDERED that respondent and its officers, agents, representatives, and employees, whether acting directly or indirectly, 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 or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework and the U.S.-Swiss Safe Harbor Framework.

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 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 call 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. Respondent shall deliver this order to such current personnel within thirty (30) days after service of this

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order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities. Respondent must secure a signed and dated statement acknowledging receipt of this order, within thirty (30) days of delivery, from all persons receiving a copy of the order pursuant to this section.

IV.

IT IS FURTHER ORDERED that respondent shall notify the Commission within fourteen (14) days of 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. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent 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 begin: *In re Tennessee Football, Inc.*, FTC File No. 1423032.

V.

IT IS FURTHER ORDERED that respondent, and its successors and assigns, within ninety (90) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, it shall submit an additional true and accurate written report.

VI.

This order will terminate on June 19, 2034, or twenty (20) years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying

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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, Commissioner McSweeney not participating.

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission ("FTC" or "Commission") has accepted, subject to final approval, a consent agreement applicable to Tennessee Football, Inc. ("the Tennessee Titans").

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

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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 the Tennessee Titans made to consumers concerning their participation in the Safe Harbor privacy framework ("Safe Harbor") agreed upon by the U.S. and the European Union ("EU") ("U.S.-EU Safe Harbor Framework"). It is among several actions the Commission is bringing to enforce the promises that companies make when they certify that they participate in the Safe Harbor Framework. The Safe Harbor framework allows U.S. companies to transfer data outside the EU consistent with European law. To join the Safe Harbor framework, a company must self-certify to the U.S. Department of Commerce ("Commerce") that it complies with a set of principles and related requirements that have been deemed by the European Commission as providing "adequate" privacy protection. Commerce maintains a public website, www.export.gov/safeharbor, where it posts the names of companies that have self-certified to the Safe Harbor framework. 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.

The Tennessee Titans are a professional football team and a member of the National Football League. According to the Commission's complaint, from August 2005 until November 2013, the Tennessee Titans set forth on their website, www.titansonline.com, privacy policies and statements about their practices, including statements related to their participation in the U.S.-EU Safe Harbor Framework.

The Commission's complaint alleges that the Tennessee Titans falsely represented that they were a "current" participant in the Safe Harbor when, in fact, from August 2009 until November 2013, the Tennessee Titans were not a "current" participant in the U.S.-EU Safe Harbor Framework. The Commission's complaint alleges that in August 2005, the Tennessee Titans submitted a

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Safe Harbor self-certification. The Tennessee Titans did not renew the self-certification in August 2009, and Commerce subsequently updated the Tennessee Titans' status to "not current" on its public website.

Part I of the proposed order prohibits the Tennessee Titans from making misrepresentations about their membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework.

Parts II through VI of the proposed order are reporting and compliance provisions. Part II requires the Tennessee Titans to retain documents relating to 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 the Tennessee Titans 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 this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed complaint or order or to modify the order's terms in any way.

INTERLOCUTORY, MODIFYING,
VACATING, AND MISCELLANEOUS
ORDERS
