

Complaint

IN THE MATTER OF

TES FRANCHISING, LLCCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5(A) OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4525; File No. 152 3015**Complaint, May 20, 2015 – Decision, May 20, 2015*

This consent order resolves concerns that TES Franchising (“TES”) deceived consumers about its participation in the U.S.-EU Safe Harbor Privacy Framework and about the nature of its dispute resolution policies. The U.S.-EU Safe Harbor Framework allows U.S. companies to transfer data outside the EU and Switzerland consistent with European law. To join the U.S.-EU Safe Harbor Framework, a company must self-certify to the U.S. Department of Commerce that it complies with a set of principles and related requirements that have been deemed by the European Commission and Switzerland as providing “adequate” privacy protection. The complaint alleges that, from March 2013 until February 2015, TES falsely represented that it was currently certified under the U.S.-EU Safe Harbor Framework. In fact, the company’s self-certifications had lapsed. The complaint also alleges that, during this same period, TES represented that all Safe Harbor-related disputes would be settled by an “arbitration administered agency” such as the American Arbitration Association, that the hearings would take place in Connecticut, and that the parties would share the costs of arbitration equally. In fact, under the U.S.-EU Safe Harbor Framework, TES was required to settle Safe Harbor-related disputes before European data protection authorities, at no cost to consumers and without requiring in-person hearings. The complaint alleges that TES’s false representations were likely to deter EU and Swiss citizens from attempting to take advantage of the dispute resolution services offered by the company. The order prohibits TES from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization. The order further prohibits TES from misrepresenting its participation in or the terms of any alternative dispute resolution process or service.

Participants

For the *Commission*: *Jessica Lyon*.

For the *Respondent*: *Not Represented by Counsel*.

COMPLAINT

The Federal Trade Commission, having reason to believe that TES Franchising, LLC, a limited liability company, has violated

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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.

THE SAFE HARBOR FRAMEWORKS

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

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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,

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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.

13. In March 2013, respondent did not renew its self-certification to the Safe Harbor Frameworks, and Commerce subsequently updated respondent's status to "not current" on its public website.

14. From at least March 2011 until February 2015, respondent disseminated or caused to be disseminated privacy policies and statements on the www.entrepreneursource.com website, including but not limited to, the following statements:

TES Franchising, LLC complies with the U.S.-EU Safe Harbor Framework and the U.S.-Swiss Safe Harbor Framework as set forth by the U.S. Department of Commerce regarding the collection, use and retention of personal information transferred from the European Union and Switzerland to the United States. We have certified that we adhere to the Safe Harbor Privacy Principles of notice, choice, onward transfer, security, data integrity, access and enforcement. To learn more about the Safe Harbor program, and to view our certification, please visit [http://www.export.gov/safeharbor/...](http://www.export.gov/safeharbor/)

If you are a resident of the European Union or Switzerland and have any concerns or complaints, please first address these issues to our Privacy Officer... If the Privacy Officer does not satisfactorily address a complaint within thirty (30) days, any dispute, controversy or claim shall be settled by an arbitration administered agency, such as the American Arbitration Association ("AAA"). All arbitration will be conducted in English. Judgment rendered by the arbitrator may be entered into any court having jurisdiction. The costs of arbitration will be borne equally by the parties. Connecticut, USA will be the site of all hearings, and such hearings will be before a single arbitrator...

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COUNT 1

15. Through the means described in Paragraph 14, respondent represented, expressly or by implication, that it was a “current” participant in the U.S.-EU Safe Harbor and U.S.-Swiss Frameworks.

16. In truth and in fact, beginning in March 2013, respondent was not a “current” participant in the U.S.-EU Safe Harbor Framework or the U.S.-Swiss Safe Harbor Framework. Therefore, the representation set forth in Paragraph 15 is false and misleading.

COUNT 2

17. Through the means described in Paragraph 14, respondent represented, expressly or by implication, that all Safe Harbor-related disputes would be settled by an “arbitration administered agency” such as the American Arbitration Association, that hearings would take place in Connecticut, and that the costs of arbitration would be shared equally by the parties.

18. In truth and in fact, the independent recourse mechanism authorized under respondent’s Safe Harbor certification was the European data protection authorities, which resolve Safe Harbor-related disputes at no cost to consumers and do not require in-person hearings. Therefore, the representation set forth in Paragraph 17 is false and misleading.

19. Further, the representation set forth in Paragraph 17 is likely to deter EU and Swiss citizens from attempting to take advantage of the dispute resolution services offered by the company.

MISREPRESENTATIONS REGARDING TRUSTE STATUS

20. True Ultimate Standards Everywhere, Inc. (“TRUSTe”) provides privacy and data security certification seals to online businesses. A business that meets TRUSTe’s designated program requirements for a particular certification program receives a corresponding seal for display on the business’s websites.

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Program requirements include specifications related to transparency of company practices, verification of privacy practices, and consumer choice regarding the collection and use of consumer personal information.

21. Respondent has disseminated or caused to be disseminated privacy policies and statements on the www.entrepreneursource.com website, including but not limited to, the following statement:

www.entrepreneursource.com is a Licensee of the TRUSTe Privacy Program . . . Because this Website wants to demonstrate its commitment to your privacy, it has agreed to disclose its information practices and have its privacy practices reviewed for compliance by TRUSTe.

COUNT 3

22. Through the means described in Paragraph 21, respondent represented, expressly or by implication, that respondent was a current Licensee of the TRUSTe Privacy Program.

23. In truth and in fact, respondent was not a current Licensee of the TRUSTe Privacy Program. Therefore, the representation set forth in Paragraph 22 was and is false and misleading.

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.

Decision and Order

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 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 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 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, now in further conformity with the procedure prescribed by 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 TES Franchising, LLC, is a Connecticut limited liability company with its principal office or place of business at 900 Main Street South, Building 2, Southbury, Connecticut 06484.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

Decision and Order

ORDER**DEFINITIONS**

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

1. Unless otherwise specified, “respondent” shall mean TES Franchising, LLC and its successors and assigns.
2. “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, 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, the U.S.-Swiss Safe Harbor Framework, and the TRUSTe privacy programs.

II.

IT IS FURTHER 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 respondent’s participation in, or the rules, processes, policies, or costs of, any alternative dispute resolution process or service, including, but not limited to, arbitration, mediation, or other independent recourse mechanism.

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III.

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.

IV.

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 order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities. For any business entity resulting from any change in structure set forth in Part V, delivery shall be at least ten (10) days prior to the change in structure. 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.

V.

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

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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. 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 TES Franchising, LLC., FTC File No. 152 3015.

VI.

IT IS FURTHER ORDERED that respondent, and its successors and assigns, within sixty (60) 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.

VII.

This order will terminate on May 20, 2035, 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

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- 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 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 TES Franchising, LLC (“TES”).

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 TES made to consumers concerning 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, “Safe Harbor Frameworks”) and concerning the

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handling of consumer disputes relating to the Safe Harbor Frameworks. The proposed complaint also alleges that TES made false or misleading representations to the effect that it was a current licensee of the TRUSTe self-regulatory program.

The Safe Harbor Frameworks allow U.S. companies to transfer data outside the EU and Switzerland consistent with European law. To join the Safe Harbor Frameworks, 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 and Switzerland as providing "adequate" privacy protection. These principles include 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. Commerce maintains a public website, www.export.gov/safeharbor, where it posts the names of companies that have self-certified to the Safe Harbor Frameworks. 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 Frameworks.

TES provides business coaching services to franchisees. According to the Commission's complaint, TES 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 Frameworks and (2) statements indicating that it is a licensee of the TRUSTe Privacy Program.

The Commission's complaint alleges that from March 2013 until February 2015 TES falsely represented that it was a "current" participant in the Safe Harbor Frameworks when, in fact, the company's self-certifications had lapsed. The

Commission's complaint also alleges that during this same time period TES represented that all Safe Harbor-related disputes would be settled by an "arbitration administered agency" such as the American Arbitration Association, that hearings would take

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place in Connecticut, and that the costs of arbitration would be shared equally by the parties. In fact, the independent recourse mechanism authorized under TES's Safe Harbor certification was the European data protection authorities, which resolve Safe Harbor-related disputes at no cost to consumers and do not require in-person hearings. The Commission's complaint alleges that these false representations are likely to deter EU and Swiss citizens from attempting to take advantage of the dispute resolution services offered by the company.

The Commission's complaint further alleges that until February 2015, TES represented through statements in its online privacy policy that it was a current licensee of the TRUSTe Privacy Program, when, in fact, it was not a current licensee.

Part I of the proposed order prohibits TES from making misrepresentations about its 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, the U.S.-Swiss Safe Harbor Framework, and the TRUSTe privacy programs. Part II of the proposed order also prohibits TES from misrepresenting in any manner, its participation in, or the rules, processes, policies, or costs of, any alternative dispute resolution process or service, including but not limited to, arbitration, mediation, or other independent recourse mechanism.

Parts III through VII of the proposed order are reporting and compliance provisions. Part III requires TES to retain documents relating to its compliance with the order for a five-year period. Part IV requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part V ensures notification to the FTC of changes in corporate status. Part VI mandates that TES submit an initial compliance report to the FTC, and make available to the FTC subsequent reports. Part VII 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.

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IN THE MATTER OF

NETWORK SOLUTIONS, LLCCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5(A) OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4527; File No. 132 3084**Complaint, May 28, 2015 – Decision, May 28, 2015*

This consent order resolves concerns that Network Solutions, LLC misled purchasers of its web hosting services by falsely promising a full refund if canceled within 30 days. Network Solutions is a domain name registrar and web-hosting provider offering web-hosting packages. The complaint alleges that the company advertised a “30-Day Money Back Guarantee” on its website but did not adequately disclose that it would withhold up to 30 percent of the purchase price. The complaint further alleges that Network Solutions’ offer of a 30-day money back guarantee combined with its failure to disclose the cancellation fee amounted to a deceptive act or practice under Section 5 of the FTC Act. The consent order requires Networks Solutions to clearly disclose the terms of any money back guarantee applicable to web services. Additionally, the order requires the company to refund the full purchase price of any web hosting service sold with a money back guarantee, in response to a request that complies with the terms of that guarantee, unless any applicable fees are disclosed clearly.

Participants

For the *Commission*: James Evans and Shameka Walker.

For the *Respondent*: Dee Bansal, M. Howard Morse, and Sarah K. Swain, Cooley LLP.

COMPLAINT

The Federal Trade Commission, having reason to believe that Network Solutions, LLC, a limited liability company (“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 is a Delaware limited liability company with its principal office or place of business at 12808 Gran Bay Parkway West, Jacksonville, Florida 32258.