



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

March 2, 2011

Lee Thomason, Esq.
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Re: In the Matter of Twitter, Inc., File No. 092 3093, Docket No. C-4316

Dear Mr. Thomason:

Thank you for your comment on the Federal Trade Commission's consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

Your comment raises several concerns about the order. First, you state that the provisions of the order are inconsistent with the Commission's press release announcing the consent agreement because the release mentions specific data security measures that are not expressly included in the order (e.g., the requirement that employees use hard-to-guess passwords). In response, the Commission notes that the portion of the press release to which your comment refers summarizes the Commission's complaint allegations in this case, not the terms of the order. The Commission's complaint alleges that Twitter failed to take the specific measures mentioned in the press release to prevent unauthorized administrative control of its system, and that these failures, taken together, constituted a failure to provide reasonable and appropriate security for users' nonpublic information. Thus, the complaint alleges that Twitter's statement to consumers that it maintained reasonable security was deceptive. To remedy this alleged deception, the order requires that Twitter implement a comprehensive information security program that is reasonably designed to protect its users' nonpublic information. The order does not prescribe the specific measures Twitter must take. Instead, the order requires Twitter to implement safeguards appropriate to its size and complexity, the nature and scope of its activities, and the sensitivity of the consumer information it collects, all of which may change over time.

Your comment also suggests that the breaches described in the Commission's complaint resulted from consumers' practices with respect to their Twitter account passwords and were "reasonably avoidable," thereby depriving the Commission of authority, under Section 5(n) of the FTC Act, to take action in this matter. In response, the Commission notes that the breaches described in the complaint resulted from Twitter's practices concerning administrative control of

its system, including its weak employee password policies, and thus were not reasonably avoidable by consumers.

In addition, your comment questions whether the Commission has authority over “websites, or over website operation protocols, or the data protection measures used by website and social network operators.” The Commission notes that its jurisdiction under Section 5 of the FTC Act extends to unfair and deceptive acts and practices in or affecting “commerce,” which is defined to include commerce among the states and with foreign nations. 15 U.S.C. §§ 44, 45(a). A service provided by a United States company that enables the passage of messages over the internet from one state to another, such as Twitter’s, is in or affecting commerce under the FTC Act, and thus is subject to Section 5 of the Act and the FTC’s enforcement of its prohibitions.

Further, your comment expresses concern that the order constitutes an attempt to impose on social network operators the requirements of the Commission’s Standards for Safeguarding Customer Information Rule (“Safeguards Rule”), 16 C.F.R. Part 314, issued pursuant to the Gramm-Leach-Bliley Act, which applies only to “financial institutions.” Your comment suggests that imposition of safeguards requirements on non-financial institutions constitutes *de facto* rulemaking by the Commission that fails to comply with the Administrative Procedure Act and exceeds the Commission’s authority. Your comment also suggests that it is inappropriate to impose such obligations on social networking companies, which you contend maintain less sensitive data than financial institutions.

In response, the Commission notes that the order is designed to remedy the deceptive statements that the Commission alleges Twitter made to consumers concerning its information security practices. Section 5(b) of the FTC Act authorizes the Commission to obtain such relief for violations of Section 5(a) of the Act, and the Commission believes this relief is appropriate to address the challenged conduct in this case. The order does not impose requirements on any entity other than Twitter. Further, the Commission has obtained the same or similar relief in each of its cases alleging deceptive statements concerning data security practices in violation of Section 5 of the FTC Act, including many where the company was not a financial institution subject to the Safeguards Rule.¹ Finally, the Commission notes that, under the terms of the order, the sensitivity of consumer information collected by Twitter is an important factor in

¹ See, e.g., *In re Life is good, Inc.*, 2008 FTC LEXIS 46 (Apr. 16, 2008) (consent order); *In re Guidance Software, Inc.*, 2007 FTC LEXIS 35 (Mar. 30, 2007) (consent order); *In re Petco Animal Supplies, Inc.*, 139 F.T.C. 102 (2005) (consent order); *In re MTS Inc.*, 137 F.T.C. 444 (2004) (consent order); *In re Guess?, Inc.*, 2003 FTC LEXIS 123 (July 30, 2003) (consent order); *In re Microsoft Corp.*, 134 F.T.C. 109 (2002) (consent order). With respect to the consent orders cited on page two of your comment (*In re CardSystems Solutions, Inc.*, 2005 FTC LEXIS 176 (Sept. 5, 2006) (consent order), *In re CVS Caremark Corp.*, 2009 FTC LEXIS 136 (June 18, 2009) (consent order), and *In re The TJX Cos.*, 2008 FTC LEXIS 75 (July 29, 2008) (consent order)), the Commission notes that these respondent companies were not financial institutions subject to the requirements of the Safeguards Rule, as your comment states. The Commission’s complaint in each of these cases alleged violations of Section 5 of the FTC Act only.

determining the types of safeguards required. This flexible standard requires only that Twitter implement a program reasonably designed to protect the types of data it actually collects.

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.fcc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and it thanks you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary