

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 Web site, [www.titansonline.com](http://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 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 Web site.

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.

By direction of the Commission.

**Donald S. Clark,**  
*Secretary.*

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## FEDERAL TRADE COMMISSION

[File No. 142–3017]

### **Apperian, Inc.; Analysis of Proposed Consent Order To Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis of Proposed Consent Order To Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before February 20, 2014.

**ADDRESSES:** Interested parties may file a comment at <https://ftcpublic.commentworks.com/ftc/apperianconsent> online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “Apperian, Inc.—Consent Agreement; File No. 142–3017” on your comment and file your comment online at <https://ftcpublic.commentworks.com/ftc/apperianconsent> <https://ftcpublic.commentworks.com/ftc/fidelitynationalconsent> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Katherine Race Brin, Bureau of Consumer Protection, (202–326–2106), 600 Pennsylvania Avenue NW., Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis To Aid Public Comment describes the terms of the consent

agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 21, 2014), on the World Wide Web, at <http://www.ftc.gov/os/actions.shtm>. A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before February 20, 2014. Write “Apperian, Inc.—Consent Agreement; File No. 142–3017” on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone’s Social Security number, date of birth, driver’s license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial information which . . . is privileged or confidential,” as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).<sup>1</sup> Your comment will be kept

<sup>1</sup> In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request.

confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublishcommentworks.com/ftc/apperianconsent> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that Web site.

If you file your comment on paper, write "Apperian, Inc.—Consent Agreement; File No. 142–3017" on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before February 20, 2014. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

#### Analysis of Proposed Consent Order To Aid Public Comment

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

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.

and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c), 16 CFR 4.9(c).

This matter concerns alleged false or misleading representations that Apperian made to consumers concerning its participation in the Safe Harbor privacy frameworks agreed upon by the U.S. and the European Union ("EU") ("U.S.-EU Safe Harbor Framework") and the U.S. and Switzerland ("U.S.-Swiss 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 U.S.-EU Safe Harbor Framework and/or U.S.-Swiss Safe Harbor Framework ("Safe Harbor Frameworks"). 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. Commerce maintains a public Web site, [www.export.gov/safeharbor](http://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.

In 2008, Commerce developed the U.S.-EU Safe Harbor Framework Certification Mark ("the mark") to allow companies to highlight for consumers their compliance with the Safe Harbor framework. Upon request, Commerce provides the mark to those organizations that maintain a "current" self-certification to the U.S.-EU Safe Harbor Framework. Commerce has established certain rules for using the mark, such as requirements related to the mark's placement on a Web site and the inclusion of a link to [www.export.gov/safeharbor](http://www.export.gov/safeharbor).

Apperian develops mobile applications management platforms for enterprises and provides tools to help companies deploy apps to employees. According to the Commission's complaint, since at least July 2010, Apperian has set forth on its Web site, [www.apperian.com](http://www.apperian.com), privacy policies and statements about its practices, including statements related to its participation in the U.S.-EU Safe Harbor Framework and the U.S.-Swiss Safe Harbor Framework. In addition, since at

least July 2010, Apperian has displayed the mark on its Web site.

The Commission's complaint alleges that Apperian, through its statements and use of the mark, falsely represented that it was a "current" participant in the Safe Harbor Frameworks when, in fact, from July 2012 until November 2013, Apperian was not a "current" participant in the Safe Harbor Frameworks. The Commission's complaint alleges that in July 2010, Apperian submitted a self-certification to the Safe Harbor Frameworks. Apperian did not renew its self-certification in July 2012, and Commerce subsequently updated Apperian's status to "not current" on its public Web site. In November 2013, Apperian renewed its self-certification to the Safe Harbor Frameworks, and its status was changed to "current" on Commerce's Web site.

Part I of the proposed order prohibits Apperian 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 and U.S.-Swiss Safe Harbor Framework.

Parts II through VI of the proposed order are reporting and compliance provisions. Part II requires Apperian 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 Apperian 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.

By direction of the Commission.

**Donald S. Clark,**  
Secretary.

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