

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright
Terrell McSweeney

In the Matter of)
)
American Apparel, Inc.,)
a corporation.)
)
_____)

DOCKET NO. C-4459

COMPLAINT

The Federal Trade Commission, having reason to believe that American Apparel, 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 American Apparel, Inc. is a Delaware corporation with its principal office or place of business at 747 Warehouse Street, Los Angeles, CA 90021.
2. Respondent is a clothing manufacturer and retailer with more than 200 stores worldwide.
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.americanapparel.net, 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”) and by the U.S. and Switzerland (“U.S.-Swiss Safe Harbor Framework”).

The 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 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 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. 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.
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 and the U.S.-Swiss 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 Frameworks.

Violations of Section 5 of the FTC Act

10. In June 2012, respondent submitted to Commerce a self-certification of compliance to the Safe Harbor Frameworks.
11. In June 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. In December 2013, respondent renewed its self-certification to the Safe Harbor Frameworks, and respondent’s status was changed to “current” on Commerce’s website.
12. Since at least June 2012, respondent has disseminated or caused to be disseminated privacy policies and statements on the www.americanapparel.net website, including, but not limited to, the following statements:

We at American Apparel Corporation (“American Apparel”) respect your concerns about privacy and value the relationship we have with you. American Apparel has certified that it abides by the Safe Harbor privacy principles, as set forth by the United States Department of Commerce, regarding the collection, storage, transfer, use and other processing of Personal Information (as defined below) transferred to the United States from the European Economic Area (“EEA”) and Switzerland...

13. Through the means described in Paragraph 12, respondent represents, expressly or by implication, that it is a “current” participant in the U.S.-EU Safe Harbor Framework and the U.S.-Swiss Safe Harbor Framework.
14. In truth and in fact, from June 2013 until December 2013, respondent was not a “current” participant in the U.S.-EU Safe Harbor Framework or U.S.-Swiss Safe Harbor Framework. Therefore, the representation set forth in Paragraph 13 was false and misleading.
15. 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 sixteenth day of June, 2014, has issued this complaint against respondent.

By the Commission, Commissioner McSweeney not participating.

Donald S. Clark
Secretary

SEAL: