

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

Division of Privacy and Identity Protection
Bureau of Consumer Protection

[Date]

BY CERTIFIED MAIL

[Company]

RE: Claims Regarding Safe Harbor Participation

Dear []:

We are writing because the website for [company name] (“the Company”), including the privacy policy, indicates that the company is a participant in the U.S.-EU Safe Harbor framework and/or the U.S.-Swiss Safe Harbor Framework. We are asking the Company to take those claims down.

From 2000 to 2017, the U.S.-EU Safe Harbor Framework provided a method for U.S. companies to transfer personal data outside of Europe consistent with the requirements of the European Union Directive on Data Protection. The U.S. Department of Commerce administered the U.S.-EU Safe Harbor Framework. To join, a company had to self-certify to the Department of Commerce that it complied with seven principles and related requirements.

The U.S.-Swiss Safe Harbor Framework was identical to the U.S.-EU Safe Harbor Framework and provided a method for U.S. companies to transfer personal data outside of Switzerland consistent with the requirements of the Swiss Federal Act on Data Protection.

The European Court of Justice declared the U.S.-EU Safe Harbor Framework invalid in 2015. As of October 2016, the Department of Commerce stopped accepting U.S.-EU Safe Harbor self-certifications. The last valid self-certifications would have expired no later than October 2017. Similarly, U.S.-Swiss Safe Harbor self-certifications would have expired no later than April 2018. The Safe Harbor frameworks have now been replaced by the EU-US and Swiss-US Privacy Shield frameworks.

The FTC has brought many cases based on a company’s false claim of participation in an international privacy program, including the Safe Harbor frameworks. These cases allege that such false claims deceive consumers in violation of Section 5 of the Federal Trade Commission Act. In an enforcement action brought under the FTC Act, the FTC may also name as respondents any individuals who controlled, had the authority to control, or participated in the unlawful conduct.

We request, therefore, that your company (1) immediately remove from its website, privacy policy, and any other public documents, all representations that might be construed as claiming

involvement in the Safe Harbor frameworks; and (2) contact us within 30 days at safeharbor@ftc.gov to confirm that you have done so. If we do not receive a timely and satisfactory response from you, we reserve the right to take appropriate legal action. We appreciate your prompt attention to this matter.

Sincerely,

Maneesha Mithal
Associate Director
Division of Privacy and Identity Protection