



[BILLING CODE: 6750-01S]

FEDERAL TRADE COMMISSION

[File No. 142 3019]

Baker Tilly Virchow Krause, LLP; 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/bakertillyconsent>

online or on paper, by following the instructions in the Request for Comment part of the

SUPPLEMENTARY INFORMATION section below. Write “Baker Tilly Virchow Krause, LLP - Consent Agreement; File No. 142-3019” on your comment and file your comment online at

<https://ftcpublic.commentworks.com/ftc/bakertillyconsenthttps://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 White, Bureau of Consumer Protection, (202-326-2878), 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, D.C. 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 “Baker Tilly Virchow Krause, LLP - Consent Agreement; File No. 142-3019” 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 Website, 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 Website.

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).¹ Your comment will be kept 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://ftcpublish.commentworks.com/ftc/bakertillyconsent> by following the instructions on the

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

web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that website.

If you file your comment on paper, write “Baker Tilly Virchow Krause, LLP - Consent Agreement; File No. 142-3019” 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 Website 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 Baker Tilly Virchow Krause, LLP (“Baker Tilly”).

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 Baker Tilly made to consumers concerning its participation in the Safe Harbor privacy framework (“Safe Harbor”)

agreed upon by the U.S. and the European Union (“EU”) (“U.S.-EU 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 Safe Harbor Framework. The Safe Harbor framework allows U.S. companies to transfer data outside the EU consistent with European law. To join the Safe Harbor framework, 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 as providing “adequate” privacy protection. These principles include notice, choice, onward transfer, security, data integrity, access, and enforcement. Commerce maintains a public website, www.export.gov/safeharbor, where it posts the names of companies that have self-certified to the Safe Harbor framework. 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 framework.

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 website and the inclusion of a link to www.export.gov/safeharbor.

Baker Tilly is an accounting and advisory services firm. According to the Commission’s complaint, since at least June 2010, Baker Tilly has set forth on its website, www.bakertilly.com, privacy policies and statements about its practices, including statements related to its participation in the U.S.-EU Safe Harbor Framework. In addition, from at least June 2010, Baker

Tilly displayed the mark on its website.

The Commission's complaint alleges that Baker Tilly, through its statements and use of the mark, falsely represented that it was a "current" participant in the Safe Harbor when, in fact, from June 2011 until December 2013, Baker Tilly was not a "current" participant in the Safe Harbor. The Commission's complaint alleges that in June 2010, Baker Tilly submitted a Safe Harbor self-certification. Baker Tilly did not renew its self-certification in June 2011 and Commerce subsequently updated Baker Tilly's status to "not current" on its public website. In December 2013, Baker Tilly renewed its self-certification to the Safe Harbor and its status was changed to "current" on Commerce's website.

Part I of the proposed order prohibits Baker Tilly 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.

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

[FR Doc. 2014-01749 Filed 01/28/2014 at 8:45 am; Publication Date: 01/29/2014]