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FEDERAL TRADE COMMISSION

[File No. 182 3077]

A Waldron HVAC, LLC; Analysis 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 to Aid Public Comment describes both the allegations in the 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 [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested parties may file comments online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write: "A Waldron HVAC, LLC; File No. 182 3077" on your comment, and file your comment online at <https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Carl H. Settemyer (202-326-2019),

Bureau of Consumer Protection, Federal Trade Commission, 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 a 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 May 8, 2019), on the World Wide Web, at <https://www.ftc.gov/news-events/commission-actions>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]. Write “A Waldron HVAC, LLC; File No. 182 3077” 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 <https://www.regulations.gov> website.

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 through the <https://www.regulations.gov> website.

If you prefer to file your comment on paper, write “A Waldron HVAC, LLC; File No. 182 3077” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania

Avenue NW, Suite CC-5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website at <https://www.regulations.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else'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, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential" – as provided by 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) – including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c). 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). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC Website – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment from the FTC Website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC 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 [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an agreement containing a consent order as to A Waldron HVAC, LLC and Thomas J. Waldron (“respondents”).

The proposed consent order (“order”) has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again

review the order and the comments received, and will decide whether it should withdraw the order or make it final.

This matter involves the respondents' use of non-disparagement provisions in consumer form contracts in the course of selling their recreational horseback riding services. The complaint alleges that the respondents violated Section 2(c) of the Consumer Review Fairness Act ("CRFA") by offering to consumers form contracts that contained nondisparagement provisions made void by Section 2(b) of the CRFA. The CRFA defines a form contract as a contract with standardized terms, used in the course of selling or leasing goods or services, and imposed on an individual without a meaningful opportunity for such individual to negotiate the standardized terms.

The order includes injunctive relief that prohibits these alleged violations and fences in similar and related conduct involving the use of contract terms that prohibit, restrict, penalize, or transfer rights in consumer reviews or evaluation of the respondents, their goods, or their services. The CRFA authorizes the Commission to seek civil penalties for knowing violations, but the complaint does not allege that the respondents' violations were knowing, and the order does not provide for monetary relief.

Part I prohibits, in the sale or leasing of any good or service, the respondents from: offering to any prospective customer a contract, or offering to any customer a renewal contract, that includes a review-limiting term; requiring that a customer accept such a term as a condition of the respondents' fulfillment of their obligations under contracts entered into before the effective date of the order; or attempting to enforce or assert the validity of such a term in customer contracts entered into before the effective date of the order. Part I would not require that the respondents publish or host the content

of any person, affect any other legal duty of a party to a contract, or affect any cause of action arising from the breach of such duty.

Part II requires the respondents to notify by mail or email customers with whom they entered into form contracts with a non-disparagement provision on or after March 14, 2017 that the non-disparagement provision is void and cannot be enforced, and that those customers can publish their honest reviews about the respondents, even if their comments are negative.

Part III requires the respondents to submit signed acknowledgments that relevant personnel received the order.

Part IV requires the respondents to file compliance reports with the Commission, and to notify the Commission of bankruptcy filings or changes in company structure that might affect compliance obligations.

Part V contains recordkeeping requirements for personnel records, consumer contracts, communications with consumers threatening any legal action relating to any review; and court filings and the company's discovery responses in legal actions over consumer reviews, as well as all records necessary to demonstrate compliance or noncompliance with the order.

Part VI contains other requirements related to the Commission's monitoring of the respondents' order compliance.

Part VII provides the effective dates of the order, including that, with exceptions, the order will terminate in 20 years.

The purpose of this analysis is to facilitate public comment on the order, and it is not intended to constitute an official interpretation of the complaint or order, or to modify the order's terms in any way.

By direction of the Commission.

April J. Tabor,
Acting Secretary.

Statement of the Federal Trade Commission

April 24, 2019

Today, the Commission announces cases against Clixsense and i-Dressup,¹ which include allegations that the companies failed to employ reasonable security to protect consumers' sensitive data. The orders obtained in these matters contain strong injunctive provisions, including new requirements that go beyond requirements from previous data security orders. For example, the orders include requirements that a senior officer provide annual certifications of compliance to the Commission, and explicit provisions prohibiting the defendants from making misrepresentations to the third parties conducting assessments of their data security programs. These new requirements will provide greater assurances that consumers' data will be protected going forward.

Since joining the Commission, we have instructed staff to closely review our orders to determine whether they could be strengthened and improved – particularly in the areas of privacy and data security. Through ongoing discussions both internally and with external stakeholders, including through our public *Hearings on Competition and Consumer Protection in the 21st Century* and the comment process,² we continue to consider changes to our orders. We will adjust our data security orders, as needed, to reflect our ongoing discussions regarding the FTC's remedial authority and needs, as well as the specific facts and circumstances of each case.

We are particularly committed to strengthening the order provisions regarding

¹ Although the Commission's settlement with i-Dressup addresses broader COPPA violations, this statement focuses specifically on the data security requirements set forth in the proposed stipulated order.

² See, e.g., *FTC Hearings on Competition and Consumer Protection in the 21st Century* (Session 9 – Data Security), Dec. 11-12, 2018, <https://www.ftc.gov/news-events/events-calendar/ftc-hearing-competition-consumer-protection-21st-century-december-2018>.

data security assessments of companies by third parties. The Commission expects that these third parties will faithfully assess data security practices to identify potential noncompliance with appropriate order provisions. Future orders will better ensure that third-party assessors know they are accountable for providing meaningful, independent analysis of the data practices under examination. The announcements today reflect the beginning of our thinking, but we anticipate further refinements, and these orders may not reflect the approach that we intend to use in every data security enforcement action going forward.

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