1323219

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

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

In the Matter of	)	
TRUE ULTIMATE STANDARDS EVERYWHERE, INC., a corporation, d/b/a TRUSTe, Inc.	)	**DOCKET NO. C-**

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that True Ultimate Standards Everywhere, Inc., a corporation, has violated the provisions of the Federal Trade Commission Act ("FTC Act"), and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent True Ultimate Standards Everywhere, Inc., also doing business as TRUSTe, Inc. ("TRUSTe"), is a privately-owned, Delaware corporation with its principal office or place of business at 835 Market Street, Suite 800, San Francisco, California 94103.

2. TRUSTe was formed as a California non-profit corporation on June 10, 1997. On June 20, 2008, TRUSTe formed a for-profit Delaware corporation and transferred all of the assets of the California non-profit entity to the for-profit corporation pursuant to an Asset Purchase Agreement effective July 3, 2008.

3. Respondent has advertised, offered for sale, and sold data privacy services to companies, including a variety of assessments and certifications, monitoring tools, and compliance controls.

4. The acts and practices of Respondent as alleged in this complaint are in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

TRUSTe's Certified Privacy Seals

5. Since approximately June 1997, Respondent has offered clients Certified Privacy Seals ("Privacy Seals") for display on clients' websites. TRUSTe has more recently offered these seals for mobile applications. Respondent provides these seals to clients that meet designated requirements for the programs that Respondent administers ("Program Requirements"). These requirements include specifications related to transparency of company practices, verification of privacy practices, and consumer choice regarding the collection and use of consumer personal information.

6. Respondent advertises itself as "the #1 privacy brand" and asserts that its "Certified Privacy Seal is recognized globally by consumers, businesses, and regulators as demonstrating privacy best practices."

7. Respondent's Privacy Seal programs include, but are not limited to, TRUSTed Websites (since 1997), which certifies websites; COPPA/Children's Privacy (2001), which certifies compliance with the FTC's Children's Online Privacy Protection Act Rule; EU Safe Harbor (2002), which assists with certification to the EU-US Safe Harbor framework for transatlantic data transfers; TRUSTed Downloads (2006), which certifies software; TRUSTed Cloud (2011), which certifies data processing services through cloud platforms; TRUSTed Apps (2011), which certifies mobile applications; and TRUSTed Data (2011), which certifies data collection practices of non-consumer facing entities.

8. Companies that meet the Program Requirements of a particular Privacy Seal must display to consumers a corresponding seal on their websites and mobile applications to demonstrate publicly to consumers their compliance with the relevant TRUSTe program.

9. In connection with its Privacy Seal programs, Respondent has provided clients with images of seals to display on their websites and mobile applications, including, but not limited to "Click-to-verify" seals containing a graphic icon, and text indicating to consumers an ability to click on the seal:

These "Click-to-verify" seals are required and must be displayed by a client on its privacy policy webpage. They are linked to a webpage hosted on the www.truste.com website, which provides verification of the sealholder's name, the specific privacy seal(s) held, and the validity date for each seal. The website also links to the Program Requirements for the Privacy Seals.

10. Respondent tests and verifies client compliance with its Program Requirements underlying its Privacy Seals through scanning technology, client interviews, document collection, and manual testing and review of client websites and mobile applications.

11. TRUSTe purports to recertify privacy sealholders on an annual basis to identify, for example: (1) material changes to privacy policies (*e.g.*, new or expanded collection/uses of personal information such as use of cookies for behavioral advertising); (2) seal validation (*e.g.*, improper placement, old versions, and bad links); (3) changes in company ownership or business model (*e.g.*, adoption of advertising supported content); and (4) where relevant, compliance with external third-party program requirements (*e.g.*, Federal Trade Commission Children's Online Privacy Protection Act safe harbor, or U.S. Department of Commerce self-certification to the US/EU Safe Harbor).

12. At all times relevant to this complaint, Respondent has controlled the design of its seals, as well as the design, content, and format of the www.truste.com webpage to which these seals link.

Violations of Section 5 of the FTC Act

Misrepresentation of certification status of TRUSTe clients

13. Since approximately 2011, Respondent has disseminated or has caused to be disseminated to consumers, on the www.truste.com website, Program Requirements containing the following statement:

> **III. Minimum Program Requirements**
>
> **…**
>
> B. Participant Accountability
>
> **…**
>
> 3. Annual Recertification
>
> a. Participant shall undergo recertification to verify ongoing compliance with these Program Requirements annually.
>
> (**Exhibit A**, Program Requirements, February 2011, *available at* www.truste.com)

Prior to 2011, Respondent disseminated or had caused to be disseminated to consumers Program Requirements containing the following statement:

II. Participant Responsibilities

. . .

C. Recertification. Participant must seek recertification by TRUSTe annually

. . .

14. The statements set forth in Paragraph 13 have been included in Respondent's Program Requirements for at least each of the following programs: TRUSTed Websites (since 1997), COPPA/Children's Privacy (2001), EU Safe Harbor (2002), TRUSTed Cloud (2011), TRUSTed Apps (2011), TRUSTed Data (2011), and TRUSTed Smart Grid (2012).

Count 1

15. Through the means described in Paragraph 13, Respondent has represented, expressly or by implication, that TRUSTe has recertified annually all companies displaying a TRUSTe Certified Privacy Seal to ensure ongoing compliance with the Program Requirements.

16. In fact, from 2006 until January 2013, Respondent did not conduct annual recertifications for all companies holding TRUSTe Certified Privacy Seals. In over 1,000 instances, TRUSTe conducted no annual review of the company's compliance with applicable Program Requirements. Therefore, the representation set forth in Paragraph 13 was false or misleading.

Misrepresentations regarding non-profit status of TRUSTe

17. Prior to its transition to a for-profit entity on July 3, 2008, Respondent required its clients to display in their privacy policies the following language TRUSTe developed:

> "TRUSTe is an independent, non-profit organization whose mission is to build users' trust and confidence in the Internet by promoting the use of fair information practices."

18. In early July 2008, Respondent notified all active and current clients that its tax status would change from non-profit to for-profit status. On July 15, 2008, the company issued a public press release announcing the company's transition to a for-profit entity.

19. In numerous instances since July 3, 2008, the date when TRUSTe formed a for-profit Delaware corporation and ceased to be a non-profit California corporation, Respondent has recertified clients who have failed to update references to the company's for-profit status. Some TRUSTe clients' privacy policies continued to describe TRUSTe as a non-profit entity until fall of 2013.

Count 2

20. Through the means described in Paragraphs 17 and 19, Respondent has represented, expressly or by implication, that TRUSTe is a non-profit organization.

21. In fact, Respondent has not been a non-profit organization since July 3, 2008. Therefore, the representation set forth in Paragraph 20 was false or misleading.

22. By providing clients with the language in Paragraph 17 and continuing to certify clients using that language as described in Paragraph 19, Respondent has furnished the means and instrumentalities for the commission of the deceptive acts or practices alleged in Paragraph 21.

23. 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, 15 U.S.C. § 45(a).

THEREFORE, the Federal Trade Commission this ___ day of _____, ____, has issued this complaint against Respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL: