



Office of the Secretary

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

June 18, 2009

Ms. Pam Dixon  
Executive Director  
World Privacy Forum  
State of California

*Re: In the Matter of CVS Caremark Corporation, File No. 072-3119, Docket No. C-4259*

Dear Ms. Dixon:

Thank you for your letter commenting on the Federal Trade Commission's consent agreement in the above-entitled proceeding. Your letter was placed on the public record pursuant to Rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and was given serious consideration by the Commission.

You commend the Commission for its action, and also present comments and recommendations which the Commission addresses below.

Your letter states that the complaint does not provide enough information about the dumpster incidents to permit you to assess whether the proposed order is reasonable. You therefore ask the Commission to revise the complaint to add information about the extent and duration of the incidents, including consumer injury. The Commission believes that the complaint provides appropriate guidance to the public of the alleged violations and the related circumstances, including specific allegations about the consumer and employee information CVS Caremark Corporation ("CVS Caremark") pharmacies disposed of in unsecured, publicly-accessible dumpsters, the geographical extent of dumpster incidents, and consumer harms that could result from misuse of the discarded information. Further, the information set out in the complaint provides a sufficient basis to assess the relief in the proposed order, which includes implementing and maintaining a comprehensive information security program for personal information, whether in paper or electronic form, and obtaining independent assessments of its effectiveness every other year for twenty years.

You also ask the Commission to make public the assessments (or portions thereof) required by the order, as well as staff analyses of assessments. Pursuant to law, compliance reports CVS Caremark submits under the order will (subject to appropriate redaction) be entered onto the public record, and other materials also may be made available as permitted by law.

Further, you recommend that the Commission seek civil monetary penalties from CVS Caremark, based on the *Milliman* and *Ingenix* settlements announced by the Commission in February 2008.<sup>1</sup> Both cases involved alleged violations of the Fair Credit Reporting Act, which expressly authorizes civil monetary penalties, but neither settlement imposed such penalties. By contrast, the complaint against CVS Caremark alleges violations of Section 5 of the Federal Trade Commission Act (“FTC Act”), which does not authorize civil monetary penalties under these circumstances. Should CVS Caremark violate the terms of the final order, however, it would be liable for civil monetary penalties of up to \$16,000 per violation, pursuant to Section 5(l) of the FTC Act. Such penalties would serve to deter future violations. In addition, with respect to future cases, the Commission has recommended that Congress provide the Commission with civil penalty authority in data security cases to further enhance its enforcement efforts.<sup>2</sup>

Finally, you ask the Commission to require CVS Caremark to notify consumers whose information was discarded in the dumpster incidents. The Commission considers a variety of factors in deciding whether notice to consumers is an appropriate remedy in a particular case, such as whether consumer victims are reasonably identifiable and whether the notice would be likely to benefit consumers under the circumstances. Here, the Commission has determined that the remedies in the proposed order – including implementing and maintaining a comprehensive information security program and obtaining independent assessments of its effectiveness every other year for 20 years – will ensure appropriate protections for consumers.

After considering your comments, the Commission has determined that the public interest would be best served by accepting the consent order. Thank you again for your letter.

By direction of the Commission.

Donald S. Clark  
Secretary

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<sup>1</sup> *In the Matter of Milliman, Inc.*, Docket No. C-4213 (February 6, 2008); *In the Matter of Ingenix, Inc.*, Docket No. C-4214 (February 12, 2008).

<sup>2</sup> *See, e.g.*, Prepared Statement of the Federal Trade Commission on “Legislative Hearing on H.R. 2221, the Data Accountability and Protection Act, and H.R. 1319, the Informed P2P User Act” Before the Committee on Energy and Commerce Subcommittee on Commerce, Trade, and Consumer Protection, United States House of Representatives (May 5, 2009), at 12, available at <http://www.ftc.gov/os/2009/05/P064504peertopeertestimony.pdf>.