



David A. Paterson
Governor

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
CONSUMER PROTECTION BOARD

Mindy A. Bockstein
Chairperson and Executive Director



April 22, 2008

By Facsimile & First Class Mail

Federal Trade Commission
Office of the Secretary
Room H-135
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Proposed Settlement Actions in the Matters of The TJX Companies, Inc.,
Reed Elsevier Inc. and Seisint, Inc. (the "TJX Settlements")

Dear Commissioners:

As New York State's top consumer watchdog, the New York State Consumer Protection Board ("CPB") is involved in a wide array of consumer issues. The CPB conducts consumer investigations, research and analysis; develops legislation, consumer education programs and materials; responds to individual complaints by working to settle disputes through voluntary agreements and represents the interests of consumers before the Public Service Commission and other State and federal agencies. In the security breach area, the CPB develops legislation and functions by statute as a member, along with the Office of Cyber Security & Critical Infrastructure Coordination, of the breach notification group responsible for administering New York State's breach notification law. In 2007, we handled an average of approximately 600 Internet-related complaints. Protecting consumers who communicate and conduct transactions online, and maintaining consumer trust in the online forum, have become critical issues for the CPB. As security breaches of electronically-held data impacts all of these issues, we write today to offer comment on the above-referenced proposed settlements issued on March 28, 2008, by the Federal Trade Commission ("FTC").

According to the Identity Theft Research Center ("ITRC"), at least 8.3 million personal and financial records of consumers were potentially compromised by security breaches at businesses, universities and government agencies in the first quarter of 2008 alone. These records were made vulnerable, according to the ITRC, through 167 publicly reported breaches. Security breaches result in exposing consumers' personal information, making them vulnerable to identity theft.



The CPB acknowledges that the FTC has been aggressively working to protect consumers in this area. With the TJX proposed settlements, 20 security breach settlement cases have been brought by the FTC under Section 5 of the Federal Trade Commission Act ("FTCA"). While under the FTCA the FTC is not authorized to seek penalties, the settlements typically mandate a security program and audits over the course of 20 years. The TJX settlements follow this model.

We offer our support of the FTC's approach in these settlement actions and the proposed TJX settlements, which result in the implementation of comprehensive, transparent information privacy regimes that are protective of consumers. Through its proactive approach to security breaches, the FTC has demonstrated, and continues to demonstrate, that companies collecting sensitive consumer information have a responsibility to keep it secure and will be held accountable to high standards of protection relating to electronically-held personal data.

In its reauthorization, the FTC has requested civil penalty authority in cases it brings under the FTCA. We support this request, and urge that consideration be given to the FTC's use of this authority on a discretionary basis, based on various factors including size of breach. However, in no event should this authority be used at the expense of consumer protection and oversight.

Indeed, we emphasize the need for audits that are independent and comprehensive. Further, because security breaches impact the public, information on whether a company has passed or failed a mandated audit should be publicly available.

Technology is advancing at a pace never before seen in our history, and although there are many benefits, government should act to ensure that the public's fundamental right to privacy is not abridged. Failure to act may result in a chilling effect.

Thank you for your consideration of these comments.

Mindy A. Bockstein
Chairperson and Executive Director

