

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:	:	Chapter 11
	:	
RADIOSHACK CORPORATION, et al., ¹	:	Case No. 15-10197 (BLS)
	:	
Debtors.	:	(Jointly Administered)
	:	

REPORT OF THE CONSUMER PRIVACY OMBUDSMAN

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May 16, 2015

¹ The Debtors are the following eighteen entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): RadioShack Corporation (7710); Atlantic Retail Ventures, Inc. (6816); Ignition L.P. (3231); ITC Services, Inc. (1930); Merchandising Support Services, Inc. (4887); RadioShack Customer Service LLC (8866); RadioShack Global Sourcing Corporation (0233); RadioShack Global Sourcing Limited Partnership (8723); RadioShack Global Sourcing, Inc. (3960); RS Ig Holdings Incorporated (8924); RSIgnite, LLC (0543); SCK, Inc. (9220); Tandy Finance Corporation (5470); Tandy Holdings, Inc. (1789); Tandy International Corporation (9940); TE Electronics LP (9965); Trade and Save LLC (3850); and TRS Quality, Inc. (5417). The address of each of the Debtors is 300 RadioShack Circle, Fort Worth, Texas 76102.

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Elise S. Frejka, the duly appointed consumer privacy ombudsman² in the above-captioned cases (the “Ombudsman”), files this report (the “Report”), pursuant to sections 332(b) and 363(b)(1)(B) of chapter 11, title 11, United States Code (the “Bankruptcy Code”), to assist the Bankruptcy Court in its consideration of the facts, circumstances and conditions of the proposed sale of personally identifiable information (“PII”), as that term is defined in section 101(41A) of the Bankruptcy Code,³ of customers of RadioShack Corporation and certain of its

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² See Order Directing the United States Trustee to Appoint a Consumer Privacy Ombudsman [D.I. 809]; Notice of Appointment of Consumer Privacy Ombudsman [D.I. 953]

³ Pursuant to 11 U.S.C. § 101(41(A)), [t]he term “PII” means—

(A) if provided by an individual to the debtor in connection with obtaining a product or a service from the debtor primarily for personal, family, or household purposes—

(i) the first name (or initial) and last name of such individual, whether given at birth or time of adoption,

debtor subsidiaries (collectively, the “Debtors”) to General Wireless Operations Inc. or its designee (the “Successful Bidder”), the highest and best bidder for certain of the Debtors’ assets (the “Sale”).

RECOMMENDATIONS

After a review of the facts and circumstances, and as more fully discussed in this Report, the Ombudsman recommends⁴ that the Bankruptcy Court approve the proposed sale and transfer of the Debtors’ customer lists and other customer-related information (the “Customer Data”), subject to the following recommendations, to which the Successful Bidder has agreed to implement:

If Successful Bidder is a “Qualified Buyer”⁵

PII that was collected⁶ from company-owned RadioShack brick and mortar stores (“RadioShack Stores”) and dealer-franchise outlets (“Dealer Franchise Stores, and together with

-
- or resulting from a lawful change of name;
 - (ii) the geographical address or a physical place of residence of such individual;
 - (iii) an electronic address (including an e-mail address) of such individual;
 - (iv) a telephone number dedicated to contacting such individual at such physical place of residence;
 - (v) a social security account number issued to such individual; or
 - (vi) the account number of a credit card issued to such individual[.]

11 U.S.C. § 101(41A)

⁴ The Ombudsman shared a preliminary draft of this Report with the Debtors, the Successful Bidder, the State Attorneys General (as defined below), the Federal Trade Commission (the “FTC”) and the Honorable Leif M. Clark (Ret.) (the “Mediator”) in advance of the mediation that occurred on May 14, 2015. As a result of the mediation, the Report was updated to reflect certain agreements in principal reached by the parties.

⁵ For purposes of this Report, the Ombudsman intends “Qualified Buyer” to mean an entity that is acquiring PII as part of a larger asset sale and (a) agrees to operate the Stores and the Website as a going concern, and that concentrates in the same business or market as the Debtors; (b) expressly agrees to be bound by, and succeed to, the Debtors’ existing privacy policies; (c) agrees to be responsible for any violation of existing privacy policies; and (d) agrees that prior to making any material change to the Debtors’ existing privacy policies, affirmative consumer consent will be obtained. See Stipulation and [Proposed] Order Establishing Conditions on Sale of Customer Information, In re Toysmart.com, LLC, Civil Action No. 00-13995-CJK (Bankr. E.D. Mass. 2000), <https://www.ftc.gov/sites/default/files/documents/cases/toysmartbankruptcy.1.htm>. In Toysmart, the debtor sought bankruptcy court approval to sell certain assets, including its customer lists, through a public auction. However, this was directly contrary to Toysmart’s privacy policy; the FTC sought to enjoin the sale. A copy of the Toysmart Stipulation and [Proposed] Order Establishing Conditions on Sale of Customer Information is attached hereto as Exhibit A.

⁶ As set forth in greater detail in paragraph 11 below, it is not possible to ascertain where (Website, dealer franchise location or retail point-of-sale) a customer first provided information to the Debtors.

the RadioShack Stores, the “Stores”) at the point-of-sale or at RadioShack.com⁷ (the “Website”) may be sold and transferred to the Successful Bidder; provided that:

- The Debtors demonstrate, and the Court finds, that the Successful Bidder is a “Qualified Buyer”.
- The scope of the Customer Data to be transferred to the Successful Bidder as part of the Sale is limited⁸ to:
 - Customer email addresses collected by the Debtors that were active within the two (2) years prior to the Petition Date (as defined below) together with any associated transaction data collected by the Debtors within the five (5) year period prior to the Petition Date limited to the following data fields: (i) store number; (ii) Ticket Date/Time; (iii) SKU number; (iv) SKU description; (v) SKU selling price; (vi) tender type; and (vii) tender amount.
 - Approximately 67 million customer name and physical mailing address files together with any associated transaction data collected by the Debtors within the five (5) year period prior to the Petition Date limited to the following data fields: (i) store number; (ii) Ticket Date/Time; (iii) SKU number; (iv) SKU description; (v) SKU selling price; (vi) tender type; and (vii) tender amount.
- The Successful Bidder agrees to (i) become the successor-in-interest under the Website privacy policy (the “Website Privacy Policy”) and the Stores privacy policy (the “Stores Privacy Policy,” and together with the Website Privacy Policy, the “Privacy Policies”)⁹ that were in effect on the Petition Date or on terms that are at least as protective of consumer privacy; (ii) adhere to all material terms of the Privacy Policies; and (iii) be liable for any violation of the Privacy Policies after the closing of the Sale (the “Closing”).
- The Successful Bidder agrees to notify customers of the Sale by:
 - Posting a clear and conspicuous notice on the Website for a period of six (6) months from the Closing advising consumers that: (i) General Wireless Operations Inc. (or its affiliated designee) is the Successful Bidder; (ii) as a result of the Sale, the Successful Bidder purchased PII; (iii) the Successful Bidder is the successor-in-interest under the Privacy Policies;

⁷ <http://www.radioshack.com>

⁸ The Successful Bidder has agreed to limit the Customer Data acquired from the Debtors in this manner.

⁹ The Ombudsman has requested template copies of the privacy policy in effect the Dealer Franchise Stores but as of the date of this Report copies have not been provided by the Ad Hoc Committee of U.S. Dealers and Franchisees (the “Ad Hoc Committee”).

and (iv) consumers have the opportunity to opt-out¹⁰ from receiving communications from the Successful Bidder and be removed from the customer database. Such notice should include a hyperlink and a toll-free number for consumers to effectuate any opt-out request.

- Placing a clear and conspicuous notice at, or near, the point of sale in the Stores for a period of six (6) months from the Closing. Such notice should include a hyperlink and a toll-free number for consumers to effectuate any opt-out request.
- Emailing, within sixty (60) days of the Closing, the subset of customers whose email addresses are being acquired by the Successful Bidder. Such email should clearly and conspicuously advise such customers that: (i) General Wireless Operations Inc. (or its affiliated designee) is the Successful Bidder; (ii) as a result of the Sale, the Successful Bidder purchased PII; (iii) the Successful Bidder is the successor-in-interest under the Privacy Policies; and (iv) their email addresses will be transferred to the Successful Bidder unless an opt-out request is received within seven (7) days. The email notification should contain a hyperlink and toll-free number for customers to effectuate any opt-out request. The Successful Bidder has agreed that the email notification will be conducted by a third-party and that customer email addresses will not be transferred to the Successful Bidder until after the conclusion of the aforementioned opt-out period.
- Mailing the subset of customers whose physical mailing addresses are being acquired by the Successful Bidder; provided that such notice only needs to be given in the event the Successful Bidder's first written communication occurs within two (2) years of Closing. As part of any such mailing, the Successful Bidder should clearly and conspicuously advise customers that: (i) General Wireless Operations Inc. (or its affiliated designee) is the Successful Bidder; (ii) as a result of the Sale, the Successful Bidder purchased PII; (iii) the Successful Bidder is the successor-in-interest under the Privacy Policies; and (iv) customers have the opportunity to opt-out from receiving communications from the Successful Bidder and be removed from the customer database.
- Except for Customer Data that is subject to litigation holds, which Customer Data should be retained by the Debtors through the conclusion of such litigation and thereafter destroyed, the Debtors should (i) destroy or cause to be destroyed within ninety (90) days of the Closing, in a manner consistent with industry standard data security protections and applicable information security laws and best practices, all Customer Data not transferred to the Successful Bidder, and (ii) file a Certificate of Destruction with the Bankruptcy Court confirming such

¹⁰ "Opt-in" consent requires affirmative steps by a consumer to allow the collection and/or use of information; "Opt-out" consent requires affirmative steps to prevent the collection and/or use of information.

destruction.

- The Successful Bidder agrees that, prior to making any material change to either or both of the Privacy Policies, including changes to the use or disclosure of PII, the Successful Bidder will, to the extent required by applicable law: (i) provide consumers with notice of the proposed change; (ii) direct consumers to the Successful Bidder's privacy policy; and (iii) provide each consumer with the opportunity to opt-in to the proposed change to the privacy policy with any such modifications only being binding on those consumers who opt-in.
- The Successful Bidder agrees to safeguard all PII in a manner consistent with industry standard data security protections and applicable information security laws and best practices.
- The Successful Bidder agrees to destroy all PII for which it determines it has no reasonable business need.
- The Successful Bidder agrees to file a notice with the Bankruptcy Court within ninety (90) days after Closing, (i) stating that it is in compliance with the foregoing provisions, and (ii) certifying that it will comply with any ongoing obligations in accordance with these provisions.

If Successful Bidder is Not a "Qualified Buyer"

If, for any reason, the Debtors do not establish that the Successful Bidder is a "Qualified Buyer," then the PII should not be sold and transferred to the Successful Bidder unless:

- The Successful Bidder agrees, at a minimum, to abide by the Debtors' existing Privacy Policies, as in effect on the Petition Date.
- The Debtors agree to notify all consumers (by email or postal mail, as applicable) that their PII could be transferred to the Successful Bidder in connection with the Sale.
- In connection with the Debtors' notification of the Sale, the Debtors agree (i) to provide consumers with the opportunity to opt-in to the transfer of their PII to the Successful Bidder, and (ii) to clearly and conspicuously state in such notification that the consumer's PII will only be transferred to the Successful Bidder if such consumer affirmatively consents to the transfer.
- The Debtors agree that only the PII of consumers who opt-in may be sold and transferred to the Successful Bidder.
- The Debtors agree to file a notice with the Bankruptcy Court within thirty (30) days after the Closing stating that they have complied with the foregoing provisions.

These recommendations are consistent with those made by consumer privacy ombudsmen in other bankruptcy cases who have encountered similar facts – *i.e.*, a proposed sale of PII that is, or may be, contrary to the terms of the debtor’s existing privacy policy.¹¹ In broad terms, consumer privacy ombudsmen have recommended, and Bankruptcy Courts have approved, the sale of PII in contravention of a debtor’s existing privacy policy; provided that: (i) the sale is made to a “Qualified Buyer;” (ii) the purchaser is the successor-in-interest to the debtor’s privacy policy; and (iii) consumers are afforded notice of the proposed sale and given an opportunity to opt-out of the proposed transfer of PII. As such, the Ombudsman believes the above recommendations are consistent with applicable precedent, including FTC rulings and prior consumer privacy ombudsman recommendations in other bankruptcy cases.

In formulating the recommendations contained in this Report, the Ombudsman has worked extensively with representatives of the Debtors, the Successful Bidder, the FTC, and the Office of the Texas Attorney General, acting on behalf of various state Attorneys General¹² who have either filed formal pleadings with this Court or have provided letters to the Texas Attorney General indicating their respective opposition to the proposed sale of the Customer Data. The Ombudsman believes these recommendations adequately address the transfer of PII in a manner that protects consumers’ PII while facilitating the Sale for the benefit of the Debtors’ estates.

¹¹ See, e.g., In re Deb Stores Holdings, LLC, Case No.: 14-12676 (KG) (Bankr. D. DE 2014) [D.I. 272]; In re deliA*s, Inc., Case No.: 14-23678 (RDD) (Bankr. S.D.N.Y. 2014) [D.I. 557]; In re CWC Liquidation Inc. f/k/a Coldwater Creek, Inc., Case No.: 14-10867 (DHS) (Bankr. D. DE 2014) [D.I. 339, 425]; In re Crumbs Bake Shop, Inc., Case No.: 14-24287 (MBK) (Bankr. D.N.J. 2014) [D.I. 174]; In re Kid Brands, Inc., Case No.: 14-22582 (DHS) (Bankr. D.N.J. 2014) [D.I. 280]; In re Dots, LLC, Case No.: 14-11016 (DHS) (Bankr. D.N.J. 2014) [D.I. 624]; In re Loehmann’s Holdings Inc., Case No.: 13-14050 (MG) (Bankr. S.D.N.Y. 2013) [D.I. 196]; In re Real Mex Restaurants, Inc., (Case No.: 11-13122 (BLS) (Bankr. D. Del. 2011) [D.I. 877]; In re Borders Group, Inc., Case No.: 11-10614 (MG) (Bankr. S.D.N.Y. 2011) [D.I. 1830]; In re Circuit City Stores, Inc., Case No.: 08-35653 (KRH) (Bankr. E.D. Va 2008) [D.I. 3318].

¹² Including, Oregon, Arizona, Colorado, District of Columbia, Hawaii, Idaho, Illinois, Indiana, Iowa, Maryland, Massachusetts, Mississippi, Missouri, Nebraska, Nevada, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Virginia, Washington, West Virginia, and Wisconsin.

BACKGROUND

The Sale Motion

1. On February 5, 2015 (the “Petition Date”) each of the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.
2. On April 10, 2015, the Debtors filed a Combined Motion for Entry of Orders: (I) Establishing Bidding and Sale Procedures; (II) Approving the Sale of Certain IP and Related Assets; and (III) Granting Related Relief [D.I. 1768] (the “Sale Motion”).¹³ The Bankruptcy Court entered the Order (I) Approving Bid and Sale Procedures for Certain IP and Related Assets; (II) Approving the Form and Manner of Notice of the Sale and Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Scheduling an Auction and Sale Hearing [D.I. 1981] (the “Bid Procedures Order”) on April 30, 2015. The assets to be marketed and sold pursuant to the Sale Motion and the Bid Procedures Motion include, among other things, the Customer Data and PII.
3. As contemplated by the Bid Procedures Order, the Debtors marketed certain assets, including the global sourcing group, intellectual property assets, the franchise and dealer network and infrastructure, and Customer Data.¹⁴
4. The Ombudsman was advised by the Debtors that Qualified Bids, as that term is defined in the Bid Procedures Order, were received by the May 6, 2015 deadline and an auction was conducted beginning on May 11, 2015 (the “Auction”).

¹³ This is the Debtors’ second attempt to sell the Customer Data. On the Petition Date, the Debtors filed a motion (D.I. 36) seeking approval of a process to market and sell, among other things, the Customer Data. The Debtors’ efforts did not result in the sale of the Customer Data.

¹⁴ Sale Motion at ¶¶ 4-5.

5. At the conclusion of the Auction, the Debtors selected General Wireless Operations Inc.¹⁵ as the highest and best bidder for the Debtors' assets, including the Customer Data.

6. On May 14, 2015, the Consumer Privacy Ombudsman attended a mediation related to the sale of the Debtors' PII with the Debtors, the Successful Bidder, the Federal Trade Commission, the Texas Attorney General, and state Attorneys General, including Connecticut, Georgia, Rhode Island, Tennessee, Missouri, Nevada, New York, Massachusetts, Pennsylvania and Oregon, with the Mediator. As a result of the mediation, the parties reached an agreement in principle that will consensually resolve many of the objections and concerns raised by the state Attorneys General surrounding the sale of the Customer Data. This mediated settlement is subject to certain consents and approvals, which should be obtained by the close of business on May 19, 2015. The Debtors have advised the Ombudsman that the Debtors will file a declaration in advance of the Sale Hearing regarding any such settlement.

7. In accordance with the Sale Motion and Bid Procedures Order, the Debtors seek to sell certain assets, including the Customer Data,¹⁶ to the Successful Bidder on the terms and conditions more fully described in the Purchase Agreement, dated as of May 15, 2015, among RadioShack Corporation, certain of the Debtors' subsidiaries, and General Wireless Operations Inc. (the "Purchase Agreement").¹⁷

¹⁵ The Successful Bidder previously acquired, among other things, 1,743 RadioShack Stores and has been operating under the RadioShack umbrella since April 1, 2015. See, Order Authorizing (I) The Sale of Certain Assets of the Debtors Free and Clear of all Claims, Lines, Liabilities, Rights, Interests and Encumbrances; (II) the Debtors to Enter into and Perform Their Obligations Under the Asset Purchase Agreement and Certain Ancillary Agreements; (III) the Debtors to Assume and Assign Certain Executory Contracts and Unexpired Leases; and (IV) Granting Related Relief [D.I. 1672].

¹⁶ See Purchase Agreement at 1.1 and Schedule 2.1(b)(iii), as such schedule may be modified prior to the Sale Hearing by mutual agreement of the Purchaser and Sellers. "Customer Information" means all "customer lists and related customer data . . . that is in the possession, custody or control of [the Debtors]."

¹⁷ The Debtors have agreed not to sell any other lists or customer data to anyone other than the Successful Bidder.

8. The Debtors intend to seek Bankruptcy Court approval of the Sale at a hearing scheduled for May 20, 2015.

Review of the Debtors' Privacy Policies and Practices

9. In performing her duties, the Ombudsman has relied upon and reviewed, among other things, the following:

- a. The Website Privacy Policy in effect on the Petition Date and the predecessor Website privacy policy (the "Predecessor Website Policy") that was in effect from January 1, 2004 through approximately October 16, 2014 (available at <http://www.archive.org>) (collectively attached hereto as Exhibit B);
- b. The RadioShack Stores Privacy Policy in effect on the Petition Date and the RadioShack Stores Privacy Policy in effect on the Petition Date at stores in Florida (collectively attached hereto as Exhibit C);
- c. Telephone interviews and discussions with (i) counsel for the Debtors; (ii) internal representatives of the Debtors, including Robert Donohoo, General Counsel; (iii) Hilco Streambank, a SCP Secured Party advisor that specializes in the sale of intellectual property assets; (iv) the FTC; (v) the Office of the Texas Attorney General; (vi) counsel for AT&T Corp. and its affiliates ("AT&T"); (vii) counsel for Sprint Solutions, Inc. ("Sprint"); (viii) counsel for Cellco Partnership d/b/a Verizon Wireless ("Verizon"); (ix) counsel for the Ad Hoc Group of U.S. Dealers and Franchisees (the "Ad Hoc Committee"); (x) Ira Brezinsky, Chairman of the Ad Hoc Committee; (xi) the Office of the New York State Attorney General, Division of Economic Justice; (xii) the Delaware Department of Justice, Consumer Protection Division; and (xiii) counsel for the Successful Bidder;
- d. Letter from the FTC to the Ombudsman dated May 16, 2015 (attached hereto as Exhibit C);
- e. Letter from Hal Morris, Assistant General Counsel, Managing Attorney/Bankruptcy Regulatory Section, Office of the Texas Attorney General to the Ombudsman dated May 12, 2015 together with the affidavits and other correspondence from various state Attorneys General setting forth the applicable state statutes which they believe the proposed sale violates;
- f. The deposition testimony of Rick Baldree, the Debtors' Assistant Director of Information Security, and Linda McMurrin, the Debtors' Corporate Records and Information Manager;

See Purchase Agreement at 8.11.

- g. Hearing testimony of David Peress, Executive Vice President, Hilco Streambank, on March 28, 2015 and April 28, 2015;
- h. The Sale Motion, Bid Procedures Order, and the Debtors' Consolidated Reply in Support of IP Bidding Procedures and Response to Case Management Order [D.I. 1916], including the Summary of the Debtors' Customer Data, as amended [D.I. 2017];
- i. Limited Objection of General Wireless, Inc. to the Debtors' Combined Motion for Entry of Orders: (I) Establishing Bidding and Sale Procedures; (II) Approving the Sale of Certain IP and Related Assets; and (II) Granting Related Relief (Objection to transfer of any PII collected from point-of-sale terminals at General Wireless stores that is stored in the Debtors' customer database) [D.I. 2045]; Ad Hoc Committee of U.S. Dealers and Franchisees' Objection to Debtors' Motion for Entry of an Order Approving the Sale of Certain IP Assets (Any sale of the Customer Data must be conditioned on (i) requirement that U.S. Dealers and Franchisees retain all rights to use Customer Data acquired by the Debtors from the U.S. Dealers and Franchisees, and (ii) purchaser covenants to maintain the Customer Data consistent with the Debtors and/or U.S. Dealers' and Franchisees' individual stated privacy policies) [D.I. 2043]; Limited Objection and Reservation of Rights of Apple Inc. to Debtors' Motion for Entry of Order Approving the Sale of Certain IP and Related Assets (Objection to transfer of any customer information collected from any customer who purchased Apple products from the Debtors) [D.I. 2055]; Limited Objection of and Reservation of Rights of AT&T Mobility, LLC to Debtors' Motion for Entry of Order Approving the Sale of Assets (Objection to sale of any PII of AT&T customers and subscribers obtained through AT&T systems or as a result of selling AT&T services in contravention of AT&T Settlement Agreement and the AT&T Settlement Order) [D.I. 2042]; Limited Objection of the State of Texas to Approval of the Sale of Certain IP and Related Assets (Adopting and incorporating prior objections to sale of PII) [D.I. 2031]; State of Texas's Limited Objection to the Sale of Personally Identifiable Information of One Hundred Seventeen Million Consumers (Sale of PII would violate Texas Deceptive Trade Practices Act (Tex. Bus. & Comm. Code 17.41 *et seq.*)) [D.I. 1393]; Notice of Joinder by Tennessee in Texas's Limited Objection to Sale of Personally Identifiable Information (Sale of PII would violate the provisions of Tennessee Consumer Protection Act, T.C.A. 47-18-102 § (1) and (2)) [D.I. 1434]; State of Oregon's Joinder in State of Texas's Limited Objection to Sale of Personally Identifiable Information of One Hundred Seventeen Million Consumers (Debtors cannot sell PII in violation of privacy policies) [D.I. 1520]; Supplement to Limited Objection Filed by the State of Texas to Sale of Personally Identifiable Information of One Hundred Seventeen Million Consumers to Show Support by Twenty-One Governmental (Consumer Protection) Entities [D.I. 1505]; Limited Objection and Notice of Joinder of the Commonwealth of Pennsylvania to the Sale of Personally Identifiable Information of One Hundred Seventeen Million

Consumers (Sale of PII would violate the provisions of Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.*) [D.I. 1517]; Second Supplement to Limited Objection Filed by the State of Texas to Sale of Personally Identifiable Information of One Hundred Seventeen Million Consumers to Show Support By Twenty-One Governmental (Consumer Protection) Entities (D.I. 1559); Motion of the State of Texas for Case Management Order Pertaining to any Sale of Personally Identifiable Information [D.I. 1668]; Letter from Clark Russell, Internet Deputy Bureau Chief, State of New York, Office of the Attorney General dated May 12, 2015 (undocketed);

- j. The Debtors' privacy practices and collection procedures concerning PII about consumers in Stores and on the Website, their database maintenance, and the sharing and use of such information with third parties;
- k. Research and review of case law, commentaries, and court orders from bankruptcy cases involving the sale of PII;
- l. Applicable United States federal and state privacy laws, regulations, enforcement actions, guidance and industry best practices; and
- m. The Purchase Agreement and all schedules thereto.

Customer Data Collected by the Debtors

10. RadioShack has been a significant part of the American retail landscape for over 90 years. As of the Petition Date, the Debtors were a well-known retail purveyor of innovative technology products and services, as well as products related to personal and home technology and power supply needs. The Debtors sold consumer electronics from leading national brands, private brands, and products and services from major wireless carriers such as AT&T, Sprint and Verizon. As of December 31, 2014, the Debtors operated more than 4,100 RadioShack stores across the United States, Puerto Rico, and U.S. Virgin Islands, and 274 stores in Mexico. In addition, the Debtors have a network of approximately 1,000 Franchise Stores located throughout the United States, Mexico and Asia. The Debtors also sell products through an e-commerce platform.

11. The Debtors collect customer data¹⁸ at retail points-of-sale, through the e-commerce platform and from dealer franchise locations. All collected customer data, regardless of its original source, is pooled and maintained in three databases that are hosted and managed by the Debtors: (a) a customer database (containing name, physical mailing address and phone number) (the “Customer Database”); (b) a contact database (containing email addresses) (the “Contact Database”);¹⁹ and (c) a transaction database (containing 117 data elements specific to a purchase such as transaction data²⁰ and credit or debit card numbers²¹) (the “Transaction Database”) (collectively, the “Database”). Mr. Baldree, the Debtors’ Assistant Director of Information Security, testified at his deposition that (a) it would be prohibitively expensive and labor intensive to separate the consumer records by business segment or point-of-origin; (b) the Debtors did not maintain a field in the Database noting the origin of that data; and (c) it is not possible to ascertain where (website, dealer franchise location or retail point-of-sale) a customer first provided information to the Debtors. The Ombudsman has attempted to corroborate Mr. Baldree’s testimony through discussions with Hilco Streambank and other representatives of the

¹⁸ Not all customer data is consumer data. For example, the Customer Database includes data collected from commercial customers. For purposes of this Report, the Ombudsman will use the term “customer data” to refer to data collected from both commercial and consumer customers of the Debtors. Any reference in this Report to “consumer” excludes the Debtors’ commercial customers.

¹⁹ The Contact Database overlaps with the Customer Database. The Debtors have advised the Ombudsman that of the approximately 8.5 million customer email addresses the Debtors are marketing for sale, approximately 8.3 million of these customers also provided the Debtors with a postal address and are included in the Customer Database.

²⁰ Customer transaction data was historically purged after three (3) years of inactivity unless a customer had purchased a service plan or warranty. In that case, the retention policy extended for the life of such plan or warranty. In or about 2011, in connection with a class action styled Redman v. RadioShack Corporation, Civil Action No.: 11 C 6747 pending in the United States District Court for the Northern District of Illinois, the Debtors placed a global litigation hold on the purging of transaction data. See Summary of Debtors’ Consumer Data at ¶ 2.

²¹ After 120 days, a consumer’s credit or debit card information is modified in the Transaction Database through marking or hashing thereby rendering it unrecognizable and no longer PII. See Deposition of Rick Baldree; Summary of Debtors’ Consumer Data at ¶ 2. The Debtors do not intend to transfer to the Successful Bidder any credit or debit card numbers. Id. at ¶ 6.

Debtors and, relying on those discussions, the Ombudsman concludes that it does not appear that segregation of the customer data by source or point of origin is a viable or cost efficient option.

12. Combined, the Customer Database and the Contact Database contain approximately 117 million²² customer records (including both consumer and commercial customers). The Ombudsman has been advised by the Debtors that the Customer Database and Contact Database contain historical consumer information obtained from various sources over the course of decades. It is the Ombudsman's understanding that the overall accuracy of the source data is not known with any degree of certainty as many of these records are likely duplicates or do not contain current or up-to-date customer information.

13. Pursuant to separate agreements with each of Verizon, Sprint, AT&T and other wireless carriers (collectively, the "Wireless Carriers"), the Debtors collect PII (including sensitive PII such as social security numbers and other government issued identification numbers unique to each consumer ("Sensitive PII")) in connection with enrolling consumers in phone and data service plans. While the Debtors have advised the Ombudsman that certain data elements, if provided by a customer, are added to the Customer Database or Contact Database, Sensitive PII is not added to any database. The Debtors have further advised the Ombudsman that there is not a data field identifying whether a customer originated with any particular Wireless Carrier.

14. Linda McMurrin, the Debtors' Corporate Records and Information Manager, testified at her deposition that all PII, including Sensitive PII, that is obtained by the Stores in paper form is subject to the Debtors' data retention policy (the "Data Retention Policy"). Specifically, the Data Retention Policy provides that (a) PII is maintained securely at the Stores for two (2) years; (b) at the expiration of the document retention period, PII is placed in a locked

²² See Summary of the Debtors' Customer Data at ¶ 4.

shred container located at each store; (c) a third party vendor regularly picks up the PII for off-site destruction; and (d) the vendor provides the Debtors with a Certificate of Destruction certifying that the PII has been destroyed in accordance with industry best practices.²³

Customer Information to be Sold

15. The Debtors have advised the Ombudsman that a subset of the Database contains customer information currently used for marketing purposes – those customers who have (a) opted-in to receiving email communications from the Debtors within the last twelve (12) months, or (b) made a purchase within the prior twelve (12) months and provided their name and physical mailing address. These subsets of the Contact Database and Customer Database, together with associated transaction data, were offered for sale by the Debtors.

16. Specifically, the Contact Database consists of approximately 8.5 million opt-in email addresses, of which approximately 3.1 million were active (i.e., made a purchase) within the last twelve (12) months, and the Customer Database consists of approximately 67 million customer names and physical mailing address files, of which approximately 11.9 million were active (i.e. made a purchase) within the last twelve (12) months.²⁴ According to the Debtors, it is possible to extract consumer files from the Customer Database to account for data considered more relevant for marketing or other purposes.²⁵

²³ The Ombudsman has been advised by the Debtors that the Data Retention Policy also applies to Customer Data that is the subject of litigation.

²⁴ The Debtors have advised the Ombudsman that they “clean up” the Contact Database and the Customer Database on a monthly basis. Undeliverable email addresses are deleted from the Contact Database and duplicate files are merged/deleted from the Customer Database. In addition, the Debtors have advised the Ombudsman that they have not experienced a material increase in the number of opt-out requests since the Petition Date. Specifically, 45,000 email customers have submitted opt-out requests since the Petition Date and this is consistent, according to the Debtors, with the Debtors’ historical unsubscribe rate. Non-email customers are able to unsubscribe from the Customer Database by calling the Debtors’ customer service line. The Debtors have advised the Ombudsman that requests to unsubscribe from the Customer Database have been minimal despite the onslaught of publicity surrounding the Sale.

²⁵ See Deposition of Rick Baldree; Hearing Testimony of David Peress (March 28, 2015); Hearing Testimony of David Peress (April 28, 2015); Summary of the Debtors’ Customer Data at ¶ 2.

17. Notably, credit card numbers, debit card numbers, and transaction data that are not typically found on a standard sales receipt will not be sold.²⁶ In addition, the Debtors have represented to the Court that all references to Wireless Carriers and specific mobility products will be scrubbed from the Transaction Database prior to the Closing.²⁷

18. The Successful Bidder has further agreed to limit the scope of the Customer Data to be acquired as set forth in the above-recommendations.

The Debtors' Privacy Policies

19. The Debtors have two privacy policies applicable to consumer information – the Stores Privacy Policy²⁸ and the Website Privacy Policy.

20. The Stores Privacy Policy provides:

Protecting Customer Information

At RadioShack, we respect your privacy. We do not sell our mailing list. The information you give us is treated with discretion and respect. We pride ourselves on not selling our private mailing list. From time to time, we may send you information from our company or from select, responsible companies that have joined with RadioShack to bring you special offers.

If you no longer wish to receive offers and information, please call us at 1-800-843-7422 or visit us at www.RadioShack.com²⁹

The Debtors have advised the Ombudsman that the Stores Privacy Policy is displayed as signage or a placard at the checkout register in the Stores.³⁰

²⁶ See Summary of the Debtors' Customer Data at ¶ 6.

²⁷ Id.

²⁸ The Ad Hoc Committee has stated to the Ombudsman that the form of the privacy policy posted at the Dealer Franchise Stores contains similar limitations to the privacy policy posted at the RadioShack Stores. As previously noted, the Ombudsman has not received a copy of the Dealer Franchise privacy policy.

²⁹ Stores Privacy Policy (Counter Valid 2/1/15 – ongoing). To comply with state law, different variations of the Stores Privacy Policy are used. However, the Debtors have advised the Ombudsman that all Stores have a privacy policy that contains a statement that PII will not be sold.

³⁰ The Chairman of the Ad Hoc Committee confirmed to the Ombudsman that the Franchise Store signage contains similar language and such policy is posted at or near the point of collection. There are also variations of the privacy policy in the Franchise Stores but all contain a statement that PII will not be sold.

21. The Website Privacy Policy applies “only to the RadioShack.com website and information provided by [a consumer] or otherwise collected online through RadioShack.com”³¹ and provides:

Information sharing and disclosure

- Agents, employees and contractors of RadioShack who have access to PII are required to protect this information in a manner that is consistent with this Privacy Policy and the high standards of the corporation.
- Information about you specifically will not be used for any purpose other than to carry out the services you requested from RadioShack and its affiliates. All of our affiliates have agreed to maintain the security and confidentiality of the information we provide to them.
- We will not sell or rent your PII to anyone at any time.
- We will not use any personal information beyond what is necessary to assist us in delivering to you the services you have requested.
- We may send PII about you to other organizations when:
 - We have your consent to share the information (you will be provided the opportunity to opt-out if you desire). For example, if you opt-in for emails we will share this information with our marketing provider.
 - We need to share your information in order to provide the product or service you have requested. For example, we need to share information with credit card providers and shippers to bill and ship the product you requested.
 - We are required to do so by law, for example, in response to a court order or subpoena.

The Predecessor Website Privacy Policy contained identical limitations on the use and disclosure of PII.

ANALYSIS

22. Section 363(b)(1) of the Bankruptcy Code governs a debtor’s ability to “use, sell, or lease” PII. Generally, a debtor may not sell or lease PII if, at the time of the commencement of a bankruptcy case, the debtor’s privacy policy prohibits the transfer of PII to unaffiliated

³¹ RadioShack.com Website Privacy Policy at p. 1.

entities.³² Notwithstanding this general prohibition, a sale is permitted, pursuant to section 363(b)(1)(B) of the Bankruptcy Code, if:

after the appointment of a consumer privacy ombudsman, the court approves the sale (i) giving consideration to the facts, circumstances, and conditions of the sale and (ii) finding that no showing was made that the sale would violate applicable nonbankruptcy law.³³

Here, both the Website Privacy Policy and the Stores Privacy Policy contain explicit restrictions on the Debtors' ability to sell or transfer the PII to a third party. Accordingly, in connection with her recommendations set forth herein, the Ombudsman is providing the Bankruptcy Court with information, pursuant to section 332(b) of the Bankruptcy Code, to assist the Bankruptcy Court in (a) considering the facts, circumstances, and condition of a proposed sale of PII, and (b) evaluating whether a sale of PII violates applicable nonbankruptcy law.

Applicable Nonbankruptcy Law

23. The Ombudsman has determined that the following nonbankruptcy laws are potentially applicable to the Sale: (a) Section 5 of the Federal Trade Commission Act³⁴ (the "FTC Act"); (b) the Children's Online Privacy Protection Act of 1998³⁵ ("COPPA"); (c) the Gramm-Leach-Bliley Act³⁶ ("GLBA"); and (d) applicable state consumer protection laws.

The Federal Trade Commission Act

24. The FTC has general authority to issue regulations to implement protections

³² See 11 U.S.C. § 363(b)(1).

³³ See 11 U.S.C. § 363(b)(1)(B).

³⁴ 15 U.S.C. §§ 41-58, as amended.

³⁵ 15 U.S.C. § 6501, *et seq.* (2006); 16 C.F.R. § 312 (2006). See also Children's Online Privacy Protection Rule, Final Rule, 64 Fed. Reg. 59888 (Nov. 3, 1999) (explaining basis and purpose of the Act).

³⁶ 15 U.S.C., Subchapter 1, § 6801-6809 (1999).

against unfair and deceptive acts and practices.³⁷ Section 5 of the FTC Act directs the FTC to prevent persons and corporations from using “unfair or deceptive acts or practices in or affecting commerce.”³⁸ Specifically, unfair acts or practices includes conduct that (a) causes substantial consumer injury; (b) is not outweighed by countervailing benefits to consumers or competition; and (c) results in an injury that consumers could not reasonably have avoided.³⁹ Deceptive acts or practices focus on whether a misrepresentation or omission is likely to mislead consumers acting reasonably under the circumstances to their detriment.⁴⁰ Specifically, to be deceptive, conduct (a) must be conveyed through either express or implied claims, (b) must be likely to mislead reasonable consumers, and (c) must be material^{41, 42}.

25. The FTC has interpreted Section 5 of the FTC Act as prohibiting an entity’s collection, use, or disclosure of PII in a manner that is contrary to a promise made to consumers in its privacy policy, including a promise not to share such information with third parties.⁴³

³⁷ 15 U.S.C. § 57A.

³⁸ 15 U.S.C. § 45(a)(1).

³⁹ 15 U.S.C. § 45(n).

⁴⁰ See FTC Policy Statement on Deception, appended to Cliffdale Associates, Inc., 103 F.T.C. 110, 174 (1984) available at <https://www.ftc.gov/public-statements/1983/10/ftc-policy-statement-deception>.

⁴¹ A representation is material if a “reasonably prudent person” would “usually” rely on it, or it is “likely to affect the consumer’s conduct or decision with regard to a product or service.” FTC v. Transnet Wireless Corp., 506 F. Supp. 2d 1247, 1266 (S.D. Fla. 2007).

⁴² See FTC v. Freedom Commc’ns, Inc., 401 F.3d 1192, 1203 (10th Cir. 2005); FTC v. Tashman, 318 F.3d 1273, 1277 (11th Cir. 2003); FTC Policy Statement on Deception, *supra* note 23.

⁴³ See In re GeoCities, Inc., 127 F.T.C. 94 (1999) (consent order settling charges that website had misrepresented the purposes for which it was collecting PII); see also United States v. ChoicePoint, Inc., Stipulated Final Judgment and Order (N.D. Ga. 2006); In the Matter of Vision I Properties d/b/a CartManager International, Agreement Containing Consent Order (FTC 2004), www.ftc.gov/os/caselist/0423068/050310agree0423068.pdf; In the Matter of Petco Animal Supplies, Inc., Decision and Order (FTC 2005), www.ftc.gov/os/caselist/0323221/050308do0323221.pdf; In the Matter of Gateway Learning Corp., Decision and Order (FTC 2004), www.ftc.gov/enforcement/cases-and-proceedings/cases/2004/12/gateway-learning-corp-matter; In the Matter of Tower Records, Decision and Order (FTC 2004), www.ftc.gov/os/caselist/0323209/040602do0323209.pdf; In the Matter of Guess?, Inc. and Guess.com, Inc., Decision and Order (FTC 2003), www.ftc.gov/os/2003/06/guessagree.pdf; In the Matter of Educational Research Center of America, Inc. and Student Marketing Group, Inc., Decision and Order (FTC 2002), www.ftc.gov/os/2003/01/ercaconsent.htm; In the Matter of the National Research Center for College and University Admissions, Inc., Decision and Order, (FTC 2003) www.ftc.gov/os/2003/01/nrccuamuncedo.htm; In

Section 5 of the FTC Act, as enforced by the FTC, would likely prohibit the Debtors from transferring consumer data, including PII, to the Successful Bidder, as doing so is contrary to the Debtors' privacy representations and could be deemed a deceptive trade practice.⁴⁴

26. Recognizing that a consumer's privacy rights must be balanced with the best interests of a debtor's estate and creditors in a bankruptcy proceeding, the FTC, in connection with the Toysmart bankruptcy case, consented to the debtor's proposed sale of PII (which was in contravention of the Toysmart privacy policy), so long as the debtor was selling the PII as part of a larger asset sale and the purchaser agreed to (a) operate as a going concern, and or concentrated in the same business or market as the debtor; (b) expressly agreed to be bound by and succeed to the debtor's existing privacy policies; (c) agreed to be responsible for any violation of existing privacy policies; and (d) agreed that prior to making any material change to the debtor's existing privacy policies, obtained affirmative (opt-in) consumer consent.⁴⁵ The Toysmart settlement has become the benchmark used by the FTC when evaluating whether PII may be sold notwithstanding provisions to the contrary in a company's privacy policy. Similarly, bankruptcy courts have relied on the criteria set forth in Toysmart when determining whether a sale complies with the Bankruptcy Code and applicable non-bankruptcy law.⁴⁶

27. As the Debtors' privacy policies and the Toysmart privacy policy both contain similar limitations on the use and disclosure of PII, the Ombudsman recommends that, given the

the Matter of Microsoft Corporation, Decision and Order (FTC 2002), www.ftc.gov/sites/default/files/documents/cases/2002/12/microsoftdecision.pdf; In the Matter of Eli Lilly and Company, Decision and Order (FTC 2002), www.ftc.gov/os/2002/05/elilillydo.htm; FTC v. Reverseauction.com, Inc., Decision and Order (FTC 2000), www.ftc.gov/os/2000/01/reverseconsent.htm; In the Matter of Liberty Financial Co., Decision and Order (FTC 1999), www.ftc.gov/os/2000/01/reverseconsent.html.

⁴⁴ See Stipulation and [Proposed] Order Establishing Conditions on Sale of Customer Information, In re Toysmart.com, LLC, Civil Action No. 00-13995-CJK (Bankr. E.D. Mass. 2000), www.ftc.gov/sites/default/files/documents/cases/toysmartbankruptcy.

⁴⁵ Id.

⁴⁶ See, footnote 11 infra.

facts and circumstances of this case, the Court follow the guidelines developed in Toysmart with certain modification as set forth herein to account for issues unique to the Debtors' data collection practices and procedures.

28. The Ombudsman has received a letter from Jessica L. Rich, Director of the FTC's Bureau of Consumer Protection. The FTC is concerned that the sale or transfer of Customer Data "would contravene RadioShack's express promise not to sell or rent such information and could constitute a deceptive or unfair trade practice under Section 5 of the FTC Act"⁴⁷ The FTC acknowledges, however, "that bankruptcy may present special circumstances, including the interest in allowing a company to . . . marshal remaining assets for its creditors."⁴⁸ The FTC cites Toysmart as "instructive on this point," and concludes that, if the Bankruptcy Court does not require consumer consent before the Debtors transfer of PII to the Successful Bidder, the FTC's concerns would be "greatly diminished" if the sale satisfies the Toysmart criteria.⁴⁹

Children's Online Privacy Protection Act

29. In addition to the FTC Act, COPPA prohibits unfair or deceptive acts or practices in connection with the collection, use, or disclosure of PII from and about children under 13 obtained from the Internet.⁵⁰ COPPA requires that companies that collect information from children provide notice on their websites concerning what information they collect, how they will use that information and what disclosure practices will apply to that information.⁵¹ Pursuant to the FTC's rules interpreting COPPA, a company must, among other things, obtain parental

⁴⁷ See Exhibit D at p. 4.

⁴⁸ Id. at p. 6.

⁴⁹ Id.

⁵⁰ 15 U.S.C. § 6501, *et seq.* (2006); 16 C.F.C. § 312 (2006). See also Children's Online Privacy Protection Rule, Final Rule, 64 Fed. Reg. 59888 (Nov. 3, 1999) (explaining basis and purpose of the Act).

⁵¹ 15 U.S.C. § 6502(b)(1)(A) (2006); 16 C.F.C. § 312.3 (a) (2006).

consent “to any material change in the collection, use, and/or disclosure practices to which the parent has previously consented.”⁵²

30. The Website Privacy Policy, in part, contains the following reference to data collection related to children under the age of 13:

RadioShack.com does not seek to collect identification information about kids under 13 years of age. If we discover such information, we will delete it. Thus, we typically retain no identifiable information about kids. However, if a parent believes his/her child has provided us information, simply call and that we delete it.

31. In addition to this specific disclaimer on the Website, the Debtors provided no information to the Ombudsman suggesting that the Website is directed in whole or in part to children or that the Debtors knowingly collected personal information from children under the age of 13.

32. With respect to data collection in Stores, the Ombudsman has been provided with no information that would suggest that the Debtors knowingly collected personal information from children under the age of 13.

33. As a result, there is no evidence that the Debtors are not in compliance with the requirements of COPPA.

Gramm-Leach-Bliley Act

34. Title V, Subtitle A of the GLBA governs the treatment of non-public personal information about consumers by domestic financial institutions. Subject to certain exceptions, the GLBA prohibits a financial institution from disclosing nonpublic personal information concerning consumers to nonaffiliated third parties, unless the financial institution satisfies certain notice and opt-out requirements, and provided that the consumer has not elected to opt

⁵² 16 C.F.R. § 312.5(a) (2006).

out of the disclosure.

35. While the Debtors are not a “financial institution” under the GLBA, the FTC’s interpretation of the GLBA is instructive. Specifically, in connection with the FTC’s consideration of its Privacy of Consumer Financial Information Rule, the FTC interpreted the GLBA as not requiring new initial (and opt-out) notices in situations in which the surviving entity adopts the policies and practices of the acquired entity. This interpretation is consistent with the FTC’s stipulation and decree in Toysmart and is helpful to the Ombudsman’s analysis of the Sale. Therefore, as long as the Successful Bidder meets the criteria of a Qualified Buyer and subject to the other recommendations that take into account the unique facts and circumstances of this case, the Ombudsman recommends that a notice and opt-out choice standard is appropriate.

Applicable State Laws

36. All 50 states and the District of Columbia have adopted their own, similar consumer protection statutes.⁵³ Since the Customer Data contains the PII of consumers in all

⁵³ See, e.g., Alabama, Ala. Code § 8-19-1 et seq.; Arizona, Consumer Fraud Act, A.R.S. §§ 44-1521-44-1534; California, Cal. Bus. & Prof. Code §17200 et seq.; Connecticut, Conn. Gen. Stat. § 42-110a et seq.; Colorado, Colorado Revised Statute § 6-1-105 (e); Delaware, Del. Code Ann. tit. 6, § 2511 et seq.; Florida, Fla. Stat. § 501.201 et seq.; District of Columbia, Consumer Protection Procedures Act, D.C. Code §§ 28-3901 et seq.; Hawaii, Haw. Rev. Stat. § 487; Idaho, Consumer Protection Act, Idaho Code§ 48-601 et seq.; Illinois, 815 Ill. Comp. Stat. Ann. §§ 505/1 et seq.; Indiana, Deceptive Consumer Sales Act, Indiana Code sec. 24-5-0.5-3(a) and (b)(1); Iowa, Consumer Fraud Act, Iowa Code § 714.16; Kentucky, Ky. Rev. Stat. Ann. §§ 367.110-367.300; Maryland, Maryland Consumer Protection Act, Md. Code Ann., Com. Law § 13-101 et seq.; Massachusetts, Massachusetts Consumer Protection Act, Mass. Gen. Laws c. 93A, § 2(a) and the regulations promulgated thereunder, 940 CMR 3.00 et seq. and 6.00 et seq.; Michigan, Mich. Comp. Laws §445.911 et seq.; Minnesota, Minn. Stat. § 325D.44-.48; Mississippi, Mississippi Consumer Protection Act, Miss. CODE ANN. §§ 75-24-1, et seq.; Missouri, § 407.020 of the Missouri Merchandising Practices Act; Montana, Mont. Code Ann. § 30-14-133 et seq.; Nebraska, Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59-1601 et seq.; Nevada, Nev. Rev. Stat. § 598.0915(5); New York, N.Y. Gen. Bus. Law § 349 et seq.; North Carolina, N.C. Gen. Stat. 75-1.1; Ohio, Consumer Sales Practices, Ohio Rev. Code Ann. §§ 1345.01 et seq.; Oklahoma, Oklahoma Consumer Protection Act, 15 O.S. § 751 et seq.; Oregon, Or. Rev. Stat. § 646.605 et seq.; Pennsylvania, Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, et seq.; South Carolina, South Carolina Unfair Trade Practices Act, §§ 37-20-190(A), 39-5-20(a), Section 39-5-10(b); South Dakota, S.D. Codified Laws § 37-24-1 et seq.; Tennessee, Consumer Protection Act, T.C.A. § 47-18-102 et seq.; Utah, Utah Code Ann. § 13-11-1 et seq.; Virginia, Virginia Consumer Protection Act, Virginia Code §§ 59.1-196 through 59.1-207; Washington, Washington Consumer Protection Act, RWC 19.86.020, West Virginia, West Virginia Consumer Credit &

U.S. States, the Debtors are required to comply with State Consumer Protection Acts, where applicable. While there is some variation among the various state laws, most, if not all, prohibit deceptive representations to consumers. As such, a debtor must comply with these applicable non-bankruptcy laws when selling PII.⁵⁴ The analysis of the Debtors' sale of PII under state law would be substantially similar to the analysis of the FTC Act discussed above.

37. The Attorney General for the State of Texas together with State Attorneys General from thirty eight (38) states (including the District of Columbia) (collectively, the "State Attorneys General") oppose the sale of the Customer Data to the Successful Bidder. The State Attorneys General take the position that the transfer of any PII collected under the Stores Privacy Policy and the Website Privacy Policy is prohibited because those policies expressly promise consumers that PII will not be sold. As a consequence, the State Attorneys General contend that PII may not be transferred without affirmative consumer consent and the approach taken by the FTC in Toysmart is not adequate to protect consumers in light of the subsequent enactment of Bankruptcy Code § 363(b)(1)(B).

38. While the Ombudsman is mindful of the State Attorneys General position, this issue does not need to be resolved in connection with this sale – the Debtors, the Successful Bidder, the FTC and the State Attorneys General were able to reach a negotiated resolution with the assistance of the Mediator. The Ombudsman was supportive of this process and believes the outcome appropriately balances the privacy rights of consumers with the economic interests of the Debtors' estates.

Protection Act, W. Va. Code §§ 46A-1-101 et seq.; Wisconsin, Wis. Stat. § 100.18.

⁵⁴ See Handling Customer Data in Bankruptcy Mergers and Acquisitions-Coping with the Consumer Privacy Ombudsman Provisions of the 2005 Bankruptcy Act, Warren Agin, 60 Consumer Fin. L.Q. Rep. 609 (2006).

Other Considerations

39. Section 332(b) of the Bankruptcy Code provides that the Ombudsman shall “provide to the court information to assist the court in its consideration of the facts, circumstances, and conditions of the proposed sale or lease of PII under section 363(b)(1)(B).”⁵⁵

Among other things, the Ombudsman may present the following information to the Court:

- a. the Debtors’ privacy policy;
- b. the privacy impact on consumers if the sale proceeds; and
- c. alternative solutions that might mitigate the privacy impact.⁵⁶

The Debtors’ Privacy Policy

40. The Debtors’ privacy policies unequivocally state that the Debtors will not sell consumers’ PII. However, a court may approve a sale of PII in contravention of a privacy policy if (a) consent is obtained from each customer, or (b)(i) the Consumer Privacy Ombudsman process is followed, and (ii) the bankruptcy court finds that applicable non-bankruptcy law has not been violated.⁵⁷

Privacy Impact on Consumers if the Sale Proceeds

41. To the extent the Successful Bidder operates or will operate a similar business or line of business as the Debtors, there will be a relatively seamless transition for consumers. Moreover, the Ombudsman recommends that the Successful Bidder agree to be bound by the Debtors’ Website Privacy Policy and Stores Privacy Policy and to use PII only in a manner consistent with those policies. These protections, coupled with the other recommendations contained in this Report, are intended to minimize the impact on consumers if the Sale of

⁵⁵ See 11 U.S.C. 363(b)(1)(B).

⁵⁶ See 11 U.S.C. § 332(b).

⁵⁷ See 11 U.S.C. 363(b)(1)(B).

Customer Data, including PII, is approved by this Court.

Alternative Solutions that Might Mitigate the Privacy Impact

42. In light of the Debtors' privacy policies and the magnitude of consumer information the Debtors maintain in the Database, the Ombudsman has considered various alternative solutions that might mitigate the privacy impact on consumers if the Sale is approved to the Successful Bidder. Among the factors considered in formulating the recommendations in this Report were (a) the sensitivity of the data collected; (b) whether consumer opt-out requests had increased following the significant press coverage regarding the Sale; (c) the costs and benefits associated with requiring affirmative consent to the Sale from consumers; and (d) the potential relevance of the Customer Data and associated PII to the Successful Bidder. The Ombudsman conveyed these concerns to the Debtors and other relevant parties-in-interest throughout the sale process. The negotiated resolution took into account each of these concerns.

43. The consumer information collected by the Debtors is not of a sensitive nature. Most of this information is available from public sources. Moreover, the Debtors are not seeking authority to sell financial information or credit or debit card numbers, which eliminates any risk of identity theft associated with the Sale. In the Ombudsman's opinion, the PII at issue here does not rise to the level of requiring affirmative opt-in consent to the Sale. However, a temporal limitation should be imposed as much of the consumer information is dated and has not been used by the Debtors in several years. As noted above, the Ombudsman therefore recommends limiting the scope of the Customer Data sold. In reaching this conclusion, the Ombudsman has taken into consideration the limited number of physical mailings undertaken by the Debtors over the past few years.

44. The Customer Database contains approximately 50 million customer records that

do not have corresponding email addresses. Traditional notice of the Sale by postal mail – on either an opt-in or opt-out basis – is not financially feasible and would likely not yield a significant response rate given the Debtors’ historical opt-outs. Accordingly, the Ombudsman proposes multiple forms of substitute notice to consumers that are designed to reach a broad consumer base. Specifically, the Ombudsman recommends that the Sale of PII be communicated to consumers by placards placed at the point of sale in each of the Stores and a conspicuous notice on the first written communication, if any, to consumers. These methods of notice, coupled with a toll-free number to process opt-out requests, are practical and effective ways of providing notice and an opportunity for consumers to opt-out. The Successful Bidder has agreed to these limitations as set forth in greater detail in the recommendations section of this Report.

45. The Contact Database contains approximately 8.7 million email addresses. The Debtors have represented to the Ombudsman that these consumers affirmatively opted-in to marketing requests and email solicitations from the Debtors. The Successful Bidder has agreed to acquire a limited subset of the Contact Database – those email addresses collected by the Debtors in the two (2) years prior to the Petition Date. In addition, the Successful Bidder will provide customers with notice and an opportunity to opt-out of the transfer of their email addresses as set forth in greater detail in the recommendations section of this Report. Such notice is adequate under the circumstances.

46. The Debtors seek authority to sell a subset of the Transaction Database – identified as the information typically contained on a customer’s sales receipt – to the Successful Bidder. The Ombudsman has been advised that the information contained in the Transaction Database is critical to the development of an effective loyalty marketing program. Further, the Ombudsman understands this information would be utilized to create predictive models that will

lead to a targeted marketing platform and build customer loyalty and brand awareness. The Successful Bidder has agreed to limit the transaction data to the following data fields: (i) store number; (ii) Ticket Date/Time; (iii) SKU number; (iv) SKU description; (v) SKU selling price; (vi) tender type; and (vii) tender amount. The Ombudsman has attempted to balance the competing needs of the Successful Bidder with consumer expectations and privacy concerns. After balancing these needs, the Ombudsman recommends that, subject to a temporal limitation of five (5) years of transaction data there will be minimal, if any, impact on consumer privacy associated with the Sale as it relates to the this subset of the Transaction Database since the Successful Bidder intends to operate in a substantially similar line of business under the RadioShack brand.

47. While the Wireless Carriers and Apple object to the sale of the Transaction Database to the extent it includes information obtained from their respective customers, the legal issues identified are outside the scope of this Report. Finally, to the extent the Successful Bidder becomes the purchaser of the Debtors' assets, the limited objection of the Successful Bidder is moot.

The Successful Bidder is a "Qualified Buyer"

48. After considering the facts and circumstances of this case, the Ombudsman considers the Successful Bidder a "Qualified Buyer". Since April 1, 2015, the Successful Bidder has been operating in substantially the same line of business as the Debtors.⁵⁸ Further, the Ombudsman has been advised by the Successful Bidder that it will (a) agree to be bound by, and succeed to, the Debtors' existing privacy policies; (b) agree to be responsible for any violation of

⁵⁸ While Toysmart and certain of its progeny have narrowly considered the line of business factor, the Ombudsman notes that such a reading does not take into account the changing landscape of business to consumer channels that has evolved and become standard post-Toysmart. As such, the Ombudsman would also recommend that the Successful Bidder be deemed a "Qualified Buyer" if measured by a more contemporary standard.

existing privacy policies; and (c) agree that prior to making any material change to the Debtors' existing privacy policies, affirmative consumer consent will be obtained. So long as the Successful Bidder's use of the Customer Data is consistent with consumers' expectations, the Ombudsman concerns are allayed.

CONCLUSION

49. In summary, the Ombudsman believes that the recommendations in this Report, if incorporated in any order approving the Sale, strike an appropriate balance between the privacy rights of consumers and practical considerations associated with the sale of the Customer Data.

Dated: New York, New York
May 16, 2015

RESPECTFULLY SUBMITTED,

A handwritten signature in cursive script, appearing to read "Elise Frejka".

Elise S. Frejka, CIPP/US
Consumer Privacy Ombudsman

TABLE OF EXHIBITS

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EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION**

In re:

TOYSMART.COM, LLC, Debtor.

**Chapter 11
Case No. 00-13995-CJK**

**STIPULATION AND ORDER ESTABLISHING CONDITIONS
ON SALE OF CUSTOMER INFORMATION**

This Stipulation is entered into this twentieth day of July, 2000, by and between, Toysmart.com, LLC, debtor and debtor-in-possession ("Debtor" or "Toysmart"), and the Federal Trade Commission ("FTC").⁽¹⁾

WHEREAS, on June 9, 2000, an involuntary petition was commenced against the Debtor under chapter 11 of 11 U.S.C. § 101, et seq. ("Code"). On June 23, 2000, the Debtor filed a consent to the order for relief under chapter 11 of the Code;

WHEREAS, the Debtor is a Delaware limited liability corporation involved in the "e-tail" business. The Debtor has, among other things, advertised, promoted, and sold toys on the Internet including through its Web site www.toysmart.com;

WHEREAS, the FTC is an independent agency of the United States government created pursuant to 15 U.S.C. § 41, et seq. ("FTC Act"). The FTC enforces § 5(a) of the FTC Act, which prohibits unfair or deceptive acts or practices in or affecting commerce;

WHEREAS, the Debtor has collected personal customer information including, but not limited to, consumers' names, addresses, billing information, shopping preferences, and family profile information;

WHEREAS, from at least September 1999 to July 2000, the Debtor's Web site included a privacy statement ("Privacy Statement") stating that (1) "Personal information voluntarily submitted by visitors to our site, such as name, address, billing information and shopping preferences, is never shared with a third party. All information obtained by toysmart.com is used only to personalize your experience online," and (2) "When you register with toysmart.com, you can rest assured that your information will never be shared with a third party;"

WHEREAS, on or about May 22, 2000, the Debtor announced that it had ceased operations and began to offer for sale customer information through advertisements appearing in the Wall Street Journal and the Boston Globe and through its Web site;

WHEREAS, on June 29, 2000, the Debtor filed the Debtor's Motion For Authority To Sell Assets (Excluding Inventory) By Public Sale Free And Clear Of Liens, Claims And

Encumbrances ("Sale Motion") and related pleadings. Pursuant to the Sale Motion, the Debtor, among other things, seeks to sell a group of assets set forth in Category C and entitled "Web Site Applications, Names, Customer List, and Product Databases" consisting of the Debtor's right, title and interest in customer information, including contents of its customer databases including detailed customer lists and related information, as well as names, trademarks, goodwill, URL names, Web site source code, and data base schemas without content and publishable content located on its Web site (each and together, the "Goodwill"); and

WHEREAS, the FTC has filed a complaint in the United States District Court for the District of Massachusetts, Federal Trade Commission v. Toysmart.com, LLC, Civil Action No. 00-11341-RGS, which alleges that the proposed sale of the customer information would constitute a deceptive act or practice in or affecting commerce under § 5(a) of the FTC Act; and

WHEREAS, the Debtor disputes the FTC's allegations and further responds that it has never violated the Privacy Statement, but in any event, seeks to resolve this matter so as to preserve the value of the Debtor's assets for the benefit of its creditors.

NOW THEREFORE, in an effort to resolve this matter without further cost or delay, the parties hereby agree, subject only to the approval of this Court, as follows:

For the purposes of this Agreement, the following definitions shall apply:

>"Qualified Buyer" shall mean an entity that (1) concentrates its business in the family commerce market, involving the areas of education, toys, learning, home and/or instruction, including commerce, content, product and services, and (2) expressly agrees to be Toysmart's successor-in-interest as to the Customer Information, and expressly agrees to the obligations set forth in Paragraphs 2, 3 and 4, below. Nothing herein, however, shall create any liability for such Qualified Buyer as a result of any actions or omissions by the Debtor, as the Customer Information is to be sold free and clear of all liens, claims and encumbrances, except for the Qualified Buyer's obligations under the Privacy Statement.

"Customer Information" shall mean information of or relating to consumers collected by the Debtor, including, but not limited to, name, address, billing information, shopping preferences, order history, gift registry selection, family profile information about consumers' children, such as name, gender, birthday, and toy interests.

"Third Party" shall mean any individual, firm, or organization other than the Qualified Buyer and its successors, except to the extent that disclosure of Customer Information to such an individual, firm, or organization is necessary to maintain the technical functioning of the Toysmart Web site or customer databases, or to fulfill a consumer's request. "Third Party" includes any affiliates of the Qualified Buyer.

"Privacy Statement" shall mean the privacy statement posted on the Toysmart Web site from at least September 1999 to July 2000, the terms of which are included in

full in Exhibit 1.

The Debtor shall only assign or sell its Customer Information as part of the sale of its Goodwill and only to a Qualified Buyer approved by the Bankruptcy Court. In the process of approving any sale of the Customer Information, the Bankruptcy Court shall require that the Qualified Buyer agree to and comply with the terms of this Stipulation.

The Qualified Buyer shall treat Customer Information in accordance with the terms of the Privacy Statement and shall be responsible for any violation by it following the date of purchase. Among other things, the Qualified Buyer shall use Customer Information only to fulfill customer orders and to personalize customers' experience on the Web site, and shall not disclose, sell or transfer Customer Information to any Third Party.

If the Qualified Buyer materially changes the Privacy Statement, prior notice will be posted on the Web site. Any such material change in policy shall apply only to information collected following the change in policy. The Customer Information shall be governed by the Privacy Statement, unless the consumer provides affirmative consent ("opt-in") to the previously collected information being governed by the new policy.

In the event that an order is not entered on or before July 31, 2001, approving the sale of the Customer Information to a Qualified Buyer or approving a plan of reorganization, the Debtor shall, on or before August 31, 2001, delete or destroy all Customer Information in its possession, custody or control, and provide written confirmation to the FTC, sworn to under penalty of perjury, that all such Customer Information has been deleted or destroyed. Pending approval of any sale of the Customer Information to a Qualified Buyer or of a plan of reorganization, the Debtor shall handle Customer Information in accordance with the Privacy Statement.

This Stipulation and Order, after approval by the Bankruptcy Court, shall be attached to and incorporated in full into the terms of any plan of liquidation or reorganization that is ultimately approved in this bankruptcy case.

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IT IS SO ORDERED.

Entered at Boston, Massachusetts, this ____ day of July, 2000.

Honorable Carol J. Kenner
United States Bankruptcy Judge

EXHIBIT 1

PRIVACY STATEMENT

Our promise

At toysmart.com, we take great pride in our relationships with our customers and pledge to maintain your privacy while visiting our site. Personal information voluntarily submitted by visitors to our site, such as name, address, billing information and shopping preferences, is never shared with a third party. All information obtained by toysmart.com is used only to personalize your experience online. This information is received via the following areas of our site: My toysmart and the Gift Center. When you place additional orders, our site will update your order history, which you can view in My toysmart. If you sign up for the gift registry, information you submit will be added to your personal profile. Other than these two instances, the information that you provide us is not supplemented in any way.

Your option

If you do not wish to receive emails containing promotional offers or contests from toysmart.com, please click the box located at the bottom of the "My toysmart" registration page. If you are already registered and would like to opt-out of such promotional offers, please go to "My toysmart," click on the "My Profile" icon, and unselect the email option located at the bottom of the page. When you register with toysmart.com, you can rest assured that your information will never be shared with a third party.

Editing your personal information

If you would like to edit your personal information, please click on the "My toysmart" button located on the top of our homepage. Then, simply click on the "My Profile" icon and update any of your information.

Contests

toysmart.com is committed to protecting the privacy of all children who enter contests on our site. We request only the child's first name and age be sent with the contest entry. We email every child's parent with notification that his or her child has entered the contest. Only winners' parents will be sent a release form, which requests a shipping address as well a permission request to post the winning entry on our site. No entries will be posted without a parent or guardian's permission, and no prizes will be sent without written consent from the parent or guardian.

Your information is safe with us!

All personal information is encrypted on a separate server. Also, we give you the option of further securing

your information with the use of a password. To create a personal password, simply go to "My toysmart." Shopping with toysmart.com is guaranteed to be 100% safe. That means we will guarantee your protection against any liability if unauthorized charges are made to your card as a result of shopping at toysmart.com. Simply stated, you are guaranteed a safe and secure transaction every time you shop with us. Visit our "Security" (http://www.toysmart.com/toysmart/ts_cs_security.asp) section for more details.

Questions regarding this statement should be directed to support@toysmart.com.

1. The FTC assents to this Court's jurisdiction solely for purposes of approval of this Stipulation. Should this Stipulation not be approved by the Bankruptcy Court, the FTC reserves the right to take all actions as it deems necessary and appropriate to protect its exercise of police and regulatory powers.

FREE SHIPPING OVER \$25

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Online Privacy Policy

The following Privacy Policy applies only to the RadioShack.com web site and information provided by you or otherwise collected online through RadioShack.com. For the privacy policies applicable to information collected in our stores or by other means, see the sign posted in stores titled, "We Value Our Relationship."

We are concerned about privacy

Your privacy is very important to us. RadioShack respects and protects the privacy of its visitors. In this document, we explain how we use the information you supply us. If we update our privacy policy, all revisions will be posted on this page. We reserve the right to change the privacy policy at any time.

Information collection and use

Two types of information may be collected when you visit our web site, information that you knowingly provide us (called personally identifiable information), and information that is obtained from your visit but is not directly associated with you (called non-personally identifiable information).

Personally identifiable information

Personally identifiable information may include information that you provide to us by requesting information, when registering for special offers or programs or when you purchase products online. This may include your name, address (including billing and shipping addresses), telephone number, e-mail address, organization, city, state and zip code. We may use this information, to process and ship orders, to contact you about the status of your order, to contact you with answers to your questions, or to provide information about new and exciting products, services, promotions and corporate-related information. We may use mailings, telephone calls and e-mail to contact you.

You also may create an account through RadioShack.com at any time by providing your email address and creating a unique password. An account is not required to visit our site or to place an order through RadioShack.com. Creating an account allows you to save order information, order history, track the status of your orders and set your ordering preferences. For your privacy and security, we do not store credit card or Gift Card numbers in your account. You may change saved account information at anytime. Simply visit the Your Account page, log in with your email address and password.

For those customers who purchase products from us online, additional personally identifiable information such as credit card information will be collected. This information is collected in order to process your order.

For those customers who register for special email offerings, we may use the zip code you provided to email special offers that apply only to your area.

We are committed to the protection of the privacy of our customers and visitors. While in the checkout process of our online store, we make use of 128 bit encryption via digital IDs provided and certified by VeriSign, Inc. These IDs enable our commerce site to conduct authenticated, strongly encrypted online commerce. Customers can submit credit card numbers or other personal information to our site with the assurance that they are doing business with us (not an impostor's "spoof" of our site) and that the information which they are sending to us cannot be intercepted or decrypted by anyone else.

Requesting removal of your information

If you have registered for special e-mail offerings, you may unsubscribe from the program, by visiting the e-mail unsubscribe page or click on the links available at the bottom of any of these special offer e-mails. You may also request the removal of your information by contacting us via e-mail.

If you wish to receive more personalized information from RadioShack or change anything about your profile such as your interests or e-mail format, please click on the links available at the bottom of any of these special offer e-mails or visit the Your Account page.

Non-personally identifiable information

Non-personally identifiable information is collected without any direct association with you specifically. In the normal course of using RadioShack.com, we may collect information about your habits and usage of our sites.

Our web sites may contain technologies known as action tags, web beacons or 1x1 pixel gifs. These employ a common internet technique used to compile aggregated statistics about the effectiveness of our advertising campaigns, common navigation paths within the sites, types of browsers and platforms that access the sites and the average connection speeds used to connect to the sites. This information is used to enhance the online experience of our customers. These technologies do not use or collect personally identifiable information, such as names or address, and do not link online actions to an identifiable person.

An IP address is a number that is assigned to your computer when you are using the Internet. Web servers automatically identify your computer by its IP address. RadioShack collects IP addresses for the purposes of system administration, to report aggregated information and to audit the use of our site. If we are required to do so by law, for example, in response to a court order or subpoena, we will provide these IP addresses to the proper authorities.

Information sharing and disclosure

Agents, employees and contractors of RadioShack who have access to personally identifiable information are required to protect this information in a manner that is consistent

with this Privacy Policy and the high standards of the corporation.

- Information about you specifically will not be used for any purpose other than to carry out the services you requested from RadioShack and its affiliates. All of our affiliates have agreed to maintain the security and confidentiality of the information we provide to them.
- We will not sell or rent your personally identifiable information to anyone at any time.
- We will not use any personal information beyond what is necessary to assist us in delivering to you the services you have requested.
- We may send personally identifiable information about you to other organizations when:
 - We have your consent to share the information (you will be provided the opportunity to opt-out if you desire). For example, if you opt-in for emails we will share this information with our marketing provider.
 - We need to share your information in order to provide the product or service you have requested. For example, we need to share information with credit card providers and shippers to bill and ship the product you requested.
 - We are required to do so by law, for example, in response to a court order or subpoena.

Use of Cookies and Applets

Cookies and applets are small text files that are placed on your computer's hard drive by our servers to identify your computer. Cookies and applets are only read by the domain that placed them there and are unable to execute any code or virus. We may use cookies or applets to recognize you when you visit our sites, to personalize your experience and generally to serve you better. We do not use cookies or applets to track your activities once you leave our web site.

You may delete these files from your computer at any time. You can set your web browser to notify you if such information is about to be placed on your computer, and you can choose the option in your web browser to refuse it. If you refuse the information, you may not be able to make full use of the features on our web site.

Kids under 13 years of age

RadioShack.com does not seek to collect identification information about kids under 13 years of age. If we discover such information, we will delete it. Thus, we typically retain no identifiable information about kids. However, if a parent believes his/her child has provided us information, simply call and that we delete it. In order for us to find the information in our databases, you will need to provide us with the following information which will only be used to search our databases and deliver confirmation to you:

- Parent's Name
- Address
- Telephone Number
- Email Address (for confirmation)
- The name of the child (if you suspect a nickname was used, please provide it)
- If the child shares time at two addresses, you will need to provide us the second address also, along with any email addresses for the child.

In order to request deletion of identifiable information that RadioShack may have unintentionally collected about your child, please call (817)415-3200. Please inform the service agent that you wish to delete your child's information, and supply the service agent with the necessary information as stated above.

Confirmation that information which identifies your child has been deleted will be delivered to you by e-mail, regular mail, or telephone.

PLEASE NOTE: Deleting your child's information will likely make it impossible for us to notify you or your child in the event of a recall of a product he or she purchased in violation of our policies. So if your child purchased ANYTHING from us in spite of our efforts to prevent it, you may not wish to delete all information. Instead, you may simply request that we correct the information by correcting the name in our records to your name rather than your child's. In consideration of young users, it is our intention to adhere to the Better Business Bureau's "Children Advertising Review Unit" (CARU) guidelines, including its guidelines on advertising. When you communicate with RadioShack, we make every effort to ensure your privacy and safety. As an added precaution, however, we still encourage parents to monitor their child's use of the Internet, and to help us protect their privacy by reminding them never to exchange personal information with this or any other web site without the assistance or express written permission of a parent or other responsible adult.

Links to and from RadioShack.com

Our web site contains links to and from other web sites that are not operated or controlled by RadioShack. WE ARE NOT RESPONSIBLE FOR THE PRIVACY PRACTICES OF, AND USE OF CHILDREN'S PERSONAL INFORMATION BY, WEB SITES THAT WE DO NOT OPERATE, and our privacy policy does not apply to these sites.

"Email a Friend" or "Email your Wish List"

If you elect to use our "Email a Friend" or "Email your Wish List" service for informing a friend about our site or products you are interested in, we may ask for your email address, your name, the email address and the name of your friend. RadioShack will automatically send the friend a one-time email on your behalf. RadioShack does not store this information. It is only used for the sole purpose of sending this one time email. We will not condition access or participation in an activity RadioShack will not condition a user's access or participation in an activity on giving out more personal information than what is considered reasonably necessary for the activity.

Co-branded offers

From time-to-time RadioShack.com provides some co-branded offers, for example to apply for a RadioShack Credit Card or to manage your AnswersPlus Account. In these cases the user is directed to another party's website. The use of data collected through that website is governed by it's own privacy policies.

Sweepstakes and contests

From time-to-time, we may request information from you through contests or sweepstakes. Participation in these contests or sweepstakes is completely voluntary and the user has a choice whether or not to participate. Information requested may include contact information (such as name, address and phone number). Contact information gathered from contests and sweepstakes will be used to notify the winners and award prizes. We use a third party to pick the contests and sweepstakes winners (please see the Information sharing and disclosure section for details on third parties). Demographic information such as the users birthdate may be requested, this is used to validate the age of the contestant when the rules of the contest specify a minimum age requirement. Users who enter the contest may also choose to receive marketing communications from RadioShack. The user may elect to "opt-out" of this communication at the bottom of each email or by visiting the Requesting removal of your information section of this policy.

How changes to the privacy policy will be communicated

If we decide to change our Privacy Policy, we will post those changes to this privacy statement, the homepage, and other places we deem appropriate so our users are always aware of what information we collect, how we use it, and under what circumstances, if any, we disclose it. If however, we are going to use users' personally identifiable information in a manner different from that stated at the time of collection we will notify users by posting a notice on our web site for 30 days.

If users have questions or concerns regarding this statement, they should contact RadioShack Online Privacy by email RadioShack.Online.Privacy@radioshack.com.

EXHIBIT B

Recent changes to this privacy policy

The following list contains changes to this Privacy Policy that have occurred within the last 60 days:

- Online privacy policy created and added to this website.

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Products or services:

If you have questions, suggestions or concerns regarding our products or services please contact us at:

Name: RadioShack Customer Care

Phone: 817-415-3200 • 817-415-2303 (fax)

Email Form: <http://www.radioshack.com/helpdesk/index.jsp?display=store&subdisplay=contact&stillHaveQuestion=yes>

Postal Address: RadioShack Customer Care • 300 RadioShack Circle • MS CF7.101 • Fort Worth, Texas • 76102

Online privacy policy:

If you have questions, suggestions or concerns regarding our online privacy policy, please contact us at:

Name: RadioShack Online Privacy

Email: RadioShack.Online.Privacy@radioshack.com

Postal Address: RadioShack Riverfront • 300 RadioShack Circle • MS EF7.350.01 • Fort Worth, Texas • 76102 • Attn: Online Privacy

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(800) 843-7422

My Store:
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Store
Finder

My
Account

0 items
\$0.00



\$10 OFF FOR YOUR NEXT VISIT WITH ANY PURCHASE.



Safety, Security & Privacy

- Secure Shopping Guarantee
- Terms & Conditions
- **Privacy Policy**
- Verified by Visa
- MasterCard SecureCode

Effective Date: 1/12/04 - Current as of: 10/16/14 11:38:30 AM

Online Privacy Policy

The following Privacy Policy applies only to the RadioShack.com web site and information provided by you or otherwise collected online through RadioShack.com. For the privacy policies applicable to information collected in our stores or by other means, see the sign posted in stores titled, "We Value Our Relationship."

We are concerned about privacy

Your privacy is very important to us. RadioShack respects and protects the privacy of its visitors. In this document, we explain how we use the information you supply us. If we update our privacy policy, all revisions will be posted on this page. We reserve the right to change the privacy policy at any time.

Information collection and use

Two types of information may be collected when you visit our web site, information that you knowingly provide us (called personally identifiable information), and information that is obtained from your visit but is not directly associated with you (called non-personally identifiable information).

Personally identifiable information

Personally identifiable information may include information that you provide to us by requesting information, when registering for special offers or programs or when you purchase products online. This may include your name, address (including billing and shipping addresses), telephone number, e-mail address, organization, city, state and zip code. We may use this information, to process and ship orders, to contact you about the status of your order, to contact you with answers to your questions, or to provide information about new and exciting products, services, promotions and corporate-related information. We may use mailings, telephone calls and e-mail to contact you.

You also may create an account through RadioShack.com at any time by providing your email address and creating a unique password. An account is not required to visit our site or to place an order through RadioShack.com. Creating an account allows you to save order information, order history, track the status of your orders and set your ordering preferences. For your privacy and security, we do not store credit card or Gift Card numbers in your account. You may change saved account information at anytime. Simply visit the Your Account page, log in with your email address and password.

For those customers who purchase products from us online, additional personally identifiable information such as credit card information will be collected. This information is collected in order to process your order.

For those customers who register for special email offerings, we may use the zip code you provided to email special offers that apply only to your area.

We are committed to the protection of the privacy of our customers and visitors. While in the checkout process of our online store, we make use of 128 bit encryption via digital IDs provided and certified by VeriSign, Inc. These IDs enable our commerce site to conduct authenticated, strongly encrypted online commerce. Customers can submit credit card numbers or other personal information to our site with the assurance that they are doing business with us (not an impostor's "spoof" of our site) and that the information which they are sending to us cannot be intercepted or decrypted by anyone else.

Requesting removal of your information

If you have registered for special e-mail offerings, you may unsubscribe from the program, by visiting the e-mail unsubscribe page or click on the links available at the bottom of any of these special offer e-mails. You may also request the removal of your information by contacting us via e-mail.

If you wish to receive more personalized information from RadioShack or change anything about your profile such as your interests or e-mail format, please click on the links available at the bottom of any of these special offer e-mails or visit the Your Account page.

Non-personally identifiable information

Non-personally identifiable information is collected without any direct association with you specifically. In the normal course of using RadioShack.com, we may collect information about your habits and usage of our sites.

Our web sites may contain technologies known as action tags, web beacons or 1x1 pixel gifs. These employ a common internet technique used to compile aggregated statistics about the effectiveness of our advertising campaigns, common navigation paths within the sites, types of browsers and platforms that access the sites and the average connection speeds used to connect

to the sites. This information is used to enhance the online experience of our customers. These technologies do not use or collect personally identifiable information, such as names or address, and do not link online actions to an identifiable person.

An IP address is a number that is assigned to your computer when you are using the Internet. Web servers automatically identify your computer by its IP address. RadioShack collects IP addresses for the purposes of system administration, to report aggregated information and to audit the use of our site. If we are required to do so by law, for example, in response to a court order or subpoena, we will provide these IP addresses to the proper authorities.

Information sharing and disclosure

Agents, employees and contractors of RadioShack who have access to personally identifiable information are required to protect this information in a manner that is consistent with this Privacy Policy and the high standards of the corporation.

- Information about you specifically will not be used for any purpose other than to carry out the services you requested from RadioShack and its affiliates. All of our affiliates have agreed to maintain the security and confidentiality of the information we provide to them.
- We will not sell or rent your personally identifiable information to anyone at any time.
- We will not use any personal information beyond what is necessary to assist us in delivering to you the services you have requested.
- We may send personally identifiable information about you to other organizations when:
 - We have your consent to share the information (you will be provided the opportunity to opt-out if you desire). For example, if you opt-in for emails we will share this information with our marketing provider.
 - We need to share your information in order to provide the product or service you have requested. For example, we need to share information with credit card providers and shippers to bill and ship the product you requested.
 - We are required to do so by law, for example, in response to a court order or subpoena.

Use of Cookies and Applets

Cookies and applets are small text files that are placed on your computer's hard drive by our servers to identify your computer. Cookies and applets are only read by the domain that placed them there and are unable to execute any code or virus. We may use cookies or applets to recognize you when you visit our sites, to personalize your experience and generally to serve you better. We do not use cookies or applets to track your activities once you leave our web site.

You may delete these files from your computer at any time. You can set your web browser to notify you if such information is about to be placed on your computer, and you can choose the option in your web browser to refuse it. If you refuse the information, you may not be able to make full use of the features on our web site.

Kids under 13 years of age

RadioShack.com does not seek to collect identification information about kids under 13 years of age. If we discover such information, we will delete it. Thus, we typically retain no identifiable information about kids. However, if a parent believes his/her child has provided us information, simply call and that we delete it. In order for us to find the information in our databases, you will need to provide us with the following information which will only be used to search our databases and deliver confirmation to you:

- Parent's Name
- Address
- Telephone Number
- Email Address (for confirmation)
- The name of the child (if you suspect a nickname was used, please provide it)
- If the child shares time at two addresses, you will need to provide us the second address also, along with any email addresses for the child.

In order to request deletion of identifiable information that RadioShack may have unintentionally collected about your child, please call **(817)415-3200**. Please inform the service agent that you wish to delete your child's information, and supply the service agent with the necessary information as stated above.

Confirmation that information which identifies your child has been deleted will be delivered to you by e-mail, regular mail, or telephone.

PLEASE NOTE: Deleting your child's information will likely make it impossible for us to notify you or your child in the event of a recall of a product he or she purchased in violation of our policies. So if your child purchased ANYTHING from us in spite of our efforts to prevent it, you may not wish to delete all information. Instead, you may simply request that we correct the information by correcting the name in our records to your name rather than your child's.

In consideration of young users, it is our intention to adhere to the Better Business Bureau's "Children Advertising Review Unit" (CARU) guidelines, including its guidelines on advertising. When you communicate with RadioShack, we make every effort to ensure your privacy and safety. As an added precaution, however, we still encourage parents to monitor their child's use of the Internet, and to help us protect their privacy by reminding them never to exchange personal information with this or any other web site without the assistance or express written permission of a parent or other responsible adult.

Links to and from RadioShack.com

Our web site contains links to and from other web sites that are not operated or controlled by RadioShack. WE ARE NOT RESPONSIBLE FOR THE PRIVACY PRACTICES OF, AND USE OF CHILDREN'S PERSONAL INFORMATION BY, WEB SITES THAT WE DO NOT OPERATE, and our privacy policy does not apply to these sites.

"Email a Friend" or "Email your Wish List"

If you elect to use our "Email a Friend" or "Email your Wish List" service for informing a friend about our site or products you are interested in, we may ask for your email address, your name, the email address and the name of your friend. RadioShack will automatically send the friend a one-time email on your behalf. RadioShack does not store this information. It is only used for the sole purpose of sending this one time email.

We will not condition access or participation in an activity

RadioShack will not condition a user's access or participation in an activity on giving out more personal information than what is considered reasonably necessary for the activity.

Co-branded offers

From time-to-time RadioShack.com provides some co-branded offers, for example to apply for a RadioShack Credit Card or to manage your AnswersPlus Account. In these cases the user is directed to another party's website. The use of data collected through that website is governed by its own privacy policies.

Sweepstakes and contests

From time-to-time, we may request information from you through contests or sweepstakes. Participation in these contests or sweepstakes is completely voluntary and the user has a choice whether or not to participate. Information requested may include contact information (such as name, address and phone number). Contact information gathered from contests and sweepstakes will be used to notify the winners and award prizes. We use a third party to pick the contests and sweepstakes winners (please see the Information sharing and disclosure section for details on third parties). Demographic information such as the users birthdate may be requested, this is used to validate the age of the contestant when the rules of the contest specify a minimum age requirement. Users who enter the contest may also choose to receive marketing communications from RadioShack. The user may elect to "opt-out" of this communication at the bottom of each email or by visiting the Requesting removal of your information section of this policy.

How changes to the privacy policy will be communicated

If we decide to change our Privacy Policy, we will post those changes to this privacy statement, the homepage, and other places we deem appropriate so our users are always aware of what information we collect, how we use it, and under what circumstances, if any, we disclose it.

If however, we are going to use users' personally identifiable information in a manner different from that stated at the time of collection we will notify users by posting a notice on our web site for 30 days.

If users have questions or concerns regarding this statement, they should contact RadioShack Online Privacy by email RadioShack.Online.Privacy@radioshack.com.

Recent changes to this privacy policy

The following list contains changes to this Privacy Policy that have occurred within the last 60 days:

- Online privacy policy created and added to this website.

Contact Information Updated email address

Contact information

Products or services:

If you have questions, suggestions or concerns regarding our **products or services** please contact us at:

Name: RadioShack Customer Care

Phone: 817-415-3200 • 817-415-2303 (fax)

Email Form: <http://www.radioshack.com/helpdesk/index.jsp?display=store&subdisplay=contact&stillHaveQuestion=yes>

Postal Address: RadioShack Customer Care • 300 RadioShack Circle • MS CF7.101 • Fort Worth, Texas • 76102

Online privacy policy:

If you have questions, suggestions or concerns regarding our **online privacy policy**, please contact us at:

Name: RadioShack Online Privacy

Email: RadioShack.Online.Privacy@radioshack.com

Postal Address: RadioShack Riverfront • 300 RadioShack Circle • MS EF7.350.01 • Fort Worth, Texas • 76102 • Attn: Online Privacy

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[View Your Order History](#)
[How to Track Your Order](#)
[Manage Your Account](#)

[30-Day Money Back Guarantee](#)
[Return Instructions](#)
[Credit for Returns](#)

[Product Safety](#)
[Price Match Policy](#)
[Tech Channel](#)

Enter your email address

[SIGN UP](#)

[Special Offers, How-to's, Savings & More!](#)

[Help Center](#)
[Call: 1-800-843-7422](#)
[Español: 1-800-843-7422](#)
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[Franchise Opportunities](#)
[Commercial Sales](#)

TRIM AND SAFETY MARKS DO NOT PRINT

Sales, Returns & Refunds

For more details, please refer to the back of your sales receipt.

- **Returns:** The 30-day return period in the first sentence of 'Return Policy' on the back of the receipt, and on any store signage does not apply to wireless handsets, tablets, laptops, PCs, cameras, GPS and radar detectors—the applicable return period for these items is limited to 14 days. This return privilege does not affect your warranty rights.
- **Defective Items:** Defective items may be repaired or replaced within 90 days of purchase under RadioShack's Warranty Policy or within the manufacturer's warranty period, whichever is longer.
- **Credit Cards:** We accept RadioShack Credit Card, MasterCard, Visa, Discover and American Express. Sales are contingent on authorization of purchase by Credit Card issuer. Non-embossed, odd-shaped or mini cards which cannot be electronically authorized or imprinted will not be honored.
- **Checks:** Accepted on the condition that if a check is returned unpaid, we may automatically debit your checking account for the check amount, plus \$40 or the maximum returned check fee(s) permitted by local law. Payment by check is your agreement to these terms.
- **Price Information:** We work hard to post accurate prices and conditions of sale, but errors may occur. We reserve the right: to correct any typographical or other errors, inaccuracies and omissions; to cancel or refuse to accept any order based on erroneous or incomplete information; and to place reasonable limits on quantities.
- **Terms and Conditions Are Applied to Gift Cards.** See back of gift card for terms and conditions.

- Items paid for by personal or traveler's check
- Gift card sales
- Advance deposits and repairs
- Tax Adjust/Exempt sales
- Commercial Charge or Service Plan sales
- Sales with the installation or shipment of merchandise
- Sales for which the information is contractually required

Counter Valid 2/1/15-Ongoing 020115P150002-3BCA

- **Name & Address Collection:** Your name and address are needed for the following transactions:

Your name, address and original sales receipt are required for all refunds. If funds are not available in-store, a check will be issued from the RadioShack corporate office within 14 days of the return.

Protecting Customer Information

At RadioShack, we respect your privacy. We do not sell our mailing list.

The information you give us is treated with discretion and respect. We pride ourselves on not selling our private mailing list. From time to time, we may send you information from our company or from select, responsible companies that have joined with RadioShack to bring you special offers.

If you no longer wish to receive offers and information, please call us at 1-800-843-7422 or visit us at www.RadioShack.com.

Warranties

Applicable warranty information on your purchase usually can be found inside the box or packaging, as part of the owner's manual or instructions. In the event your purchase includes a warranty and there is a defect in the materials or workmanship, please review the warranty carefully for terms, conditions and exclusions. In some cases, the warranty may be with a manufacturer other than RadioShack. If so, to get the quickest assistance with your issue, you should contact that manufacturer directly (not RadioShack) for resolution.

To review the applicable warranty information on any product prior to making your purchase, please ask your Sales Associate for assistance.

By entering into a purchase or transaction, you expressly agree that, in the event of a breach: 1) RadioShack may limit your remedy to an exchange, gift card, refund or repair; and 2) RadioShack is not responsible for any liability, loss, or damage associated with any product or service, including the cost of cover, or other incidental or consequential damages.



radioshack

FILE INFO	Filename	p_15_0002_03b.indd	Trim	18.5" x 7.25"	Placed Graphics	Inks PMS 412 C PMS 7417 C Z_Watermark
	Print Time	12-30-2014 2:58 PM	Bleed	18.75" x 7.5"		
	Last Modified	12-29-2014 1:12 PM	PDF Scale	None		
	User/Prev. User	Tracy Rhodes / Vikki Stevens	Page Scale	1" = 1"		
	Workstation	TX5570AC512886	Page Count	1		
	PDF Creation	DALiM_INPUT / CS6	Postscript	Level 3		

IN-STORE SIGNAGE

(Florida; Base Version)

Your Check is Welcome

We will gladly accept your check upon the condition that you agree if your check is returned unpaid, merchant may automatically debit your checking account for the amount of the check, plus \$40 or the maximum returned check fee(s) permitted by local law. Your payment by check is your agreement to these terms.

Sales, Returns & Refunds

For more details, please refer to the back of your sales receipt.

- **Returns:** Some items purchased at RadioShack may be returned for exchange, credit or full or partial refund within 30 days of purchase.
- **Defective Items:** Defective items may be repaired or replaced within 90 days of purchase under RadioShack's Warranty Policy, or within the manufacturer's warranty period, whichever is longer.
- **Credit Cards:** We accept RadioShack AnswersPlus®, MasterCard, Visa, Discover and American Express. Sales are contingent on authorization of purchase by credit card issuer. Non-embossed, odd-shaped or mini cards which cannot be electronically authorized or imprinted will not be honored.
- **TERMS AND CONDITIONS ARE APPLIED TO GIFT CARDS.**
See back of Gift Card for terms and conditions
- **Name and Address Collection:** Your name and address are needed for the following transactions:
 - Items paid for by personal or traveler's check
 - Gift Card sales
 - Advance deposits and repairs
 - Tax Adjust/Exempt sales
 - Commercial Charge or Service Plan sales
 - Sales with the installation or shipment of merchandise
 - Sales where the information is contractually required

Your name, address and original sales receipt are required for all refunds. If funds are not available in-store, a check will be issued from the RadioShack corporate office within 14 days of the return.

**EXHIBIT
C**

We Respect Your Privacy

We Do Not Sell Our Mailing List

The information you give us is treated with discretion and respect. We pride ourselves on not selling our private mailing list. From time to time, we may send you information from our company or from select, responsible companies that may join with RadioShack to bring you special offers.

To receive a copy of our sales circular, please ask your Sales Associate for details or visit www.RadioShack.com.

If you no longer wish to receive offers and information, please call us at 1-800-843-7422 or visit us at www.RadioShack.com.

Thank you for shopping at RadioShack and thank you for helping us to serve you better.

Warranties

Applicable warranty information on your purchase usually can be found inside the box or packaging, as part of the owner's manual or instructions.

In the event your purchase includes a warranty and there is a defect in the materials or workmanship, please review the warranty carefully for terms, conditions and exclusions.

In some cases, the warranty may be with a manufacturer other than RadioShack. If so, to get the quickest assistance with your issue, you should contact that manufacturer directly (not RadioShack) for resolution.

To review the applicable warranty information on any product prior to making your purchase, please ask a Sales Associate for assistance.

EXHIBIT D

Jessica L. Rich
Office of the Director
Bureau of Consumer Protection

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

May 16, 2015

Elise Frejka, Esq.
Frejka PLLC
733 Third Avenue
New York, NY 10017

In Re: *RadioShack Corporation, et al.*, No. 15-10197 (BLS) (Bankr. D. Del.).

Dear Ms. Frejka:

For decades, the Federal Trade Commission (“FTC”) has acted to protect consumer privacy. Among other laws, the FTC enforces Section 5 of the Federal Trade Commission Act (“FTC Act”), which prohibits unfair or deceptive acts or practices. I am the Director of the FTC’s Bureau of Consumer Protection (“BCP”) and am writing to express BCP’s concerns¹ about the possible sale of certain consumer personal information currently in the possession of RadioShack Corporation (“RadioShack”) as part of the bankruptcy proceeding.² It is our understanding that this information is subject to a sale hearing before the Honorable Bankruptcy Judge Brendan L. Shannon on May 20, 2015. As the court-appointed Consumer Privacy Ombudsman, we request that you consider these comments when drafting your report and that you attach this letter to your report when you submit it to the court.

RadioShack and Its Privacy Policies

The facts as we understand them are as follows: RadioShack sold consumer electronics, including mobile devices, and other merchandise through brick-and-mortar stores and online. In the course of conducting its business, RadioShack collected personal information from millions of consumers, including name, physical mailing address (billing and shipping), telephone number, email address, credit or debit card number,³ and purchase history⁴ for over 117 million

¹ Please note that the views expressed herein do not necessarily reflect the views of the Federal Trade Commission or any individual Commissioner.

² *In re RadioShack Corporation, et al.*, No. 15-10197 (BLS) (Bankr. D. Del.). For purposes of this letter, RadioShack is defined to include RadioShack Corporation and its seventeen affiliated debtors in their jointly administered Chapter 11 bankruptcy cases.

³ RadioShack has represented that credit and debit card information in its possession was modified through marking or hashing after 120 days, thereby making it unreadable.

customers. RadioShack states that its current database contains consumer information collected over many years and that the overall accuracy of the data is uncertain, as many of the data entries may be duplicates or not current.

RadioShack collected this information from consumers under one of at least two different privacy policies it has disclosed during bankruptcy proceedings. The first, published on the www.radioshack.com website at the petition date of the bankruptcy filing, states in relevant part:

Personally identifiable information

Personally identifiable information may include information that you provide to us by requesting information, when registering for special offers or programs or when you purchase products online. This may include your name, address (including billing and shipping addresses), telephone number, e-mail address, organization, city, state and zip code. We may use this information, to process and ship orders, to contact you about the status of your order, to contact you with answers to your questions, or to provide information about new and exciting products, services, promotions and corporate-related information. We may use mailings, telephone calls and e-mail to contact you.

Information sharing and disclosure

Agents, employees and contractors of RadioShack who have access to personally identifiable information are required to protect this information in a manner that is consistent with this Privacy Policy and the high standards of the corporation.

- Information about you specifically will not be used for any purpose other than to carry out the services you requested from RadioShack and its affiliates. All of our affiliates have agreed to maintain the security and confidentiality of the information we provide to them.
- **We will not sell or rent your personally identifiable information to anyone at any time.**⁵
- We will not use any personal information beyond what is necessary to assist us in delivering to you the services you have requested.
- We may send personally identifiable information about you to other organizations when:
 - We have your consent to share the information (you will be provided the opportunity to opt-out if you desire). For example, if you opt-in for emails we will share this information with our marketing provider.

⁴ RadioShack has represented that purchase history was retained for a period of three years unless the consumer obtained a service plan or warranty, in which case the purchase history was retained indefinitely. During the last five years, however, RadioShack has retained all purchase history to comply with litigation holds.

⁵ This statement has appeared on a version of the radioshack.com privacy policy since at least April 2004.

- We need to share your information in order to provide the product or service you have requested. For example, we need to share information with credit card providers and shippers to bill and ship the product you requested.
- We are required to do so by law, for example, in response to a court order or subpoena.

(Emphasis added).⁶

Another RadioShack privacy policy, displayed to consumers on various signage in RadioShack stores, contained similar language restricting the sale of personal information:

We Respect Your Privacy

We Do Not Sell Our Mailing List

The information you give us is treated with discretion and respect. **We pride ourselves on not selling our private mailing list.** From time to time, we may send you information from our company or from select, responsible companies that may join with RadioShack to bring you special offers.

If you no longer wish to receive offers and information, please call us at 1-800-843-7422 or visit us at www.RadioShack.com. (Emphasis added).⁷

For the period covered by these privacy policies, RadioShack thus clearly and expressly represented that customer information would not be rented or sold to third parties.

The representations RadioShack made to its customers about the privacy of their information, including name, address, telephone number, email address, and purchase history, would likely be considered very important to many customers. We understand that the purchase history for sale from the RadioShack database includes 21 categories of information.⁸

⁶ RadioShack Online Privacy Policy, 2014, *available at* <http://www.radioshack.com/privacy-policy/privacy.html>.

⁷ See STATE OF TEXAS'S LIMITED OBJECTION TO SALE OF PERSONALLY IDENTIFIABLE INFORMATION OF ONE HUNDRED SEVENTEEN MILLION CONSUMERS, ECF Dkt. No. 1393, Exh. C.

⁸ The Commission has acted in previous instances to address privacy issues presented by the sale or disclosure of purchase history information that is sensitive. See *FTC v. Toysmart*, No. 00-11341-RGS (D. Mass. 2000), *available at* <https://www.ftc.gov/enforcement/cases-proceedings/x000075/toysmartcom-llc-toysmartcom-inc> (consent order relating to sale in bankruptcy of children's information, including shopping preferences); *In the Matter of MTS, Inc., d/b/a Tower Records/Books/Video*, No. C-4110 (F.T.C. 2004) (consent order settling charges that Tower Records misrepresented the privacy, confidentiality, and security of consumers' personal information, including past purchase histories, on its website); Letter from Maneesha Mithal, Associate Director, Division of Privacy and Identity Protection to Reed Freeman (Mar. 12, 2010), *available at* <http://www.ftc.gov/os/closings/100312netflixletter.pdf> (letter to counsel for Netflix, Inc. closing staff investigation regarding concern that release of movie viewing datasets could be re-identified and expose customer identity and film viewing histories and preferences); and Letter from David C. Vladeck, Director, Bureau of Consumer Protection to Jane Horvath, Google, Inc. (Sept. 2, 2009), *available at* <http://www.ftc.gov/os/closings/090903horvathletter.pdf> (expressing concern regarding potential online behavioral

Consumers who provided their personal information to RadioShack would likely be very concerned if it were to be transferred without restriction to an unknown purchaser for unknown uses.

Potential Sale or Transfer of Personal Information

We understand that RadioShack's customer information constitutes a potentially valuable asset. We are concerned, however, that a sale or transfer of the personal information of RadioShack's customers would contravene RadioShack's express promise not to sell or rent such information and could constitute a deceptive or unfair practice under Section 5 of the FTC Act.⁹

The Commission has brought many cases alleging that the failure to adhere to promises about information privacy constitute a deceptive practice under the FTC Act.¹⁰ These cases include *FTC v. Toysmart*,¹¹ in which the Commission sued an online toy retailer which had filed for bankruptcy and sought to auction the personal information it collected from its customers. The Commission alleged that the sale of personal information constituted a deceptive practice because the company had represented in its privacy policy that such information would never be shared with third parties.¹²

We have similar concerns about the potential deceptive nature of the transfer of customer information in this case. We recognize, however, that bankruptcy presents special

advertising or secondary use of consumer search, purchase, and reading history associated with Google Books project).

⁹ 15 U.S.C. § 45.

¹⁰ See, e.g., *In the Matter of Snapchat, Inc.*, No. C-4501 (F.T.C. 2014) (consent order), available at <http://www.ftc.gov/enforcement/cases-proceedings/132-3078/snapchat-inc-matter>; *Facebook, Inc.*, No. C-4365 (F.T.C. 2012) (consent order), available at <http://www.ftc.gov/os/caselist/0923184/index.shtm>; *FTC v. ControlScan, Inc.*, No. 1:10-cv-00532-JEC (N.D. Ga. 2010) (Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief), available at <http://www.ftc.gov/os/caselist/0723165/index.shtm>; *In the Matter of Google, Inc.*, No. C-4336 (F.T.C. 2011) (consent order), available at <http://www.ftc.gov/os/caselist/1023136/index.shtm>; *In the Matter of Chitika, Inc.*, No. C-4324 (F.T.C. 2011) (consent order), available at <http://www.ftc.gov/os/caselist/1023087/110617chitikacmpt.pdf>.

¹¹ First Amended Complaint for Permanent Injunction and Other Equitable Relief, No. 00-11341-RGS (D. Mass. July 21, 2000), available at <http://www.ftc.gov/os/2000/07/toysmartcomplaint.htm>.

¹² *Id.* Since the *Toysmart* case, the Bureau has sent letters similar to this one, advocating on behalf of consumers whose personal information was subject to potential transfer or sale in bankruptcy proceedings. See Letter from Jessica L. Rich, Director, FTC's Bureau of Consumer Protection to The Honorable Shelley C. Chapman, United States Bankruptcy Judge, Bankruptcy Court for the Southern District of New York. (May 23, 2014), available at <https://www.ftc.gov/public-statements/2014/05/commission-letter-jessica-l-rich-director-bureau-consumer-protection-filed> (letter to bankruptcy court judge expressing concern that potential sale of student personal information may violate Bankruptcy Code and Section 5 of the FTC Act); Letter from David C. Vladeck, Director, FTC's Bureau of Consumer Protection to Michael St. Patrick Baxter, Esq., et al. (Sept. 14, 2011), available at http://www.ftc.gov/sites/default/files/documents/public_statements/protection-personal-customer-information-held-borders-group/110914bordersletter.pdf (letter to bankruptcy court-appointed Consumer Privacy Ombudsman noting potential Section 5 concerns associated with selling personal information in a manner inconsistent with privacy policy representations); Letter from David C. Vladeck, Director, FTC's Bureau of Consumer Protection to Peter Larson, et al. (July 1, 2010), available at <http://www.ftc.gov/os/closings/100712xy.pdf> (setting forth concerns about the transfer of personal information about subscribers to gay male youth-oriented XY Magazine to a new owner of the business).

circumstances, including the interest in allowing a company to get back on its feet – or alternatively, to marshal remaining assets for its creditors – consistent with any promises made to customers. *Toysmart* is instructive on this point. There, the Commission entered into a settlement with the company allowing the transfer of customer information under certain limited circumstances: 1) the buyer had to agree not to sell customer information as a standalone asset, but instead to sell it as part of a larger group of assets, including trademarks and online content; 2) the buyer had to be an entity that concentrated its business in the family commerce market, involving the areas of education, toys, learning, home and/or instruction (*i.e.*, the same line of business that Toysmart had been in); 3) the buyer had to agree to treat the personal information in accordance with the terms of Toysmart’s privacy policy; and 4) the buyer had to agree to seek affirmative consent before making any changes to the policy that affected information gathered under the Toysmart policy. These conditions served to protect consumer interests by ensuring that the data would be used consistent with Toysmart’s promises by an entity that was essentially operating as a new owner of the business, as opposed to a “third party” who was merely the highest bidder in a winner-take-all auction that may not have a reputational interest in handling the information in the same manner.

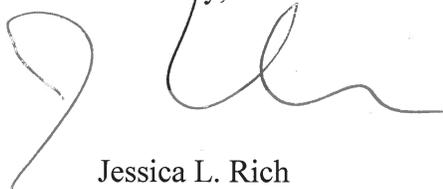
We believe the *Toysmart* precedent is an appropriate model to apply here to third parties. In this case, consumers provided personal information to RadioShack with the expectation that RadioShack might use it, for example, to make new offers of interest to consumers, but not to sell or rent it. As in *Toysmart*, our concerns about the transfer of customer information inconsistent with privacy promises would be greatly diminished if the following conditions were met:

- The customer information is not sold as a standalone asset;
- The buyer is engaged in substantially the same lines of business as RadioShack;
- The buyer expressly agrees to be bound by and adhere to the terms of RadioShack’s privacy policies as to the personal information acquired from RadioShack; and
- The buyer agrees to obtain affirmative consent from consumers for any material changes to the policy that affect information collected under the RadioShack policies.

As an alternative, we believe it would be appropriate for RadioShack to obtain affirmative consent from its customers before it transfers the data. The consent process would allow customers to make their own determination as to whether a transfer of their information would be acceptable to them. For consumers who do not consent, their data would be purged.

Thank you for this opportunity to express our concerns. We appreciate your consideration of these comments. If you have any additional questions about this matter, please contact Jamie Hine at (202) 326-2188 or jhine@ftc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'JL Rich', written over the word 'Sincerely,'.

Jessica L. Rich