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Congress of the United States

House of Representatives

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June 11, 2014

The Honorable Edith Ramirez
Chairwoman
U.S. Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Dear Madam Chairwoman:

The Committee on Oversight and Government Reform is investigating the activities of Tiversa, Inc., a company upon which the Federal Trade Commission (“FTC”) relied as a source of information in its enforcement action against LabMD, Inc.¹ Information the Committee recently obtained indicates that the testimony provided by company officials to federal government entities may not have been truthful.

The Committee’s ongoing investigation has shown that competing claims exist about the culpability of those responsible for the dissemination of false information. It is clear at this point, however, that the information provided to the FTC is incomplete and inaccurate. A witness in the proceedings against LabMD, Inc. recently testified to the Committee that he provided incomplete or inaccurate information to the FTC regarding the origin of a “1718” document. In a transcribed interview with Committee staff, Tiversa’s Chief Executive Officer, Robert Boback, testified that he received “incomplete information with regard to my testimony of FTC and LabMD.”² He further stated that the “the original source of the disclosure was incomplete.”³ Mr. Boback testified:

Q How did you determine that it was incomplete or that there was a problem with the spread analysis?

A I had . . . [Tiversa Employee A], perform[] an analysis, again, remember, data store versus the peer to peer. So the information in the data store, [Tiversa Employee B] performed another analysis to say, what was the original source of the file from LabMD and what

¹ See *In re LabMD, Inc.*, No. 9357 (Fed. Trade Comm’n Aug. 29, 2013), available at <http://www.ftc.gov/sites/default/files/documents/cases/2013/08/130829labmdpart3.pdf>.

² Transcribed Interview of Robert Boback, Transcript at 129-130 (June 5, 2014) [hereinafter Boback Tr.].

³ *Id.*

was the disclosure, a full analysis of it which then provided to me, which expanded upon what [Tiversa Employee B] had told me when I asked [Tiversa Employee B] prior to my testimony. And the only reason why I asked [Tiversa Employee B] in the first place was because [Tiversa Employee B] was the analyst on it at the time when it was found, so I asked the analyst who was most familiar with this. I didn't know [Tiversa Employee B] was going to provide me with less than accurate information.

* * *

Q So at the time that you were first made aware of the 1718 document in April, May of 2008, Tiversa employees had not conducted the spread analysis?

A No.

Q And you did not know the original source of the 1718 document?

A I did not. No.

* * *

Q Did there come a point at which a Tiversa employee determined who the original source of the 1718 document was?

A Well, that's – yes. A Tiversa employee told me who the original source was . . . just before I testified . . . in the deposition [in the FTC LabMD case] in November of last year. And, subsequently, we have done a new search and found that the origin was different than what was provided to me . . . in November.

The Committee brings this matter to your attention because this information bears directly on the ongoing proceeding against LabMD, Inc. The Committee is currently considering next steps with regard to its own investigation, including the possibility of holding hearings, agreeing to hear certain testimony in executive session, and, based on information provided, to immunize certain future testimony pursuant to 18 U.S.C. § 6005. The Committee may request documents and access to relevant FTC witnesses. It is my expectation that you and your staff will cooperate fully with any subsequent requests for documents or transcribed witness interviews.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at “any time” investigate “any matter” as set forth in House Rule X.

The Honorable Edith Ramirez
June 11, 2014
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If you have any questions, please contact the Committee staff at (202) 225-5074.
Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Darrell Issa", with a large, sweeping flourish extending to the right.

Darrell Issa
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
William A. Sherman II, Counsel, LabMD, Inc.
Laura Riposo VanDruff, Complain Counsel, U.S. Federal Trade Commission
William A. Burck, Quinn Emanuel Urquhart & Sullivan LLP