

FILED



2:55 pm, 12/20/07

Stephan Harris  
Clerk of Court

UNITED STATES DISTRICT COURT  
DISTRICT OF WYOMING

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FEDERAL TRADE COMMISSION,	)	
Plaintiff,	)	No. 06CV0105D
v.	)	ORDER AND JUDGMENT FOR
	)	PERMANENT INJUNCTION AND
ACCUSEARCH, INC. d/b/a Abika.com,	)	OTHER EQUITABLE RELIEF
and JAY PATEL,	)	
Defendants.	)	

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**ORDER AND JUDGMENT**

The Court entered judgment as to liability in favor of the Federal Trade Commission on September 28, 2007. After additional briefing and argument by the parties, the Court finds that entry of the Order for Permanent Injunction and Equitable Relief is in the public interest.

**DEFINITIONS**

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

1. "Defendants" means AccuSearch, Inc., *d/b/a Abika.com*, and Jay Patel, individually and as an officer of Accusearch, Inc.
  
2. "Customer phone records" means (a) information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and (b) information contained in the bills pertaining to telephone exchange service or telephone toll

service received by a customer of a carrier, which includes, but is not limited to, telephone call detail records,

3. “Consumer personal information” means any individually identifiable information concerning a consumer, including, but not limited to: (a) an unpublished or unlisted wire line or wireless phone number; (b) an unpublished or unlisted physical or mailing address, including street name and name of city or town, Post Office Box number, or Private Mailbox number; (c) an email address or other online contact information, such as an instant messaging user identifier or a screen name that reveals an individual’s email address; (d) a Social Security number in whole or in part; (e) credit and/or debit card information, including credit and/or debit card number, expiration date, data stored on the magnetic strip of a credit or debit card, and transaction detail records; (f) bank account information or transaction records, including the ABA routing number, account number, check number, and transaction detail records; (g) a driver’s license number; or (h) any other information from or about an individual consumer that is combined with (a) through (g) above.

4. “Publicly available information” shall have the meaning set forth in 16 C.F.R. § 313.3(p).

5. “Reasonable basis.”

You have a “reasonable basis” to believe that information is lawfully made available to the general public if you have taken reasonable steps to determine: (I) That the information is of the type that is available to the general public; and (ii) Whether an individual can direct that the information not be made available to the general public, and if so, that your consumer has not

done so.

## **ORDER**

### **I. BAN ON SALE OF CUSTOMER PHONE RECORDS**

**IT IS THEREFORE ORDERED** that defendants, their successors and assigns, and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any person, trust, corporation, subsidiary, division, or other device, are hereby permanently restrained and enjoined from obtaining, causing others to obtain, marketing, or selling customer phone records and consumer personal information that is derived from customer phone records; *provided, however* that defendants shall not be prohibited from obtaining customer phone records or consumer personal information that is derived from customer phone records if clearly permitted by any law, regulation, or lawful court order.

### **II. PROHIBITED BUSINESS ACTIVITIES**

**IT IS FURTHER ORDERED** that defendants, their successors and assigns, and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any person, trust, corporation, subsidiary, division, or other device, in connection with the obtaining, advertising, promoting, marketing, offering for sale, sale, or distribution of consumer personal information, unless otherwise authorized pursuant to any law, regulation, or lawful court order, are hereby permanently restrained and enjoined from:

A. Purchasing, marketing, offering for sale, or selling, or causing another to purchase, market, offer for sale, or sell consumer personal information without the express written permission of the person whose personal information is obtained, marketed, offered for sale, or sold, unless such consumer personal information was lawfully obtained from publicly available information;

B. Making false or deceptive statements or representations, including but not limited to, impersonating any person or entity, directly or by implication, to any person or entity in order to obtain consumer personal information; and

C. Requesting any person or entity to purchase consumer personal information relating to any third person, or otherwise purchasing consumer personal information from any person or entity, unless the person making such a request has a reasonable basis to believe the means by which the other person or entity will obtain the information are lawful and not in violation of any law or regulation or of this Order including, without limitation, Section II.A and B of this Order.

### **III. NOTIFICATION**

#### **IT IS FURTHER ORDERED that:**

A. The FTC may provide, to the extent practicable, a notice to individuals whose customer phone records defendants sold from February 2003 to the date of entry of this Order, informing the individuals that defendants acquired and sold their phone records, the dates defendants sold the records, and the identity of the persons to whom defendants sold the records.

The notice may also provide guidance on how to respond to the disclosure or loss of sensitive consumer information, including phone records;

B. Defendants, within thirty (30) days from the date of entry of this Order, shall provide to the FTC their data relating to the individual consumers whose phone records defendants sold from February 2003 to the date of entry of this Order, to the extent that such data has not been previously provided. Such data shall include all information in defendants' possession, custody or control pertaining to individual consumers, including, but not limited to:

1. telephone number(s) for which the records were provided;
2. postal address(es);
3. electronic mail address(es);
4. current telephone number(s);
5. date(s) phone records were sold; and
6. person(s) who purchased the phone records from defendants.

Defendants shall assist the FTC in reading and understanding the data, including without limitation by providing information about the file structure and format of the data; and

C. Upon confirmation by the FTC that it has received in a usable format the information required under Section III.B, defendants shall immediately destroy all information in their possession, custody or control relating to the individuals whose phone records were sold including, but not limited to, any phone records.

#### **IV. MONETARY RELIEF**

**IT IS FURTHER ORDERED** that:

A. Judgment is hereby entered against defendants, jointly and severally, in the amount of \$199,692.71;

B. Within ten (10) days of receipt of notice of entry of this Order, defendants shall transfer payment in the form of a certified check made payable to and delivered to the Commission, or by wire transfer in accordance with directions provided by the Commission. Any funds received by the FTC pursuant to this Section shall be deposited into a fund administered by the Commission or its agent to be used to for such equitable relief, including but not limited to disgorgement to the U.S. Treasury of ill-gotten monies or consumer information remedies as the FTC determines to be reasonably related to defendants' practices alleged in the Complaint. Defendants shall have no right to challenge the FTC's choice of remedies under this Section IV.

C. The judgment entered pursuant to this Section IV is equitable monetary relief, solely remedial in nature, and not a fine, penalty, punitive assessment or forfeiture; and

D. In the event of any default in any payment or transfer to the Commission set forth in this Section, the amount of \$199,692.71, less the sum of any payments made to the Commission pursuant to this Section, shall become immediately due and payable by defendants, and interest computed pursuant to 28 U.S.C. § 1961, as amended, shall immediately begin to accrue on the unpaid balance.

#### **V. DISTRIBUTION OF ORDER BY DEFENDANTS**

**IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry

of this Order, defendants shall deliver copies of the Order as directed below:

A. Defendant AccuSearch, Inc., must deliver a copy of this Order to all of its principals, officers, directors, and managers. Defendant AccuSearch, Inc., also must deliver copies of this Order to all of its employees, agents, and representatives who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within five (5) days of service of this Order upon defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities;

B. For any business which engages in conduct related to the subject matter of this Order and that defendant Jay Patel controls, directly or indirectly, or in which he has a majority ownership interest, defendant Jay Patel must deliver a copy of this Order to all principals, officers, directors, and managers of that business. Defendant Jay Patel must also deliver copies of this Order to all employees, agents, and representatives of that business. For current personnel, delivery shall be within ten (10) days of service of this Order upon defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities;

C. For any business where defendant Jay Patel is not a controlling person, but otherwise engages in conduct related to the subject matter of this Order, defendant Jay Patel must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct; and

D. Defendants must secure a written statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Section V. Written acknowledgment of receipt in the form of email correspondence is

sufficient. If a person receiving a copy of the Order pursuant to Section V refuses to acknowledge receipt, defendant Jay Patel may submit a signed affidavit stating that a copy of the Order has been provided to the person but that the person refuses to acknowledge receipt thereof.

## VI. RECORD-KEEPING PROVISIONS

**IT IS FURTHER ORDERED** that, for a period of four (4) years from the date of entry of this Order, each defendant, in connection with any business where (1) such defendant is the majority owner, or directly or indirectly manages or controls the business, and (2) the business is engaged in or assists others engaged in conduct related to the subject matter of the Order, and their agents, employees, officers, corporations, successors and assigns, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from failing to create and retain the following records:

A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;

B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;

C. Customer files containing the names, addresses, phone numbers, dollar amounts



paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;

D. Written complaints and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests;

E. Copies of all websites, sales scripts, training materials, advertisements, or other marketing materials, and records that accurately reflect the time periods during which such materials were used and the persons and business entities that used such materials;

F. To the extent consumer personal information is purchased through any third party, records that accurately reflect the name, address, and telephone number of such third party including, but not limited to, copies of all contracts and correspondence (other than correspondence that contains consumer personal information) between any defendant and such third party; and

G. All records and documents necessary to demonstrate full compliance with each provision of this Order including, but not limited to, copies of acknowledgments of receipt of this Order required by Section V.D of this Order and all reports submitted to the FTC pursuant to Section VII of this Order.

## **VII. COMPLIANCE REPORTING BY DEFENDANTS**

**IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this Order may be monitored:

A. For a period of three (3) years from the date of entry of this Order, defendant Jay Patel shall comply with the following:

1. Defendant Jay Patel shall notify the FTC of the following:

a. Any changes in his residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;

b. Any changes in his employment status (including self-employment), and any change in his ownership in any business entity, within ten (10) days of the date of such change. Such notice shall include the name and address of each business that he is affiliated with, employed by, creates or forms, or performs services for; a statement of the nature of the business; and a statement of his duties and responsibilities in connection with the business or employment; and

c. Any changes in his name or use of any aliases or fictitious names;

2. Defendants shall notify the FTC of any changes in the corporate structure of defendant AccuSearch, Inc., or any business entity that defendant Jay Patel directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address; at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation

about which the defendants learn less than thirty (30) days prior to the date such action is to take place, defendants shall notify the FTC as soon as is practicable after obtaining such knowledge;

B. One hundred eighty (180) days after the date of entry of this Order, each defendant shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which each has complied and is complying with this Order. This report shall include, but not be limited to:

1. For defendant Jay Patel:
  - a. His then-current residence address, mailing addresses, and telephone numbers;
  - b. His then-current employment and business addresses and telephone numbers, a description of the business activities of each such employer or business, and his title and responsibilities for each such employer or business; and
  - c. Any other changes required to be reported under Section VII.A of this Order;
2. For all defendants:
  - a. A copy of each acknowledgment of receipt of this Order, obtained pursuant to Section V.D of this Order; and
  - b. Any other changes required to be reported under Section VII.A of this Order;

C. For the purposes of this Order, defendants shall, unless otherwise directed by the FTC's authorized representatives, mail all written notifications to the FTC to:

Associate Director for Enforcement  
Federal Trade Commission  
600 Pennsylvania Avenue NW  
Room NJ2122  
Washington, DC 20580  
Re: FTC v. AccuSearch, Inc.

### **VIII. COMPLIANCE MONITORING**

**IT IS FURTHER ORDERED** that, for the purpose of monitoring and investigating compliance with any provision of this Order,

A. Within ten (10) days of receipt of written notice from a representative of the FTC, defendants shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in defendants' possession, or direct or indirect control, to inspect the business operation;

B. In addition, the FTC is authorized to monitor compliance with this Order by all other lawful means including, but not limited to, the following:

1. Obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45; and

2. Posing as consumers and suppliers to: defendants, defendants' employees, or any other entity managed or controlled, in whole or in part, by defendants, without the

necessity of identification or prior notice; and

C. Defendants shall permit representatives of the FTC to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

*Provided* however, that nothing in this Order shall limit the FTC's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

**IX. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS**

**IT IS FURTHER ORDERED** that each defendant, within ten (10) business days of receipt of this Order, as entered by the Court, must submit to the FTC a truthful sworn statement acknowledging receipt of this Order.

**X. RETENTION OF JURISDICTION**

**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

**IT IS SO ORDERED, this 20<sup>th</sup> day of December, 2007.**



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UNITED STATES DISTRICT JUDGE