

**ORIGINAL**

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

VICTOR L. GUZZETTA,

d/b/a SMART DATA SYSTEMS,

Defendant.

**FILED**

IN CLERK'S OFFICE  
U.S. DISTRICT COURT, E.D.N.Y.

★ APR 17 2001 ★

BROOKLYN OFFICE

**CV 01 2335**

**TRAGER, IL**

**CHREN**

Civil Action No.

**[PROPOSED] EX PARTE TEMPORARY RESTRAINING ORDER,  
ASSET FREEZE, AND ORDER TO SHOW CAUSE  
WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), having filed its complaint for a permanent injunction and other equitable relief in this matter, pursuant to Sections 5(a) and 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a) and 53(b), and Section 522(a) of the Gramm-Leach-Bliley Act (“GLB Act”), 15 U.S.C. § 6822(a), and having moved *ex parte* for a Temporary Restraining Order pursuant to Rule 65 of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 65, and the Court having considered the complaint, declarations, exhibits, and memorandum of law filed in support thereof, and now being advised in the premises finds that:

1. This Court has jurisdiction of the subject matter of this case and there is good cause to believe it will have jurisdiction of all parties hereto;
2. There is good cause to believe that the Commission will ultimately succeed in establishing that Defendant Victor L. Guzzetta, doing business as Smart Data Systems, has engaged and is likely to engage in acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and Section 521 of the GLB Act, 15 U.S.C. § 6821;
3. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for consumers in the form of monetary redress or disgorgement of ill-gotten gains will occur from the sale, transfer, or other disposition or concealment by Defendant of his assets or business records unless Defendant is immediately restrained and enjoined by Order of this Court.

There is thus good cause for relieving the Commission of the duty to provide Defendant with prior notice of the Commission's motion;

4. Weighing the equities and considering Plaintiff's likelihood of ultimate success, a temporary restraining order with asset freeze and other equitable relief is in the public interest; and
5. No security is required of any agency of the United States for issuance of a restraining order. Fed. R. Civ. P. 65(c).

### **DEFINITIONS**

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

1. "Person" means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.
2. "Defendant" means Victor L. Guzzetta, doing business as Smart Data Systems, his assigns, agents, servants, employees or affiliates, and those persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division or other device.
3. The terms "customer," "customer information of a financial institution," and "financial institution" have the same meanings as set out in Sections 527(1), 527(2), and 527(4)(A) of the GLB Act, respectively, 15 U.S.C. §§ 6827(1), 6827(2), and 6827(4)(A).
4. "Asset" or "Assets" means all real and personal property of Defendant, or held for the benefit of Defendant, including but not limited to "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," or "notes," (as these terms are

defined in the Uniform Commercial Code), and all chattels, leaseholds, contracts, mails or other deliveries, shares of stock, lists of consumers, accounts, lines of credits, receivables and all cash, wherever located.

5. "Document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rules of Civil Procedure 34(a) and includes writings, drawings, graphs, charts, photographs, audio, and video recordings, computer records, and other data compilations from which the information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

#### **I. PROHIBITED BUSINESS ACTIVITIES**

**IT IS THEREFORE ORDERED** that, in connection with the advertising, promotion, offering for sale, or sale of customer information of a financial institution, Defendant Victor L. Guzzetta, his assigns, agents, servants, employees or affiliates, and those persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division or other device, are hereby temporarily restrained and enjoined from:

- A. Violating or assisting others in violating any provision of Section 521 of the GLB Act, 15 U.S.C. § 6821, including but not limited to: obtaining or attempting to obtain, or causing to be disclosed or attempting to cause to be disclosed to any person, customer information maintained by a financial institution relating to another person by:

- (1) making a false, fictitious, or fraudulent representation in any form to an officer, employee, or agent of a financial institution;

- (2) making a false, fictitious, or fraudulent statement or representation to a customer of a financial institution;
- (3) providing any document to an officer, employee, or agent of a financial institution, knowing that the document is forged, counterfeit, lost, or stolen, was fraudulently obtained, or contains a false, fictitious, or fraudulent statement or representation;
- (4) requesting a person to obtain customer information of a financial institution knowing that the person will obtain, or attempt to obtain the information in a fraudulent manner;

- B. Misrepresenting, directly or by implication, his identity for the purpose of obtaining customer information of a financial institution relating to another person;
- C. Selling, renting, leasing, transferring, or otherwise disclosing any customer information of a financial institution relating to another person; and
- D. Falsely representing, expressly or by implication, that Defendant can, without engaging in false and deceptive representations, obtain customer information of a financial institution relating to another person.

## **II. LIMITED ASSET FREEZE**

- A. **IT IS FURTHER ORDERED** that Defendant is temporarily enjoined from directly or indirectly selling, transferring, alienating, liquidating, encumbering, pledging, loaning, assigning, concealing dissipating, converting, withdrawing or making any other disposition of any funds, credit instruments or any real or personal property, or other

assets, or any interest therein, wherever located, owned or controlled by, or held for the benefit of, in whole or in part, or in the possession of Defendant, other than those that are actual, ordinary and necessary business or living expenses that Defendant will reasonably incur.

- B. **IT IS FURTHER ORDERED** that the assets affected by this Paragraph shall include both existing assets and assets acquired after the effective date of this Order.
- C. **NOTWITHSTANDING** the asset freeze provisions of Paragraph II. A-B above, Defendant may pay amounts in excess of five thousand dollars (\$ 5,000) only after notice to counsel for the Commission, and prior approval by the Court.

### **III. DEFENDANT'S FINANCIAL STATEMENTS**

**IT IS FURTHER ORDERED** that, within five (5) days of receiving service of this Order, Defendant Victor L. Guzzetta shall prepare and deliver to the Court and counsel for the Commission a completed financial statement on the forms attached to this Order, verified under oath and accurate as of the date of service of this Order upon him.

### **IV. RETENTION OF ASSETS AND RECORDS BY FINANCIAL INSTITUTIONS**

**IT IS FURTHER ORDERED** that, pending determination of Plaintiff's request for a preliminary injunction, any bank or savings and loan, brokerage, or other financial institution, business entity, or person that holds, controls, or maintains custody of any account or asset of Defendant or of Smart Data Systems, or has held, controlled, or maintained custody of any

account or asset of Defendant or of Smart Data Systems, at any time since November 12, 1999, and which receives a copy of this order shall:

- A. Prohibit Defendant from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling, or otherwise disposing of any such asset except as specified in II. A-C of this order; and
- B. Provide counsel for Plaintiff, within five (5) business days of receiving a copy of this Order, a sworn statement setting forth:
  1. The identification number of each such account or asset titled in the name, individually or jointly, of Defendant or of Smart Data Systems, or held on behalf of, or for the benefit of, Defendant or of Smart Data Systems;
  2. The balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and
  3. The identification of any safe deposit box that is either titled in the name, individually or jointly, of Defendant or of Smart Data Systems, or is otherwise subject to access by Defendant or of Smart Data Systems; and
- C. Upon the request by Plaintiff, promptly provide Plaintiff with copies of all records or other documentation pertaining to each such account or asset, including but not limited to originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit

instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs. Any such financial institution, account custodian, or other aforementioned entity may arrange for Plaintiff to obtain copies of any such records which Plaintiff seeks, provided that such institution or custodian may charge a reasonable fee not to exceed fifteen (15) cents per page copied.

#### V. PLAINTIFF'S ACCESS TO BUSINESS RECORDS

**IT IS FURTHER ORDERED** that Defendant Victor L. Guzzetta, his assigns, agents, servants, employees or affiliates, and those persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division or other device, **by 3 p.m. on the first business day following service of this Order upon him**, shall produce to Plaintiff at the Federal Trade Commission, Northeast Regional Office, One Bowling Green, Suite 318, New York, New York, for inspection, inventory and/or copying, the following:

- A. All materials that concern, reflect or relate directly or indirectly to Defendant's offer, sale or provision of customer information of financial institutions, including but not limited to:
1. "asset searches," "bank account" searches (national and offshore), "stock, bond & mutual fund account," searches, and "safe deposit" location searches and any information, products or data related thereto;
  2. written and electronic correspondence (including, but not limited to, all orders for Defendant's services), books, written or printed records,



handwritten notes, telephone logs, telephone scripts advertisements (including but not limited to advertisements placed on the World Wide Web), USENET Newsgroup postings, World Wide Web pages;

3. all financial records, contracts, accounting data, including receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, copies of federal, state or local business or personal income or property tax returns, 1099 forms, and other documents or records of any kind that relate to Defendant's provision of customer information; and
4. all computers and data in whatever form, used by Defendant, in whole or in part, including but not limited to floppy disks, hard drives, cd-roms, zip disks, punch cards, magnetic tape, back-up tapes, and computer chips, computerized files and storage media on which information has been saved, as well as all equipment needed to read any such material.

The Commission shall return materials so produced by Defendant, within three (3) business days of completing inventory and copying.

## **VI. RECORD KEEPING/BUSINESS OPERATIONS**

**IT IS FURTHER ORDERED** that Defendant Victor L. Guzzetta, his assigns, agents, servants, employees or affiliates, and those persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, whether acting directly

or through any corporation, subsidiary, division or other device, are hereby temporarily restrained and enjoined from:

- A. Failing to create and maintain books, records, accounts, and data that, in reasonable detail, accurately, fairly, and completely reflect their incomes, disbursements, transactions, and use of monies;
- B. Destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any contracts, accounting data, correspondence, advertisements, computer tapes, discs, or other computerized records, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, copies of federal, state or local business or personal income or property tax returns, and other documents or records of any kind which relate to their business practices or business or personal finances from November 12, 1999, to the present time; and
- C. Creating, operating, or exercising any control over any business entity, including any partnership, limited partnership, joint venture, sole proprietorship or corporation, without first providing Plaintiff with a written statement disclosing: (1) the name of the business entity; (2) the address and telephone number of the business entity; (3) the names of the business entity's officers, directors, principals, managers, and employees; and (4) a detailed description of the business entity's intended activities.

## **VII. SERVICE OF ORDER BY DEFENDANT**

**IT IS FURTHER ORDERED** that Defendant shall immediately provide a copy of this Order to each of his assigns, agents, servants, employees, affiliates, and independent contractors, and shall, within three (3) business days from the date of service of this Order, provide Plaintiff with a sworn statement that Defendant has complied with this provision of the Order and provide Plaintiff with a list of all business entities and individuals that were provided a copy of this Order.

## **VIII. CONSUMER CREDIT REPORTS**

**IT IS FURTHER ORDERED** that, pursuant to Section 604 of the Fair Credit Reporting Act, 15 U.S.C. § 1681b, any consumer reporting agency may furnish Plaintiff with a consumer report concerning Defendant.

## **IX. MONITORING**

**IT IS FURTHER ORDERED** that agents or representatives of the Commission may contact Defendant or his agents or representatives directly and anonymously for the purpose of monitoring compliance with Paragraph I of this Order, and may tape-record any oral communications that occur in the course of such contacts.

## **X. SERVICE OF ORDER**

**IT IS FURTHER ORDERED** that, pursuant to Fed. R. Civ. P. 4(c)(2), copies of this Order and the initial pleadings filed in this matter may be served by employees of the FTC, by

employees of any other law enforcement agency, and by agents of any process servers retained by the FTC, upon any Defendant, upon the business premises of any Defendant, and upon any financial institution or any person or entity that may be in possession of any assets, property or property rights of any Defendant.

#### **XI. EXPEDITED DISCOVERY**

**IT IS FURTHER ORDERED** that in anticipation of the preliminary injunction hearing in this matter, the parties are granted leave to conduct expedited discovery in this matter. The parties may depose witnesses at any time after the date of this Order upon two (2) business days notice. The parties shall respond to any interrogatories or requests for admissions or production of documents within five (5) business days after service of the interrogatories or request.

#### **XII. HEARING**

**IT IS FURTHER ORDERED** that Defendant shall prepare and deliver to the Court and to the Commission, not later than 4:30 p.m. of the third (3rd) business day prior to the preliminary injunction hearing, any opposition to issuance of a preliminary injunction, including any declarations, exhibits, memoranda or other evidence on which they intend to rely.

**IT IS FURTHER ORDERED** that, if any party to this action intends to present the testimony of any witness at the preliminary injunction hearing in this matter, that party shall, at least forty-eight (48) hours prior to the scheduled date and time of hearing, file with this Court and serve on all other parties, a witness list which shall include the name, address and telephone

number of any such witness, and either a summary of the witness' expected testimony or the witness' affidavit revealing the substance of such witness' expected testimony.

**IT IS FURTHER ORDERED** that Defendant shall appear before this Court on the 27<sup>th</sup> day of April, 2001, at 4:00 o'clock p. .m. at the United States Courthouse, ~~Room~~ \_\_\_\_\_, 225 Cadman Plaza East, Brooklyn, New York 11201, to show cause, if any there be, why this Court should not enter a preliminary injunction, pending final ruling on the Complaint, against said Defendant enjoining him from further violations of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a), and Section 521(a) of the Gramm-Leach-Bliley Act, 15 U.S.C. § 6821(a), continuing the freeze of his assets and imposing such additional relief as may be appropriate.

### **XIII. SERVICE OF DOCUMENTS ON PLAINTIFF**

**IT IS FURTHER ORDERED**, for the purposes of this Order, all correspondence and service of pleadings on Plaintiff shall be addressed to:

**LAURA MAZZARELLA, ESQ.**  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580  
Telephone (202) 326-3424  
Fax (202) 326-2558

**CAROLE PAYNTER, ESQ.**  
Federal Trade Commission — Northeast Region  
One Bowling Green, Suite 318  
New York, NY 10004  
Telephone (212) 607-2829  
Fax (212) 607-2822

**XIV. RETENTION OF JURISDICTION**

**IT IS FURTHER ORDERED** that this Court retains jurisdiction of this matter for all purposes.

**SO ORDERED**, this 17<sup>th</sup> day of April, 2001. *at 4 p.m.*

*David G. Treger*  
UNITED STATES DISTRICT JUDGE

A TRUE COPY  
ATTEST  
DATED *Apr. 17* 2001  
ROBERT C. HEINEMANN  
BY *[Signature]* CLERK  
DEPUTY CLERK