

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

_____)	
FEDERAL TRADE COMMISSION,)		
)		
Plaintiff,)		
)		
v.)		
)		
VICTOR L. GUZZETTA,)		
)		
d/b/a SMART DATA SYSTEMS,)	Civil Action No.	
)		
)		
Defendant.)		
_____)	

**COMPLAINT FOR INJUNCTIVE
AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), by its undersigned attorneys, alleges as follows:

1. The Commission brings this action under 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), to secure preliminary and permanent injunctive relief, rescission of contracts, restitution, redress, disgorgement, and other equitable relief for defendant’s violations of Section 521 of the GLB Act, 15 U.S.C. § 6821, and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

JURISDICTION AND VENUE

2. Jurisdiction is based on 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and on 15 U.S.C. §§ 45(a)(1), 53(b), and 6822(a).

3. Venue in the Eastern District of New York is proper under 28 U.S.C. §§ 1391(b)

and 15 U.S.C. § 53(b).

PLAINTIFF

4. Plaintiff FTC is an independent agency of the United States Government created by 15 U.S.C. § 41, *et seq.* The Commission is charged, *inter alia*, with enforcing Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. Plaintiff is also charged, under Section 522(a) of the GLB Act, 15 U.S.C. § 6822(a), with enforcing Section 521(a) of the GLB Act, 15 U.S.C. § 6821(a), which prohibits any person from using false pretenses to obtain customer information of a financial institution from the financial institution or from the customer. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes plaintiff to initiate federal district court proceedings, in its own name by its designated attorneys, to enjoin violations of any provision of law enforced by the FTC, and to secure such equitable relief as may be appropriate in each case, including redress, restitution and disgorgement.

DEFENDANT

5. Defendant Victor L. Guzzetta resides and conducts business in the Eastern District of New York. At all times material to this complaint, he has resided and conducted business at 20 Cattaraugus Street, Staten Island, New York. Defendant does business as Smart Data Systems, an unincorporated entity, from his residence and through his Web site located at <http://smartdatasystems.com>. On his Web site, defendant purports to be in the information search business. At all times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices set forth in this complaint.

6. At all times material to this complaint, defendant has conducted business in this district.

DEFENDANT’S BUSINESS PRACTICES

7. Since at least September 2000, defendant has advertised over the World Wide Web that he can obtain customer information from financial institutions and make such information available to his clients for a fee. For example, defendant offers on his Web site to sell asset information such as statewide bank account searches for \$175; and stocks, bonds, and mutual funds searches for \$300. On his Web site, defendant states “[w]e are a full service search firm”and, “[i]f you can’t find something you need to know, call us.”

8. To obtain customer information, defendant uses false pretenses, fraudulent statements, fraudulent or stolen documents, or other misrepresentations, including posing as a customer of a financial institution, to induce officers, employees, or agents of financial institutions (and persons defendant believes to be such officers, employees, or agents) to disclose customer information. Defendant sells to his clients the customer information that he has obtained, including bank account balances and bank account activity statements.

COMMERCE

9. At all times material herein, defendant has maintained a course of trade in or affecting commerce, as *commerce* is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

GRAMM-LEACH-BLILEY ACT

10. Section 521 of the GLB Act, 15 U.S.C. § 6821, became effective on November 12, 1999, and has since remained in full force and effect. Section 521(a) of the Gramm-Leach-Bliley Act, 15 U.S.C. § 6821(a), prohibits:

any person from obtaining or attempting to obtain, or causing to be disclosed or attempting to cause to be disclosed to any person, customer information of a financial institution relating to another person - (1) by making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a financial institution; (2) by making a false, fictitious, or fraudulent statement or representation to a customer of a financial institution; or (3) by 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.

Section 527(1) of the GLB Act, 15 U.S.C. § 6827(1), defines *customer*, with respect to a financial institution, as “any person (or authorized representative of a person) to whom the financial institution provides a product or service, including that of acting as a fiduciary.” Section 527(2) of the GLB Act, 15 U.S.C. § 6827(2), defines *customer information of a financial institution* as “any information maintained by or for a financial institution which is derived from the relationship between the financial institution and a customer of the financial institution and is identified with the customer.” Section 527(4)(A) of the GLB Act, 15 U.S.C. § 6827(4)(A), defines *financial institution* as “any institution engaged in the business of providing financial services to customers who maintain a credit, deposit, trust, or other financial account or relationship with the institution.”

VIOLATIONS OF GLB ACT ARE UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN VIOLATION OF SECTION 5(a) OF THE FTC ACT

11. Section 522(a) of the GLB Act, 15 U.S.C. § 6822(a), empowers the Commission to enforce Section 521 of the GLB Act, 15 U.S.C. § 6821, “in the same manner and with the same power and authority as the Commission has under the Fair Debt Collection Practices Act [“FDCP Act”] to enforce compliance with such Act.” Section 814 of the FDCP Act, 15 U.S.C. § 1692l, provides that “[a]ll the functions and powers of the Commission under the [FTC Act] are

available to the Commission to enforce compliance with” the FDCP Act. Section 814 of the FDCP Act also provides that a violation of the FDCP Act “shall be deemed to be an unfair or deceptive act or practice in violation of” the FTC Act.

SECTION 5(a) OF THE FTC ACT

12. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), renders unfair or deceptive acts or practices in or affecting commerce unlawful. Misrepresentations of material facts constitute deceptive acts or practices and are unlawful pursuant to Section 5(a) of the FTC Act. Under Section 5(n) of the FTC Act, an act or practice is unfair if it causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. 15 U.S.C. § 45(n).

COUNT ONE

DEFENDANT’S VIOLATIONS OF GRAMM-LEACH-BLILEY ACT

13. In numerous instances, directly or through others, defendant has contacted financial institutions and falsely represented to representatives of the financial institutions (or persons defendant believed to be such representatives) that he is a customer of the financial institution or has made other misrepresentations. Defendant makes these false representations to induce the persons to disclose customer information belonging to third parties.

14. Defendant’s false representations to representatives of financial institutions (or persons defendant believes to be such representatives) violate Section 521 of the GLB Act, 15 U.S.C. § 6821.

COUNT TWO

DEFENDANT'S VIOLATIONS OF SECTION 5(a) OF THE FTC ACT

15. Paragraphs 1-14 are incorporated herein by reference.

16. Defendant's practices of misrepresenting (1) his identity, (2) his purposes, or (3) his right to receive customer information, to representatives of financial institutions (or persons defendant believes to be representatives of financial institutions), for the purpose of fraudulently obtaining consumers' financial information and subsequently selling that information, causes or is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.

17. Defendant's acts or practices, as set out above, are misleading.

18. Therefore, defendant's acts or practices, as set out above, are unfair or deceptive and violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

19. Consumers throughout the United States have suffered, or are likely to suffer, injury as a result of the defendant's ongoing unlawful acts or practices. Absent injunctive relief by this Court, defendant is likely to continue to injure consumers and harm the public interest.

UNJUST ENRICHMENT

20. If defendant is permitted to retain the sums obtained as a result of his violations of the GLB Act and the FTC Act, he would be unjustly enriched and consumers will be denied just compensation.

THIS COURT'S POWER TO GRANT RELIEF

21. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant

injunctive and other ancillary relief, including disgorgement and consumer redress, to prevent and remedy any violations of any provision of law enforced by the FTC.

22. This Court, in the exercise of its equitable jurisdiction, may award other ancillary relief to remedy injury caused by defendant's law violations.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, the Federal Trade Commission, requests that this Court, as authorized by Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and pursuant to its own equitable powers:

a. Award plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief;

b. Permanently enjoin defendant from violating the GLB Act and the FTC Act, as alleged herein; and

c. Award all relief that the Court finds necessary to remedy defendant's continuing violations of the GLB Act and Section 5(a) of the FTC Act, including, but not limited to, redress, and disgorgement of defendant's ill-gotten gains.

Dated: _____

Respectfully Submitted,

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General Counsel

OF COUNSEL

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