

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

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In the Matter of)	
THE NATIONAL RESEARCH CENTER FOR)	FILE NO. 022-3005
COLLEGE AND UNIVERSITY ADMISSIONS, INC., and)	
AMERICAN STUDENT LIST, LLC,)	
corporations, and)	AGREEMENT
)	CONTAINING
DON M. MUNCE, individually and as an officer of)	CONSENT ORDER
THE NATIONAL RESEARCH CENTER FOR COLLEGE)	AS TO AMERICAN
AND UNIVERSITY ADMISSIONS, INC.)	STUDENT LIST, LLC
)	
)	

The Federal Trade Commission has conducted an investigation of certain acts and practices of American Student List, LLC, a corporation, (“proposed respondent”). Proposed respondent, having been represented by counsel, is willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

IT IS HEREBY AGREED by and between American Student List, LLC, by its duly authorized officers, and counsel for the Federal Trade Commission that:

1. Proposed respondent American Student List, LLC (“ASL”) is a New York limited liability company with its principal office or place of business at 330 Old Country Road, Mineola, New York 11501.
2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint.
3. Proposed respondent waives:
 - (a) Any further procedural steps;
 - (b) The requirement that the Commission’s decision contain a statement of findings of fact and conclusions of law; and

- (c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of thirty (30) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondent's address as stated in this agreement by any means specified in Section 4.4(a) of the Commission's Rules shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the draft complaint and consent order. It understands that it may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

ORDER

DEFINITIONS

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

1. “Personally identifiable information” or “personal information” shall mean individually identifiable information from or about an individual including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (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 telephone number; (e) a Social Security Number; (f) an Internet Protocol (“IP”) address or host name that identifies an individual; (g) a persistent identifier, such as a customer number held in a “cookie” or processor serial number, that is combined with other available data that identifies an individual; or (h) any information, including, but not limited to, grade point average, date of birth, academic or occupational interests, athletic or extracurricular interests, racial or ethnic background, or religious affiliation, that is combined with any of (a) through (g) above.
2. “Noneducational-related marketing purpose” shall mean for the purpose of marketing products or services, or selling personally identifiable information from or about an individual for use in marketing products or services to individuals. Provided, however, that “noneducational-related marketing purpose” does not apply to the collection, disclosure or use of personally identifiable information from or about a student for the exclusive purpose of developing, evaluating, or providing to students or educational institutions (a) college or postsecondary education recruitment, or military recruitment; (b) book clubs, magazines, and programs providing access to low-cost literary products; (c) curriculum and instructional materials used by elementary schools and secondary schools; (d) student recognition programs; or (e) any other activity expressly determined under 20 U.S.C. §1232h(c)(4)(A) or its implementing regulations to be an “educational product or service.” Provided further that, for purposes of determining whether any specific activity is covered by subsections (a) through (e) above, or should be deemed to be an “educational product or service,” any official written interpretation disseminated to the public by the Department of Education regarding such activity shall be controlling.
3. “Survey” shall mean the survey that is distributed or caused to be distributed by respondents under the name “National Research Center for College and University Admissions.”
4. “Student” shall mean any elementary school or secondary school student.
5. Unless otherwise specified, “respondent” shall mean ASL and its successors and assigns and its officers, and its agents, representatives, and employees.
6. “Clearly and conspicuously” shall mean as follows:

- A. In print communications, the message shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.
- B. In communications disseminated orally, the message shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.
- C. In communications made through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online services and software), the message shall be presented simultaneously in both the audio and visual portions of the communication. In any communication presented solely through visual or audio means, the message may be made through the same means in which the communication is presented. Any audio message shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. Any visual message shall be of a size and shade, with a degree of contrast to the background against which it appears, and shall appear on the screen for a duration and in a location, sufficiently noticeable for an ordinary consumer to read and comprehend it.

The message shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the message shall be used in any communication.

7. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondent, in connection with the collection of personally identifiable information from an individual, shall not misrepresent in any manner, expressly or by implication, (a) how personally identifiable information is collected or will be used or disclosed; or (b) how the collection of personally identifiable information is funded.

II.

IT IS FURTHER ORDERED that respondent, in connection with the collection of personally identifiable information from students, shall not use or disclose such information for any noneducational-related marketing purpose, unless it discloses clearly and conspicuously (a) the existence and nature of such noneducational-related marketing purpose; and (b) the types or categories of any entities to which the information will be disclosed. Such disclosures shall be made in the following locations:

- (1) in all privacy statements published by respondents that refer or relate to the collection of personally identifiable information from students;

(2) in all communications to students, parents, educators, or educational institutions that refer or relate to the collection of personally identifiable information from students; and

(3) in all questionnaires, survey instruments, or other documents through which respondent collects personally identifiable information from students.

Provided that the disclosures required by this Part II are in addition to, and not in lieu of, any other disclosures that respondents may be required to make, including but not limited to any disclosure required by state or federal law.

III.

IT IS FURTHER ORDERED that respondent shall not use or disclose for any noneducational-related marketing purpose any personally identifiable information collected through surveys distributed prior to the date of service of this order. For purposes of this Part only, “noneducational-related marketing purpose” shall exclude use or disclosure for the purpose of (a) job recruitment, (b) the provision of student loans, or (c) the provision of standardized test preparation services.

IV.

IT IS FURTHER ORDERED that respondent ASL and its successors and assigns shall, for a period of five (5) years after the date of issuance of this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying a print or electronic copy of all documents demonstrating their compliance with the terms and provisions of this order, including, but not limited to:

- A. a sample copy of each different survey form, privacy statement, or communication relating to the collection of personally identifiable information to students, parents, educators, or educational institutions containing representations about (a) how personally identifiable information will be used or disclosed or (b) how the collection of personally identifiable information is funded. Each Web page copy shall be dated and contain the full URL of the Web page where the material was posted online. Electronic copies shall include all text and graphics files, audio scripts, and other computer files used in presenting the information on the Web;
- B. a sample copy of each different document containing the disclosure required by Part II of this order; and

- C. all invoices, communications, and records relating to the use or disclosure of personally identifiable information for any noneducational-related marketing purpose.

V.

IT IS FURTHER ORDERED that respondent ASL and its successors and assigns shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order. Respondent shall deliver this order to such current personnel within thirty (30) days after the date of service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities.

VI.

IT IS FURTHER ORDERED that respondent ASL and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) 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 corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which a respondent learns less than thirty (30) days prior to the date such action is to take place, the respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

VII.

IT IS FURTHER ORDERED that respondent ASL and its successors and assigns shall, within sixty (60) days after service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

VIII.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that a respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Signed this _____ day of _____, 2002.

AMERICAN STUDENT LIST, LLC

By: _____
DONALD DAMORE,
President

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Chadbourne & Parke LLP
Counsel for Respondent ASL

FEDERAL TRADE COMMISSION

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