

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(NORTHERN DIVISION)

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Civil No.: AMD-01-1121
)	
INFORMATION SEARCH, INC.,)	
a Maryland corporation,)	
35 N. Montford Ave., Baltimore City, MD 21224;)	
)	
and)	
)	
DAVID J. KACALA, individually,)	
35 N. Montford Ave., Baltimore City, MD 21224)	
)	
Defendants.)	
)	

**FIRST AMENDED
COMPLAINT FOR INJUNCTIVE
AND OTHER EQUITABLE RELIEF**

Plaintiff 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 defendants’ 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 Northern Division of the District of Maryland is proper under 28 U.S.C. §§ 1391(b)-(c), 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 of the GLB Act, 15 U.S.C. § 6821, which prohibits any person from using, directly or through others, 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.

DEFENDANTS

5. Defendant Information Search, Inc. (“ISI”), is a Maryland corporation with its principal offices located at 35 North Montford Avenue, Baltimore, Maryland. ISI conducts business over the telephone and through its Web site located at <www.http://information-

search.com>.

6. Defendant David J. Kacala is the founder, owner, sole director, and sole officer of ISI. Acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of ISI, as set forth in this complaint.
7. At all times material to this complaint, defendants have conducted business in this district.

DEFENDANTS' BUSINESS PRACTICES

8. Since at least September 2000, defendants have advertised over the World Wide Web that they can obtain customer information from financial institutions and make such information available to their clients for a fee. On their Web site, defendants state: "ISI can provide the information that leads you to locating people and businesses, finding and verifying assets." Defendants offer on their Web site to sell asset information such as bank accounts, stock, bond, and mutual fund information, and safe deposit box locations. On their Web site, defendants offer to "[r]etrieve information on a business or individual locally or nationally."
9. To obtain customer information, defendants use, or cause others to use, 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 defendants believe to be such officers, employees, or agents) to disclose customer information. Defendants sell the customer information that they have obtained, including bank account balances and bank account

activity statements, to their clients.

COMMERCE

10. At all times material herein, defendants have 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.

THE GRAMM-LEACH-BLILEY ACT

11. 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 521(b) of the Gramm-Leach-Bliley Act, 15 U.S.C. § 6821(b), prohibits any person from requesting:

a person to obtain customer information of a financial institution, knowing that the person will obtain, or attempt to obtain, the information from the institution in any manner described in [Section 521(a) of the Graham-Leach-Bliley Act, 15 U.S.C. § 6821(a)].

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

12. 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

13. 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

DEFENDANTS' VIOLATIONS OF GRAMM-LEACH-BLILEY ACT

14. In numerous instances, through others, defendants have contacted financial institutions and falsely represented to representatives of the financial institutions (or persons defendants believed to be such representatives) that defendants are customers of the financial institutions, or have made other misrepresentations. Defendants make these false representations to induce the persons to disclose customer information belonging to third parties.
15. Defendants' false representations to representatives of financial institutions (or persons defendants believe to be such representatives) violate Section 521(b) of the GLB Act, 15 U.S.C. § 6821(b).

COUNT TWO

DEFENDANTS' VIOLATIONS OF SECTION 5(a) OF THE FTC ACT

16. Paragraphs 1-15 are incorporated herein by reference.
17. Defendants' practices of misrepresenting, through others, (1) their identity, (2) their

purposes, or (3) their right to receive customer information, to representatives of financial institutions (or persons defendants believe 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.

18. Defendants' acts or practices, as set out above, are misleading.
19. Therefore, defendants' 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

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

UNJUST ENRICHMENT

21. If defendants are permitted to retain the sums obtained as a result of their violations of the GLB Act and the FTC Act, they would be unjustly enriched and consumers will be denied just compensation.

THIS COURT'S POWER TO GRANT RELIEF

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff 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 defendants from violating the GLB Act and the FTC Act, as alleged herein; and
- c. Award all relief that the Court finds necessary to remedy defendants' continuing violations of the GLB Act and Section 5(a) of the FTC Act, including, but not limited to, redress, and disgorgement of defendants' ill-gotten gains.

Dated: _____

Respectfully Submitted,

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