

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
NORTHERN DIVISION**

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.: AMD01-1121
)	
INFORMATION SEARCH, INC.)	
)	
and)	
)	
DAVID J. KACALA, individually,)	
Defendants.)	
)	
)	

**STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT INJUNCTION
AND MONETARY RELIEF AGAINST DEFENDANTS
INFORMATION SEARCH, INC. AND DAVID J. KACALA**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), commenced this action on April 17, 2001, by filing a Complaint 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), charging Defendants Information Search, Inc. (“ISI”) and David J. Kacala (“Kacala”) with engaging in unfair or deceptive acts or practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and practices in violation of

Section 521 of the GLB Act, 15 U.S.C. § 6821, in connection with the procurement, sale and offering for sale, of customer information of a financial institution.

The Commission and Defendants have now agreed to a settlement of this action.

Accordingly, the Commission and Defendants consent to entry of this Stipulated Final Judgment and Order ("Order") without trial or adjudication of any issue of law or fact herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

FINDINGS

1. This is an action by the Commission instituted under Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. § 53(b). The Complaint seeks permanent injunctive relief and monetary relief against Defendants in connection with the procurement, sale and offering for sale, of customer information of a financial institution.
2. This Court has jurisdiction over the subject matter of this case and over Defendants under 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and under 15 U.S.C. §§ 45(a)(1), 53(b), and 6822(a). Venue in the Northern Division of the District of Maryland is proper as to all parties under 28 U.S.C. § 1391(b) and 15 U.S.C. § 53(b).
3. The Complaint states a claim upon which relief may be granted against Defendants under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b), and Sections 521(a) and 522(a) of the GLB Act, 15 U.S.C. §§ 6821(a) and 6822(a).
4. The Commission has the authority under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), to seek the relief it has requested.
5. Defendants were properly served with the Complaint and Summons in this matter.

6. The activities of Defendants charged in the Complaint are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
7. Defendants enter into this Order freely and without coercion, and acknowledge that they understand the provisions of this Order and are prepared to abide by its terms.
8. Defendants waive all rights to seek appellate review or otherwise challenge or contest the validity of this Order. Defendants further waive and release any claims they may have against the Commission, its employees, representatives, or agents.
9. Defendants agree that this Order does not entitle either Defendant to seek or to obtain attorneys' fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended by Pub.L.104-121, 110 Stat. 847, 863-4 (1996). Defendants further waive any right to attorneys' fees that may arise under said provision of law.
10. This Order is for settlement purposes only and does not constitute and shall not be interpreted to constitute an admission by Defendants that they engaged in violations of any law or regulation, or that the facts alleged in the Complaint, other than the jurisdictional facts, are true.
11. Entry of this Order is in the public interest.

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. "Defendants" means Information Search, Inc. and David J. Kacala, and each of them, their assigns, agents, servants, employees or affiliates, 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 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. “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.
5. The terms "and" and "or" have both conjunctive and disjunctive meanings.

I. PROHIBITED BUSINESS ACTIVITIES

IT IS THEREFORE ORDERED that, in connection with the obtaining, offering for sale, or selling of customer information of a financial institution, Defendants are hereby permanently restrained and enjoined from:

- A. Making, or assisting in making, directly or by implication, any false or misleading statement about Defendants’ identities, purpose, or right to receive customer information;
- B. Requesting a person to obtain customer information of a financial institution knowing or consciously avoiding knowing that the person will obtain, or attempt to obtain, the

information from the institution in any manner described by Section A of this Paragraph, or in any manner that violates Section 521 of the GLB Act, 15 U.S.C. § 6821;

- C. Disclosing, disseminating, distributing, or selling customer information of a financial institution. *Provided, however,* that Defendants may disclose, disseminate, distribute or sell such customer information (1) with the prior written consent of the consumer to whom such information relates, (2) to a law enforcement agency, or (3) as required or permitted by any law, regulation or court order; and
- D. Making, directly or by implication, any statement of material fact that is false or misleading.

Provided, further, that no provision of Paragraph I shall be construed to prevent Defendants from engaging in conduct otherwise permissible under Section 521(g) of the GLB Act, 15 U.S.C. § 6821(g).

II. GRAMM-LEACH-BLILEY ACT PROHIBITIONS

IT IS FURTHER ORDERED that, in connection with the advertising, promoting, obtaining, offering for sale, or selling of customer information of a financial institution, Defendants are hereby permanently restrained and enjoined from violating or assisting others in violating any provision of Section 521 of the GLB Act, 15 U.S.C. § 6821, as it now exists or may hereafter be amended. A copy of the “Fraudulent Access to Financial Information” provisions of the Gramm-Leach-Bliley Act, 15 U.S.C. § § 6821-6827, is attached to this Order and is hereby incorporated as if recited herein.

III. SUSPENDED JUDGMENT

IT IS FURTHER ORDERED that judgment is entered against Defendants, jointly and severally, in the amount of FIFTEEN THOUSAND DOLLARS (\$15,000). Provided, however, that this judgment shall be suspended until further order of the Court, and provided further that this judgment shall be subject to the conditions set forth in Section IV of this Order.

IV. RIGHT TO REOPEN

IT IS FURTHER ORDERED that the Commission's agreement to and the Court's approval of this Order is expressly premised upon the truthfulness, accuracy, and completeness of Defendants' business records, submitted on September 6, 2001, and sworn testimony regarding Defendants' revenues attributable to financial asset searches that violate 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), and related information submitted to the Commission, which contain material information relied upon by the Commission in negotiating and agreeing to the terms of this Order.

IT IS FURTHER ORDERED that the Commission's agreement to and the Court's approval of this Order is expressly premised upon the truthfulness, accuracy, and completeness of David Kacala's individual financial statements submitted on May 1, 2001, which contain material information relied upon by the Commission in negotiating and agreeing to the terms of this Order. If the Commission should have evidence that the Defendant failed to disclose significant income or assets, or materially misrepresented the information contained in the individual financial statements, the Court shall reinstate the judgment against such Defendant, in

favor of the Commission, in the amount of FIFTEEN THOUSAND DOLLARS (\$15,000.00), and the entire amount of the judgment shall become immediately due and payable.

IT IS FURTHER ORDERED that if the Commission should have evidence that the above-referenced information failed to disclose any significant revenue attributable to violative financial asset searches, or that Defendants materially misrepresented the revenues so attributable, or made any other material misrepresentation or omission, the Commission may move that the Court reopen this Order for the sole purpose of allowing the Commission to modify Defendants' monetary liability. Should this judgment be modified as to the monetary liability of Defendants, this Order, in all other respects, shall remain in full force. Any proceedings instituted under this Paragraph shall be in addition to and not in lieu of any other proceedings the Commission may initiate to enforce this Order. Solely for the purposes of reopening or enforcing this Paragraph, Defendants waive any right to contest any of the allegations set forth in the Complaint filed in this matter.

V. LIFTING OF ASSET FREEZE

IT IS FURTHER ORDERED that the freeze against the assets of Defendants pursuant to Paragraph II of the Stipulated Preliminary Injunction entered by this Court on May 4, 2001, shall be lifted upon entry of Stipulated Final Judgment.

VI. PROHIBITION ON DISCLOSING INFORMATION FROM ASSET SEARCHES

IT IS FURTHER ORDERED that Defendants are permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing (i) the name, address, social security number, telephone number, e-mail address, credit card number, or other identifying information, or (ii) any bank or brokerage account number or balance, or financial asset

information of any kind, of any person who was, at any time, the subject of an asset search by Defendants or by any agents, servants, employees, or contractors of Defendants.

Provided, however, that Defendants may disclose such information (1) with the written consent of the consumer to whom such information relates, (2) to a law enforcement agency, or (3) as required or permitted by any law, regulation, or court order.

VII. 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, in connection with any business engaged in whole or in part in advertising, promoting, obtaining, offering for sale, or selling of customer information of a financial institution, of which either Defendant is the majority owner, or directly or indirectly manages or controls the business, Defendants shall:

A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt of same from, each officer or director, each individual serving in a management capacity, all personnel involved in financial asset searches of consumers, including, but not limited to, agents and independent contractors, and all sales personnel, whether designated as employees, agents, consultants, independent contractors, or otherwise, immediately upon employing or retaining any such persons; and

B. Maintain for a period of three (3) years after creation and, upon reasonable notice, make available to representatives of the Commission, the original signed and dated acknowledgments of the receipt of copies of this Order, as required in Section A of this Paragraph.

VIII. MONITORING COMPLIANCE OF EMPLOYEES, AGENTS AND INDEPENDENT CONTRACTORS

IT IS FURTHER ORDERED that in connection with any business engaged in whole or in part in advertising, promoting, obtaining, offering for sale, or selling of customer information of a financial institution, of which either Defendant is the majority owner, or directly or indirectly manages or controls the business, Defendants are hereby permanently restrained and enjoined from failing to take reasonable steps sufficient to monitor and ensure that all employees, agents and independent contractors comply with Paragraphs I and II of this Order.

IX. DOCUMENT RETENTION

IT IS FURTHER ORDERED that Defendants, each of them and their successors and assigns, shall maintain for at least five (5) years from the date of service of this Order and, upon written request by FTC employees, make available to the FTC for inspection and copying:

A. All records and documents necessary to demonstrate fully their compliance with each provision of this Order, including, but not limited to, financial and other business records, order forms, invoices, employee training materials, and scripts;

B. All records and documents necessary to demonstrate their compliance with the requirements of the Sections 521-527 of the GLB Act, 15 U.S.C. § 6821-6827 inclusive, specifically including, but not limited to, Section 521(g) of the GLB Act, 15 U.S.C. § 6821(g), in the event that either Defendant intends to rely upon this exception to the prohibited business practices described in Paragraph I; and

C. Copies of any complaints received by Defendants regarding Defendants' sale of customer information of a financial institution.

X. COMPLIANCE REPORTING

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

A. Sixty (60) days after the date of entry of this Order, Defendants shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which Defendants have complied and are complying with this Order;

B. For a period of five (5) years from the date of entry of this Order, Defendant David J. Kacala shall annually report to the Commission his current employment, business address, business phone number, and a description of business activities; provided, however, that if Defendant changes employer he shall provide an additional report within thirty (30) days after the change of employment which includes a statement of the nature of the business and a statement of Defendant's duties and responsibilities in connection with the business or employment;

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

Associate Director, Division of Financial Practices
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580
Re: FTC v. Information Search, Inc. and David J. Kacala; and

D. For purposes of the compliance reporting required by this Paragraph, the Commission is authorized to communicate directly with Defendants.

XI. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that the Commission is authorized to monitor Defendants' compliance with this Order by all lawful means, including but not limited to, the following:

A. The Commission is authorized, without further leave of court, to obtain discovery from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26-37, including the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and investigating Defendants' compliance with any provision of this Order;

B. The Commission is authorized to use representatives posing as clients, consumers, bank employees, private investigators, suppliers and other persons to Defendants, Defendants' employees, or any other entity managed or controlled in whole or in part by either Defendant, without the necessity of identification or prior notice; and

C. Nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49 and 57b-1, to investigate whether Defendants have violated any provision of this Order, Section 5 of the FTC Act, 15 U.S.C. § 45, or Section 521 of the GLB Act, 15 U.S.C. § 6821.

XII. ACCESS TO PREMISES, RECORDS, AND PERSONS

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, for the purpose of further determining compliance with this Order, Defendants shall, within three (3) business days of receipt of written notice from the Commission, permit representatives of the Commission:

A. To access, during normal business hours, any office, or facility storing documents, of any business of which either Defendant is the majority owner or directly or indirectly manages or controls, and where the business is engaged in information brokering. In providing such access, such Defendant shall permit representatives of the Commission to inspect and copy all documents relevant to any matter contained in this Order; and shall permit Commission representatives to remove documents relevant to any matter contained in this Order for a period not to exceed five (5) business days so that the documents may be inspected, inventoried, and copied; and

B. To interview the officers, directors and employees, including all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, of any business to which Section A of this Paragraph applies, concerning matters relating to compliance with the terms of this Order. The persons interviewed may have counsel present.

Provided that, upon application of the Commission and for good cause shown, the Court may enter an *ex parte* order granting immediate access to Defendants' business premises for the purposes of inspecting and copying all documents relevant to any matter contained in this Order.

XIII. ACKNOWLEDGMENT

IT IS FURTHER ORDERED that, within five (5) business days after receipt by Defendants of this Order as entered by the Court, Defendant David J. Kacala, for himself and for Defendant ISI, shall submit to the Commission a truthful sworn statement, in the form shown on Appendix A hereto, that shall acknowledge receipt of this Order.

XIV. COSTS AND ATTORNEYS FEES

IT IS FURTHER ORDERED that all parties to this Order will bear their own costs and attorneys fees incurred in connection with this action.

XV. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that the Court retains jurisdiction of this matter for all purposes, including the construction, modification, and enforcement of this Order.

STIPULATED AND AGREED TO BY:

FOR THE PLAINTIFF:

Dated: _____, 2001

Alain Sheer
Jeffery S. Davidson
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
Attorneys for Plaintiff

FOR DEFENDANTS:

Dated: _____, 2001

Stephen J. Kacala
35 North Montford Avenue
Baltimore, Maryland 21224
Attorney for Defendant ISI

Dated: _____, 2001

David J. Kacala,
President of Defendant ISI

Dated: _____, 2001

David J. Kacala, individually

IT IS SO ORDERED.

Dated: _____, 2001

UNITED STATES DISTRICT JUDGE

APPENDIX A

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
NORTHERN DIVISION**

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.: AMD01-1211
)	
INFORMATION SEARCH, INC.)	
)	
and)	
)	
DAVID J. KACALA, individually)	
)	
)	
Defendants.)	
)	

AFFIDAVIT OF DAVID J. KACALA

David J. Kacala, being duly sworn, hereby states and affirms as follows:

1. My name is David J. Kacala. My current residence is 35 North Montford Avenue, Baltimore, Maryland. I am a citizen of the United States and am over 18 years of age. I have personal knowledge of the facts set forth in this Affidavit.
2. I am a Defendant in FTC v. Information Search, Inc. and David J. Kacala, Civil Action No. AMD01-1211 in the United States District Court for the District of Maryland, Northern Division.
3. On _____, 2002, I received for myself and for Information Search, Inc. a copy of the Stipulated Final Judgment and Order of Permanent Injunction, which was signed by the Honorable Andre M. Davis and entered by the Court. A true and correct copy of the Order I received is attached to this Affidavit.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on _____, 2002, at _____.

David J. Kacala, President of ISI

State of Maryland, County of _____
Subscribed and sworn to before me
this ____ day of _____, 2001.

Notary Public
My Commission expires: _____, 20__