

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FILED

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U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

ACTION RESEARCH GROUP, INC.; JOSEPH
DEPANTE; MATTHEW DEPANTE; BRYAN
WAGNER; CASSANDRA SELVAGE; and EYE IN
THE SKY INVESTIGATIONS, INC.,

Defendants.

Case No.: 6:07-cv-227-Orl-22JGG

**JUDGMENT BY DEFAULT AND PERMANENT INJUNCTION
AGAINST DEFENDANTS CASSANDRA SELVAGE AND
EYE IN THE SKY INVESTIGATIONS, INC.**

Plaintiff, the Federal Trade Commission (“FTC”), commenced this action on February 14, 2007 by filing its complaint against Defendants Eye in the Sky Investigations, Inc. (“ESI”) and Cassandra Selvage (“Selvage”), among others. The FTC alleges that Defendants ESI and Selvage engaged in unfair and deceptive acts or practices in violation of Section 5(a) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45(a), in connection with using false pretenses to obtain and sell confidential customer phone records without customers’ knowledge or consent, and seeks a permanent injunction and other relief pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b).

Pursuant to Federal Rule of Civil Procedure 55(a), default was entered as to Defendants ESI and Selvage on March 22, 2007. The FTC now has moved this Court for entry of a

judgment by default and permanent injunction, pursuant to Federal Rules of Civil Procedure 55(b)(2), against Defendants ESI and Selvage. Having considered the memoranda and exhibits filed in support of said motion, and all other pleadings and filings in this action, and now being fully advised of the premises, the Court finds:

1. The FTC has the authority under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), to seek the relief it has requested.

2. This Court has jurisdiction over the subject matter of this case and has jurisdiction over Defendants ESI and Selvage. Venue in the Middle District of Florida is proper, and the Complaint states a claim upon which relief may be granted against these Defendants.

3. The activities of Defendants ESI and Selvage, are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

4. Process and service of process as to Defendants ESI and Selvage are proper.

5. Defendant Selvage is not an infant or an incompetent or in military service or otherwise exempted under the Soldiers' and Sailors' Civil Relief Act of 1940.

6. Defendants ESI and Selvage failed to answer or otherwise file any response to the Complaint. Accordingly, they are in default for failure to plead in or otherwise defend this action.

7. Since at least April 2004, Defendants ESI and Selvage have obtained confidential customer phone records from telecommunications carriers and made such information available to their clients for a fee. Further, since at least November 2004, they have advertised on their Web site: "YOU GIVE US A CELLULAR NUMBER WITH THE NAME, ADDRESS, SS#, WE GIVE YOU A LIST OF THE CALLS MADE PER MONTH." For a fee, they have offered to obtain, for any cellular, residential, or business phone number, all outgoing monthly toll calls. Times and dates of the calls as well as "EXPRESS (1 HOUR) SERVICE" were available for an extra fee.

8. The account holders have not authorized Defendants ESI and Selvage to obtain access to or sell their confidential customer phone records. Instead, to obtain such information, these Defendants have used false pretenses, fraudulent statements, fraudulent or stolen documents or other misrepresentations, including posing as a customer of a telecommunications carrier, to induce officers, employees, or agents of telecommunications carriers to disclose confidential customer phone records. Defendants ESI and Selvage have sold the confidential customer phone records that they have obtained to their clients.

9. The invasion of privacy and security resulting from obtaining and selling confidential customer phone records without the consumers' authorization causes substantial harm to consumers and the public, including, but not limited to, endangering the health and safety of consumers. Consumers cannot reasonably avoid these injuries because the practices of Defendants ESI and Selvage are entirely invisible to them. The harm caused by these Defendants' unauthorized access to and disclosure of confidential customer phone records is not

outweighed by countervailing benefits to consumers or to competition. Therefore, their practices constitute an unfair and deceptive practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

10. Defendant Selvage is the founder, owner, sole director, and sole officer of ESI. At all times material, acting alone or in concert with others, she formulated, directed, controlled, or participated in the unlawful acts and practices of ESI.

11. Defendants ESI and Selvage reasonably may continue to engage in the activities alleged in the Complaint or otherwise violate Section 5 of the FTC Act, unless they are prohibited from doing so by order of the Court. Accordingly, it is proper in this case to issue a permanent injunction prohibiting them from obtaining and selling customer phone records, to prohibit them from making misrepresentations in connection with the obtaining and selling of consumer personal information, and to provide for monitoring by the FTC of their compliance with such a permanent injunction.

12. Under Section 13(b) of the FTC Act, the Court has the equitable authority to order disgorgement of ill-gotten gains in the amount of a defendant's unjust enrichment. It is proper in this case to enter a monetary judgment against Defendants ESI and Selvage to disgorge their ill-gotten gains resulting from their violations of the FTC Act.

13. The profit for the sale of confidential customer phone records by Defendants ESI and Selvage is at least \$110,762. This figure constitutes the unjust enrichment these Defendants obtained from their scheme.

14. This action and the relief awarded herein are in addition to, and not in lieu of, other remedies as may be provided by law, including both civil and criminal remedies.

15. The entry of this Order, as set forth below, is in the public interest.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

DEFINITIONS

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

1. “Defendants ESI and Salvage” means Eye in the Sky Investigations, Inc. and Cassandra Salvage, individually and as an officer of Eye in the Sky Investigations, Inc.
2. “Customer phone records” means: (a) information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and (b) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier, which includes, but is not limited to, telephone call detail records.
3. “Consumer personal information” means any individually identifiable information concerning a consumer, including, but not limited to: (a) an unpublished or unlisted wire line or wireless phone number; (b) an unpublished or unlisted physical or mailing address, including

street name and name of city or town, Post Office Box number, or Private Mailbox number; (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 Social Security number in whole or in part; (e) credit and/or debit card information, including credit and/or debit card number, expiration date, data stored on the magnetic strip of a credit or debit card, and transaction detail records; (f) bank account information or transaction records including the ABA routing number, account number, check number, and transaction detail records; (g) a driver's license number; or (h) any other information from or about an individual consumer that is combined with (a) through (g) above.

BAN ON SALE OF CUSTOMER PHONE RECORDS

I. IT IS THEREFORE ORDERED that Defendants ESI and Selvage, their assigns, agents, servants, employees and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from obtaining, causing others to obtain, marketing, or selling customer phone records and consumer personal information that is derived from customer phone records. Nothing in this Order shall be read as an exception to this Section I.

PROHIBITED BUSINESS ACTIVITIES

II. IT IS FURTHER ORDERED that Defendants ESI and Selvage, their assigns, agents, servants, employees and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, in connection with the obtaining,

marketing or sale of any consumer personal information, are hereby restrained and enjoined from:

A. Making false or deceptive statements or representations, including but not limited to impersonating any person or entity, directly or by implication, to any person or entity in order to obtain consumer personal information;

B. Requesting any person or entity to obtain consumer personal information relating to any third person, if the person making such a request knows or should know that the person or entity to whom such a request is made will obtain or attempt to obtain such information in violation of Subsection A of Section II.

MONETARY RELIEF

III. IT IS FURTHER ORDERED that:

A. Judgment is hereby entered against Defendants ESI and Selvage, jointly and severally, in the amount of \$110,762, with post-judgment interest at the legal rate. The monetary judgment set forth in this Section III is enforceable against any asset owned jointly by, on behalf of, for the benefit of, or in trust by or for, either Defendant, whether held as tenants in common, joint tenants with or without the right of survivorship, tenants by the entirety, and/or community property. The entry of this monetary judgment does not preclude the FTC from establishing in any litigation that actual sales by these Defendants exceeded this amount.

B. Any funds received by the FTC pursuant to Section III shall be deposited into a fund administered by the FTC or its agent to be used for such equitable relief, including but not limited to consumer information remedies and disgorgement to the U.S. Treasury of ill-gotten monies, as the FTC determines to be reasonably related to these Defendants' practices alleged in the Complaint. Defendants ESI and Selvage shall have no right to challenge the FTC's choice of remedies under this Section III.

C. Defendants ESI and Selvage further agree that the facts as alleged in the FTC's complaint shall be taken as true in the event of any subsequent litigation to collect amounts due pursuant to this Order, including but not limited to a nondischargeability complaint in any bankruptcy proceeding.

D. The judgment entered pursuant to this Section III is equitable monetary relief, solely remedial in nature, and not a fine, penalty, punitive assessment or forfeiture.

E. Defendants ESI and Selvage are hereby required, in accordance with 31 U.S.C. § 7701, to furnish to the FTC their tax identification numbers, which shall be used for purposes of collecting and reporting on any delinquent amount arising out of this Order.

TURNOVER OF ASSETS

IV. IT IS FURTHER ORDERED that:

A. In order partially to satisfy the monetary judgment set forth in Section III of this Order, any financial or brokerage institution, escrow agent, title company, commodity trading

company, business entity, or person, whether located within the United States or outside the United States, that holds, controls or maintains accounts or assets of, on behalf of, or for the benefit of, Defendants ESI and Selvage shall turn over such account or asset to the FTC within five (5) business days of receiving notice of this Order by any means, including but not limited to via facsimile.

B. In order partially to satisfy the monetary judgment set forth in Section III of this Order, Defendants ESI and Selvage each shall provide an accounting of, and turn over to the FTC, within fifteen (15) business days following the entry of this Order, all assets, real and personal, where ever located within the United States held: (a) by either Defendant, (b) for either such Defendant's benefit, or (c) under either such Defendant's direct or indirect control, jointly or singly, including, but not limited to, all assets placed in trust by, for, for the benefit of, on account of, or on behalf of either Defendant.

C. In order partially to satisfy the monetary judgment set forth in Section III of this Order, Defendants ESI and Selvage each shall provide an accounting of, and repatriate and turn over to the FTC, within fifteen (15) business days following the entry of this Order, all assets, real and personal, where ever located in foreign countries held: (a) by either Defendant, (b) for either such Defendant's benefit, or (c) under either such Defendant's direct or indirect control, jointly or singly, including, but not limited to, all assets placed in trust by, for, for the benefit of, on account of, or on behalf of either Defendant.

DISTRIBUTION OF ORDER

V. **IT IS FURTHER ORDERED** that, for a period of ten (10) years from the date of entry of this Order, Defendants ESI and Selvage shall deliver copies of the Order as directed below:

A. Defendant ESI must deliver a copy of this Order to all of its principals, officers, directors, and managers. Defendant ESI also must deliver copies of this Order to all of its employees, agents, and representatives who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within five (5) days of service of this Order upon Defendant ESI. For new personnel, delivery shall occur prior to them assuming their responsibilities.

B. For any business that Defendant Selvage controls, directly or indirectly, or in which she has a majority ownership interest, Defendant Selvage must deliver a copy of this Order to all principals, officers, directors, and managers of that business. Defendant Selvage must also deliver copies of this Order to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within (5) days of service of this Order upon Defendants ESI and Selvage. For new personnel, delivery shall occur prior to them assuming their responsibilities.

C. For any business where Defendant Selvage is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, Defendant Selvage must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.

D. Defendants ESI and Selvage must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Section V.

RECORD-KEEPING PROVISIONS

VI. IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, Defendants ESI and Selvage, in connection with any business where (1) either such Defendant is the majority owner or otherwise controls, directly or indirectly, the business and (2) the business is engaged in or assists others engaged in the advertising, promoting, marketing, offering for sale, sale, or distribution of consumer personal information, and their agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from failing to create and retain the following records:

A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;

B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;

C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of goods or services purchased, and description of goods or services purchased, to the extent such information is obtained in the ordinary course of business;

D. Complaints and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests;

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials, and records that accurately reflect the time periods during which such materials were used and the persons and business entities that used such materials;

F. To the extent consumer personal information is obtained through the use of any third party, records that accurately reflect the name, address and telephone number of such third party, including, but not limited to, copies of all contracts and correspondence between either Defendant and such third party; and

G. Copies of each acknowledgment of receipt of Order required to be obtained pursuant to Section V of this Order.

COMPLIANCE REPORTING

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

A. For a period of five (5) years from the date of entry of this Order,

1. Defendant Selvage shall notify the FTC of the following:

a. Any changes in her residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;

b. Any changes in her employment status (including self-employment), and any change in her ownership in any business entity, within ten (10) days of the date of such change. Such notice shall include the name and address of each business that she is affiliated with, employed by, creates or forms, or performs services for; a statement of the nature of the business; and a statement of her duties and responsibilities in connection with the business or employment; and

c. Any changes in her name or use of any aliases or fictitious names; and

2. Defendants ESI and Selvage shall notify the FTC of any changes in corporate structure of Defendant ESI or any business entity that Defendant Selvage directly or indirectly control(s), or has an ownership interest in, 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 entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which either Defendant learns less than thirty (30) days prior to the date such action is to

take place, such Defendant shall notify the FTC as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Order, Defendants ESI and Selvage each shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Order. This report shall include, but not be limited to:

1. For Defendant Selvage:
 - a. Her then-current residence address, mailing addresses, and telephone numbers;
 - b. Her then-current employment and business addresses and telephone numbers, a description of the business activities of each such employer or business, and her title and responsibilities, for each such employer or business; and
 - c. Any other changes required to be reported under subparagraph A of this Section VII.
2. For both Defendants ESI and Selvage:
 - a. A copy of each acknowledgment of receipt of this Order, obtained pursuant to Section V; and

b. Any other changes required to be reported under subparagraph A of this Section VII.

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

Associate Director of Enforcement
Federal Trade Commission
600 Pennsylvania Avenue NW Room NJ-2122
Washington, DC 20580
Re: FTC v. Action Research Group, Inc, et. al.

D. For purposes of the compliance reporting and monitoring required by this Order, the FTC is authorized to communicate directly with Defendants ESI and Selvage.

COMPLIANCE MONITORING

VIII. IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order,

A. Within ten (10) days of receipt of written notice from a representative of the FTC, Defendants ESI and Selvage each shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in such Defendant's possession or direct or indirect control to inspect the business operation;

B. In addition, the FTC is authorized to monitor compliance with this Order by all other lawful means, including but not limited to the following:

1. obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45; and

2. posing as consumers and suppliers to: Defendants ESI and Selvage, their 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. Defendants ESI and Selvage shall permit representatives of the FTC to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

Provided, however, that nothing in this Order shall limit the FTC's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

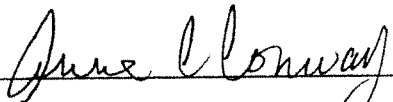
ACKNOWLEDGMENT OF RECEIPT OF ORDER

IX. IT IS FURTHER ORDERED that within five (5) business days after receipt of this Order, as entered by the Court, Defendants ESI and Selvage shall each submit to the FTC a truthful sworn statement acknowledging receipt of this Order.

RETENTION OF JURISDICTION

X. IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter, for purposes of construction, modification and enforcement of this Order.

IT IS SO ORDERED, this 6th day of June, 2007.



ANNE C. CONWAY
United States District Judge