



4. Respondent Jan Stumacher is an officer and director of SMG. Individually or in concert with others, he formulates, directs, controls, or participates in the policies, acts, or practices of SMG, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of SMG.

5. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

6. Since at least 1999, respondents have collected personal information from high school and middle and junior high school students through surveys (the “Surveys”). Respondents market and distribute the Surveys to the students’ teachers and guidance counselors with the request that they have their students complete the Surveys. Respondents have collected personal information (the “Survey Data”) from millions of high school students and from more than 300,000 middle and junior high school students who completed the Surveys.

7. The Surveys collect from high school students personal information including, but not limited to, name, address, gender, grade point average, date of birth, academic and occupational interests, athletic and extracurricular interests, religious affiliation, racial and ethnic background, and the name and grade of a sibling.

8. The Surveys collect from middle and junior high school students personal information including, but not limited to, name, address, gender, grade point average, date of birth, occupational interests, current athletic and extracurricular activities, religious affiliation, racial and ethnic background, the name and grade of a sibling, computer usage, and television viewing habits.

9. Respondents create, market and distribute the Surveys, as well as compile and use Survey Data. Respondent SMG funds the costs to create and distribute the Surveys. Respondent SMG uses Survey Data to create lists of students that it sells to commercial entities for use in marketing. Such entities include, but are not limited to, banks, insurance companies, consumer goods and services providers, and list brokers.

10. Respondents have disseminated or caused to be disseminated marketing materials and privacy statements, including but not limited to the attached Exhibits A through E. These marketing materials and privacy statements contain the following statements regarding the use and disclosure of personal information collected through the Surveys:

- A. “ERCA is a non-profit corporation that conducts a voluntary survey of high school students throughout the United States. The survey is designed to help students further their education and professional development by enabling institutions of higher learning to identify potential students and to provide them with information about curricula, extracurricular activities and financial aid programs.” (Exhibit A, ERCA Web site home page).

- B. “As you may know, ERCA is administering this annual poll to more than 14 million students and will compile the information into a survey report that details the interests and trends among today’s students. This information will be used by universities and colleges nationally in their ongoing efforts to communicate and keep in touch with the interests and trends among today’s high school students. University financial aid offices and scholarship foundations may also utilize the information to evaluate and make funding available for students’ post secondary education.” (Exhibit B, cover letter to high school educators accompanying the Survey).
- C. “At the beginning of each school year, high school educators nationally have administered an annual survey of senior high school students. In the last 2 years nearly 60,000 teachers and 4,000,000 students participated. The results are tabulated into a survey report that is utilized by colleges and universities in their ongoing efforts to keep in touch with the interests and trends among today’s students.

As the trend toward colleges’ student recruitment has moved earlier and earlier into the student’s high school career, we must begin to administer this poll at the middle and junior high school level in order to provide a complete report. I am writing to request your cooperation in doing so.

ERCA is administering this annual poll to more than 14 million students and will compile the information into a survey report that details the interests and trends among today’s students. This information will be used by both public and private universities and colleges. University financial aid offices and scholarship foundations may also utilize the information to make funding available for students’ education.” (Exhibit C, cover letter to middle and junior high school educators accompanying the Survey).

- D&E. “ERCA will utilize this data for student related research and may make it available to Colleges, Universities, Educational Agencies and others wishing to learn about and communicate useful and pertinent information to students.” (Exhibit D, Privacy Statement found on high school Survey; Exhibit E, Privacy Statement found on middle and junior high school Survey).

11. Through the means described in Paragraph 10, respondents have represented, expressly or by implication, that information collected from students through the Surveys is shared only with colleges, universities, and other entities providing education-related services.

12. In truth and in fact, information collected from students through the Surveys is shared not only with colleges, universities, and other entities providing education-related services, but also

with commercial entities for marketing purposes. Therefore, the representation set forth in Paragraph 11 was, and is, false or misleading.

13. Through the means described in Paragraph 10, respondents have represented, expressly or by implication, that information collected from middle and junior high school students through the Survey is compiled into survey reports that are shared with colleges and universities.

14. In truth and in fact, little if any information collected from middle and junior high school students through the Survey is compiled into survey reports. Rather, the information is primarily shared with commercial entities for marketing purposes. Therefore, the representation set forth in Paragraph 13 was, and is, false or misleading.

15. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices, in or affecting commerce, in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this sixth day of May, 2003, has issued this complaint against respondents.

By the Commission.

Donald S. Clark  
Secretary

SEAL: