

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Timothy J. Muris, Chairman
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary

In the Matter of)
)
)
EDUCATIONAL RESEARCH CENTER)
OF AMERICA, INC., and)
STUDENT MARKETING GROUP, INC.,)
corporations, and)
)
MARIAN SANJANA, individually and as an officer of)
EDUCATIONAL RESEARCH CENTER OF)
AMERICA, INC., and)
)
JAN STUMACHER, individually and as an officer of)
STUDENT MARKETING GROUP, INC.)
)

DECISION AND ORDER

Docket No. C-4079

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Respondents named in the caption hereof, and the Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the Respondents with violation of the Federal Trade Commission Act, 15 U.S.C. § 45 et seq;

The Respondents, their attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), an admission by the Respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it has reason to believe that the Respondents have violated the said Act, and that a Complaint should issue stating

its charges in that respect, and having thereupon accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure described in Section 2.34 of its Rules, the Commission hereby issues its Complaint, makes the following jurisdictional findings and enters the following Order:

1. Respondent Educational Research Center of America, Inc. (“ERCA”) is a Pennsylvania corporation with its principal office or place of business headquartered in Pittsburgh, Pennsylvania.

2. Respondent Marian Sanjana is an officer of ERCA. Her principal office or place of business is the same as that of ERCA.

3. Respondent Student Marketing Group, Inc. (“SMG”) is a New York corporation with its principal office or place of business at 300 Merrick Road, Suite 206, Lynbrook, New York 11563.

4. Respondent Jan Stumacher is an officer and director of SMG. His principal office or place of business is the same as that of SMG.

5. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

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 any survey that is distributed or caused to be distributed by Respondents under the name “Educational Research Center of America.”

4. “Student” shall mean any elementary school or secondary school student.

5. Unless otherwise specified, “Respondents” shall mean ERCA and SMG, and each of the above’s successors and assigns and their officers; Marian Sanjana and Jan Stumacher, individually and as officers of the above corporations; and each of the above’s 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 Respondents, in connection with the collection of personally identifiable information from an individual, shall not misrepresent in any manner, expressly or by implication, how personally identifiable information is collected or will be used or disclosed.

II.

IT IS FURTHER ORDERED that Respondents, 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 they disclose clearly and conspicuously (a) the existence and nature of such noneducational-related marketing purpose; (b) the types or categories of any entities to which the information will be disclosed; and (c) that the information used or disclosed is personally identifiable. 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 Respondents collect 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 Respondents shall not use or disclose for any noneducational-related marketing purpose any personally identifiable information collected through surveys distributed prior to July 30, 2002, from any student who was thirteen years or older at the time of collection. 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 products or services.

IV.

IT IS FURTHER ORDERED that Respondents shall delete all personally identifiable information collected through surveys distributed prior to the date of service of this order from any student who was under the age of thirteen at the time of collection.

V.

IT IS FURTHER ORDERED that Respondents ERCA and SMG, and their successors and assigns, and Respondents Marian Sanjana and Jan Stumacher 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 how personally identifiable information will be used or disclosed. 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.

VI.

IT IS FURTHER ORDERED that Respondents ERCA and SMG, and their successors and assigns, and Respondents Marian Sanjana and Jan Stumacher 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. Respondents 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.

VII.

IT IS FURTHER ORDERED that Respondents ERCA and SMG and their 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.

VIII.

IT IS FURTHER ORDERED that Respondents Marian Sanjana and Jan Stumacher, for a period of five (5) years after the date of issuance of this order, shall notify the Commission of the discontinuance of their current business or employment, or of their affiliation with any new business or employment involving the collection of personally identifiable information for use in marketing products or services. The notice shall include Respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. 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.

IX.

IT IS FURTHER ORDERED that Respondents ERCA and SMG, and their successors and assigns, and Respondents Marian Sanjana and Jan Stumacher 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 they have complied with this order.

X.

This order will terminate on May 6, 2023, 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.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: May 6, 2003