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

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CLERK, US DISTRICT COURT
MIDDLE DISTRICT FLORIDA
ORLANDO, FL

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.)

Civil Action No.

COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission ("FTC"), by its undersigned attorneys, for its complaint alleges:

1. The FTC brings this action pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to secure a permanent injunction, rescission of contracts, restitution, disgorgement of ill-gotten gains, and other equitable relief against Defendants for violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), in connection with surreptitiously obtaining and selling confidential customer phone records without the customer's knowledge or authorization.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b).

3. Venue in the Middle District of Florida is proper under 28 U.S.C. §§1391(b) and (c), and 15 U.S.C. § 53(b).

PLAINTIFF

4. Plaintiff FTC is an independent agency of the United States Government created by the FTC Act, 15 U.S.C. §§ 41 *et seq.* The FTC 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. The FTC may initiate federal district court proceedings, through its attorneys, to enjoin violations of the FTC Act, and to secure such other equitable relief, including rescission of contracts and restitution, and disgorgement of ill-gotten gains, as may be appropriate in each case. 15 U.S.C. § 53(b).

DEFENDANTS

5. Defendant Action Research Group, Inc. (“ARG”) is a Florida corporation with its principal place of business located at 2263 W. New Haven Avenue, Melbourne, Florida. ARG transacts or has transacted business in this district.

6. Defendant Joseph DePante is a principal, owner, manager, officer, or director of ARG. At all times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices set forth in this complaint. He transacts or has transacted business in this district.

7. Defendant Matthew DePante is a principal, owner, manager, officer, or director of ARG. At all times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices set forth in this complaint. He transacts or has transacted business in this district.

8. Defendant Bryan Wagner performs or has performed services for ARG as an employee or contractor. At all times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices set forth in this complaint. He transacts or has transacted business in this district.

9. Defendant Cassandra Selvage performs or has performed services for ARG as an employee or contractor, and is the principal, owner, manager, officer, or director of Eye in the Sky Investigations (“ESI”). At all times material to this complaint, acting alone or in concert with others, she has formulated, directed, controlled, or participated in the acts and practices set forth in this complaint. She resides in and transacts or has transacted business in this district.

10. Defendant ESI is a Florida corporation with its principal place of business located at 4708 Merlin Circle, Dade City, Florida. ESI transacts or has transacted business in this district.

COMMERCE

11. At all times relevant to this complaint, 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.

BACKGROUND ON CUSTOMER PROPRIETARY NETWORK INFORMATION

12. The Telecommunications Act of 1996 defines “customer proprietary network information” to mean:

(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,

47 U.S.C. § 222(h)(1), which includes, but is not limited to, telephone call records (hereinafter referred to as “customer phone records”). The Telecommunications Act further provides that

[e]xcept as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable customer proprietary network information in its provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories.

47 U.S.C. § 222(c)(1). The Telecommunications Act further provides that customer phone records may only be disclosed “upon affirmative written request by the customer, to any person designated by the customer.” 47 U.S.C. § 222(c)(2).

DEFENDANTS’ BUSINESS PRACTICES

13. Since at least September 2005, Defendants have obtained confidential customer phone records pertaining to account holders with telecommunications carriers from those carriers, including lists of calls made as well as the date, time, and duration of such calls, and have made such information available to their clients or others for a fee.

14. The account holders have not authorized Defendants to access or sell their confidential customer phone records. Instead, to obtain such information, Defendants have used, or have caused others to use, false pretenses, fraudulent statements, fraudulent or stolen documents or other misrepresentations, including posing as an account holder or as an employee of the telecommunications carrier, to induce officers, employees, or agents of telecommunications carriers to disclose confidential customer phone records. Defendants have sold the confidential customer phone records that they have obtained to their clients or others.

15. The invasion of privacy and security from the unauthorized access to and sale of confidential customer phone records causes or is likely to cause substantial harm to consumers and the public, including, but not limited to, loss of privacy and endangering the health and safety of consumers. Consumers cannot reasonably avoid these injuries because Defendants' practices are entirely invisible to the injured consumers. The harm caused by Defendants' unauthorized access to and disclosure of confidential customer phone records is not outweighed by countervailing benefits to consumers or to competition.

THE FEDERAL TRADE COMMISSION ACT

16. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), provides that “unfair or deceptive acts or practices in or affecting commerce are hereby declared unlawful.”

DEFENDANTS' VIOLATIONS OF THE FTC ACT

COUNT ONE

17. The FTC incorporates each and every allegation contained in paragraphs 1 through 16 of this complaint as if fully set forth herein.

18. In numerous instances, in the course and conduct of their business, Defendants, directly or through their employees and agents, expressly or by implication, have represented or caused others to represent to telecommunications carriers: (i) that they are specifically-identified account holders with those carriers seeking disclosure of confidential customer phone records for their own benefit; (ii) that they are employees of the carriers seeking disclosure of the confidential customer phone records of the actual account holder; and/or (iii) that they are otherwise authorized to seek disclosure of confidential customer phone records.

19. In truth and in fact, Defendants are not the specifically-identified account holders with those carriers, employees of the carriers, or otherwise authorized to seek disclosure of confidential customer phone records.

20. Defendants' misrepresentations cause or are likely to cause the carriers to disclose to Defendants confidential customer phone records.

21. Defendants' misrepresentations as set forth above constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT TWO

22. The FTC incorporates each and every allegation contained in paragraphs 1 through 21 of this complaint as if fully set forth herein.

23. As described in paragraphs 13 through 15, Defendants, directly or through their employees or agents, have obtained and sold to third parties confidential customer phone records without the knowledge or consent of the customer.

24. Defendants' practices in obtaining and selling to third parties confidential customer phone records have caused or are likely to cause substantial injury to consumers that is not reasonably avoidable by consumers and is not outweighed by countervailing benefits to consumers or competition.

25. Therefore, Defendants' practices as set forth above constitute unfair practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

26. Consumers throughout the United States have suffered, or are likely to suffer, substantial injury as a result of the Defendants' unlawful acts and practices. In addition, Defendants have been unjustly enriched as a result of their unlawful acts and practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

27. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief, including rescission of contracts and restitution, and the disgorgement of ill-gotten gains, to prevent and remedy any violations of any provision of law enforced by the FTC.

PRAYER FOR RELIEF

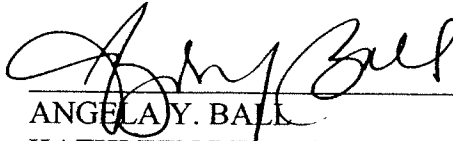
WHEREFORE, Plaintiff, the Federal Trade Commission, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, requests that the Court:

- 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, including, but not limited to, a preliminary injunction.
- b. Enter a permanent injunction to prevent further violations of the FTC Act by Defendants;
- c. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, including, but not limited to, rescission or reformation of contracts, restitution, and the disgorgement of ill-gotten monies; and
- d. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Dated: February 13, 2007

Respectfully Submitted,

WILLIAM BLUMENTHAL
General Counsel



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