

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 14 C 2054
)	
INFOTRACK INFORMATION SERVICES,)	Judge
INC., and STEVE KAPLAN, Individually,)	
and as an officer of the corporation,)	
)	
Defendants.)	

**COMPLAINT FOR CIVIL PENALTIES,
PERMANENT INJUNCTION, AND OTHER EQUITABLE RELIEF**

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission (“FTC” or “Commission”), for its Complaint, alleges:

1. Plaintiff brings this action under sections 5(a), 13(b), and 16(a) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a), 53(b), and 56(a); and section 621(a) of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681s(a), to obtain monetary civil penalties, and injunctive or other relief from Defendants InfoTrack Information Services, Inc., and Steve Kaplan, individually, for engaging in violations of the FTC Act, 15 U.S.C. § 45(a), and the FCRA, 15 U.S.C. §§ 1681–1681x.

Jurisdiction and Venue

2. This Court has subject matter jurisdiction over this matter under 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and under 15 U.S.C. §§ 45(a), 53(b), 56(a), and 1681s.

3. Venue is proper in this district under 28 U.S.C. §§ 1391(b)-(c) and 1395(a), and 15 U.S.C. § 53(b).

Plaintiff

4. This action is brought by the United States of America on behalf of the Federal Trade Commission. The Commission is an independent agency of the United States government given statutory authority and responsibility by, *inter alia*, the FTC Act, *as amended*, 15 U.S.C. §§ 41-58, and the FCRA, 15 U.S.C. §§ 1681-1681x. The Commission is charged, *inter alia*, with enforcing section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair and deceptive acts or practices in or affecting commerce; and the FCRA, which imposes duties upon consumer reporting agencies.

Defendants

5. Defendant InfoTrack Information Services, Inc. (“InfoTrack” or “Defendant”) is an Illinois corporation with its principal place of business in Deerfield, Illinois. Defendant transacts or has transacted business in this district.

6. Defendant Steve Kaplan is the sole owner and officer of InfoTrack and at all times material to this complaint, acting alone or in concert with others, has formulated, directed, or controlled the acts or practices of InfoTrack, including the various acts or practices alleged in this complaint. His principal office or place of business is that of InfoTrack.

The Fair Credit Reporting Act (“FCRA”)

7. The FCRA was enacted in 1970, became effective on April 25, 1971, and has been in force since that date. The Fair and Accurate Credit Transactions Act amended the FCRA in December 2003, and the Dodd-Frank Act amended the FCRA in July 2010.

8. Section 621 of the FCRA, 15 U.S.C. § 1681s, authorizes the Commission to use all of its functions and powers under the FTC Act to enforce compliance with the FCRA by all persons subject thereto except to the extent that enforcement specifically is committed to some

other governmental agency, irrespective of whether the person is engaged in commerce or meets any other jurisdictional tests set forth by the FTC Act.

9. Defendants are now and have been a “consumer reporting agency,” as defined in section 603(f) of the FCRA, 15 U.S.C. § 1681a(f). That section defines a consumer reporting agency as:

any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

Defendants regularly sell in interstate commerce information on consumers that they assemble for the purpose of furnishing consumer reports to third parties, as described further below.

10. The FCRA imposes several obligations on consumer reporting agencies, including obligations to: (1) take reasonable steps to ensure the maximum possible accuracy of consumer reports (Section 607(b) of the FCRA, 15 U.S.C. § 1681e(b)); and (2) provide prescribed notices to users of their consumer reports and to companies that furnish information to consumer reporting agencies (Section 607(d)(1) of the FCRA, 15 U.S.C. § 1681e(d)(1)). These obligations are described in more detail below.

Defendants’ Business Practices

11. Defendants provide, among other things, background screening reports to hundreds of employers throughout the United States about prospective and current employees, in order to assist the employers in making decisions about hiring and other employment-related issues (“background screening reports”). These reports include but are not limited to public record information, such as names of individuals on sex offender registries, and criminal

histories of individuals.

12. The background screening reports that Defendants provide to employers are “consumer reports” as defined in section 603(d) of the FCRA, 15 U.S.C. § 1681a(d). That section defines a “consumer report” as

any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for (A) credit or insurance to be used primarily for personal, family, or household purposes; (B) employment purposes; or (C) any other purpose authorized under section 604.

Defendants’ reports are communicated to third parties; bear on, among other things, consumers’ general reputation and personal characteristics; and are used as a factor in determining eligibility for employment.

Accuracy

13. Section 607(b) of the FCRA, 15 U.S.C. § 1681e(b), requires that “[w]henver a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.”

14. In numerous instances, Defendants failed to follow reasonable procedures to assure maximum possible accuracy of their consumer reports. Among other things, Defendants failed to follow reasonable procedures to assure that the information contained in their consumer reports concerned the individual who was the subject of the report.

15. Defendants often provided consumer reports to employers about job applicants. These reports included information about whether the applicant was registered in a National Sex

Offender Registry. The employer would provide the applicant's first and last name, and date of birth, to assist Defendants in conducting their searches of the National Sex Offender Registry.

16. Prior to the fall of 2011, for many records, no date of birth was available in the National Sex Offender Registry. In these instances, if Defendants' search identified more than one individual with the searched first and last name who had a record in the registry, Defendants reported "possible matches" to employers. Defendants would forward reports that included names and pictures of several different people with the same name who were convicted sex offenders and listed in the National Sex Offender Registry. Defendants' practice and procedure resulted in furnishing consumer reports to employers that included National Sex Offender Registry records of individuals who could not have been the subject of the inquiry.

17. In many instances, these failures led to reports that necessarily included consumer report information about individuals other than the prospective employees and, in some instances, may have led to denied employment opportunities.

FCRA Notification Requirements

18. Section 607(d)(1) of the FCRA, 15 U.S.C. § 1681e(d)(1), requires that a consumer reporting agency provide, to any person who regularly and in the ordinary course of business furnishes information about any consumer to the consumer reporting agency ("furnisher"), a "Notice To Furnishers of Information: Obligations of Furnishers Under the FCRA" ("Furnisher Notice"), the acceptable content of which is set forth in 16 CFR Parts 601 and 608, Appendix G, *recodified* at 12 CFR 1022, Appendix M. Section 607(d)(2) of the FCRA, 15 U.S.C. § 1681e(d)(2). It also requires that a consumer reporting agency provide, to any person to whom it provides a consumer report ("user"), a "Notice To Users of Consumer Reports: Obligations of Users Under the FCRA" ("User Notice"), the acceptable content of which is set forth in 16 CFR

Parts 601 and 608, Appendix H, *recodified* at 12 CFR 1022, Appendix N. Since at least July 1, 2009 and continuing until at least January 2012, Defendants failed to provide these prescribed notices to the furnishers and users of their reports.

19. Section 613(a) of the FCRA, 15 U.S.C. § 1681k(a), contains special requirements for consumer reporting agencies that furnish consumer reports containing public record information for employment purposes if that information is likely to have an adverse effect upon a consumer's ability to obtain employment. These consumer reporting agencies must either (1) notify the consumer, at the time that such information is reported, of the fact that public record information is being reported, or (2) maintain "strict procedures" designed to ensure the reported public record information is complete and up to date. For consumer reports containing information concerning sex offender registry information, Defendants neither provided the notice prescribed, nor did they maintain "strict procedures" designed to ensure that public record information it reported was complete and up to date.

Count I – Violations of Section 607(b) of the FCRA

20. As described in Paragraphs 14, 15 and 16, in multiple instances, Defendants failed to use reasonable procedures to assure maximum possible accuracy of consumer report information from sex offender registry records.

21. By and through the acts and practices described in Paragraph 20, Defendants have violated section 607(b) of the FCRA, 15 U.S.C. § 1681e(b).

22. Pursuant to section 621(a)(1) of the FCRA, 15 U.S.C. § 1681s(a)(1), the acts and practices alleged in Paragraph 20 also constitute unfair or deceptive acts or practices in violation of section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

Count II – Violations of 607(d) of the FCRA

23. As described in Paragraph 18, Defendants have failed to provide the prescribed User Notice and Furnisher Notice required by the FCRA.

24. By and through the acts and practices described in Paragraph 23, Defendants have violated section 607(d) of the FCRA, 15 U.S.C. § 1681e(d).

25. Pursuant to section 621(a)(1) of the FCRA, 15 U.S.C. § 1681s(a)(1), the acts and practices alleged in Paragraph 23 also constitute unfair or deceptive acts or practices in violation of section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

Count III – Violations of Section 613(A)(1 and (2) of the FCRA

26. As described in Paragraph 19, in multiple instances, Defendants failed to provide written notice to consumers of the fact that it reported public record information to employers, at the time the information was reported. Defendants also failed to maintain strict procedures to ensure that the public record information in the reports was complete and up to date.

27. By and through the acts and practices described in Paragraph 26, Defendants have violated section 613(a)(1)-(2) of the FCRA, 15 U.S.C. § 1681k(a)(1)-(2).

28. Pursuant to section 621(a)(1) of the FCRA, 15 U.S.C. § 1681s(a)(1), the acts and practices alleged in Paragraph 26 also constitute unfair or deceptive acts or practices in violation of section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

This Court's Power to Grant Relief

29. Section 621(a)(2)(A) of the FCRA, 15 U.S.C. § 1681s(a)(2), authorizes the Court to award monetary civil penalties in the event of a knowing violation of the FCRA, which constitutes a pattern or practice. Defendants' violations of the FCRA, as alleged in this Complaint, have been knowing and have constituted a pattern or practice of violations. As

specified by the Federal Civil Penalty Inflation Adjustment Act of 1990, 28 U.S.C. § 2861, as amended by the Debt Collection Improvements Act of 1996, Pub. L. 104-134, § 31001(s)(1), 110 Stat. 1321-373, the Court is authorized to award a penalty of not more than \$2,500 per violation for violations occurring before February 10, 2009, and \$3,500 per violation for violations occurring on or after that date.

30. Each instance in which Defendants have failed to comply with the FCRA constitutes a separate violation of the FCRA for the purpose of assessing monetary civil penalties under section 621(A)(2) of the FCRA, 15 U.S.C. § 1681s. Plaintiff seeks monetary civil penalties for every separate violation of the FCRA.

31. Pursuant to Section 621(a)(1) of the FCRA, 15 U.S.C. § 1681s, and Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), this Court is authorized to issue a permanent injunction prohibiting Defendants from violating the FTC Act and the FCRA.

Prayer for Relief

WHEREFORE, Plaintiff requests that this Court, pursuant to 15 U.S.C. §§ 45(a), 45(m)(1)(a), 53(b), and 1681s, and pursuant to the Court's own equitable powers:

(1) Enter judgment against Defendants and in favor of Plaintiff for each violation alleged in this Complaint;

(2) Enter a permanent injunction against Defendants to prevent further violations of the FCRA and the FTC Act, as alleged herein;

(3) Award Plaintiff monetary civil penalties from Defendants for each violation of the FCRA alleged in this Complaint;

(4) 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. The parties, by their counsel,

hereby consent to the terms and conditions of the Stipulated Final Judgment and Order for Civil Penalties, Permanent Injunction, and Other Equitable Relief as set forth above and consent to the entry thereof.

**FOR THE FEDERAL TRADE
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Respectfully submitted,

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Dated: March 24, 2014

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

United States of America

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Donald R. Lorenzen
United States Attorney's Office
219 S. Dearborn Street, 5th Fl., Chicago, Illinois 60604
(312) 353-5330

DEFENDANTS

Infotrack Information Services and Steve Kaplan, individually, and as an officer of the corporation

County of Residence of First Listed Defendant LAKE (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation

VI. CAUSE OF ACTION (Enter U.S. Civil Statute under which you are filing and write a brief statement of cause)

15 USC 45(a), 53(b) and 56(a)

VII. Previous Bankruptcy Matters (For nature of suit 422 and 423, enter the case number and judge for any associated bankruptcy matter previously adjudicated by a judge of this Court. Use a separate attachment if necessary)

VIII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

IX. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

X. This case (check one box) Is not a refiling of a previously dismissed action is a refiling of case number previously dismissed by Judge

DATE 03/24/2014

SIGNATURE OF ATTORNEY OF RECORD

s/ Donald R. Lorenzen

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; NOTE: federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the six boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless diversity. Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

VII. Previous Bankruptcy Matters For nature of suit 422 and 423 enter the case number and judge for any associated bankruptcy matter previously adjudicated by a judge of this court. Use a separate attachment if necessary.

VIII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

IX. Related Cases. This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

X. Refiling Information. Place an "X" in one of the two boxes indicating if the case is or is not a refiling of a previously dismissed action. If it is a refiling of a previously dismissed action, insert the case number and judge.

Date and Attorney Signature. Date and sign the civil cover sheet.