

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND

IN THE UNITED STATES DISTRICT COURT, 11:24
FOR THE DISTRICT OF MARYLAND
(NORTHERN DIVISION)

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

INFORMATION SEARCH, INC.,
and
DAVID KACALA, individually

Defendants.

CLERK'S OFFICE
U.S. DISTRICT COURT
DISTRICT OF MARYLAND
NORTHERN DIVISION
Baltimore, Maryland

Civil No.: AMD-01-1121

**(Proposed) EX PARTE TEMPORARY RESTRAINING ORDER,
LIMITED ASSET FREEZE AND OTHER EQUITABLE RELIEF**

2001 Mar 17 p 1:50
U.S. DISTRICT COURT
DISTRICT OF MARYLAND
NORTHERN DIVISION
Baltimore, Maryland

Plaintiff, Federal Trade Commission ("Commission"), having filed its complaint for a permanent injunction and other equitable relief in this matter, pursuant to Sections 5(a) and 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a) and 53(b), and Section 522(a) of the Gramm-Leach-Bliley Act ("GLB Act"), 15 U.S.C. § 6822(a), and having moved *ex parte* for a Temporary Restraining Order pursuant to Rule 65 of the Federal Rules of Civil Procedure, and the Court having considered the complaint, declarations, exhibits, and memorandum of law filed in support thereof, and now being advised in the premises finds that:

1. This Court has jurisdiction of the subject matter of this case and there is good cause to believe it will have jurisdiction of all parties hereto;
2. There is good cause to believe that the Commission will ultimately succeed in establishing that defendants David J. Kacala and Information Search, Inc. have engaged and are likely to engage in acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and Section 521 of the GLB Act, 15 U.S.C. § 6821;
3. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for consumers in the form of monetary redress or disgorgement of ill-gotten gains will occur from the sale, transfer, or other disposition or concealment by defendants of their assets or business records unless defendants are immediately restrained and enjoined by Order of this Court. There is thus good cause for relieving the Commission of the duty to provide

- defendants with prior notice of the Commission's motion;
4. Weighing the equities and considering plaintiff's likelihood of ultimate success, a temporary restraining order with asset freeze and other equitable relief is in the public interest; and
 5. No security is required of any agency of the United States for issuance of a restraining order. Fed. R. Civ. P. 65(c).

DEFINITIONS

For purposes of this temporary restraining order, the following definitions shall apply:

1. "Person" means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.
2. "Defendants" mean David J. Kacala, and Information Search, Inc.
3. The terms "customer," "customer information of a financial institution," and "financial institution" have the same meanings as set out in Sections 527(1), 527(2), and 527(4)(A) of the GLB Act, respectively, 15 U.S.C. §§ 6827(1), 6827(2), and 6827(4)(A).
4. "Asset" or "Assets" means all real and personal property of defendants, or held for the benefit of defendants, including but not limited to "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," or "notes," (as these terms are defined in the Uniform Commercial Code), and all chattels, leaseholds, contracts, mails or other deliveries, shares of stock, lists of consumers, accounts, lines of credits, receivables and all cash, wherever located.

5. "Document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a) and includes writings, drawings, graphs, charts, photographs, audio, and video recordings, computer records, and other data compilations from which the information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

I. PROHIBITED BUSINESS ACTIVITIES

IT IS THEREFORE ORDERED that, in connection with the advertising, promotion, offering for sale, or sale of customer information of a financial institution, defendants, their officers, 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, whether acting directly or through any corporation, subsidiary, division or other device, are hereby temporarily restrained and enjoined from:

- A. Violating or assisting others in violating any provision of Section 521 of the GLB Act, 15 U.S.C. § 6821, including but not limited to: obtaining or attempting to obtain, or causing to be disclosed or attempting to cause to be disclosed to any person, customer information maintained by a financial institution relating to another person by:

(1) making a false, fictitious, or fraudulent representation in any form to an officer, employee, or agent of a financial institution;

- (2) making a false, fictitious, or fraudulent statement or representation to a customer of a financial institution;
 - (3) providing any document to an officer, employee, or agent of a financial institution, knowing that the document is forged, counterfeit, lost, or stolen, was fraudulently obtained, or contains a false, fictitious, or fraudulent statement or representation;
 - (4) requesting a person to obtain customer information of a financial institution knowing that the person will obtain, or attempt to obtain the information in a fraudulent manner;
- B. Misrepresenting, directly or by implication, their identity for the purpose of obtaining customer information maintained by a financial institution relating to another person;
- C. Selling, renting, leasing, transferring, or otherwise disclosing any customer information of a financial institution relating to another person; and
- D. Falsely representing, expressly or by implication, that defendants can, without engaging in false and deceptive representations, obtain customer information maintained by a financial institution relating to another person.

II. LIMITED ASSET FREEZE

- A. **IT IS FURTHER ORDERED** that defendants are temporarily enjoined from directly or indirectly selling, transferring, alienating, liquidating, encumbering, pledging, loaning, assigning, concealing, dissipating, converting, withdrawing, or making any other

disposition of any funds, credit instruments or any real or personal property, or other assets, or any interest therein, wherever located, owned or controlled by, or held for the benefit of, in whole or in part, or in the possession of defendants, other than those that are actual, ordinary and necessary business or living expenses that defendants will reasonably incur.

- B. **IT IS FURTHER ORDERED** that the assets affected by this Paragraph shall include both existing assets and assets acquired after the effective date of this Order.
- C. **NOTWITHSTANDING** the asset freeze provisions of Paragraph II. A-B above, defendants may transfer amounts in excess of five thousand dollars (\$ 5,000) only after notice to counsel for the Commission, and prior approval by the Court.

III. DEFENDANTS' FINANCIAL STATEMENTS

IT IS FURTHER ORDERED that, within five (5) days of receiving service of this Order, defendant David J. Kacala shall prepare and deliver to the Court and counsel for the Commission a completed financial statement on the forms attached to this Order, verified under oath and accurate as of the date of service of this Order upon him, for defendant individually and for each business entity of which such defendant is an officer or member.

IV. RETENTION OF ASSETS AND RECORDS BY FINANCIAL INSTITUTIONS

IT IS FURTHER ORDERED that, pending determination of plaintiff's request for a preliminary injunction, any bank or savings and loan, brokerage, or other financial institution, business entity, or person that holds, controls, or maintains custody of any account or asset of defendant David J. Kacala or of Information Search, Inc., or has held, controlled, or maintained custody of any account or asset of defendant David J. Kacala or of Information Search, Inc., at any time since November 12, 1999, and which receives a copy of this order shall:

- A. Prohibit defendants from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling, or otherwise disposing of any such asset except as specified in Paragraph II. A-C of this order; and
- B. Provide counsel for plaintiff, within five (5) business days of receiving a copy of this Order, a ~~written~~^{no. 41716} statement setting forth:
 1. The identification number of each such account or asset titled in the name, individually or jointly, of David J. Kacala or of Information Search, Inc., or held on behalf of, or for the benefit of, David J. Kacala or of Information Search, Inc.;
 2. The balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and

3. The identification of any safe deposit box that is either titled in the name, individually or jointly, of David J. Kacala or of Information Search, Inc., or is otherwise subject to access by David J. Kacala or of Information Search, Inc.; and
- C. Upon the request by plaintiff, promptly provide plaintiff with copies of all records or other documentation pertaining to each such account or asset, including but not limited to originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs. Any such financial institution, account custodian, or other aforementioned entity may arrange for plaintiff to obtain copies of any such records which plaintiff seeks, provided that such institution or custodian may charge a reasonable fee not to exceed fifteen (15) cents per page copied.

V. PLAINTIFF'S ACCESS TO BUSINESS RECORDS

IT IS FURTHER ORDERED that defendants, their officers, 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, whether acting directly or through any corporation, subsidiary, division, or other device, shall **by 2 p.m. on the first business day following service of this Order upon them**, produce to plaintiff for inspection, inventory and/or copying, at a location designated by plaintiff, the following:

A. All materials that concern, reflect or relate directly or indirectly to defendants' offer, sale or provision of customer information of financial institutions, including but not limited to:

1. "asset searches," "bank account" searches (national and offshore), "stock, bond & mutual fund account," searches, and "safe deposit" location searches and any information, products or data related thereto;
2. written and electronic correspondence (including, but not limited to, all orders for defendants' services), books, written or printed records, handwritten notes, telephone logs, telephone scripts advertisements (including but not limited to advertisements placed on the World Wide Web), USENET Newsgroup postings, World Wide Web pages;
3. all financial records, contracts, accounting data, including receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, copies of federal, state or local business or personal income or property tax returns, 1099 forms, and other documents or records of any kind that relate to defendants' provision of customer information; and
4. all computers and data in whatever form, used by defendants, in whole or in part, including but not limited to floppy disks, hard drives, cd-roms, zip disks, punch cards, magnetic tape, back-up tapes, and computer chips,

computerized files and storage media on which information has been saved, as well as all equipment needed to read any such material.

The Commission shall return materials so produced by defendants, within three (3) business days of completing inventory and copying.

VI. RECORD KEEPING/BUSINESS OPERATIONS

IT IS FURTHER ORDERED that defendants, their officers, 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, whether acting directly or through any corporation, subsidiary, division or other device, are hereby temporarily restrained and enjoined from:

- A. Failing to create and maintain books, records, accounts, and data that, in reasonable detail, accurately, fairly, and completely reflect their incomes, disbursements, transactions, and use of monies;
- B. Destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any contracts, accounting data, correspondence, advertisements, computer tapes, discs, or other computerized records, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, copies of federal, state, or local business or personal income or property tax returns, and other documents or records of any kind which relate to their

business practices or business or personal finances from November 12, 1999, to the present time; and

- C. Creating, operating, or exercising any control over any business entity, including any partnership, limited partnership, joint venture, sole proprietorship or corporation, without first providing plaintiff with a written statement disclosing: (1) the name of the business entity; (2) the address and telephone number of the business entity; (3) the names of the business entity's officers, directors, principals, managers, and employees; and (4) a detailed description of the business entity's intended activities.

VII. SERVICE OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that, defendants shall immediately provide a copy of this Order to each of their officers, assigns, managing agents, employees, representatives, and independent contractors, and shall, within three (3) business days from the date of service of this Order, provide plaintiff with a sworn statement that defendants have complied with this provision of the Order and provide plaintiff with a list of all business entities and individuals that were provided a copy of this Order.

VIII. CONSUMER CREDIT REPORTS

IT IS FURTHER ORDERED that, pursuant to Section 604 of the Fair Credit Reporting Act, 15 U.S.C. § 1681b, any consumer reporting agency may furnish plaintiff with a consumer report concerning defendants.

IX. MONITORING

IT IS FURTHER ORDERED that agents or representatives of the Commission may contact defendants or their agents or representatives directly and anonymously for the purpose of monitoring compliance with Paragraph I of this Order, and may tape-record any oral communications that occur in the course of such contacts.

X. SERVICE OF ORDER

IT IS FURTHER ORDERED that, pursuant to Fed. R. Civ. P. 4(c)(2), copies of this Order and the initial pleadings filed in this matter may be served by employees of the FTC, by employees of any other law enforcement agency, and by agents of any process servers retained by the FTC, upon any defendants, upon the business premises of any defendant, and upon any financial institution or any person or entity that may be in possession of any assets, property or property rights of any defendant.

XI. EXPEDITED DISCOVERY

IT IS FURTHER ORDERED that in anticipation of the preliminary injunction hearing in this matter, the parties are granted leave to conduct expedited discovery in this matter. The parties may depose witnesses at any time after the date of this Order upon two (2) business days notice. The parties shall respond to any interrogatories or requests for admissions or production of documents within five (5) business days after service of the interrogatories or requests.

XII. HEARING

IT IS FURTHER ORDERED that defendants shall prepare and deliver to the Court and to the Commission, not later than 4:30 p.m. of the third (3rd) business day prior to the preliminary injunction hearing, any opposition to issuance of a preliminary injunction, including any declarations, exhibits, memoranda or other evidence on which they intend to rely.

IT IS FURTHER ORDERED that, if any party to this action intends to present the testimony of any witness at the preliminary injunction hearing in this matter, that party shall, at least forty-eight (48) hours prior to the scheduled date and time of hearing, file with this Court and serve on all other parties, a witness list which shall include the name, address and telephone number of any such witness, and either a summary of the witness' expected testimony or the witness' affidavit revealing the substance of such witness' expected testimony.

IT IS FURTHER ORDERED that defendants shall appear before this Court on the 24th day of April, 2001, at 2:00 o'clock p. .m. at the United States Courthouse, ^{Courtroom} Room 5B, 101 W. Lombard Street, Baltimore, MD 21201 to show cause, if any there be, why this Court should not enter a preliminary injunction, pending final ruling on the Complaint, against said defendants enjoining them from further violations of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a), and Section 521(a) of the Gramm-Leach-

Bliley Act, 15 U.S.C. § 6821(a), continuing the freeze of their assets and imposing such additional relief as may be appropriate.

This TRO expires at the end of the said hearing, unless extended pursuant to law.

XIII. SERVICE OF DOCUMENTS ON PLAINTIFF

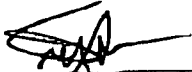
IT IS FURTHER ORDERED, for the purposes of this Order, all correspondence and service of pleadings on plaintiff shall be addressed to:

SHOBA KAMMULA, ESQ.
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
Telephone (202) 326-3159
Fax (202) 326-2558

XVI. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for all purposes.

SO ORDERED, this 17^P day of April, 2001.



Frederick P. Smith
UNITED STATES DISTRICT JUDGE

Respectfully submitted,

JOHN D. GRAUBERT
Acting General Counsel

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600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
(202)326-3024; 3027 (voice)
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Consent to Release of Financial Records

I, _____, of the State of _____ in the United States of America, do hereby direct any bank or trust company at which I have a bank account of any kind or at which a corporation or other entity has a bank account of any kind upon which I am authorized to draw, and its officers, employees and agents, to disclose all information and deliver copies of all documents of every nature in your possession or control which relate to the said bank accounts to any attorney of the Federal Trade Commission, and to give evidence relevant thereto, in the matter of the Federal Trade Commission v. David J. Kacala, and Information Search, Inc., Civ. Action No. _____, now pending in the United States District Court for the District of Maryland, Northern Division, and this shall be irrevocable authority for so doing. This direction is intended to apply to the laws of countries other than the United States which restrict or prohibit the disclosure of bank information without the consent of the holder of the account, and shall be construed as consent with respect thereto, and the same shall apply to any of the bank accounts for which I may be a relevant principal.

Dated: _____, 2001

Signature: _____

Printed full name: _____