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As Part of "Operation Detect Pretext" FTC Sues to Halt "Pretexting"

Using False Pretenses to Steal Consumers' Personal Financial Information Violates The Law

FOR RELEASE

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The Federal Trade Commission has filed suit in three U. S. District Courts to halt the operations of information brokers who use false pretenses, fraudulent statements, or impersonation to illegally obtain consumers' confidential financial information - such as bank balances - and sell it. Obtaining consumers' private financial information under false pretenses - a practice known as "pretexting" - violates federal law. The FTC asked the courts to halt the illegal practices permanently, freeze the defendants' assets pending trial, and order them to give up their ill-gotten gains. In each of the three cases the courts temporarily enjoined the defendant from continuing the illegal practices and imposed a partial freeze of assets pending a hearing.

The Commission has been actively involved in the fight against pretexting since April 1999, when it filed suit against Touch Tone Information Systems, Inc., alleging that pretexting is deceptive and unfair in violation of the Federal Trade Commission Act. Subsequently, Congress enacted the Gramm-Leach-Bliley Act, which specifically prohibits obtaining, or attempting to obtain, another person's financial information by making false, fictitious or fraudulent statements to financial institutions. In January 2001, the Commission announced the kickoff of "Operation Detect Pretext." As part of this effort, FTC staff, after screening 1,000 Web sites and reviewing more than 500 print media advertisements, identified approximately 200 firms that offered to obtain and sell asset or bank account information to third parties. The Commission sent notices to these firms advising them that their practices must comply with the anti-pretexting provisions of Gramm-Leach-Bliley. At the same time, the Commission published a Consumer Alert titled "Pretexting: Your Personal Information Revealed." The three suits filed this week represent the Commission's latest efforts under "Operation Detect Pretext" to stop pretexting.

In documents filed with the courts, the FTC charged that the defendants maintained Web sites where they advertised that they could obtain non-public, confidential, financial information -- including such things as checking and savings account numbers and balances, stock, bond and mutual fund accounts and safe deposit box locations -- for fees ranging from \$100 to \$600, depending on the information sought. In sting operations set up by the FTC in cooperation with local banks, investigators set up dummy bank accounts in the names of cooperating witnesses and then called defendants posing as purchasers of defendants' pretexting services. In one case, for

example, an FTC investigator posed as a consumer seeking account balance information on her fiancé's checking account. The investigator provided limited information about her "fiancé's" account to the defendant. The defendant called the bank, identifying himself by the name of the supposed "fiancé," and asked to check his balance. He later provided the account balance information to the FTC investigator.

The FTC charged that the defendants use false pretenses to steal consumers' private financial information and sell it. The FTC complaints allege that these practices violate the FTC Act and the Gramm-Leach-Bliley Act. The Commission alleged that the sale of financial information by pretexters is also likely to injure consumers by invading their financial privacy and exposing them to the risk of economic harm and financial fraud because their information could be disclosed to individuals who might use it to deplete a bank account or liquidate a stock portfolio, or to steal an identity.

The Commission complaints name Information Search, Inc., and David Kacala of Baltimore, Maryland; Victor Guzzetta doing business as Smart Data Systems of Staten Island, New York; and Paula Garrett doing business as Discreet Data Systems of Humble Texas. The cases were filed under seal in U. S. District Courts for the District of Maryland; the Eastern District of New York; and the Southern District of Texas.

The Commission vote to authorize the filing of the complaints was 3-2, with Commissioner Orson Swindle dissenting and issuing a dissenting statement, and Commissioner Thomas B. Leary dissenting and issuing a statement concurring in part and dissenting in part.

Commissioner Swindle explained that he reluctantly voted against the filing of the three complaints for several reasons. For reasons he articulated in his dissent in Touch Tone Information Systems, Inc., he did not have reason to believe "that the proposed defendants have violated the Commission's binding deception standard." Instead, he "would have preferred to have proceeded administratively so that the Commission could address in the first instance whether pretexting is deceptive under Section 5." He also opposed alleging that the proposed defendants' conduct was unfair under Section 5, because, in his view, the defendants' alleged actions were not likely to cause substantial injury to consumers, as required by the statute. Third, Commissioner Swindle believed there was insufficient support for some of the complaint allegations regarding defendants' violations of the Gramm-Leach-Bliley Act and for seeking an ex parte asset freeze.

In his separate statement, Commissioner Leary said, "I would have voted for complaints that pleaded 'deceptive acts or practices' in violation of Section 5(a)(1) of the Federal Trade Commission Act, in addition to violations of the Gramm-Leach-Bliley Act, and that requested preliminary and permanent injunctive relief against the violations of law asserted. At the present time, I do not believe we have a sufficient basis to plead that the defendants' conduct was 'unfair' or to request further ancillary relief."

NOTE: The Commission authorizes the filing of a complaint when it has "reason to believe" that the law has been or is being violated, and it appears to the Commission that a proceeding is in the public interest. A complaint is not a finding or ruling that the defendant actually has violated the law. The cases will be decided by the courts.

Copies of the complaints and the statements by Commissioners Swindle and Leary are available from the FTC's web site at <http://www.ftc.gov> and also from the FTC's Consumer Response Center, Room 130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The FTC works for the consumer to prevent fraudulent, deceptive and unfair business practices in the marketplace and to provide information to help consumers spot, stop and avoid them. To file a complaint, or to get free information on any of 150 consumer topics, call toll-free, 1-877-FTC-HELP (1-877-382-4357). The FTC enters Internet, telemarketing and other fraud-related complaints into Consumer Sentinel, a secure, online database available to hundreds of civil and criminal law enforcement agencies worldwide.

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(FTC File Nos. 012 3066 (Smart Data Systems)
012 3067 (Discreet Data) 012 3083 (Information Search, Inc.)
(Civil Action Nos. CV 01-2335 (Smart Data Systems)
H01-1255 (Discreet Data) AMD-01-1121 (Information Search, Inc.)

CONTACT INFORMATION

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Related Cases

[Garrett, Paula L. d/b/a Discreet Data Systems](#)

[Guzzetta, Victor L., d/b/a Smart Data Systems](#)

[Information Search, Inc., and David J. Kacala \(District of Maryland, Northern Division\)](#)

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