

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

-vs-

Case No. 6:07-cv-227-Orl-22UAM

ACTION RESEARCH GROUP, INC., et al.,

Defendants.

**STIPULATED FINAL ORDER FOR PERMANENT INJUNCTION AND SETTLEMENT
OF MONETARY CLAIMS**

Plaintiff, the Federal Trade Commission (“FTC”), has filed its complaint for permanent injunction and other relief pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), charging Defendants with violating Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). The FTC and Defendants Action Research Group, Inc., Joseph Depante, and Matthew Depante have agreed to the entry of this Stipulated Final Judgment and Order for Permanent Injunction (“Order”) by this Court to resolve all matters of dispute between the FTC and Defendants with respect to the conduct alleged in the complaint in this action.

FINDINGS

By stipulation of the parties, the Court finds as follows:

1. The FTC has the authority under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), to seek the relief it has requested.

2. This Court has jurisdiction over the subject matter of this case and over Defendants. Venue in the Middle District of Florida is proper, and the Complaint states a claim upon which relief may be granted against Defendants.

3. The activities of Defendants are in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44.

4. Defendants waive all rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order. Each party shall bear its own costs and attorneys' fees. Defendants also waive all rights to seek judicial review of, or otherwise challenge or contest the validity of, this Order.

5. By entering into this Order, Defendants do not admit the allegations set forth in the Complaint, other than the jurisdictional facts. Defendants' consent to entry of this Order shall not be interpreted to constitute an admission by them that they have engaged in any violations of any law or regulations.

6. This action and the relief awarded herein are in addition to, and not in lieu of, other remedies as may be provided by law, including both civil and criminal remedies.

7. Entry of this Order is in the public interest.

DEFINITIONS

For purposes of this Order, the following definitions shall apply:

1. "Defendants" means Action Research Group, Inc., its successors and assigns, Joseph Depante, and Matthew Depante. "Corporate Defendant" means Action Research Group, Inc. and its successors and assigns. "Individual Defendants" means Joseph Depante and Matthew Depante.

2. "Customer phone records" means (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, which includes, but is not limited to, telephone call detail records.

3. “Consumer personal information” means any individually identifiable information concerning a consumer, including, but not limited to: (a) an unpublished or unlisted wire line or wireless phone number; (b) an unpublished or unlisted physical or mailing address, including street name and name of city or town, Post Office Box number, or Private Mailbox number; (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 Social Security number in whole or in part; (e) credit and/or debit card information, including credit and/or debit card number, expiration date, data stored on the magnetic strip of a credit or debit card, and transaction detail records; (f) bank account information or transaction records including the ABA routing number, account number, check number, and transaction detail records; (g) a driver’s license number; or (h) any other information from or about an individual consumer that is combined with (a) through (g) above.

ORDER

BAN ON SALE OF CUSTOMER PHONE RECORDS

I. IT IS THEREFORE ORDERED that Defendants and their agents, servants, salespersons, employees, independent contractors, attorneys, and those persons in active concert or participation with them, whether acting directly or through any sole proprietorship, partnership, limited liability company, corporation, subsidiary, branch, division, or other entity, who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from obtaining, causing others to obtain, marketing, or selling customer phone

records and consumer personal information that is derived from customer phone records; *provided, however*, that Defendants shall not be prohibited from obtaining customer phone records or consumer personal information that is derived from customer phone records pursuant to any law, regulation, or lawful court order. Nothing in this Order shall be read as an exception to Section I.

PROHIBITED BUSINESS ACTIVITIES

II. IT IS FURTHER ORDERED that the Defendants and their agents, servants, salespersons, employees, independent contractors, attorneys, and those persons in active concert or participation with them, whether acting directly or through any sole proprietorship, partnership, limited liability company, corporation, subsidiary, branch, division, or other entity, who receive actual notice of this Order by personal service or otherwise, in connection with the obtaining, marketing, or sale of any consumer personal information, unless otherwise authorized pursuant to any law, regulation, or lawful court order, are hereby restrained and enjoined from:

A. Making false or deceptive statements or representations, including but not limited to impersonating any person or entity, directly or by implication, to any person or entity in order to obtain consumer personal information;

B. Requesting any person or entity to obtain consumer personal information relating to any third person, if the person making such a request knows or should know that the person or entity to whom such a request is made will obtain or attempt to obtain such information in violation of Subsection A of Section II.

MONETARY RELIEF

III. IT IS FURTHER ORDERED that:

A. Judgment is hereby entered against Defendants, jointly and severally, in the amount of SIXTY SEVEN THOUSAND DOLLARS (\$67,000.00); *provided, however*, that this judgment shall be suspended (1) upon the transfer of \$3,000 to the FTC or its designated agent; and (2) as long as the Court makes no finding, as provided in Section IV of this Order, that any defendant materially misrepresented or omitted the nature, existence, or value of any asset.

B. Any funds received by the FTC pursuant to this Section III of this Order shall be deposited into a fund administered by the FTC or its agent to be used for equitable relief, including but not limited to consumer redress and any attendant expenses for the administration of any redress funds. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the FTC may apply any remaining funds for such other equitable relief, including but not limited to consumer information remedies, as the FTC determines to be reasonably related to the practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the U.S. Treasury as equitable disgorgement. Defendants shall have no right to challenge the FTC's choice of remedies or the manner of distribution.

C. While Defendants do not admit any of the facts alleged in the Complaint other than jurisdictional facts, Defendants agree that the facts as alleged in the Complaint filed in this action shall be taken as true without further proof in any bankruptcy case or subsequent civil litigation pursued by the FTC to enforce its rights pursuant to this Final Order, including but not limited to a nondischargeability complaint in any bankruptcy case. Defendants further stipulate

and agree that the facts alleged in the Complaint establish all elements necessary to sustain an action pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S. C. § 523(a)(2)(A).

D. The judgment entered pursuant to this Section III is equitable monetary relief, solely remedial in nature, and not a fine, penalty, punitive assessment, or forfeiture.

E. Defendants acknowledge and agree that any money paid pursuant to this Order is irrevocably paid to the FTC for purposes of settlement between the FTC and Defendants, and they relinquish all rights, title, and interest to such money.

F. Defendants are hereby required, in accordance with 31 U.S.C. § 7701, to furnish to the FTC their tax identification numbers, which shall be used for purposes of collecting and reporting on any delinquent amount arising out of this Order.

G. Pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(1), any consumer reporting agency may furnish a consumer report concerning any Defendant to the FTC, which shall be used for purposes of collecting and reporting on any delinquent amount arising out of this Order.

RIGHT TO REOPEN

IV. IT IS FURTHER ORDERED that the FTC's agreement to this Order is expressly premised on the truthfulness, accuracy, and completeness of Defendants' financial statements previously submitted to the FTC. If, upon motion by the FTC, the Court finds that the financial statement of any Defendant contains any material misrepresentation or omission, the suspended judgment entered in Section III of this Order shall become immediately due and payable as to that Defendant (less any amounts turned over to the FTC pursuant to Section III(A) of this Order); *provided, however*, that in all other respects this Order shall remain in full force and effect unless otherwise ordered by the Court; and, *further provided*, that proceedings instituted

under this provision would be in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings that the FTC may initiate to enforce this Order. For purposes of Section IV, Defendants waive any right to contest any of the allegations in the Complaint.

COOPERATION WITH FTC

V. IT IS FURTHER ORDERED that Defendants shall, in connection with this action or any subsequent investigations related to or associated with the transactions or the occurrences that are the subject of the FTC's Complaint, cooperate in good faith with the FTC and appear at such places and times as the FTC shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by the FTC. If requested in writing by the FTC, Defendants shall appear and provide truthful testimony in any trial, deposition, or other proceeding related to or associated with the transactions or the occurrences that are the subject of the Complaint, without the service of a subpoena, *provided, however*, that Defendants shall be entitled to receive any witness fees and expenses allowable pursuant to Fed. R. Civ. P. 45.

COMPLIANCE MONITORING

VI. IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order:

A. Within ten (10) days of receipt of written notice from a representative of the FTC, Defendants each shall submit additional written reports, which are true and accurate and sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in each such Defendant's possession or direct or indirect control, to inspect the business operation.

B. In addition, the FTC is authorized to use all other lawful means, including but not limited to:

1. obtain discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;

2. pose as consumers and suppliers to Defendants, their employees, or any other entity managed or controlled in whole or in part by any Defendant, without the necessity of identification or prior notice.

C. Defendants each shall permit representatives of the FTC to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present;

D. Provided however, that nothing in this Order shall limit the FTC's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

COMPLIANCE REPORTING BY DEFENDANTS

VII. IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

A. For a period of three (3) years from the date of entry of this Order,

1. Individual Defendants each shall notify the FTC of the following:

a. Any changes in his residence, mailing addresses, and telephone numbers, within fifteen (15) days of the date of such change;

b. Any changes in his employment status (including self-employment), and any change in his ownership in any business entity, within fifteen (15) days of the date of such change. Such notice shall include the name and address of each business that he is affiliated with, employed by, creates, forms, or performs services for; a detailed description of the nature of the business; and a detailed description of his duties and responsibilities in connection with the business or employment; and

c. Any changes in his name or use of any aliases or fictitious names.

2. Defendants shall notify the FTC of any changes in structure of Corporate Defendant or any business entity that any Defendant directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order, including but not limited to incorporation or other organization; a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; or a change in the business name or address, at least thirty (30) days prior to such change; *provided, however,* that, with respect to any proposed change in the business entity about which a Defendant learns fewer than thirty (30) days prior to the date such action is to take place, such Defendant shall notify the FTC as soon as is practicable after obtaining such knowledge.

B. One hundred and eighty (180) days after the date of entry of this Order and annually thereafter for a period of three (3) years, Defendants each shall provide a written report to the FTC, which is true and accurate and sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Order.

This report shall include, but not be limited to:

1. for each Individual Defendant:

a. his then-current residence address, mailing addresses, and telephone numbers;

b. his then-current employment status (including self-employment), including the name, addresses, and telephone numbers of each business that he is affiliated with, employed by, or performs services for; a detailed description of the nature of the business; and a detailed description of his duties and responsibilities in connection with the business or employment; and

c. any other changes required to be reported under subparagraph A of Section VII;

2. for all Defendants:

a. a copy of each acknowledgment of receipt of this Order obtained pursuant to Section IX; and

b. any other changes required to be reported under subparagraph A of Section VII;

C. Defendants shall notify the FTC of the filing of a bankruptcy petition by any Defendant within fifteen (15) days of filing;

D. For the purposes of this Order, Defendants shall, unless otherwise directed by the FTC's authorized representatives, send all reports and notifications required by this Order to the FTC at the following address:

Associate Director, Division of Enforcement
Federal Trade Commission
600 Pennsylvania Avenue, N.W., Room NJ2122
Washington, D.C. 20580
RE: FTC v. Action Research Group, Case No. 6:07-cv-227-Orl-22UAM (M.D. Fla.)

E. For purposes of the compliance reporting and monitoring required by this Order, the FTC is authorized to communicate directly with Defendants.

RECORD KEEPING

VIII. IT IS FURTHER ORDERED that, for a period of six (6) years from the date of entry of this Order, in connection with any business where any Defendant is the majority owner of the business or directly or indirectly manages or controls the business, each Defendant and their agents, servants, salespersons, employees, independent contractors, attorneys, and those persons in active concert or participation with them, whether acting directly or through any sole proprietorship, partnership, limited liability company, corporation, subsidiary, branch, division, or other entity, who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from failing to create and retain the following records:

A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;

B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;

C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of goods or services purchased, and description of goods or services purchased, to the extent such information is obtained in the ordinary course of business;

D. Complaints and refund requests (whether received directly, indirectly, or through any third party) and any responses to those complaints or requests;

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials, and records that accurately reflect the time periods during which such materials were used and the persons and business entities that used such materials;

F. To the extent consumer personal information is obtained through the use of any third party, records that accurately reflect the name, address, and telephone number of such third party, including, but not limited to, copies of all contracts and correspondence (other than correspondence that contains consumer personal information) between any Defendant and such third party; and

G. All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, acknowledgments of receipt of this Order, required by Sections IX and X, and all reports submitted to the FTC pursuant to Section VII.

DISTRIBUTION OF ORDER BY DEFENDANTS

IX. IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Order, Defendants shall deliver copies of this Order as directed below:

A. Corporate Defendant must deliver a copy of this Order to all principals, officers, directors, and managers, and all employees, agents, and representatives who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within five (5) days of service of this Order upon Corporate Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities.

B. Individual Defendant as control person: For any business entity that an Individual Defendant controls, directly or indirectly, or in which such Individual Defendant has a majority ownership interest, such Individual Defendant must deliver a copy of this Order to all principals, officers, directors, and managers, and all employees, agents, and representatives who engage in

conduct related to the subject matter of the Order. For current personnel, delivery shall be within five (5) days of service of this Order upon the Individual Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities.

C. Individual Defendant as employee or non-control person: For any business where an Individual Defendant is not a controlling person of a business but otherwise engages in conduct related to the subject matter of the Order, such Individual Defendant must deliver a copy of this Order to all principals and managers of such business entity before engaging in such conduct.

D. Each Defendant must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Section.

ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS

X. IT IS FURTHER ORDERED that each Defendant, within five (5) business days of receipt of this Order as entered by the Court, must submit to the FTC a truthful sworn statement acknowledging receipt of this Order.

RETENTION OF JURISDICTION

XI. IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

STIPULATED AND AGREED TO BY:

\s\Joseph Depante
ACTION RESEARCH GROUP, INC., Defendant
By:
Address:

\s\Joseph Depante
JOSEPH DEPANTE, Defendant

\s\Matthew Depante
MATTHEW DEPANTE, Defendant

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IT IS SO ORDERED, this 18th day of March, 2008.



ANNE C. CONWAY
United States District Judge