

Complaint

IN THE MATTER OF

**EDUCATIONAL RESEARCH CENTER OF AMERICA,
INC., ET AL.**CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-4079; File No. 0223249
Complaint, May 6, 2003--Decision, May 6, 2003*

This consent order addresses representations by Respondent Educational Research Center of America, Inc. – a student survey company that provides student data to colleges and universities and other entities for recruitment and marketing purposes – and its officer, Respondent Marian Sanjana, and Respondents Student Marketing Group, Inc. – a commercial list broker that supplies names for youth marketing campaigns – and their respective officers, Respondents Marian Sanjana and Jan Stumacher – about how detailed, personal information collected from middle, junior high, and high school students through a survey would be used. The order, among other things, prohibits the respondents – in connection with the collection of personally identifiable information from an individual – from misrepresenting how such information is collected or will be used or disclosed. The order also prohibits the respondents – in connection with the collection of personally identifiable information from students for any “noneducational-related marketing purpose” – from using or disclosing such information unless they disclose (1) the existence and nature of such noneducational-related marketing purpose, (2) the types or categories of any entities to which the information will be disclosed, and (3) that the information used or disclosed is personally identifiable. In addition, the order prohibits the respondents from using or disclosing for any noneducational-related marketing purpose any personally identifiable information that was collected through surveys distributed prior to July 30, 2002. The order also requires the respondents to delete all personally identifiable information collected through surveys from any student who was under the age of thirteen at the time of collection.

Participants

For the Commission: *Laura Mazzarella, Gregory A. Ashe, Jessica L. Rich, and Joel Winston.*

For the Respondents: *Patrick McElhinney, Kirkpatrick & Lockhart, LLP.*

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COMPLAINT

The Federal Trade Commission, having reason to believe that Educational Research Center of America, Inc. and Student Marketing Group, Inc., corporations; Marian Sanjana, individually and as an officer of Educational Research Center of America, Inc.; and Jan Stumacher, individually and as an officer of Student Marketing Group, Inc. (“respondents”), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Educational Research Center of America, Inc. (“ERCA”) is a Pennsylvania corporation with its principal office or place of business headquartered in Pittsburgh, Pennsylvania.
2. Respondent Marian Sanjana is an officer and director of ERCA. Individually or in concert with others, she formulates, directs, controls, or participates in the policies, acts, or practices of ERCA, including the acts or practices alleged in this complaint. Her principal office or place of business is the same as that of ERCA.
3. Respondent Student Marketing Group, Inc. (“SMG”) is a New York corporation with its principal office or place of business at 300 Merrick Road, Suite 206, Lynbrook, New York 11563. SMG also does business as the College Bound Selection Service.
4. Respondent Jan Stumacher is an officer and director of SMG. Individually or in concert with others, he formulates, directs, controls, or participates in the policies, acts, or practices of SMG, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of SMG.
5. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

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6. Since at least 1999, respondents have collected personal information from high school and middle and junior high school students through surveys (the “Surveys”). Respondents market and distribute the Surveys to the students’ teachers and guidance counselors with the request that they have their students complete the Surveys. Respondents have collected personal information (the “Survey Data”) from millions of high school students and from more than 300,000 middle and junior high school students who completed the Surveys.
7. The Surveys collect from high school students personal information including, but not limited to, name, address, gender, grade point average, date of birth, academic and occupational interests, athletic and extracurricular interests, religious affiliation, racial and ethnic background, and the name and grade of a sibling.
8. The Surveys collect from middle and junior high school students personal information including, but not limited to, name, address, gender, grade point average, date of birth, occupational interests, current athletic and extracurricular activities, religious affiliation, racial and ethnic background, the name and grade of a sibling, computer usage, and television viewing habits.
9. Respondents create, market and distribute the Surveys, as well as compile and use Survey Data. Respondent SMG funds the costs to create and distribute the Surveys. Respondent SMG uses Survey Data to create lists of students that it sells to commercial entities for use in marketing. Such entities include, but are not limited to, banks, insurance companies, consumer goods and services providers, and list brokers.
10. Respondents have disseminated or caused to be disseminated marketing materials and privacy statements, including but not limited to the attached Exhibits A through E. These marketing materials and privacy statements contain the following statements regarding the use and disclosure of personal information collected through the Surveys:

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- A. “ERCA is a non-profit corporation that conducts a voluntary survey of high school students throughout the United States. The survey is designed to help students further their education and professional development by enabling institutions of higher learning to identify potential students and to provide them with information about curricula, extracurricular activities and financial aid programs.” (Exhibit A, ERCA Web site home page).
- B. “As you may know, ERCA is administering this annual poll to more than 14 million students and will compile the information into a survey report that details the interests and trends among today’s students. This information will be used by universities and colleges nationally in their ongoing efforts to communicate and keep in touch with the interests and trends among today’s high school students. University financial aid offices and scholarship foundations may also utilize the information to evaluate and make funding available for students’ post secondary education.” (Exhibit B, cover letter to high school educators accompanying the Survey).
- C. “At the beginning of each school year, high school educators nationally have administered an annual survey of senior high school students. In the last 2 years nearly 60,000 teachers and 4,000,000 students participated. The results are tabulated into a survey report that is utilized by colleges and universities in their ongoing efforts to keep in touch with the interests and trends among today’s students.

As the trend toward colleges’ student recruitment has moved earlier and earlier into the student’s high school career, we must begin to administer this poll at the middle and junior high school level in order to provide a complete report. I am writing to request your cooperation in doing so.

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ERCA is administering this annual poll to more than 14 million students and will compile the information into a survey report that details the interests and trends among today's students. This information will be used by both public and private universities and colleges. University financial aid offices and scholarship foundations may also utilize the information to make funding available for students' education." (Exhibit C, cover letter to middle and junior high school educators accompanying the Survey).

D&E. "ERCA will utilize this data for student related research and may make it available to Colleges, Universities, Educational Agencies and others wishing to learn about and communicate useful and pertinent information to students." (Exhibit D, Privacy Statement found on high school Survey; Exhibit E, Privacy Statement found on middle and junior high school Survey).

11. Through the means described in Paragraph 10, respondents have represented, expressly or by implication, that information collected from students through the Surveys is shared only with colleges, universities, and other entities providing education-related services.

12. In truth and in fact, information collected from students through the Surveys is shared not only with colleges, universities, and other entities providing education-related services, but also with commercial entities for marketing purposes. Therefore, the representation set forth in Paragraph 11 was, and is, false or misleading.

13. Through the means described in Paragraph 10, respondents have represented, expressly or by implication, that information collected from middle and junior high school students through the Survey is compiled into survey reports that are shared with colleges and universities.

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14. In truth and in fact, little if any information collected from middle and junior high school students through the Survey is compiled into survey reports. Rather, the information is primarily shared with commercial entities for marketing purposes. Therefore, the representation set forth in Paragraph 13 was, and is, false or misleading.

15. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices, in or affecting commerce, in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this sixth day of May, 2003, has issued this complaint against respondents.

By the Commission.

EXHIBIT A



Educational Research Center Of America

ERCA is a non-profit corporation that conducts a voluntary survey of high school students throughout the United States. The survey is designed to help students further their education and professional development by enabling institutions of higher learning to identify potential students and to provide them with information about curricula, extracurricular activities and financial aid programs. The ERCA survey results are available free of charge, on the ERCA web site. ERCA will also provide a minimum of 25 scholarships per year to deserving students. Participation in the survey is not a prerequisite to receiving an ERCA scholarship.

Directors Bio

**Scholarship
Application**

**Scholarship
Awardees**

**ERCA
Survey Report**

Contact Us

[ERCA's Privacy of Student Information Policy](#)



EXHIBIT B



A Nonprofit Entity

OFFICIAL TEACHER COMMUNICATION
Annual Student Survey

Educational Research Center of America, Inc.
2020 Pennsylvania Ave NW Room 7799 (202) 393-7799
Washington, D.C. 20006 www.Studentresearch.org

Dear Teacher,

As the school year begins, it's time for ERCA's annual survey of high school students. We appreciate the cooperation from nearly 60,000 high school educators, who previously have helped administer our survey. We urge you to join in and be equally cooperative. Previous student surveys have been successful because of the cooperation and help from high school educators just like you. Thank you.

As you may know, ERCA is administering this annual poll to more than 14 million students and will compile the information into a survey report that details the interests and trends among today's students. This information will be used by universities and colleges nationally in their ongoing efforts to communicate and keep in touch with the interests and trends among today's high school students. University financial aid offices and scholarship foundations may also utilize the information to evaluate and make funding available for students' post secondary education.

Your participation is critical to your students' post-secondary future. Upon compilation, a copy of this survey's results will be reserved for your review. Simply fill out and send in the reservation card enclosed with your students' completed forms, and the report will be made available to you immediately upon its completion.

ERCA is a nonprofit organization. This year we have set an aggressive goal of collecting completed surveys from at least 3 million high school students. Please help us meet this goal by distributing the enclosed forms to all of your students, in all of your classes. We encourage you to visit our web site at www.Studentresearch.org to learn more about the results from last year's high school student survey, and the ERCA scholarships that were awarded.

Please ask each of your students to fill out the survey **clearly and completely** and then place them in the postage-paid envelope and mail.

***Please distribute the survey forms to all seniors and juniors.
Remaining forms should then be distributed to sophomores and freshmen.***

We cannot compile our final report and make it available to the colleges and universities that will rely upon it until we receive your response. In order to achieve our goal, we may be writing to you several times to request your cooperation. Please have your students complete the enclosed survey within the next week, so that our nonprofit organization can save the costs associated with contacting you again.

On behalf of the Educational Research Center of America, and the universities and colleges that will rely upon the information collected, I want to thank you in advance for your cooperation.

Sincerely,

Marian Sanjana M.Ed.
Director of Student Research

Exhibit B

P.S. Reserve your ERCA annual survey report. Fill out and return the reservation card enclosed along with your students' completed surveys.

EXHIBIT C



A Nonprofit Entity

OFFICIAL TEACHER COMMUNICATION
Annual Student Survey

Educational Research Center of America, Inc.
2020 Pennsylvania Ave NW Room 7799 (202) 393-7799
Washington, D.C. 20006 www.Studentresearch.org

Dear Teacher,

At the beginning of each school year, high school educators nationally have administered an annual survey of senior high school students. In the last 2 years nearly 60,000 teachers and 4,000,000 students participated. The results are tabulated into a survey report that is utilized by colleges and universities in their ongoing efforts to keep in touch with the interests and trends among today's students.

As the trend toward colleges' student recruitment has moved earlier and earlier into the student's high school career, we must begin to administer this poll at the middle and junior high school level in order to provide a complete report. I am writing to request your cooperation in doing so.

ERCA is administering this annual poll to more than 14 million students and will compile the information into a survey report that details the interests and trends among today's students. This information will be used by both public and private universities and colleges. University financial aid offices and scholarship foundations may also utilize the information to evaluate and make funding available for students' education.

Your participation is critical to your students' future. Upon compilation, a copy of this survey's results will be reserved for your review. Simply fill out and send in the reservation card enclosed with your students' completed forms, and the report will be made available to you immediately upon its completion.

ERCA is a nonprofit organization. This year we have set an aggressive goal of collecting completed surveys from at least 1 million middle and junior high school students. Please help us meet this goal by distributing the enclosed forms to all of your students, in all of your classes. Ask them to fill out the survey **clearly and completely** and then place them in the postage-paid envelope and mail.

Please distribute the survey forms to every student in each of your classes.

We cannot compile our final report and make it available to the colleges and universities that will rely upon it until we receive your response. We encourage you to visit our web site at www.Studentresearch.org to learn more about the results from last year's high school student survey, and the ERCA scholarships that were awarded.

We are very concerned with paper (and tree) conservation and not wasting this natural resource needlessly. ERCA will utilize over 750,000 pounds of paper in the administration of this survey. Many forms are wasted and trees needlessly killed as some teachers choose not to participate. Please pitch in, and have your class participate, and not let the enclosed forms go to waste. On behalf of the Educational Research Center of America, and the universities and colleges that will rely upon the information collected, I want to thank you in advance for your cooperation.

Sincerely,


Marian Sanjana M.Ed.
Director of Student Research

Exhibit C

P.S. Reserve your ERCA annual survey report. Fill out and return the reservation card enclosed along with your students' completed surveys.

EXHIBIT D

High School ID # 725996521

[illegible][illegible][illegible][illegible]

22

□ □ □ □ □



State

Zip Code

Male Female

200□

22

/ □ □

100

A+

A

A-

B+

B

B-



C

C-

or Less

Month

Day

Year

Approximate Grade Point Average:

Scale: A=4; B=3; C=2; D=1; Failing = 0

[illegible]

4

6

7 ☐

8

9

10

11

D 1

His/Her School Grade

7. ☐ Technical College
8. ☐ Trade /Vocational School
9. ☐ Will not attend college

19. ☐ Methodist
20. ☐ Nazarene
21. ☐ Pentecostal
22. ☐ Presbyterian
23. ☐ Southern Baptist Conv.
24. ☐ United Church of Christ
25. ☐ Interdenominational
26. ☐ None of the above

16. ☐ Mathematics / Statistics
17. ☐ Medical School
18. ☐ Military School / Academy
19. ☐ Music College
20. ☐ Nursing College
21. ☐ Religion / Theology
22. ☐ Sciences
23. ☐ Social Studies
24. ☐ Undecided/Other

Exhibit D

4. PLEASE MARK THE 2 CHOICES BELOW THAT MOST ACCURATELY REPRESENT YOUR CURRENT INTERESTS OR FUTURE CAREER GOALS. (DARKEN TWO)

- | | | |
|---|--|--|
| 1. ☐ Accounting | 29. ☐ Drafting / Building Architecture | 57. ☐ Math |
| 2. ☐ Advertising / Marketing | 30. ☐ Drama / Acting / Dance | 58. ☐ Medical Physician |
| 3. ☐ Aviation / Airline Industry | 31. ☐ Education | 59. ☐ Medical/Lab Science Tech.. |
| 4. ☐ Agriculture | 32. ☐ Electronics | 60. ☐ Military Science |
| 5. ☐ Animal Science | 33. ☐ Engineering (General, Civil) | 61. ☐ Ministry / Theology |
| 6. ☐ Archeology | 34. ☐ Engineering (Electrical) | 62. ☐ Music (all types) |
| 7. ☐ Art (Painting, Drawing, Sculpture) | 35. ☐ Engineering (Electronic Tech.) | 63. ☐ Nursing / Health Care |
| 8. ☐ Athletics / Coaching | 36. ☐ Engineering (Mechanical) | 64. ☐ Optometry / Ophthalmology |
| 9. ☐ Automotive / Truck Technology | 37. ☐ English / Writer | 65. ☐ Pharmacist |
| 10. ☐ Auto Body Repair | 38. ☐ Environmental / Conservation | 66. ☐ Photography / Studio Film |
| 11. ☐ Banking | 39. ☐ Environmental Technology | 67. ☐ Physical Education |
| 12. ☐ Biological Science | 40. ☐ Fashion Design Merchandising | 68. ☐ Physical Therapy |
| 13. ☐ Broadcasting / Radio / TV | 41. ☐ Finance | 69. ☐ Physics |
| 14. ☐ Business / General | 42. ☐ Food Service Culinary Arts | 70. ☐ Political Science/Government |
| 15. ☐ Business / Management | 43. ☐ Foreign Language | 71. ☐ Psychology / Psychiatry |
| 16. ☐ Chemistry | 44. ☐ Forestry | 72. ☐ Real Estate |
| 17. ☐ Child Care | 45. ☐ Graphic Design | 73. ☐ Robotics |
| 18. ☐ Chiropractic | 46. ☐ History | 74. ☐ Science |
| 19. ☐ Christian Services / Missionary | 47. ☐ Hospitality | 75. ☐ Small Engine Technology |
| 20. ☐ Commercial Art / Design | 48. ☐ Hotel Management | 76. ☐ Social Work |
| 21. ☐ Computer Aided Drafting | 49. ☐ Information Technology | 77. ☐ Teacher |
| 22. ☐ Computer / Data Processing | 50. ☐ Insurance | 78. ☐ Telecommunications |
| 23. ☐ Computer Programming/Networking | 51. ☐ Interior Design | 79. ☐ Travel |
| 24. ☐ Computer Repair | 52. ☐ International Business | 80. ☐ Tourism / Transportation |
| 25. ☐ Cosmetology | 53. ☐ Internet / E-Commerce Tech | 81. ☐ Veterinary Medicine |
| 26. ☐ Criminal Justice | 54. ☐ Journalism | 82. ☐ Web Design |
| 27. ☐ Culinary Arts | 55. ☐ Law Enforcement | 83. ☐ Wildlife Management |
| 28. ☐ Dental Field | 56. ☐ Lawyer / Paralegal | 84. ☐ Undecided / Other |

5. WHICH 2 SPORTS OR ACTIVITIES MIGHT YOU PARTICIPATE IN DURING COLLEGE ? (DARKEN TWO)

- | | | |
|--|---|---|
| 1. ☐ Academic | 12. ☐ Fishing | 22. ☐ Soccer |
| 2. ☐ Art | 13. ☐ Football | 23. ☐ Softball |
| 3. ☐ Band | 14. ☐ Golf | 24. ☐ Study Abroad |
| 4. ☐ Baseball | 15. ☐ Gymnastics | 25. ☐ Swimming |
| 5. ☐ Basketball | 16. ☐ Hockey | 26. ☐ Tennis |
| 6. ☐ Cheerleading | 17. ☐ Lacrosse | 27. ☐ Theatre / Drama |
| 7. ☐ Culinary Arts | 18. ☐ Language | 28. ☐ Track |
| 8. ☐ Dance | 19. ☐ Military / ROTC | 29. ☐ Volleyball |
| 9. ☐ Debate | 20. ☐ Music | 30. ☐ Weightlifting |
| 10. ☐ Diving | 21. ☐ Skiing | 31. ☐ Wrestling |
| 11. ☐ Equestrian | | 32. ☐ Writing |

6. YOU MAY BE ELIGIBLE FOR A GRANT OR A LOAN BASED ON YOUR ETHNIC BACKGROUND. PLEASE SPECIFY ONE:

- | | |
|--|--|
| 1. ☐ American Indian /Alaskan Native | 4. ☐ Latin American/South or Central American/Hispanic |
| 2. ☐ Asian/Asian American/Pacific Island | 5. ☐ Mexican or Mexican American |
| 3. ☐ Black/African American/Caribbean | 6. ☐ Puerto Rican |
| | 7. ☐ White/Caucasian |
| | 8. ☐ Prefer not to respond |

7. IS ANOTHER LANGUAGE SPOKEN IN YOUR HOUSEHOLD OTHER THAN ENGLISH?

1. ☐ Yes
2. ☐ No

8. WHICH BRANCH OF THE ARMED SERVICES WOULD YOU CONSIDER JOINING TO HELP FINANCE YOUR COLLEGE EDUCATION? (DARKEN ONE)

- | | | |
|--------------------------------------|---|-------------------------------|
| 1. ☐ Air Force | 4. ☐ Marines | 7. ☐ None |
| 2. ☐ Army | 5. ☐ National Guard | |
| 3. ☐ Coast Guard | 6. ☐ Navy | |

9. DO YOU HAVE A COMPUTER IN YOUR HOUSEHOLD? ☐ Yes ☐ No

10. WHERE DO YOU PLAN ON LIVING DURING YOUR FRESHMAN YEAR OF COLLEGE?

- | | |
|--|--|
| 1. ☐ At Home | 3. ☐ Off Campus |
| 2. ☐ On-Campus Housing | 4. ☐ Fraternity/Sorority |
| | 5. ☐ Undecided |

EXHIBIT E

Please **PRINT CLEARLY** and answer each question **ACCURATELY**.
Your answers are important to the success of this national survey.

This survey is being conducted by Educational Research Center of America, Inc.
(A Non-Profit Student Research Entity.)

First Name _____ MI

Last Name _____

Home Address (use two lines if necessary) _____

Home Address (2nd Line) _____ Apt # _____

City _____

State _____ Zip Code _____

☐ Male ☐ Female

Permanent E-Mail Contact Address (Please Print Very Clearly) _____

Month / Day / Year ☐ 5th ☐ 6th ☐ 7th ☐ 8th ☐ 9th
Date of Birth Your current grade in school

First Name of your oldest brother or sister that lives in your home
☐ 6th ☐ 7th ☐ 8th ☐ 9th ☐ 10th ☐ 11th ☐ 12th ☐ Older than 12th
Current grade in school of the brother/sister above

Approximate Grade Point Average:

☐ A+ ☐ A ☐ A- ☐ B+ ☐ B ☐ B- ☐ C+ ☐ C ☐ C- or less

1. Do you plan to attend college?

1. ☐ Will probably attend college 2. ☐ Will not attend college

2. If you were to join a church related organization;
Which would you choose? (Darken ONE)

- | | |
|--|---|
| 1. ☐ Adventist | 14. ☐ Islam |
| 2. ☐ African Methodist Episcopal | 15. ☐ Judaism |
| 3. ☐ Assemblies of God | 16. ☐ LDS / Mormon |
| 4. ☐ Baptist | 17. ☐ Lutheran |
| 5. ☐ Bible | 18. ☐ Mennonite |
| 6. ☐ Catholic | 19. ☐ Methodist |
| 7. ☐ Church of Christ | 20. ☐ Nazarene |
| 8. ☐ Church of God | 21. ☐ Pentecostal |
| 9. ☐ Christian Science | 22. ☐ Presbyterian |
| 10. ☐ Disciples of Christ | 23. ☐ Southern Baptist Conv. |
| 11. ☐ Episcopal | 24. ☐ United Church of Christ |
| 12. ☐ Evangelical | 25. ☐ Interdenominational |
| 13. ☐ Friends/Quakers | 26. ☐ None of the above |

3. During this school year, which activities listed below,
might you actively participate in? (Darken up to TWO)

- | | |
|---|---|
| 1. ☐ Academic Honor Society | 14. ☐ Military |
| 2. ☐ Art | 15. ☐ Political |
| 3. ☐ Athletics | 16. ☐ Poetry |
| 4. ☐ Ballet | 17. ☐ Photography |
| 5. ☐ Camping | 18. ☐ Public Speaking |
| 6. ☐ Community Service | 19. ☐ Religious youth activities |
| 7. ☐ Chess Club | 20. ☐ Science Club |
| 8. ☐ Dance | 21. ☐ Student Government |
| 9. ☐ Debating Club | 22. ☐ Theatre |
| 10. ☐ Foreign Exchange | 23. ☐ Volunteer work |
| 11. ☐ Journalism | 24. ☐ Woodworking |
| 12. ☐ Music (vocal) | 25. ☐ Working for pay - part time |
| 13. ☐ Music (instrumental) | 26. ☐ Writing |

(Please continue on next page)

represent your current interests for a future career. (Darken TWO)

- | | |
|---|--|
| 1. ☐ Accounting | 43. ☐ Foreign Language |
| 2. ☐ Advertising / Marketing | 44. ☐ Forestry |
| 3. ☐ Aviation / Airline Industry | 45. ☐ Graphic Design |
| 4. ☐ Agriculture | 46. ☐ History |
| 5. ☐ Animal Science | 47. ☐ Hospitality |
| 6. ☐ Archeology | 48. ☐ Hotel Management |
| 7. ☐ Art (Painting, Drawing, Sculpture) | 49. ☐ Information Technology |
| 8. ☐ Athletics / Coaching | 50. ☐ Insurance |
| 9. ☐ Automotive / Truck Technology | 51. ☐ Interior Design |
| 10. ☐ Auto Body Repair | 52. ☐ International Business |
| 11. ☐ Banking | 53. ☐ Internet / E-Commerce Tech. |
| 12. ☐ Biological Science | 54. ☐ Journalism |
| 13. ☐ Broadcasting / Radio / TV | 55. ☐ Law Enforcement |
| 14. ☐ Business / General | 56. ☐ Lawyer / Paralegal |
| 15. ☐ Business / Management | 57. ☐ Math |
| 16. ☐ Chemistry | 58. ☐ Medical Physician |
| 17. ☐ Child Care | 59. ☐ Medical / Lab Science Tech. |
| 18. ☐ Chiropractic | 60. ☐ Military Science |
| 19. ☐ Christian Services / Missionary | 61. ☐ Ministry / Theology |
| 20. ☐ Commercial Art / Design | 62. ☐ Music (all types) |
| 21. ☐ Computer Aided Drafting | 63. ☐ Nursing / Health Care |
| 22. ☐ Computer / Data Processing | 64. ☐ Optometry / Ophthalmology |
| 23. ☐ Computer Programming/Networking | 65. ☐ Pharmacist |
| 24. ☐ Computer Repair | 66. ☐ Photography / Studio Film |
| 25. ☐ Cosmetology | 67. ☐ Physical Education |
| 26. ☐ Criminal Justice | 68. ☐ Physical Therapy |
| 27. ☐ Culinary Arts | 69. ☐ Physics |
| 28. ☐ Dental Field | 70. ☐ Political Science / Government |
| 29. ☐ Drafting / Building Architecture | 71. ☐ Psychology / Psychiatry |
| 30. ☐ Drama / Acting / Dance | 72. ☐ Real Estate |
| 31. ☐ Education | 73. ☐ Robotics |
| 32. ☐ Electronics | 74. ☐ Science |
| 33. ☐ Engineering (General, Civil) | 75. ☐ Small Engine Technology |
| 34. ☐ Engineering (Electrical) | 76. ☐ Social Work |
| 35. ☐ Engineering (Electronic Tech.) | 77. ☐ Teacher |
| 36. ☐ Engineering (Mechanical) | 78. ☐ Telecommunications |
| 37. ☐ English / Writer | 79. ☐ Travel |
| 38. ☐ Environmental / Conservation | 80. ☐ Tourism / Transportation |
| 39. ☐ Environmental Technology | 81. ☐ Veterinary Medicine |
| 40. ☐ Fashion Design / Merchandising | 82. ☐ Web Design |
| 41. ☐ Finance | 83. ☐ Wildlife Management |
| 42. ☐ Food Service / Culinary Arts | 84. ☐ Undecided / Other |

5. Which 2 SPORTS or ACTIVITIES do you participate in? (Darken TWO)

- | | |
|--|---|
| 1. ☐ Academic | 17. ☐ Lacrosse |
| 2. ☐ Art | 18. ☐ Language |
| 3. ☐ Band | 19. ☐ Military / ROTC |
| 4. ☐ Baseball | 20. ☐ Music |
| 5. ☐ Basketball | 21. ☐ Skiing |
| 6. ☐ Cheerleading | 22. ☐ Soccer |
| 7. ☐ Culinary Arts | 23. ☐ Softball |
| 8. ☐ Dance | 24. ☐ Study Abroad |
| 9. ☐ Debate | 25. ☐ Swimming |
| 10. ☐ Diving | 26. ☐ Tennis |
| 11. ☐ Equestrian | 27. ☐ Theatre / Drama |
| 12. ☐ Fishing | 28. ☐ Track |
| 13. ☐ Football | 29. ☐ Volleyball |
| 14. ☐ Golf | 30. ☐ Weightlifting |
| 15. ☐ Gymnastics | 31. ☐ Wrestling |
| 16. ☐ Hockey | 32. ☐ Writing |

6. Please tell us your ethnic background by checking ONE below:

- | | |
|---|--|
| 1. ☐ American Indian | 5. ☐ Mexican American |
| 2. ☐ Asian | 6. ☐ Puerto Rican |
| 3. ☐ African American | 7. ☐ White/Caucasian |
| 4. ☐ Hispanic | 8. ☐ Prefer not to respond |

7. Is another language spoken in your home other than English?

1. ☐ Yes 2. ☐ No

8. Do you have a computer in your household? ☐ Yes ☐ No

9. How many hours do you spend on the computer each day?

- | | |
|--------------------------------------|--|
| 1. ☐ Less than 1 | 3. ☐ 3 - 4 hours |
| 2. ☐ 1 - 3 hours | 4. ☐ More than 4 hours |

10. How many hours of television do you watch per day?

- | | |
|--------------------------------------|--|
| 1. ☐ Less than 1 | 3. ☐ 3 - 4 hours |
| 2. ☐ 1 - 3 hours | 4. ☐ More than 4 hours |

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A Non-Profit Student Research Entity. JHSF80

All information answered on this questionnaire is offered voluntarily by each student.
ERCA will utilize this data for student related research and may make it
available to Colleges, Universities, Educational Agencies and others wishing to
learn about and communicate useful and pertinent information to students.

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DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Respondents named in the caption hereof, and the Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the Respondents with violation of the Federal Trade Commission Act, 15 U.S.C. § 45 et seq;

The Respondents, their attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), an admission by the Respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it has reason to believe that the Respondents have violated the said Act, and that a Complaint should issue stating its charges in that respect, and having thereupon accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure described in Section 2.34 of its Rules, the Commission hereby issues its Complaint, makes the following jurisdictional findings and enters the following Order:

1. Respondent Educational Research Center of America, Inc. (“ERCA”) is a Pennsylvania corporation with its principal office or place of business headquartered in Pittsburgh, Pennsylvania.

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2. Respondent Marian Sanjana is an officer of ERCA. Her principal office or place of business is the same as that of ERCA.

3. Respondent Student Marketing Group, Inc. (“SMG”) is a New York corporation with its principal office or place of business at 300 Merrick Road, Suite 206, Lynbrook, New York 11563.

4. Respondent Jan Stumacher is an officer and director of SMG. His principal office or place of business is the same as that of SMG.

5. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

ORDER

DEFINITIONS

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

1. “Personally identifiable information” or “personal information” shall mean individually identifiable information from or about an individual including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (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 telephone number; (e) a Social Security Number; (f) an Internet Protocol (“IP”) address or host name that identifies an individual; (g) a persistent identifier, such as a customer number held in a “cookie” or processor serial number, that is combined with other available data that identifies an individual; or (h) any information, including, but not limited to, grade point average, date of birth, academic or occupational interests, athletic or extracurricular interests, racial or ethnic background, or religious affiliation, that is combined with any of (a) through (g) above.

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2. “Noneducational-related marketing purpose” shall mean for the purpose of marketing products or services, or selling personally identifiable information from or about an individual for use in marketing products or services to individuals. Provided, however, that “noneducational-related marketing purpose” does not apply to the collection, disclosure or use of personally identifiable information from or about a student for the exclusive purpose of developing, evaluating, or providing to students or educational institutions (a) college or postsecondary education recruitment, or military recruitment; (b) book clubs, magazines, and programs providing access to low-cost literary products; (c) curriculum and instructional materials used by elementary schools and secondary schools; (d) student recognition programs; or (e) any other activity expressly determined under 20 U.S.C. §1232h(c)(4)(A) or its implementing regulations to be an “educational product or service.” Provided further that, for purposes of determining whether any specific activity is covered by subsections (a) through (e) above, or should be deemed to be an “educational product or service,” any official written interpretation disseminated to the public by the Department of Education regarding such activity shall be controlling.
3. “Survey” shall mean any survey that is distributed or caused to be distributed by Respondents under the name “Educational Research Center of America.”
4. “Student” shall mean any elementary school or secondary school student.
5. Unless otherwise specified, “Respondents” shall mean ERCA and SMG, and each of the above’s successors and assigns and their officers; Marian Sanjana and Jan Stumacher, individually and as officers of the above corporations; and each of the above’s agents, representatives, and employees.
6. “Clearly and conspicuously” shall mean as follows:

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- A. In print communications, the message shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.
- B. In communications disseminated orally, the message shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.
- C. In communications made through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online services and software), the message shall be presented simultaneously in both the audio and visual portions of the communication. In any communication presented solely through visual or audio means, the message may be made through the same means in which the communication is presented. Any audio message shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. Any visual message shall be of a size and shade, with a degree of contrast to the background against which it appears, and shall appear on the screen for a duration and in a location, sufficiently noticeable for an ordinary consumer to read and comprehend it.

The message shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the message shall be used in any communication.

7. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that Respondents, in connection with the collection of personally identifiable information from an individual, shall not misrepresent in any manner, expressly or by

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implication, how personally identifiable information is collected or will be used or disclosed.

II.

IT IS FURTHER ORDERED that Respondents, in connection with the collection of personally identifiable information from students, shall not use or disclose such information for any noneducational-related marketing purpose, unless they disclose clearly and conspicuously (a) the existence and nature of such noneducational-related marketing purpose; (b) the types or categories of any entities to which the information will be disclosed; and (c) that the information used or disclosed is personally identifiable. Such disclosures shall be made in the following locations:

- (1) in all privacy statements published by Respondents that refer or relate to the collection of personally identifiable information from students;
- (2) in all communications to students, parents, educators, or educational institutions that refer or relate to the collection of personally identifiable information from students; and
- (3) in all questionnaires, survey instruments, or other documents through which Respondents collect personally identifiable information from students.

Provided that the disclosures required by this Part II are in addition to, and not in lieu of, any other disclosures that Respondents may be required to make, including but not limited to any disclosure required by state or federal law.

III.

IT IS FURTHER ORDERED that Respondents shall not use or disclose for any noneducational-related marketing purpose any personally identifiable information collected through surveys

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distributed prior to July 30, 2002, from any student who was thirteen years or older at the time of collection. For purposes of this Part only, “noneducational-related marketing purpose” shall exclude use or disclosure for the purpose of (a) job recruitment, (b) the provision of student loans, or (c) the provision of standardized test preparation products or services.

IV.

IT IS FURTHER ORDERED that Respondents shall delete all personally identifiable information collected through surveys distributed prior to the date of service of this order from any student who was under the age of thirteen at the time of collection.

V.

IT IS FURTHER ORDERED that Respondents ERCA and SMG, and their successors and assigns, and Respondents Marian Sanjana and Jan Stumacher shall, for a period of five (5) years after the date of issuance of this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying a print or electronic copy of all documents demonstrating their compliance with the terms and provisions of this order, including, but not limited to:

- A. a sample copy of each different survey form, privacy statement, or communication relating to the collection of personally identifiable information to students, parents, educators, or educational institutions containing representations about how personally identifiable information will be used or disclosed. Each Web page copy shall be dated and contain the full URL of the Web page where the material was posted online. Electronic copies shall include all text and graphics files, audio scripts, and other computer files used in presenting the information on the Web;

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- B. a sample copy of each different document containing the disclosure required by Part II of this order; and
- C. all invoices, communications, and records relating to the use or disclosure of personally identifiable information for any noneducational-related marketing purpose.

VI.

IT IS FURTHER ORDERED that Respondents ERCA and SMG, and their successors and assigns, and Respondents Marian Sanjana and Jan Stumacher shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order. Respondents shall deliver this order to such current personnel within thirty (30) days after the date of service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities.

VII.

IT IS FURTHER ORDERED that Respondents ERCA and SMG and their successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which a Respondent learns less than thirty (30) days prior to the date such action is to take place, the Respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of

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Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

VIII.

IT IS FURTHER ORDERED that Respondents Marian Sanjana and Jan Stumacher, for a period of five (5) years after the date of issuance of this order, shall notify the Commission of the discontinuance of their current business or employment, or of their affiliation with any new business or employment involving the collection of personally identifiable information for use in marketing products or services. The notice shall include Respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

IX.

IT IS FURTHER ORDERED that Respondents ERCA and SMG, and their successors and assigns, and Respondents Marian Sanjana and Jan Stumacher shall, within sixty (60) days after service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

X.

This order will terminate on May 6, 2023, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

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- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any Respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that a Respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Analysis

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from Educational Research Center of America, Inc., (“ERCA”) and its officer Marian Sanjana (“Sanjana”), and Student Marketing Group, Inc., (“SMG”) and its officer Jan Stumacher (“Stumacher”). ERCA is a student survey company that provides student data, through SMG, to colleges and universities and other entities for recruitment and marketing purposes. SMG is a commercial list broker that supplies names for youth marketing campaigns.

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement’s proposed order.

This matter concerns representations about how detailed, personal information collected from middle, junior high, and high school students through a survey would be used. The proposed respondents distribute a survey to middle, junior high, and high school teachers and guidance counselors with the request that they have their students complete the survey. The survey collects from students personal information including name, address, age, race, religious affiliation, and academic, career, and athletic interests. ERCA compiles personal information collected from high school students into a survey report that it provides to colleges and universities. It also provides personal information collected through the survey to SMG. SMG provides the survey information to colleges and universities, and also creates lists of students that it provides to commercial entities for use in marketing. Such entities include, but are not limited to, banks,

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insurance companies, consumer goods and services providers, and list brokers.

The Commission's complaint charges that the proposed respondents falsely represented that information collected from students through the survey is shared only with colleges, universities, and other entities providing education-related services when, in fact, such information is also shared with commercial entities for marketing purposes. The complaint also alleges that the proposed respondents falsely represented that information collected from middle and junior high school students through the survey is compiled into survey reports when, in fact, little if any such information is compiled into survey reports; instead it is primarily shared with commercial entities for marketing purposes.

Part I of the consent order prohibits the proposed respondents, in connection with the collection of personally identifiable information from an individual, from misrepresenting how such information is collected or will be used or disclosed. Part II of the order prohibits the proposed respondents, in connection with the collection of personally identifiable information from students for any "noneducational-related marketing purpose," from using or disclosing such information unless they disclose (1) the existence and nature of such noneducational-related marketing purpose, (2) the types or categories of any entities to which the information will be disclosed, and (3) that the information used or disclosed is personally identifiable.

The proposed order defines "noneducational-related marketing purpose" to mean for the purpose of marketing products or services, or selling personally identifiable information from or about an individual for use in marketing products or services to individuals. The definition specifically excludes the use of personal information in connection with certain activities determined to be "educational products or services" under the No Child Left Behind Act of 2001, namely (a) college or postsecondary education recruitment, or military recruitment;

Analysis

(b) book clubs, magazines, and programs providing access to low-cost literary products; (c) curriculum and instructional materials used by elementary schools and secondary schools; (d) student recognition programs; or (e) any other activity expressly determined under the No Child Left Behind Act or its implementing regulations to be an “educational product or service.” In addition, the proposed order provides that when determining whether any specific activity is an “educational product or service,” any official, written, publicly-disseminated interpretation by the Department of Education regarding such activity shall be controlling.

Part III of the order prohibits the proposed respondents from using or disclosing for any noneducational-related marketing purpose any personally identifiable information that was collected through surveys distributed prior to July 30, 2002. In addition to the educational purposes excepted from the definition of “noneducational-related marketing purpose,” Part III also permits the proposed respondents to use such information for the purpose of (a) job recruitment, (b) the provision of student loans, or (c) the provision of standardized test preparation services.

To address respondents’ collection of information from younger children, Part IV of the order requires the proposed respondents to delete all personally identifiable information collected through surveys from any student who was under the age of thirteen at the time of collection.

The remainder of the proposed order contains standard requirements that the proposed respondents maintain copies of privacy statements and other documents relating to the collection, use or disclosure of personally identifiable information; distribute copies of the order to certain company officials and employees; notify the Commission of any change in the corporation that may affect compliance obligations under the order; and file one or more reports detailing their compliance with the order. Part X of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

Analysis

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

This proposed order, if issued in final form, will resolve the claims alleged in the complaint against the named respondents. It is not the Commission's intent that acceptance of this consent agreement and issuance of a final decision and order will release any claims against any unnamed persons or entities associated with the conduct described in the complaint.

Complaint

IN THE MATTER OF

PFIZER INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-4075; File No. 0210192*
Complaint, April 11, 2003--Decision, May 27, 2003

This consent order addresses the acquisition by Respondent Pfizer Inc. of Respondent Pharmacia Corporation. The order, among other things, would require the respondents to divest (1) Pfizer's worldwide rights and assets relating to its overactive bladder drug, darifenacin, to Novartis AG; (2) Pfizer's worldwide rights and assets relating to its combination hormone replacement therapy, femhrt, to Galen Holdings plc; (3) Pharmacia's rights and assets in the field of sexual dysfunction relating to its D2 dopamine receptor agonist, PNU-142,774, to Neurocrine Biosciences, Inc.; (4) Pfizer's U.S. rights and assets relating to its lactating cow and dry cow mastitis products to Schering-Plough Corporation; (5) Pharmacia's worldwide rights and assets relating to Cortaid, its over-the-counter hydrocortisone-based cream, to Johnson & Johnson; (6) Pfizer's U.S. and Puerto Rican rights and assets relating to its over-the-counter motion sickness product, Bonine, to Insight Pharmaceuticals Corporation; and (7) Pfizer's worldwide rights and assets relating to its Halls over-the-counter cough drop business to Cadbury Schweppes plc. The order also requires the respondents to return to Natestch Pharmaceutical Company, Inc. all rights to make, use, and sell Natestch's intranasal apomorphine product for the treatment of erectile dysfunction. In addition, the order requires the respondents to renegotiate a 1999 license and supply agreement between Pharmacia and Novartis for deramaxx – Novartis's canine arthritis drug – to enable Novartis to operate as an independent competitor, rather than a partner, of the merged entity.

Participants

For the Commission: *Elizabeth A. Jex, Christina R. Perez, Yolanda R. Gruendel, Michael R. Barnett, Jeffrey H. Perry, Kari A. Wallace, Stephanie A. Parks, David von Nirschl, Ramon A. Gras, Michele M. Cerullo, Sylvia M. Brooks, Sara S. Brown, Karina B. Lubell, Emily R. Pitlick, Michael Christini, Kristen M. Gorzelany, Ann Malester, Elizabeth A. Piotrowski, Ron Levy, Charissa P. Wellford, and Mary T. Coleman.*