

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

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**THE PEOPLE OF THE STATE OF NEW YORK, by
ELIOT SPITZER, Attorney General of the State
of New York,**

Petitioners

-against-

**STUDENT MARKETING GROUP, INC. and
EDUCATIONAL RESEARCH CENTER OF
AMERICA, INC.**

Respondents

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**VERIFIED
PETITION
Index # _____**

TO: THE SUPREME COURT OF THE STATE OF NEW YORK

The People of the State of New York, by their attorney, Eliot Spitzer, Attorney General of the State of New York, allege upon information and belief:

JURISDICTION AND PARTIES

1. Petitioners, the People of the State of New York, bring this special proceeding pursuant to Executive Law §63(12) and General Business Law (“GBL”) Article 22-A to enjoin respondents from engaging in fraudulent and deceptive practices in the conduct of their business in violation of Executive Law §63(12) and GBL Article 22-A, and to obtain penalties and costs, as provided by statute, to be paid to the State of New York.
2. Executive Law §63(12) empowers the Attorney General to seek injunctive relief, restitution, damages and costs when any person or business entity has engaged in, or otherwise demonstrated repeated or persistent fraudulent or illegal acts in the transaction of business.
3. GBL Article 22-A empowers the Attorney General to seek injunctive relief, restitution, penalties and costs when any person or business entity has engaged in deceptive acts or practices in the conduct of any business.
4. Respondent Student Marketing Group, Inc. (“SMG”) is a New York corporation, incorporated on December 3, 1998, with its principal place of business at 300 Merrick Road, Suite 206,

Lynbrook, NY 11563.

5. Respondent Educational Research Center of America, Inc (“ERCA”) is a nonprofit Pennsylvania corporation, incorporated on July 7, 1999, with its principal place of business at 1155 Folkstone Drive, Pittsburgh, PA 15243, which appears to be the residence of the sole listed officer.

6. The statutory five day prior notice required pursuant to GBL Article 22-A was sent to each of the respondents by certified mail, return receipt requested, on July 8, 2002.

Facts

7. SMG is engaged in the business of compiling and marketing a database (referred to by SMG as the “Student Database”) containing the names and addresses of children and students, together with a wide range of personal information on each child and student in the Student Database.

8. The personal information on the children and students whose names and addresses are in SMG’s Student Database includes, inter alia: age, date of birth, gender, religious affiliation, ethnic background, e-mail address, class year, grade point average, interest in college, career interests, sports participation and computer ownership.

9. SMG markets its database to businesses that target their products and services to children and students. As explained in the “Company Profile” on SMG’s website (www.studentmarketing.net):

Student Marketing Group is a full-service direct marketing agency. We provide a wide range of lists and services to businesses targeting children, students and young adults. Our goal is to help you find – and build relationships with – those people who are most likely to buy your products and services.

(A copy of the relevant page from SMG’s website is annexed hereto as Exhibit A.)

10. SMG states on its website that “the student demographic is unique, with traits and dynamics specifically its own,” and that SMG “has created an all-inclusive database which will help you

identify and reach those students most likely to become your customers.” (A copy of the relevant page from SMG’s website is annexed hereto as Exhibit B.)

11. SMG’s website identifies specific types of products and services that can be successfully marketed using its Student Database. For example, SMG claims that the Student Database can be utilized successfully in targeting college-bound high school students for the following products and services:

- Magazines & Books
- Arts & Crafts
- Photo Services
- Music & Video
- Jewelry
- Book Clubs
- Educational Software
- Entertainment Software
- Credit Cards
- Computers
- Electronics
- Fashion
- Health & Beauty
- Career/Vocational Counseling
- College Prep
- Scholarships
- Student Loans
- Sporting Goods

- Hobbies

(A copy of the relevant page from SMG's website is annexed hereto as Exhibit C.)

12. Marketers wishing to utilize SMG's Student Database to target children and students pay SMG a specified fee per thousand names. The fee varies depending on the amount of information on each student the marketer wants. Payment of the standard fee permits the marketer to use the information one time. Payment of a higher fee entitles the marketer to unlimited use of the information for one year.

13. Marketers can obtain custom-generated lists from SMG, including lists based on religious affiliation and/or ethnic background. (A copy of the relevant page from SMG's website is annexed hereto as Exhibit D.)

SMG's Student Database

14. In order to obtain names, addresses and personal information for its Student Database, SMG has engaged in an elaborate and deceptive scheme on unwitting teachers and students across New York and the nation.

15. In July, 1999, SMG created and incorporated ERCA, a nonprofit corporation, to serve as a front for SMG in the collecting of personal information for SMG's Student Database.

16. In August, 1999, ERCA and SMG entered into a written contract pursuant to which SMG provides funding to ERCA to conduct annual surveys of students throughout the United States. Pursuant to the contract, SMG is given an exclusive license to market, without restriction, the survey data obtained by ERCA. SMG also agreed to fund at least \$25,000 in scholarships to be awarded to students annually by ERCA. (A copy of the contract is annexed hereto as Exhibit E.)

17. After entering into the contract with ERCA, SMG prepared a cover letter and survey form for ERCA to be sent to teachers and guidance counselors across the country.

18. Under the name of ERCA, a cover letter and survey forms were sent in 2000 to

approximately 41,800 faculty members at 1,019 New York educational institutions, and in 2001 to approximately 97,500 faculty members at 1,870 New York educational institutions. For those years, ERCA obtained 89,968 names from New York students who completed the survey.

19. The cover letter contains an emblem in the upper-left corner, under which are the words “ERCA” and “A Nonprofit Entity.” In the upper-right corner of the letter is the following:

OFFICIAL TEACHER COMMUNICATION
Annual Student Survey

The address for ERCA listed on the letterhead is 2020 Pennsylvania Ave., NW, Room 7799, Washington, D.C. 20006 which, in fact, is merely a mail drop box.

20. The name Educational Research Center of America, the emblem, the Washington D.C. address and the use of the word “official, taken together, have the tendency and capacity to convey the false impression that ERCA is an official government educational institution.

21. The letter is addressed “Dear Teacher” and begins as follows:

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 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. [Emphasis in original]

(A copy of the cover letter is annexed hereto as Exhibit F.)

22. The letter asks the teacher to have his or her students fill out the form clearly and completely and then return them in the pre-paid envelope supplied by ERCA.

23. Nowhere in the letter is it disclosed to the teacher that the purpose for collecting the personal information on his or her students is for SMG to market the information to businesses who will then target the students to purchase the types of goods and services specified in paragraph "11" above.

24. To the contrary, the letter represents, directly and by implication, that the information is being sought solely "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" and for "university financial aid offices and scholarship foundations...to evaluate and make funding available for students' post secondary education."

25. The survey requests the types of personal information contained set forth in paragraph "8" above: name, address, age, date of birth, gender, religious affiliation, ethnic background, e-mail address, class year, grade point average, interest in college, career interests, sports participation and computer ownership.

26. At the bottom of the form is a statement that ERCA will use the 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." (A sample copy of the survey form is annexed as Exhibit G.)

27. In fact, the information provided by the unwitting students is marketed by SMG to businesses who then target the student to purchase the types of goods and services specified in paragraph "11" above. The information is also marketed by SMG to educational institutions who solicit students to apply to their institution.

**FIRST CAUSE OF ACTION
PURSUANT TO
EXECUTIVE LAW § 63(12)-- FRAUD**

28. As set forth above, respondents repeatedly and persistently engage in fraud in the conduct of their business.

29. Respondent's conduct constitutes repeated and persistent fraud in violation of Executive Law § 63(12).

**SECOND CAUSE OF ACTION PURSUANT
TO EXECUTIVE LAW § 63(12)-- ILLEGALITY
VIOLATION OF GENERAL BUSINESS LAW § 349**

30. GBL § 349 declares unlawful any deceptive acts or practices in the conduct of any business, trade or commerce in this state.

31. By reason of the foregoing, respondents have repeatedly and persistently violated GBL §349.

32. By repeatedly and persistently violating GBL § 349, respondents have engaged in repeated and persistent illegality in violation of Executive Law § 63(12).

DEMAND FOR RELIEF

WHEREFORE, petitioners respectfully request a judgment and order be issued providing the following:

A. Permanently enjoining respondents from further violating Executive Law §63(12) and GBL, Article 22-A, and from engaging in the fraudulent and deceptive practices alleged herein;

B. Barring respondents from marketing, directly or indirectly, the information obtained through the surveys;

C. Directing respondents to pay civil penalties of \$500 to the State of New York for

each deceptive or unlawful act in violation of GBL Article 22-A;

D. Awarding petitioners costs, including \$2,000 in additional costs against each respondent pursuant to CPLR §8303 (a) (6); and

E. Granting such other relief as is just and proper.

Dated: New York, NY
August 29, 2002

Yours, etc.,
ELIOT SPITZER
Attorney General of the State of New York,
Attorney for Petitioners
By:

HERBERT ISRAEL,
Assistant Attorney General

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THOMAS CONWAY
Assistant Attorney General in Charge

STEPHEN MINDELL
Assistant Attorney General
of counsel

VERIFICATION

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

HERBERT ISRAEL, being duly sworn, deposes and says:

1. I am an Assistant Attorney General in the office of Eliot Spitzer, Attorney General of the State of New York, and am duly authorized to make this verification.
2. I have read the foregoing petition and know the contents thereof. The same is true to my knowledge, except as to matters stated to be alleged on information and belief, and as to those matters I believe them to be true.
3. The reason this verification is not made by petitioners is that petitioners are a body politic. The Attorney General is their statutory representative.

HERBERT ISRAEL

Sworn to before me this
29th day of August, 2002

Assistant Attorney General
of the State of New York