



December 14, 2004

J. Howard Beales, Director
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
USA

Re: Complaint against Abika.com

Dear Mr. Beales:

We are writing to request that you investigate Abika.com, an Internet-based organization that offers online search services – i.e., the gathering and selling of personal information about individuals. Apparently based in Cheyenne, Wyoming, Abika provides comprehensive searches on Americans and Canadians, to anyone willing to pay the requisite fee. In the course of its business, the company routinely collects, uses and discloses personal information without the knowledge or consent of the individual in question.

Our review of the company's website, policies and practices indicates that they may be violating US law in a number of respects. In particular, Abika appears to be engaged in unfair or deceptive acts or practices as defined by Section 5(a) of the *FTC Act*. Moreover, Abika appears to be violating or causing violations of the *Telecommunications Act of 1996*, and the *Fair Credit Reporting Act*.

1. Breach of the FTC Act

Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), renders unlawful unfair or deceptive acts or practices in or affecting commerce. Misrepresentations of material facts would satisfy this section. Under Section 5(n), an act or practice is unfair if it causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition (15 U.S.C. § 45(n)).

Abika misrepresents its right to legally obtain, or cause others to obtain, the information it is advertising on its website. It makes this misrepresentation both explicitly and by omission. Abika represents that it accesses an extensive network of third party public and private databases, licensed private investigators, court researchers and other information vendors, suggesting that its information collection methods are legal and reliable. Yet several categories of information it is selling are not available except by misrepresentation, fraud or collusion in the violation of a federal statute. For instance, telephone records can only be obtained through violations of federal law. On the other hand, criminal records, credit reports, and public record

information may be lawfully obtained; however, the purposes for which they are sought would have to be misrepresented in order for Abika to locate and sell this information legally. These misrepresentations are similar to the misrepresentations made by the defendant information brokers in *FTC v. Information Search, Inc.*,¹ as well as the misrepresentations in numerous cross-border lottery ticket sales cases pursued by the FTC, e.g. *FTC v. World Media Brokers Inc.*²

It should be noted that, while private investigators are regulated by a wide range of state laws (with licensing requirements ranging from simple payment of a licensing fee to extensive occupational training and experience), none of these regulatory schemes give private investigators special rights to solicit others to violate the law.

By obtaining and selling private information about consumers that is not legally available, or that is only available for other, narrowly-defined purposes, Abika has almost certainly caused substantial injury to consumers, and is likely to cause additional injury. Because Abika's main business consists of surreptitiously obtaining information about consumers, this injury is not avoidable by the consumers themselves. Moreover, the service of unlawfully obtaining and reselling information about consumers does not provide countervailing benefits to consumers or to competition.

2. *Violation of the Telecommunications Act*

Congress enacted the *Telecommunications Act of 1996*, 47 U.S.C. § 222 *et. seq.*, to stimulate competition in telecommunication services, while keeping consumer privacy in mind. Section 222 provides that telecommunications carriers must protect the confidentiality of “consumer proprietary network information” (“CPNI”). CPNI includes calling history and activity, billing records, and unlisted telephone numbers of service subscribers. The *Act* prohibits carriers from using CPNI even for their own marketing purposes. Furthermore, the *Act* prohibits carriers from using, disclosing, or permitting access to CPNI without the customer’s consent or as otherwise required by law if the use or disclosure is not in connection with the provided service.

Abika offers a "Monthly Report of Call Activity for Cell Phone Number" for customers who wish to purchase a copy of a third party's cellular phone record. In order to purchase this information, Abika requests the following information regarding the third party: cellular phone number, full name, address, and social security number (if known). Additional information such as dates for call activity can be requested.

Abika also advertises the sale of protected residential telecommunication activity. It offers the "Monthly Local or Toll Call Activity of Landline Phone Number" for customers who wish to purchase a copy of a third party's residential long distance bill for the last billing cycle. In order to purchase this information, a customer must provide the following information regarding the third party: name, telephone number, social security number, and address. (See <http://www.abika.com/Reports/FindPhoneNumbers.htm>)

¹ Stipulated Final Judgment, *FTC v. Information Search, Inc.* (No. AMD01-1121), available at <http://www.ftc.gov/os/2002/03/infosearchstip.pdf>.

² Complaint, *FTC v. World Media Brokers Inc.* (No. O2C-6985), available at <http://www.ftc.gov/os/2002/12/emscmp.pdf>.

Abika does not explain how it obtains this information, but it does not appear possible for Abika to reliably obtain this information without making misrepresentations to telecommunications carriers or without soliciting the carriers to violate the *Telecommunications Act*.

3. *Violation of the Fair Credit Reporting Act*

The *Fair Credit Reporting Act* (FCRA), 15 U.S.C. § 168 *et seq.*, seeks to adopt procedures that simultaneously meet the needs of credit reporting agencies while respecting the confidentiality, accuracy, and proper utilization of consumer information. A credit reporting agency is defined in §608(f) as

“...any person which, for monetary fees, dues, or on a cooperative non-profit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports”

We submit that Abika qualifies as a consumer reporting agency insofar as it is in the practice of selling “investigative consumer reports”, which can contain a wide range of information about the individual consumer, depending on the report purchased.

Under the *Act*, when a consumer report is prepared, notice must be given to the consumer in accordance with §606(a). The notice requirement will not be satisfied unless “it is clearly and accurately disclosed to the consumer that an investigative consumer report including information as to his character, general reputation, personal characteristics and mode of living, whichever are applicable, may be made” and it must be made in writing “not later than three days after the date on which the report was first requested”.

With some exceptions (e.g., medical records search), Abika provides consumer reports without any notice to the consumer. Indeed, Abika makes a point of guaranteeing to its customers that their request will be kept confidential and that their search subjects will not be contacted. Clearly, Abika is in violation of the *Fair Credit Reporting Act*.

We await your investigation, findings, and response.

Yours truly,

original signed

Dina Mashayekhi,
CIPPIC Intern

Philippa Lawson,
Executive Director, CIPPIC

Attach (excerpts from the Abika.com website)