

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Civil Docket No.: 06-CA 11370MLW

Christine. Varad,
Plaintiff,

v.

Reed Elsevier Incorporated,
d.b.a. *Lexis Nexis Corporation*,
Lexis Nexis Accurint,
Defendant.

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MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

In the early months of the year 2001, the 4th Circuit Court of Appeals noted the following in Dalton v. Capital Associated Industries, Inc., 257 F 3rd 409, 17 IER Cases 1313 (4th Cir. 2001).

“Congress enacted FCRA in 1970 out of concerns about abuses in the consumer reporting industry. See: S.Rep. No. 91-517, at 3 (1969); 116 Cong. Rec. 35941 (1970) (statement of Sen. Proxmire); id. At 36570 (statement of Rep. Sullivan); see also Guimond v. Trans Union Credit Info. Co., 45 F.3rd 1329, 1333 (9th Cir. 1995); St. Paul Guardian Ins. Co. v. Johnson, 884 F. 2nd 881, 883 (5th Cir. 1989); Hovater v. Equifax, Inc., 823 F. 2nd 413, 416-17 (11th Cir. 1987). Employers were placing increasing reliance on consumer reporting agencies to obtain information on the backgrounds of prospective employees. Congress found that in too many instances agencies were reporting inaccurate information that was adversely affecting the ability of individuals to obtain employment. As Representative Sullivan remarked, “with the trend toward the establishment of all sorts of computerized data banks, the individual is in greater danger of having his life and character reduced to impersonal “blips” and key punch holes in a stolid and unthinking machine which can literally ruin his reputation without cause, and make him unemployable.” 116 Cong. Rec. 36570 (1970). In enacting FCRA Congress adopted a variety of measures designed to insure that agencies report accurate information.” See: Dalton at 414-415.

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The justices of the 4th Circuit could not have foreseen or even imagined the events that would unfold only a few short months later that same year on September 11, 2001. Inconceivable acts of terror in New York, Washington, D.C., Pennsylvania brought to bear safety measures of every conceivable kind in comprehensive efforts to thwart terrorist activity and protect the nation from harm. Background checks have become the norm in our daily life. They are utilized extensively and for countless purposes. The inescapable result is that should incorrect data get into a background check report it now poses a significant danger of adversely affecting an individual's freedom to obtain employment, professional licensing, access to professional affiliations and organizations or even board a common carrier airplane. Courts must protect basic individual liberties now more than ever before by strictly enforcing the statutory rights that shield citizens against unfair and deceptive actions of consumer reporting agencies routinely collecting and disseminating information retained in nationally accessed personal information databases.

Lexis Nexis Accurint web site advertises the access and use of its product to government agencies, state and local law enforcement representatives, legal professionals, academic professionals, health care professionals, the banking and insurance industry and the debt collection industry. Inaccurate data contained in an Accurint background report creates a "virtual machinegun" threatening to pump holes into every single aspect of a person's life on a national basis at a speed defined only by the capability of the receiving party's desktop modem. Defaming and corrupting the character and reputation of an individual has never been easier, never more pervasive. Invading countless aspects of an individual's interaction with daily life and society based

on countless identified and unidentified data resources is now only a “click” away not only to responsible inquirers, See: Exhibit 1, Lexis Nexis Accurint Web site pages, but to ubiquitous mainframe hackers who may access and alter personal data information.

The “background check” envisioned and addressed by Congress in 1969 within the Fair Credit Reporting Act has escalated to nearly out of control levels. Now, more than even, the contents of any so-called “file” holding both public and “non-public” or private information about an individual that is routinely transmitted to clients of consumer credit reporting agencies must be accessible to adversely affected individuals to allow for verification of complete data file contents and must be closely regulated by courts in order to preserve and defend individual liberties such as freedoms from invasions of privacy, defamation and access to employment and earning opportunities.

STATEMENT OF THE FACTS

On January 23, 2006, Plaintiff filled out and signed an application for employment with F&W Publishing, Adams Media of Avon Massachusetts. That application required Plaintiff’s authorization for an investigation to be effected regarding her background by an undesignated “consumer reporting agency prior to being offered employment or granted continued employment.” See: Exhibit 1, F&W Publications, Adams Media Application for Employment, pages 8, 9, 10, 14, 15 [pages 7, 11,12 and 13 omitted ab initio]. Plaintiff agreed to the required background check and gave her authorization on that part of the application. See: Exhibit 1, F&W Publications, Adams Media Application for Employment, pages 8, 9, 14, 15 [pages 7, 11,12 and 13 omitted ab initio]. The background check was subsequently requested by F&W Publishing and duly

conducted by Gall and Gall Company. Plaintiff requested a copy of the completed background check and F&W Publishing, Adams Media allowed Plaintiff to be provided with a partial copy of the February 6, 2006 Gall and Gall report, See: Exhibit 2, 1st Gall and Gall Report, which made her aware that a national criminal background check had been conducted showing no criminal records and an “address source manager” report which included multiple false and inaccurate entries regarding past and present address information. See: Exhibit 2, 1st Gall and Gall Applicant Screening Report to F&W Publishing, Adams Media, page 3-4.

Plaintiff immediately contacted Amy Brewer, Recruiting Manager at F&W Publishing to address the false information problem, correct it and to defend herself against the dissemination of any additional data regarding her character or personal history. Ms. Brewer sent Plaintiff an email admitting,

“I have done research into why two additional addresses were listed on your background report-please know that this report nor the information is disseminated to any other agency. The addresses are found through a database that pulls from several different locations, and may not be accurate which is why we do a social security check, which is more accurate.” See: Exhibit 3, Brewer email to Plaintiff.

Receiving no valid assistance from F&W Publishing, Adams Media, Plaintiff contacted Gall and Gall Company directly by telephone and letter dated March 26, April 3, 4 and 16, 2006 to try to stop dissemination of false data in connection with her name, address history, birth date and social security number before any additional harm was done. See: Exhibit 4, Plaintiff letters to Gall and Gall Company.

On April 5, 2006, Gall and Gall Company responded by providing a second “Applicant Screening Report” on the Plaintiff to F&W Publishing, Adams Media and sent a copy of this second report to the Plaintiff by registered mail. The second report

was identical to the first with the exception the former address history information provided by Lexis Nexis Accurint database was omitted and replaced with the results of a federal Social Security database search. That search was misleading as to address history for the reason that Social Security does not collect address information from periods of federal employment, unemployment and/or self-employment. Multiple omissions of valid address history information regarding citizens are common in that database. It is rarely utilized to attempt to verify an employee's address history for the reason. See: Exhibit 5, 2nd Gall and Gall "Applicant Screening Report" to F&W Publishing, Adams Media.

Plaintiff sought at minimum to protect her reputation and identity by correcting the false Lexis Nexis Accurint address history entries. She contacted Steven Gall, President of Gall and Gall Company and asked him to provide her with the database source of the false address history information contained in the "Address Source Manager" report.

On April 5, 2006, Steven E. Gall responded as follows:

"Address Source Manager is provided by ACCURINT, a division of Lexis Nexis, PO Box 538358, Atlanta, Georgia 30353. Toll Free Phone: (888) 332-8244." See: Exhibit 6, Steven Gall letter to Plaintiff.

Plaintiff was unable to contact anyone at that address for inquiry as to Lexis Nexis Accurint for the reason that the address and phone number are intended solely for use by clients of Lexis Nexis Accurint for payment on account of monthly service charges for services provided by Lexis Nexis Accurint.

On April 17, 2006, Plaintiff contacted James Swift, Operations Manager at Lexis Nexis Accurint in Boca Raton, Florida. Plaintiff requested a complete copy of her file

and an opportunity to formally dispute and correct any and all false information contained in that file pursuant to her rights and the protected afforded by the Fair Credit Reporting Act, 15 U.S.C. 1681 et seq. and M.G.L. c. 93 § 50-62 inclusive. See: Exhibit 7, Plaintiff letter to James Swift, Lexis Nexis Accurint.

James Swift responded to Plaintiff's requests for her file by stating, "Kindly be advised that Accurint is **NOT** a Consumer Reporting Agency, and as such, Accurint is not governed by the Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.)." and "We do not examine or verify our data, nor is it possible for our computers to correct or change data that is incorrect.- Accurint can only provide the data that was reported to us." See: Exhibit 8, James Swift, Lexis Nexis Accurint letter dated April 20, 2006.

Plaintiff was left with no way to correct or challenge the false and harmful data and no way to protect her name, reputation and identity. Swift's letter went on to say:

"If you complete and properly notarize the enclosed form, Accurint will attempt to provide you with the source that supplied the potentially incorrect information. Accurint urges you to contact those companies directly and seek to have them correct or update your information. Only our suppliers can change or update information – Accurint cannot change or update inaccurate information."

Plaintiff cooperated and filled in, and had notarized, the form as requested and mailed it along with her letter to James Swift of Lexis Nexis Accurint on April 30, 2006.

See: Exhibit 9, Plaintiff's April 30, 2006 letter to James Swift, Lexis Nexis Accurint.

Plaintiff expected that Accurint would keep it's word and provide her with the sources of the data that supplied the false address history information so that she could contact them and request that they correct or update that database for the reason that Accurint was patently refusing to do so. No source information was ever supplied by Lexis Nexis Accurint as promised. In Swift's Lexis Nexis Accurint response letter to Plaintiff dated

May 23, 2006, See: Exhibit 10, Lexis Nexis Accurint letter to Plaintiff dated May 23, 2006, it is suggested that source of the false address history data might be one of the three credit reporting agencies, Equifax, Experian and Trans Union and nothing else. Plaintiff had already informed Gall and Gall Company and Lexis Nexis Accurint that she had obtained her credit reports from those three sources and found no incorrect or false address contained history in them. The injurious data was generated by some other, yet undisclosed, Lexis Nexis Accurint data source.

Left with no other possible option to protect her name, reputation and personal identity from continued defamation and related harms from persistent Lexis Nexis Accurint dissemination of false address history information in connection with her name, social security number and birth date, [as advertised via the Lexis Nexis Accurint web site, providing data to state and federal government agencies, insurance companies, state and federal law enforcement representatives, legal, academic and health care professionals, the banking industry and the debt collection industry and even routinely private, unpublicized medical record information, See: Exhibit 15, Lexis Nexis Accurint Web site pages}, Plaintiff was forced to draft a M.G.L. c. 93A demand letter and to send it, on June 3, 2006, registered mail, return receipt requested to James Swift, Operations Manager, Lexis Nexis Accurint, of 6601 Park of Commerce Boulevard, Boca Raton, Florida. See: Exhibit 11, M.G.L. c. 93A Demand Letter.

On June 20, 2006, John Byrne, Director and Senior Corporate Counsel for Lexis Nexis Accurint responded to Plaintiff's M.G.L.C. 93A demand letter. His response on behalf of Lexis Nexis Accurint was insufficient to properly resolve the problem and Plaintiff was forced to file a complaint with this Court to try to stop the continuing

defamation by Lexis Nexis Accurint, finally determine the sources of the false data in order to correct them, uncover the names of requesting persons or entities previously supplied with the false data in order to contact them to inform them of necessary corrections to their databases, and gain redress for the substantial financial and personal losses that the defamation caused by Lexis Nexis Accurint data has already effected.

DISCUSSION

PART I

In providing a report concerning the character of the Plaintiff to Gall and Gall Company,

Lexis Nexis Accurint functioned as a “consumer reporting agency” as defined by 15

U.S.C. 1681a et seq.

When does the provision of information for inclusion in a investigative report on an individual depart that simple status of general provision of publicly, known data and rise to a level of data collection and dissemination conferring the status of information in the form of a consumer report for the purposes of 15 U.S.C. § 1681?

According to 15 U.S.C. § 1681a (d)(1) that point of demarcation is specifically reached when the information provided is not merely general information but is information “bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for credit or insurance to be primarily for

personal, family, or household purposes; employment purposes; or any other purpose authorized under 15 U.S.C. 1681b. That point is alternatively reached pursuant to 15 U.S.C. § 1681a (e) where the information provided constitutes “investigative consumer report” because it contains information bearing on a “consumer’s character, general reputation, personal characteristics or mode of living as obtained through personal interviews with neighbors, friends or associates of the consumer reported on or with others with whom his is acquainted or who may have personal knowledge concerning any such item of information.”

An application by this court of either or both statutory standards to the facts of the instant case will evidence that Lexis Nexis Accurint acted in the capacity of a “consumer reporting agency” and was therefore at all times subject to the regulations of 15 U.S.C. 1681 et seq. Indeed Lexis Nexis Accurint acted in violation of that statute as to the Plaintiff’s protected rights. The results of a national criminal history search on the plaintiff or a “criminal background check” such as the one disseminated by the Defendant to Gall and Gall Company is nothing if it is not a report bearing on the character of the Plaintiff. See: Exhibit 2, 1st Gall and Gall Company “Applicant Screening Report” to F & W Publishing, Adams Media dated February 6, 2006.

Lexis Nexis Accurint did not provide Gall and Gall Company with general, publicly knowable information relating to the Plaintiff. It provided that company with a very specific criminal history background check on the plaintiff by accessing multiple databases on national basis. The report included multiple false and inaccurate claims of previous and present addresses in association with Plaintiff’s birth date, age and a social

security number. See: Exhibit 2, 1st Gall and Gall Company “Applicant Screening Report to F & W Publishing, Adams Media dated February 6, 2006.

Lexis Nexis Accurint provided (1) a national criminal history report and (2) a national address history report, at minimum, on the Plaintiff from its Florida database to Gall and Gall Company in Ohio for final dissemination to the plaintiff’s employer, F & W Publishing; Adams Media in Massachusetts. A simple review of the those facts will evidence that Lexis Nexis Accurint in truth functioned as a consumer reporting agency as defined by 15 U.S.C. § 1681a (d)(1). A comprehensive criminal background check, reporting on the results of a national search of criminal databases including a report of multiple false past addresses clearly is information that will “bear” on a plaintiff’s “credit worthiness, credit capacity, character, general reputation, personal characteristics and mode of living” and such is information that clearly “serves as a significant factor in establishing plaintiff’s eligibility for credit, insurance”, and as at issue here, “employment”. See: 15 U.S.C. § 1681a (d)(1).

There is no triable issue of fact as to whether Lexis Nexis Accurint functioned as a “consumer reporting agency”. Lexis Nexis Accurint provided a 15 U.S.C. § 1681a (d)(1) consumer report to Gall and Gall Company and functioned as a consumer reporting agency.

15 U.S.C. § 1681a (f) defines the term “consumer reporting agency” as “any person which, for monetary fees, ~~dues~~, or on a cooperative basis, regularly engages in whole or in part in the practice of assembling or evaluating 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.”

It is only reasonable for people to be protected from unfair and deceptive business practices that improperly re-characterize the legal status of a consumer reporting agency such as Lexis Nexis Accurint so that it will be free to engage in the exact kind of unlawful abuse of personal data that the statutes were enacted to protect people against. Lexis Nexis Accurint, for monetary fees, regularly engages in the practice of assembling or evaluating credit information and other private information on consumers for the purpose of furnishing consumer reports to third parties, such as Gall and Gall Company. Lexis Nexis Accurint meets or exceeds all of the essential elements defining the conference of a status of “consumer reporting agency” pursuant to 15 U.S.C. § 1681a (f).

PART II

As a consumer reporting agency, Lexis Nexis Accurint violated Plaintiff’s statutory right to be provided with a copy of her file pursuant to 15 U.S.C. § 1681(g)(a) et seq.

15 U.S.C. § 1681a (g) defines the term “file,” as “all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.”

A consumer reporting agency such as Lexis Nexis Accurint is compelled by law pursuant to 15 U.S.C. § 1681(g)(a) et seq. to do the following upon request of a consumer such as Plaintiff pursuant to § 1681h (a)(1):

1. Clearly and accurately disclose to the consumer: all information in the consumer’s file at the time of the request;
2. Disclose the sources of the information;

3. Disclose the identification of each person (including each end-user identified under section 1681e(e)(1) that procured a consumer report (i) for employment purposes, during the 2-year period preceding the date on which the request is made; (ii) for any other purpose, during the 1-year period preceding the date on which the request is made;
4. Disclose the dates, original payees, and amounts of any checks upon which is based any adverse characterization of the consumer included in the file at the time of disclosure; and
5. Provide a record of all inquiries received by the agency during the 1-year period preceding the request that identifies the consumer in connection with a credit or insurance transaction that was not initiated by the consumer.”

The facts evidence that the Plaintiff made repeated requests to Lexis Nexis Accurint for a full disclosure of the information contained in her file including all information lawfully required to be provided pursuant to 15 U.S.C. § 1681(g)(a) et seq. See: Exhibit 7, Plaintiff letter dated April 17, 2006 to Lexis Nexis Accurint, Operations Manager James Swift, Exhibit 8, Plaintiff letter dated April 30, 2006 to Lexis Nexis Accurint, Operations Manager James Swift and Exhibit 11, M.G.L. c. 93A Demand Letter. The Lexis Nexis Accurint responses failed to disclose the file or any data source information in violation of Plaintiff’s rights pursuant to 15 U.S.C. § 1681 et seq.

Lexis Nexis Accurint falsely re-characterized itself as “not a consumer reporting agency” while in truth it knew or should have known that it retained no special legal

status or exemption from responsibilities imposed on it as a consumer reporting agency pursuant to 15 U.S.C. § 1681 et seq.

PART III

Defendant's actions providing information to Gall and Gall Company and to F&W

Publishing Company resulted in defamation and libel of the Plaintiff.

“To withstand a motion for summary judgment for defamation, a plaintiff must show that the defendant “published a false statement about him to a third party that either caused him economic loss or was of the type that is actionable without proof of economic loss. *Phelan v. May Dep't Stores Co.*, 443 Mass. 52, 55-56, 819 N.E. 2d 550 (2004). Four types of statements are actionable without proof of economic loss: (1) statements that constitute libel; (2) statements that charge the plaintiff with a crime; (3) statements that allege that the plaintiff has certain diseases; and (4) statements that may prejudice the plaintiff's profession or business. *Ravnikar v. Bogojaviensky*, 438 Mass. 627, 630, 782 N.E.2d 508 (2003).” See: *Eckhardt v. Neles Automation*, 2006 Mass. Super. LEXIS 39.

Lexis Nexis Accurint defamed and libeled Plaintiff by publishing false address history data information in a background report bearing on the plaintiff's character to Gall and Gall Company and to be subsequently published to Plaintiff's employer, F& W Publishing, Adams Media. At least two patently false addresses in Sioux City, South Dakota, associated with Plaintiff's correct social security number and date of birth (to imply that the data was properly verified) were inappropriately associated with the Plaintiff's name and identity. See: Exhibit 13, Varad Affidavit, ¶ 1 and 2.

F&W Publishing, Adams Media, Plaintiff's former employer, relied on the Lexis Nexis Accurint report address history data to concluded that Plaintiff had lied on her employment application by intentionally omitting specifically requested address history information. See: Exhibit 13, Varad Affidavit, ¶ 3. Plaintiff was defamed by the false information and data supplied by Lexis Nexis Accurint for inclusion in the Gall and Gall

“Applicant Screening Report” to be disseminated to her employer, F&W Publishing, Adams Media. See: Exhibit 2, 1st Gall and Gall Applicant Screening Report to F&W Publishing, Adams Media.

“Liability may be imposed for words which are not inherently disparaging, but have that effect when viewed in context. Sharrett, 365 Mass. at 143-144. Whether the statement is reasonably susceptible to a defamatory meaning is a threshold question of law for the court. Foley v. Lowell Sun Publishing Co., 404 Mass. 9, 11, 533 N.E.2d 196 (1989). See: Holland v. Kwiat, 2006, Mass. Super. LEXIS 407.

While an address history may not be inherently disparaging examined in isolation, when viewed in the context of an employment application process it is clearly defamatory if that history effectively causes the employer to conclude that the prospective employee has lied on his or her application for employment. This was a consumer agency report utilized for the purpose of evaluating Plaintiff as a prospective employee. If the contents of that report proved negative Plaintiff risked at minimum being fired or simply not hired based on its contents. Here Plaintiff was defamed by false information and omitted information to provide confirmation for her data entries. See: Exhibit 13, Varad Affidavit, ¶ 2.

15 U.S.C. § 1681a (h) states that the term “employment purposes” when used in connection with a consumer report means “a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee” and that was exactly the type of situation that existed when Lexis Nexis Accurint reported data to Gall and Gall Company for final dispersion to F&W Publishing, Adams Media regarding the character and address history of the Plaintiff.

Based on the Lexis Nexis Accurint web site advertisements of easy access to database information by state government representatives and courts and also based on

specific information given to Plaintiff by a State of Massachusetts employee with personal knowledge that State employee routinely access Lexis Nexis databases for information, Plaintiff concludes that the same false, misleading and libelous address information and data concerning her address history was reported to court department representatives of the State of Massachusetts Board of Bar Examiners as was reported to Gall and Gall Company and subsequently F&W Publishing, Adams Media , See: Exhibit 13, Varad Affidavit, ¶ 6. Address and employment data as provide by an applicant on application for admission to a state Bar and for licensing in the legal profession is regularly and well know to be routinely utilized by licensing boards such as the Maine Board of Bar Examiners and the Massachusetts Board of Bar Examiners to evaluate an applicant's character for truthfulness.

In the absence of Lexis Nexis Accurint providing the complete file as required pursuant to 15 U.S.C. § 1681(g)(a) et seq., Plaintiff is left to assume that same false information regarding her address history was similarly disseminated to the Maine Board of Bar Examiners and the Massachusetts Board of Bar Examiners pursuant to her applications for admission to the Bar in order to evaluate the Plaintiff's character for truthfulness.

False information submitted by Lexis Nexis Accurint resulted in the same adverse and injurious evaluation of her character for truthfulness as it did when submitted to F&W Publishing, Adams Media causing the same defamation and harm to Plaintiff's rights and reputation but additionally impairing her ability to become licensed to earn her living in her chosen profession, be included in professional organizations or access similar professional employment opportunities.

PART IV

Lexis Nexis Accurint's actions toward the Plaintiff were unfair and deceptive under the standards set forth in M.G.L. c. 93A, § 9 and in FTC v. Sperry & Hutchinson Co., 405 U.S. 233, 244, n.5 (1972).

The actions of defendant, Lexis Nexis Accurint, were unfair and deceptive under standards established by the Supreme Court to the United States and the Federal Trade Commission. The court addressed unfair and deceptive practices in violation of federal statutes as follows:

"The Commission has described the factors it considers in determining whether a practice that is neither in violation of the antitrust laws nor deceptive is nonetheless unfair:

"(1) whether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise - whether, in other words, it is within at least the penumbra of some common-law, [405 U.S. 233, 245] statutory, or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive, or unscrupulous; (3) whether it causes substantial injury to consumers (or competitors or other businessmen)." Statement of Basis and Purpose of Trade Regulation Rule 408, Unfair or Deceptive Advertising and Labeling of Cigarettes in Relation to the Health Hazards of Smoking, 29 Fed. Reg. 8355 (1964).

S&H argues that a later portion of this statement commits the FTC to the view that misconduct in respect of the third of these criteria is not subject to constraint as "unfair" absent a concomitant showing of misconduct according to the first or second of these criteria. But all the FTC said in the statement referred to was that "[t]he wide variety of decisions interpreting the elusive concept of unfairness at least makes clear that a method of selling violates Section 5 if it is exploitive or inequitable and if, in addition to being morally objectionable, it is seriously detrimental to consumers or others." Ibid. (emphasis added)." See: Federal Trade Commission v. Sperry, 405 U.S. 233, 244, n.5. (1972).

Lexis Nexis Accurint trade practices are also unfair and deceptive under the standard set by Massachusetts state court decisions:

“In Massachusetts, “a practice or act will be unfair under G.L. c. 93A §2, if it is (1) within the penumbra of common law, statutory, or other established concept of fairness; (2) immoral, unethical, oppressive, or unscrupulous; or (3) causes substantial injury to competitors or other business people.” Morrison v. Toys-R-Us, Inc. Massachusetts, 441 Mass. 451, 457, 806 N.E. 2d 388 (2004). See: Galena v. Commerce Ins. Co., 2006 Mass. Super. LEXIS 45, Opinion No.: 92038, Docket No.: 03-0870-C.

A trade practice that offends public policy and is injurious to consumers on a national basis, such the Accurint web site proclaimed practice of not providing the public with “consumer reports” for the purposes of the Fair Credit Reporting Act or the Accurint repeated claim to Plaintiff, and countless other similarly situated persons, of not functioning as a “consumer reporting agency,” are comparable to trade practices that have already been recognized by courts as unfair and deceptive trade practices. See: Marshall v. Miller, 302 N.C. 539, 548, 276 S.E. 2d 397, 403 (1981).

It is intentionally misleading for Lexis Nexis Accurint to make inaccurate claims to the general public that the information and data it provides to third parties are not to be considered consumer reports for the purposes of the Fair Credit Reporting Act, 15 U.S.C.1681 et seq. The Lexis Nexis Accurint web site states the following:

“The information provided by Accurint is not a consumer report (as the term is defined in the Fair Credit Reporting Act (FCRA) and may not be used for any purpose permitted by the FCRA.” See: Exhibit 14, Lexis Nexis Accurint webpage statement.

The public is falsely led to believe that the statutory protections of the Fair Credit Reporting Act and similar applicable state statutory protections are not applicable to reports generated by Lexis Nexis Accurint. The public is tricked into thinking that it has no statutory right to be provided with a copy of a file retained by the Lexis Nexis Accurint database should defamatory or inaccurate information come to light as generated by a Lexis Nexis Accurint consumer report. The public is shrewdly defrauded

of statutory protections of contesting false or injurious information contained in a Lexis Nexis Accurint file and is left with no mechanism to defend against unfettered acts of defamation and/or invasion of privacy based on data disseminated to third parties by a consumer reporting agency such as Lexis Nexis Accurint.

Lexis Nexis Accurint provides information and personal data on individuals to state and federal government agencies, insurance companies, state and federal law enforcement representatives, legal, academic and health care professionals, the banking industry and the debt collection industry routinely contains private, unpublicized information, even medical record information. See: Exhibit 15, Lexis Nexis Accurint webpages. In stark contrast, common Internet search engine databases routinely provide information based on public data either intentionally published by a party themselves or obtained through a public media or publishing medium such as a newspaper. There is no private information element to the data published by common search engines and no resultant need to regulate information already in the public domain.

It is an unfair and deceptive business practice for Lexis Nexis Accurint to make misleading claims to the Plaintiff that it does not function as a consumer reporting agency subject to the provisions of 15 U.S.C. 1681 et seq. Lexis Nexis Accurint provided Gall and Gall Company with data information for inclusion in a investigative report on Plaintiff to be subsequently disseminated Plaintiff's employer, F&W Publishing, Adams Media. Lexis Nexis Accurint knew or should have known that (1) it provided Gall and Gall Company with a consumer credit report as defined by 15 U.S.C. 1681a (d)(1) and (2) thereby functioned as a consumer reporting agency pursuant to 15 U.S.C. 1681a (f)

and that Gall and Gall Company was routinely utilizing information provided by Accurint to compile reports client employers for the purpose of evaluating prospective employees.

Clearly Lexis Nexis Accurint engaged in a deceptive trade practice regarding its status as a consumer reporting agency generating consumer reports for third parties and a deception is never fair to a consumer defrauded of his statutory right to defend his good name by seeking to arrest continued corporate acts of defamation that serve to obstruct with his right and ability to earn a living in his chose profession.

CONCLUSION

For all the above stated reasons, this Court should grant a summary judgment on all counts in favor of the Plaintiff.

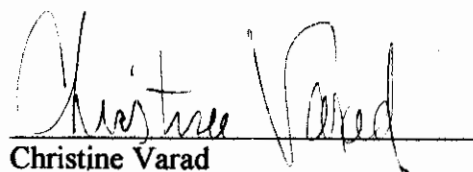
Respectfully submitted,



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I certify that on this 29th day of October 2006, I caused a copy of MOTION FOR A SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT OF A MOTION FOR A SUMMARY JUDGMENT to be served on the attorney of record for defendant Reed Elsevier, Incorporated at the following address of record:

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Christine Varad