UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. THE BROADCAST TEAM, INC., ROBERT J. TUTTLE and MARK S. EDWARDS, Defendants.	Case No. 6:05-cv-1920-ORL-19JGG **COMPLAINT FOR CIVIL PENALTIES, PERMANENT INJUNCTION, AND OTHER RELIEF**

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("FTC" or "Commission"), pursuant to Section 16(a)(1) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 56(a)(1), for its complaint alleges:

1. Plaintiff brings this action under Sections 5(a), 5(m)(1)(A), 13(b), and 16(a) of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), and 56(a), and Section 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (the "Telemarketing Act"), 15 U.S.C. § 6105, to obtain monetary civil penalties, a permanent injunction, and other equitable relief for defendants' violations of the FTC's Telemarketing Sales Rule (the "TSR" or "Rule"), 16 C.F.R. Part 310, as amended by 68 Fed. Reg. 4580, 4669 (January 29, 2003), and 68 Fed. Reg. 45134, 45144 (July 31, 2003).

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(m)(1)(A), 53(b), and 56(a). This action arises under 15 U.S.C. § 45(a).

3. Venue is proper in this District under 28 U.S.C. §§ 1391(b)-(c) and 1395(a), and 15 U.S.C. § 53(b).

DEFENDANTS

4. Defendant The Broadcast Team, Inc. ("TBT"), is a for-profit Florida corporation with its principal place of business at 9 Sunshine Boulevard, Ormond Beach, Florida. TBT transacts or has transacted business in this District.

5. Defendant Robert J. Tuttle is the chief executive officer and a director of Defendant TBT and owns 50% of TBT. In connection with the matters alleged herein, Mr. Tuttle has transacted business in this District. At all times material to this complaint, acting alone or in concert with others, Defendant Tuttle has formulated, directed, controlled, or participated in the acts and practices of TBT, including the acts and practices set forth in this complaint.

6. Defendant Mark S. Edwards is the president and a director of defendant TBT and owns 50% of TBT. In connection with the matters alleged herein, Mr. Edwards has transacted business in this District. At all times material to this complaint, acting alone or in concert with others, Defendant Edwards has formulated, directed,

controlled, or participated in the acts and practices of TBT, including the acts and practices set forth in this complaint.

THE TELEMARKETING SALES RULE AND THE NATIONAL DO NOT CALL REGISTRY

7. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108, in 1994. On August 16, 1995, the FTC adopted the Telemarketing Sales Rule (the "Original TSR"), 16 C.F.R. Part 310, which became effective on December 31, 1995. On January 29, 2003, the FTC amended the TSR by issuing a Statement of Basis and Purpose ("SBP") and the final amended TSR (the "Amended TSR"). 68 Fed. Reg. 4580, 4669.

8. A telephone call is an "outbound telephone call" under the Amended TSR if the telephone call is initiated by a telemarketer to induce the purchase of goods or services, or to solicit a charitable contribution. 16 C.F.R. § 310.2(u).

9. An outbound telephone call is "abandoned" under the Amended TSR if a person answers it and the telemarketer does not connect the call to a sales representative within two (2) seconds of the person's completed greeting. *Id.* § 310.4(b)(1)(iv).

10. Since October 1, 2003, sellers and telemarketers subject to the FTC's authority under the Telemarketing Act have been prohibited from abandoning any outbound telephone call by not connecting the call to a representative within two (2) seconds of the consumer's completed greeting. *Id.*

11. Telemarketers that are subject to the FTC's authority are prohibited from abandoning outbound telephone calls, even if the seller on whose behalf the call is made is not subject to the FTC's authority. *See* 68 Fed. Reg. 4589-90.

12. The Amended TSR also established a "do-not-call" registry, maintained by the Commission (the "National Do Not Call Registry" or "Registry"), of consumers who do not wish to receive certain types of telemarketing calls. Consumers can register their telephone numbers on the Registry without charge either through a toll-free telephone call or over the Internet at *donotcall.gov*.

13. Since September 2, 2003, sellers, telemarketers, and other permitted organizations have been able to access the Registry over the Internet at *telemarketing.donotcall.gov* to download the registered numbers.

14. Consumers who receive telemarketing calls to their registered numbers can complain of Registry violations the same way they registered, through a toll-free telephone call or over the Internet at *donotcall.gov*, or by otherwise contacting law enforcement authorities.

15. Since October 17, 2003, sellers and telemarketers subject to the FTC's authority under the Telemarketing Act generally have been prohibited from calling numbers on the Registry if the call is made to induce the purchase of goods or services. 16 C.F.R. § 310.4(b)(1)(iii)(B) ("the Do Not Call regulation" or "the DNC regulation"). The Amended TSR permits such calls to numbers on the Registry if the call falls within

the provisions of the Rule that govern calls based on an express written agreement or an established business relationship (16 C.F.R. §§ 310.4(b)(1)(iii)(B)(i) or (ii)).

16. Solicitations to induce charitable contributions via outbound telephone calls are not covered by the Do Not Call regulation. *Id.* § 310.6(a). Solicitations to induce charitable contributions via outbound telephone calls are covered by the prohibition on abandoned calls when such solicitations are made by telemarketers or sellers subject to the FTC's authority under the Telemarketing Act.

17. The Amended TSR imposes fees for access to the Registry. These fees must be paid whenever access to the Registry is required by the Amended TSR, similar regulations promulgated by the FCC at 47 C.F.R. § 64.1200, or any other federal law. If a seller, telemarketer, or other permitted organization chooses to access the Registry to prevent telephone calls to numbers on the Registry, but is not required by federal law to access the Registry, there is no charge for access. 16 C.F.R. § 310.8(c). A telemarketer may act on behalf of a seller in applying for access to the National Do Not Call Registry and in accessing the Registry. 68 Fed. Reg. 45,137.

18. Since October 17, 2003, telemarketers subject to the FTC's authority under the Telemarketing Act have been prohibited from making any call to induce the purchase of goods or services to any telephone number within a given area code unless the seller on whose behalf the calls are made has paid (either directly or through another person) the annual fee for access to the telephone numbers within that area code that are included in the National Do Not Call Registry. The Amended TSR does not

require such payment when the telephone numbers are accessed and downloaded, but does require that the fees be paid before calls are placed. Payment is not necessary if the seller initiates, or causes a telemarketer to initiate, calls solely to persons covered by the provisions allowing calls based on an express agreement or an established business relationship (16 C.F.R. §§ 310.4(b)(1)(iii)(B)(i) or (ii)), and the seller does not access the National Do Not Call Registry for any other purpose. 16 C.F.R. § 310.8(b).

19. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the TSR constitutes an unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

DEFENDANTS' BUSINESS PRACTICES

20. TBT is a "telemarketer" as defined by the TSR, 16 C.F.R. § 310.2(bb), because, in connection with telemarketing, TBT initiates telephone calls to customers and donors. TBT sells a computerized message delivery service designed to deliver prerecorded messages to telephone answering machines or voice mail services. TBT's service is described as a "voice broadcasting" service and is marketed under the name "RealCall."

21. In providing RealCall voice broadcasting services, TBT uses automated dialers to place calls to a database of numbers. When the calls are answered, TBT uses a computerized protocol to detect whether the call has been answered by a live person,

or by an answering machine or voice mail system. If the call is answered by an answering machine or voice mail system, RealCall also uses a computerized protocol to detect when the answering machine or voice mail system is ready to record a message. TBT's automated service will then deliver a prerecorded message to the answering machine or voice mail system.

22. TBT's RealCall voice broadcasting services can be programmed so that the prerecorded message is played only if the call is answered by an answering machine or voice mail system and, if the call is answered by a live person, the call is terminated immediately. Alternatively, TBT's RealCall voice broadcasting services can be programmed so that the prerecorded message is played regardless of whether the call is answered by an answering machine, a voice mail system, or a live person. TBT's RealCall voice broadcasting services also can be programmed so that the prerecorded message is only played if the call is answered by a live person.

23. TBT's automated system for placing outbound telephone calls allows it to place over a million RealCall voice broadcasting calls a day.

24. At all times relevant to this complaint, defendants have maintained a substantial course of trade or business in the offering for sale and sale of goods or services via the telephone, in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

Abandoned Calls

25. When a person answers a telephone call placed using TBT's RealCall voice broadcasting service, TBT causes the call to be abandoned because it does not connect the person to a sales representative within two seconds of the person's completed greeting. Depending on how the service is programmed, TBT will either terminate the call upon determining that the call has not been answered by an answering machine or voice mail system, or will play the prerecorded message to the individual and then terminate the call.

26. Since October 1, 2003, TBT has conducted numerous RealCall voice broadcasting telemarketing campaigns that have caused telephone calls to be abandoned whenever a call is answered by a person rather than by an answering machine or voice mail service. These telemarketing campaigns resulted in over 64 million hang-ups when a live person answered the phone. The telemarketing campaigns include:

a. Delivering messages to induce the purchase of debt management services from Debt Management Foundation Services, Inc. ("DMFS"). Between October 1, 2003 and July 21, 2004, this campaign resulted in TBT causing over 59 million telephone calls to be abandoned.

b. Delivering messages to induce the purchase of debt management services from two additional sellers, Express Consolidation, Inc., and Lighthouse Credit Foundation, Inc. TBT's campaigns for these entities resulted in TBT causing over 5 million telephone calls to be abandoned since October 1, 2003.

c. Delivering messages to solicit sales of tickets for conferences of Women of Faith. During 2004 and 2005, these campaigns resulted in TBT causing over 250,000 telephone calls to be abandoned.

d. Delivering messages to induce charitable contributions to CARE. During 2004, this campaign resulted in TBT causing over 200,000 telephone calls to be abandoned; and

e. Delivering messages to solicit customers of sellers for additional sales. The messages delivered by TBT to such customers did not provide the customers with an opportunity to state that the customer does not wish to receive further outbound telephone calls for the sellers' goods or services.

27. Since October 1, 2003, TBT has received over $2.1 million in revenue from its sales of RealCall voice broadcasting services in which TBT initiated calls to induce the sales of goods or services or a charitable contribution, and TBT's service caused telephone calls to be abandoned when the call was answered by a person rather than by an answering machine or voice mail service.

Calls to Persons Registered on the National Do Not Call Registry

28. Between October 17, 2003 and January 15, 2004, TBT called numbers on the Registry to deliver RealCall voice broadcasting messages designed to induce the purchase of debt management services from DMFS. At the instruction of DMFS, TBT placed these calls without eliminating all numbers on the Registry from the list of numbers to be called.

29. On January 15, 2004, TBT received instructions from DMFS that TBT should eliminate numbers listed on the National Do Not Call Registry (and state do not call registries) from the list of numbers to be called in providing RealCall voice broadcasting services for DMFS. TBT did not implement this instruction until February 5, 2004, and continued to place telephone calls to deliver telephone messages soliciting for DMFS, to numbers on the Registry from January 15, 2004, to February 4, 2004. Between January 15 and February 4, 2004, TBT's telemarketing activities for DMFS resulted in TBT initiating calls to over 1 million persons who had indicated that they did not wish to receive such calls by listing their numbers in the Registry at least three months before TBT's call.

Placing Calls on Behalf of Sellers Who Had Not Paid for Access to the National Do Not Call Registry

30. TBT has obtained authorization to access the National Do Not Call registry on behalf of for-profit and nonprofit sellers, and has represented that these sellers are not required to pay fees for access to the Registry under the provisions of the Amended TSR that provide that there is no charge for access if access to the Registry is not required by the Amended TSR, similar regulations promulgated by the FCC at 47 C.F.R. § 64.1200, or any other federal law. 16 C.F.R. § 310.8(c).

31. In obtaining the authorizations described in paragraph 29, TBT representatives endorsed, under penalty of perjury, a certification that stated, in part, that "I am authorized to certify and do so certify on behalf of my Organization, as well as any

Clients for which my Organization is accessing the National Do Not Call Registry . . . that our fee(s) for access to the National Registry, if required by law, either has been or will be paid, before downloading any data from the National Registry."

32. TBT obtained authorization to access the National Registry as described in paragraph 29, on behalf of three purportedly nonprofit sellers marketing debt management services -- DMFS, Express Consolidation, Inc., and Lighthouse Credit Foundation, Inc. TBT represented that such access did not require payment of the applicable fees when (i) TBT was making and/or planned to make telephone calls on behalf of these sellers to induce the purchase of goods and services, and (ii) the calls that TBT was making and/or planned to make were not made solely to persons with whom the sellers had an express agreement or an established business relationship.

33. Since October 17, 2003, TBT has initiated outbound telephone calls for each of the sellers identified in paragraph 31, to induce the purchase of goods or services on behalf of these sellers when the sellers had not paid the required annual fees for access to the telephone numbers in the National Do Not Call Registry. The sellers had not paid the applicable fees because TBT, acting as the agent for the sellers, represented that payment of the applicable fees was not required.

VIOLATIONS OF THE TELEMARKETING SALES RULE

Count I
(Abandoning Calls)

34. In numerous instances, in connection with telemarketing, defendants have abandoned, or caused others to abandon, an outbound telephone call by failing to connect the call

to a sales representative within two (2) seconds of the completed greeting of the person answering the call, in violation of the TSR. 16 C.F.R. § 310.4(b)(1)(iv).

Count II
(Calls to Persons Registered on the National Do Not Call Registry)

35. In numerous instances, in connection with telemarketing, defendants have engaged in, or caused others to engage in, initiating an outbound telephone call to a person's telephone number on the National Do Not Call Registry, in violation of the TSR. 16 C.F.R. § 310.4(b)(1)(iii)(B).

Count III
(Placing Calls on Behalf of Sellers That Had Not Paid National Registry Fees)

36. In numerous instances, in connection with telemarketing, defendants have initiated, or caused others to initiate, outbound telephone calls to induce the purchase of goods or services to telephone numbers within a given area code on behalf of sellers who had not, either directly or through another person, paid the required annual fee for access to the telephone numbers within that area code that are included in the National Do Not Call Registry, in violation of the TSR. 16 C.F.R. § 310.8.

CONSUMER INJURY

37. Consumers in the United States have suffered and will suffer injury as a result of defendants' violations of the TSR. Absent injunctive relief by this Court, defendants are likely to continue to injure consumers and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

38. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief to prevent and remedy any violation of any provision of law enforced by the FTC.

39. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, and as implemented by 16 C.F.R. § 1.98(d) (1997), authorizes this Court to award monetary civil penalties of not more than $11,000 for each violation of the TSR.

40. Defendants' violations of the TSR were committed with the knowledge required by Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

41. This Court, in the exercise of its equitable jurisdiction, may award ancillary relief to remedy injury caused by defendants' violations of the Amended TSR and the FTC Act.

PRAYER FOR RELIEF

WHEREFORE, plaintiff requests that this Court, as authorized by Sections 5(a), 5(m)(1)(A), and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), and pursuant to its own equitable powers:

A. Enter judgment against defendants and in favor of plaintiff for each violation alleged in this complaint;

B. Award plaintiff monetary civil penalties from each defendant for every violation of the TSR;

C. Permanently enjoin defendants from violating the TSR and the FTC Act;

D. Order defendants to pay the costs of this action; and

E. Award plaintiff such other and additional relief as the Court may determine to be just and proper.

Dated: December 27, 2005

Respectfully submitted,

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