

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
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)
Triple Take Lawn Care, Inc. ) File No. EB-07-TC-3838
aka TT Lawn Care, Inc. )
) NAL/Acct. No. 200932170950
Apparent Liability for Forfeiture ) FRN: 0018529446
)
)

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: February 25, 2009

Released: February 25, 2009

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL")<sup>1</sup>, we find that Triple Take Lawn Care, Inc. ("Triple Take")<sup>2</sup> apparently willfully or repeatedly violated section 64.1200(c)(2) of the Commission's rules, by making one telephone call for the purpose of delivering a telephone solicitation to one residential telephone consumer who had registered their telephone number on the National Do-Not-Call Registry.<sup>3</sup> Based on the facts and circumstances surrounding the apparent violation, we find that Triple Take is apparently liable for a forfeiture in the amount of \$10,000. Triple Take will have the opportunity to submit evidence and arguments in response to this NAL to show that no forfeiture should be imposed or that some lesser amount should be assessed.

<sup>1</sup> See 47 U.S.C. § 503(b)(1). The Commission has the authority under this section of the Act to assess a forfeiture against any person who has "willfully or repeatedly failed to comply with any of the provisions of this Act or of any rule, regulation, or order issued by the Commission under this Act ...." See also 47 U.S.C. § 503(b)(5) (stating that the Commission has the authority under this section of the Act to assess a forfeiture penalty against any person who does not hold a license, permit, certificate or other authorization issued by the Commission or an applicant for any of those listed instrumentalities so long as such person (A) is first issued a citation of the violation charged; (B) is given a reasonable opportunity for a personal interview with an official of the Commission, at the field office of the Commission nearest to the person's place of residence; and (C) subsequently engages in conduct of the type described in the citation).

<sup>2</sup> According to publicly available information, Triple Take is also known as TT Lawn Care, Inc. Therefore, all references in this NAL to "Triple Take" encompass Triple Take as well as TT Lawn Care, Inc. Triple Take has offices at 24119 W. Riverwalk Ct., Unit 109, Plainfield, IL 60544 and 24137 W. Riverwalk Ct., Plainfield, IL 60544. John Khoury is listed as the President of Triple Take and Dan Souris is the Sales Manager for Triple Take. Accordingly, all references in this NAL to "Triple Take" also encompass the foregoing individuals and all other principals and officers of this entity, as well as the corporate entity itself.

<sup>3</sup> See 47 C.F.R. § 64.1200(c)(2).

## II. BACKGROUND

2. Section 64.1200(c)(2) of the Commission's rules generally prohibits the delivery of telephone solicitations to residential telephone numbers that are contained in the National Do-Not-Call Registry, except in certain limited situations.<sup>4</sup> Under the Communications Act of 1934, as amended ("Act"), and the Commission's rules, a "telephone solicitation" means "the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person."<sup>5</sup> Not every promotional call, however, constitutes a prohibited telephone solicitation under this rule. Calls made by or on behalf of a tax-exempt nonprofit organization are not considered to be telephone solicitations.<sup>6</sup> Similarly, calls that are made to a person who either has provided prior express invitation or permission to call<sup>7</sup> or has an established business relationship<sup>8</sup> with the caller are not considered to be telephone solicitations. In addition to these statutory exemptions, section 64.1200(c)(2)(iii) also permits telephone solicitations to National Do-Not-Call registrants in the limited situation in which the caller has a personal relationship with the called party.<sup>9</sup>

3. Entities making telephone solicitations must honor do-not-call registrations no later than 31 days after a number is placed on the National Do-Not-Call Registry.<sup>10</sup> To accomplish this, section 64.1200(c)(2)(i)(D) requires entities making telephone solicitations to use a version of the National Do-Not-Call Registry obtained no more than 31 days before any telephone solicitation is made, and to

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<sup>4</sup> 47 C.F.R. § 64.1200(c)(2).

<sup>5</sup> 47 U.S.C. §227(a)(3); 47 C.F.R. §64.1200(f)(12).

<sup>6</sup>47 U.S.C § 227(a)(3); 47 C.F.R. § 64.1200(f)(12).

<sup>7</sup> Section 64.1200(c)(2)(ii) of our rules requires that prior express invitation or permission "must be evidenced by a signed, written agreement between the consumer and seller which states that the consumer agrees to be contacted by this seller and includes the telephone number to which the calls may be placed." 47 C.F.R. § 64.1200(c)(2)(ii).

<sup>8</sup> For do-not-call purposes, the term "established business relationship" means "a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of the subscriber's purchase or transaction with the entity within the eighteen (18) months immediately preceding the date of the telephone call or on the basis of the subscriber's inquiry or application regarding products or services offered by the entity within the three months immediately preceding the date of the call, which relationship has not been previously terminated by either party." 47 C.F.R. § 64.1200(f)(4). The established business relationship exception does not apply when a telephone subscriber has made a company-specific do-not-call request. A company-specific do-not-call request terminates an established business relationship for telemarketing purposes even if the requester continues to do business with the company. 47 C.F.R. § 64.1200(f)(4)(i); *see also Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14014, 14070, para. 96 (2003); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 7 FCC Rcd 8752, 8766 n.47, 8770 n.63 (1992); *see also* H.R. Rep. 102-317, 1<sup>st</sup> Sess., 102<sup>nd</sup> Cong. at 15 (1991); *Charvat v. Dispatch Consumer Services, Inc.*, 95 Ohio St. 3d 505, 769 N.E.2d 829 (2002).

<sup>9</sup> The term "personal relationship" means "any family member, friend, or acquaintance of the telemarketer making the call." 47 C.F.R. § 64.1200(f)(14).

<sup>10</sup> The 31-day requirement applies to telephone solicitations made on or after January 1, 2005. *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Order, 19 FCC Rcd 19215 (2004). Previously, the Commission's rules provided that do-not-call registrations had to be honored within 3 months. *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14014, 14040, para. 38 (2003). The 3-month provision applied to telephone solicitations made before January 1, 2005.

document this process. Do not call registrations must be honored indefinitely, or until either the consumer cancels the registration or the database administrator removes the telephone number from the National Do-Not-Call Registry.<sup>11</sup> An entity that does not claim one of the exemptions set forth above is not liable for calling a telephone number on the National Do-Not-Call Registry only if it is able to demonstrate both that it has fully complied with the Commission's standards governing use of the National Do-Not-Call Registry as set out in section 64.1200(c)(2)(i)(A)-(E) of the rules, *and* that the particular telephone solicitation call was the result of specific error.<sup>12</sup>

4. In order to comply with the Commission's standards, a person or entity initiating a telephone solicitation must first demonstrate that, as part of its routine business practice it has: (1) established and implemented written procedures to comply with the do-not-call rules; (2) trained its personnel, and any entity assisting in its compliance, in the procedures established pursuant to the do-not-call rules; (3) maintained and recorded a list of telephone numbers the seller may not contact; (4) used a process to prevent telemarketing to any telephone number on any list established pursuant to the do-not-call rules employing a version of the National Do-Not-Call Registry obtained from the administrator of the Registry within a designated time frame, and has maintained records documenting this process; and (5) used a process to ensure that it does not sell, rent, lease, purchase, or use the Registry for any purpose except national do-not-call compliance, and that it has purchased access to the Registry from the Registry administrator without participating in any cost sharing arrangement with any other entity. We reiterate, however, that the "safe harbor" from liability only applies if such person or entity is able to show that the particular violative calls made in spite of adherence to the enumerated do-not-call procedures were the result of specific error.

5. On July 2, 2007, in response to one or more consumer complaints alleging that Triple Take had made telephone calls for the purpose of delivering telephone solicitations to residential telephone consumers who had registered their telephone numbers on the National Do-Not-Call Registry, the Commission staff issued a citation<sup>13</sup> to Triple Take, pursuant to section 503(b)(5) of the Act.<sup>14</sup> The staff cited Triple Take for delivering one or more telephone solicitations to residential telephone consumers who had registered their telephone numbers on the National Do-Not-Call Registry, in violation of section 64.1200(c)(2) of the Commission's rules. The citation warned Triple Take that subsequent violations could result in the imposition of monetary forfeitures of up to \$11,000 per violation, and included a copy of the consumer complaint that formed the basis of the citation.<sup>15</sup> The citation informed Triple Take that within thirty (30) days of the date of the citation, it could either request an interview with Commission staff, or could provide a written statement responding to the citation. Triple Take did not request an interview but did respond to the citation on July 31, 2007.<sup>16</sup>

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<sup>11</sup> 47 C.F.R. § 64.1200(c)(2).

<sup>12</sup> 47 C.F.R. § 64.1200(c)(2)(1)(A)-(E).

<sup>13</sup> Citation from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, File No. EB-07-TC-3838, issued to Triple Take on July 2, 2007.

<sup>14</sup> See 47 U.S.C. § 503(b)(5) (authorizing the Commission to issue citations to persons who do not hold a license, permit, certificate or other authorization issued by the Commission or an applicant for any of those listed instrumentalities for violations of the Act or of the Commission's rules and orders).

<sup>15</sup> Commission staff mailed the citation to Dan Souri, Triple Take Lawn Care, 24137 West Riverwalk Court, Plainfield, IL 60544.

<sup>16</sup> Letter from Dan Souri, Sales Manager, Triple Take Lawn Care, to Kurt Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, dated July 31, 2007. The response states that Triple Take is sorry for the inconvenience and that no one on the Triple Take sales force recalls calling the complainant.

6. Despite the citation's warning that subsequent violations could result in the imposition of monetary forfeitures, we have received an additional consumer complaint indicating that Triple Take continued to engage in such conduct after receiving the citation.<sup>17</sup> We base our action here specifically on a complaint filed by one consumer establishing that Triple Take continued to deliver a telephone solicitation after the date of the citation to a consumer who had registered their telephone number on the National Do-Not-Call Registry.<sup>18</sup>

7. Section 503(b) of the Act authorizes the Commission to assess a forfeiture for each violation of the Act or of any rule, regulation, or order issued by the Commission under the Act by a non-common carrier or other entity not specifically designated in section 503 of the Act. The maximum penalty for such a violation is \$11,000 for a violation occurring before September 2, 2008, and \$16,000 for a violation occurring on or after September 2, 2008.<sup>19</sup> In exercising such authority, we are to take into account "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."<sup>20</sup>

### III. DISCUSSION

#### A. Violations of the Commission's Rules

8. We find that Triple Take apparently violated section 64.1200(c)(2) of the Commission's rules and orders by delivering at least one telephone solicitation to the one consumer identified in the Appendix who had registered their telephone number on the National Do-Not-Call registry. This NAL is based on evidence that one consumer who had registered their telephone number on the National Do-Not-Call registry received a telephone solicitation from Triple Take *after* the Commission staff's citation. The call at issue advertised lawn services. Hence, the call at issue here therefore falls within the definition of a "telephone solicitation."<sup>21</sup> Further, we find that the call at issue here was not made on behalf of a tax exempt, nonprofit organization. In addition, according to the complaint, the consumer neither had an established business relationship with Triple Take nor gave Triple Take prior express invitation or

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<sup>17</sup> See Appendix for a listing of the consumer complaint against Triple Take requesting Commission action.

<sup>18</sup> We note that evidence of additional instances of unlawful conduct by Triple Take may form the basis of subsequent enforcement action.

<sup>19</sup> Section 503(b)(2)(C) provides for forfeitures up to \$10,000 for each violation in cases not covered by subparagraph (A) or (B), which address forfeitures for violations by licensees and common carriers, among others. See 47 U.S.C. § 503(b). In accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, Pub. L. 104-134, Sec. 31001, 110 Stat. 1321, the Commission implemented an increase of the maximum statutory forfeiture under section 503(b)(2)(C) first to \$11,000 and more recently to \$16,000. See 47 C.F.R. § 1.80(b)(3); *Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 15 FCC Rcd 18221 (2000) (forfeiture maximum for this type of violator set at \$11,000); *Amendment of Section 1.80(b) of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 19 FCC Rcd 10945 (2004) (amendment of section 1.80(b) to reflect inflation left the forfeiture maximum for this type of violator at \$11,000); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, 23 FCC Rcd 9845 (2008) (amendment of section 1.80(b) to reflect inflation increased the forfeiture maximum for this type of violator at \$16,000).

<sup>20</sup> 47 U.S.C. § 503(b)(2)(D); *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, Report and Order*, 12 FCC Rcd 17087, 17100-01 para. 27 (1997) (*Forfeiture Policy Statement*), recon. denied, 15 FCC Rcd 303 (1999).

<sup>21</sup> See 47 U.S.C. § 227(a)(4); 47 C.F.R. § 64.1200(f)(12).

permission to deliver the telephone solicitation.<sup>22</sup> Finally, Triple Take made the call at issue more than thirty-one (31) days after the consumer placed their residential telephone number on the National Do-Not-Call Registry. Based on the entire record, including the consumer complaint, we conclude that Triple Take apparently violated section 64.1200(c)(2) the Commission's rules by delivering one telephone solicitation to one consumer who had registered their telephone number on the National Do-Not-Call registry

#### B. Proposed Forfeiture

9. We find that Triple Take is apparently liable for a forfeiture in the amount of \$10,000. The Commission's *Forfeiture Policy Statement* does not establish a base forfeiture amount for violating the prohibition on making telephone solicitations to customers who have registered on the National Do-Not-Call Registry.<sup>23</sup> The Commission has found that a national do-not-call violation implicates the same concern as a violation of the company specific do-not-call rules and, accordingly, justifies the application of the \$10,000 base amount that the Commission previously proposed for company specific do-not call violations.<sup>24</sup> We apply that base amount to the one apparent telephone solicitation violation. Thus, we propose a total forfeiture of \$10,000. Triple Take will have the opportunity to submit evidence and arguments in response to this NAL to show that no forfeiture should be imposed or that some lesser amount should be assessed.<sup>25</sup>

#### IV. CONCLUSION AND ORDERING CLAUSES

10. We have determined that Triple Take Lawn Care, Inc., apparently violated section 64.1200(c)(a) of the Commission's rules by delivering at least one telephone solicitation to the one consumer identified in the Appendix who had registered their telephone number on the National Do-Not-Call registry. We have further determined that Triple Take Lawn Care, Inc. is apparently liable for a forfeiture in the amount of \$10,000.

11. Accordingly, IT IS ORDERED, pursuant to section 503(b) of the Act, 47 U.S.C. § 503(b), and section 1.80 of the Rules, 47 C.F.R. § 1.80, and under the authority delegated by sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, that Triple Take Lawn Care, Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of \$10,000 for willful or repeated violations of section 64.1200(c)(2) of the Commission's rules, 47 C.F.R. § 64.1200(c)(2), and the related orders described in the paragraphs above.

12. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission's rules,<sup>26</sup> within thirty (30) days of the release date of this *Notice of Apparent Liability for Forfeiture*, Triple

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<sup>22</sup> See, e.g., complaint dated February 28, 2008, from Karl Cordes stating that he had not given the advertiser permission to call, or done business with the advertiser. The complainant involved in this action is listed in the Appendix below.

<sup>23</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, Report and Order*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

<sup>24</sup> *Dynasty Mortgage, LLC*, Order of Forfeiture, 22 FCC Rcd 9453, 9469, para. 43 (2007).

<sup>25</sup> See 47 U.S.C. § 503(b)(4)(C); 47 C.F.R. § 1.80(f)(3).

<sup>26</sup> 47 C.F.R. § 1.80.

Take Lawn Care, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Timeshare Register will also send electronic notification on the date said payment is made to Johnny.drake@fcc.gov. Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

14. The response, if any, must be mailed both to the Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau – Telecommunications Consumers Division, and to Colleen Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, SW, Washington, DC 20554, and must include the NAL/Acct. No. referenced in the caption.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. IT IS FURTHER ORDERED that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Triple Take Lawn Care, Inc., Attention: Dan Souri, Sales Manager, John Khoury, President, 24137 W. Riverwalk Ct., Plainfield, IL 60544 and 24119 W. Riverwalk Ct., Plainfield, IL 60544.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief, Enforcement Bureau

APPENDIX

<b>Complainant received telephone solicitation after registering on the National Do-Not-Call Registry</b>	<b>Violation Date</b>
Karl Cordes	2/28/08