

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

THE BROADCAST TEAM, INC.,

Plaintiff,

-vs-

Case No. 6:05-cv-1342-Orl-22JGG

FEDERAL TRADE COMMISSION,

Defendant.

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ORDER

I. INTRODUCTION

The Broadcast Team, Inc. (“TBT”) seeks a preliminary injunction prohibiting the Federal Trade Commission from enforcing the “abandoned calls” component of the agency’s Telemarketing Sales Rule (“TSR”)¹ in such a way as to prevent TBT from utilizing prerecorded calls to solicit funds on behalf of a charity. After carefully considering the parties’ oral arguments and written submissions, the Court determines that TBT has failed to demonstrate its entitlement to preliminary injunctive relief.

II. PRELIMINARY INJUNCTION STANDARD

“A district court may issue a preliminary injunction when the moving party demonstrates (1) a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered unless the injunction is issued; (3) the threatened injury to the moving party

¹16 C.F.R. Part 310.

(4) if issued, the injunction would not be adverse to the public interest.” *BellSouth Telecomms., Inc. v. MCIMetro Access Transmission Servs., LLC*, 425 F.3d 964, 968 (11th Cir. 2005).

III. BACKGROUND

TBT is a for-profit company which has the technological capability to generate high volumes of automated telephone calls. TBT maintains that it does not perform live telemarketing for any of its clients. Rather, TBT states its “primary service is to allow entities access to [its] computerized systems by which they can send prerecorded telephone messages to designated telephone numbers.” Affidavit of Robert Tuttle, ¶ 3, at 1.² TBT alleges that it was approached on September 1, 2005 by anothe

²Ex. “A” to Doc. 16.

³At the time TBT initiated this suit and moved for a preliminary injunction, the FTC had merely threatened enforcement action. That threat has now materialized. *See United States v. The Broadcast Team, Inc., et al.*, No. 6:05-cv-1920-Orl-19JGG.

charitable organizations themselves is unaffected.” *Id.* at 335-36 (quoting 68 Fed. Reg. at 4585). The Fourth Circuit stated that the FTC’s]TJ136.01 0 TD0.00129425 0 i”4 Tw[(c regconci

Interpretations constitute prior-fee str

⁴The fact that the FCC may have a more liberal rule, permitting pre-recorded solicitations by for-profit telefundraisers acting on behalf of charitable organizations, does not diminish Congress’s separate mandate to the FTC. *See NFB*, 420 F.3d at 348 n.6 (finding unsurprising that FTC and FCC have different rules regarding charitable solicitations).

that it violates equal protection principles. TBT has not succeeded in showing a substantial likelihood of success on these arguments, either.

As the Fourth Circuit stated in *NFB*, prior restraints are traditionally found in the context of injunctions or licensing schemes which confer unbridled discretion upon government officials. 420 F.3d at 350 n.8. Here, as in *NFB*, “it is only after the speech is uttered that a violation of the TSR can occur and sanctions can be imposed.” *Id.*

The vagueness and overbreadth arguments appear weak, as well. It is highly questionable whether the FTC’s interpretation of “sales representative” - as contemplating an actual person, as distinguished from a recording - renders the abandoned calls rule impermissibly vague. TBT’s overbreadth argument is equally unconvincing, particularly given the FTC’s broad charge to regulate abusive telemarketing practices invasive of a consumer’s right to privacy in the home. TBT’s equal protection challenge is dubious, as well. The Fourth Circuit rejected similar arguments in *NFB*. *See* 420 F.3d at 350 n.8 & 345-49. Moreover, in considering these constitutional arguments, this Court is compelled to recognize the very strong governmental interest the FTC has in protecting the privacy of the home. *Id.* at 339-40.


Based on the foregoing, the Court concludes that TBT has not succeeded in demonstrating that it has a substantial likelihood of success on the merits of any of its claims. For this reason, TBT’s request for preliminary injunctive relief must be denied.⁵

⁵The Court also determines that TBT has failed to establish that it faces irreparable injury, and that the balance of harms and the public interest favor issuance of a preliminary injunction.


VI. CONCLUSION

Based on the foregoing, it is ORDERED that The Broadcast Team, Inc.'s Motion for Preliminary Injunction (Doc. 15), filed October 28, 2005, is DENIED.

DONE and **ORDERED** in Chambers, in Orlando, Florida on January 6, 2006.



ANNE C. CONWAY
United States District Judge



Copies furnished to:

Counsel of Record
Unrepresented Party