

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. \_\_\_\_\_ -Civ

UNITED STATES OF AMERICA

Plaintiff,

v.

ADT SECURITY SERVICES, INC., a Delaware  
Corporation,

Defendant.

**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), 16(a) and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), 56(a) and 57b, and Section 6 of the

Complaint

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).

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](http://donotcall.gov).

7. 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](http://donotcall.gov), or by otherwise contacting law enforcement authorities.

8. Since October 17, 2003, sellers and telemarketers have been prohibited from calling numbers on the Registry in violation of the Amended TSR. 16 C.F.R. § 310.4(b)(1)(iii)(B).

9. Since September 2, 2003, sellers, telemarketers, and other permitted organizations have been able to access the Registry over the Internet at [telemarketing.donotcall.gov](http://telemarketing.donotcall.gov) to download the registered numbers.

10. A “seller” is any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration. 16 C.F.R. § 310.2(z).

11. A “telemarketer” is any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor. 16 C.F.R. § 310.2 (bb). A telemarketer may initiate calls by hiring, retaining or using another person to actually make the calls, or by actually placing the calls itself.

12. “Person” means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity. 16 C.F.R. § 310.2 (v).

13. It is a violation of the Amended TSR for a telemarketer subject to the FTC's jurisdiction to call a number on the Registry, or for a seller to cause a telemarketer subject to the FTC's jurisdiction to do so. 16 C.F.R. § 310.4(b)(1)(iii)(B).

14. It is a violation of the Amended TSR for any person to provide substantial assistance or support to any telemarketer when that person knows or consciously avoids knowing that the telemarketer is engaged in any practice that violates § 310.4 of the Amended TSR. 16 C.F.R. § 310.3(b).

15. A seller is liable for providing substantial assistance or support to any telemarketer when the seller knows or consciously avoids knowing that the telemarketer is engaged in any practice that violates § 310.4 of the Amended TSR.

16. Substantial assistance means more than a mere casual or incidental dealing with a seller or telemarketer that is unrelated to a violation of the Rule. TSR SBP, 60 Fed. Reg. 43842 at 43852 (Aug. 12, 1995).

17. 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).



26. Consumers who purchase ADT home security systems from ADT authorized dealers must sign contracts with the authorized dealers. Authorized dealers may offer these “new accounts” only to ADT. When ADT purchases the accounts from the authorized dealers, the accounts become ADT accounts and the authorized dealers become ADT subcontractors, providing monitoring and repair services to those accounts. In addition to lengthy “Dealer Program Guidelines” to assist its authorized dealers, ADT supplies the authorized dealers with access to a wide array of marketing materials, including lead lists, a web site for ordering trade show displays, and the forms and contracts the authorized dealers use in consumer transactions. ADT also approves authorized dealers’ scripts and marketing materials.

27. On or after October 17, 2003, ADT authorized dealers are telemarketers that have engaged in telemarketing on behalf of defendant.

28. On or after October 17, 2003, one or more of defendant’s authorized dealers, acting on behalf of defendant, have placed outbound telephone calls to consumers’ telephone numbers on the National Do Not Call Registry. Defendant has offered to provide or provided financial payments, such as commissions or revenue sharing fees, to authorized dealers for security alarm subscriber accounts.

29. On or after October 17, 2003, defendant has provided substantial assistance and support to one or more authorized dealers even though defendant knew or consciously avoided knowing that one or more authorized dealers were engaged in violations of § 310.4 of the TSR.

30. Defendant has provided substantial assistance to authorized dealers by offering to pay or paying commissions or revenue sharing fees for security alarm subscriber accounts, allowing authorized dealers to market ADT goods or services, purchasing security alarm

subscriber accounts acquired through telemarketing, and collecting money from subscribers contacted by authorized dealers.

31. At all times relevant to this complaint, defendant has 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.

### **VIOLATIONS OF THE TELEMARKETING SALES RULE**

#### **Count I**

##### **Violating the National Do Not Call Registry**

32. In numerous instances, in connection with telemarketing, Defendant has initiated, or caused others to initiate, 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 II**

##### **Assisting and Facilitating**

33. Defendant has provided substantial assistance and support to one or more authorized dealers even though Defendant knew or consciously avoided knowing that one or more authorized dealers were engaged in violations of § 310.4 of the TSR. Defendant, therefore, has violated 16 C.F.R. § 310.3(b).

### **CONSUMER INJURY**

34. Consumers in the United States have suffered and will suffer injury as a result of Defendant’s violations of the TSR. Absent injunctive relief by this Court, Defendant is likely to continue to injure consumers and harm the public interest.

**THIS COURT’S POWER TO GRANT RELIEF**

35. 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.

36. 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. Defendant’s 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).

37. This Court, in the exercise of its equitable jurisdiction, may award ancillary relief to remedy injury caused by Defendant’s violations of the Rule 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 57b, and pursuant to its own equitable powers:

- A. Enter judgment against Defendant and in favor of Plaintiff for each violation alleged in this complaint;
- B. Award Plaintiff monetary civil penalties from Defendant for every violation of the TSR;
- C. Permanently enjoin Defendant from violating the TSR and the FTC Act;
- D. Order Defendant to pay the costs of this action; and





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Director  
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