

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE TALBOTS, INC.,

Defendant.

Case No. 10-cv-10698

COMPLAINT FOR CIVIL
PENALTIES, PERMANENT
INJUNCTION, AND OTHER
EQUITABLE RELIEF

Plaintiff, the United States of America, ~~bring~~ 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 from Defendant for its ~~violations~~ violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC’s Telemarketing Sales Rule (the “TSR” or “Rule”), 16 C.F.R. Part 310.

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).

DEFENDANT

of the Rule for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in, initiating an outbound telephone call to a person who has previously made such a Do Not Call request. 16 C.F.R. § 310.4(b)(1)(iii)(A).

8. On August 29, 2008, the Commission published an amendment to the TSR that prohibits initiating outbound telephone calls to deliver prerecorded messages unless the message makes certain disclosures and provides a mechanism for the recipients of such messages to make Do Not Call requests. 73 Fed. Reg. 51163, 51188 (2008). As amended, effective December 1, 2008, 16 C.F.R. § 310.4(b)(1)(v)(B) of the TSR requires that an outbound telephone call that delivers a prerecorded message promptly disclose the identity of the seller, that the purpose of the call is to sell goods or services, and the nature of the goods or services; and that these disclosures be followed immediately by disclosure of one or both of the following:
 - A. In the case of a call that could be answered in person by a consumer, that the person called can use an automated interactive voice and/or keypress-activated opt-out mechanism to assert a Do Not Call request at any time during the message; and
 - B. In the case of a call that could be answered by an answering machine or voicemail service, that the person called can use a toll-free telephone number to assert a Do Not Call request.
9. As amended, effective December 1, 2008, 16 C.F.R. § 310.4(b)(1)(iv)(B) of the TSR requires that an outbound telephone call that delivers a prerecorded message and could be answered by a person allow the recipient of the call to assert a Do Not Call request by

using an automated interactive voice and/or keypress-activated opt-out mechanism that will, once invoked, immediately disconnect the call.

10. Since December 1, 2008, it is an abusive telemarketing practice and a violation of the

telephones and which involves more than one interstate telephone call. Specifically, Talbots engaged telemarketers to make outbound telephone calls that would deliver prerecorded messages advertising offers for the purchase of goods sold under the Talbots brand or the J.Jill brand. Telemarketers, at the request of Talbots, initiated at least 3.4 million outbound telephone calls that delivered prerecorded messages during telephone calls answered by persons, answering machines and voicemail services from February 11, 2009 through July 23, 2009.

16. The prerecorded messages that telemarketers delivered on behalf of Defendant did not provide information about an automated keypad mechanism or toll-free number to contact the sender immediately after disclosure of the seller, the purpose of the call and the nature of the goods and services. Instead, the prerecorded messages did not mention an automated keypad mechanism or toll free number until after thirty or more seconds of the telemarketing message had already been played.
17. The prerecorded messages that telemarketers delivered on behalf of Defendant did not inform consumers who answered in person that they may automatically assert a Do Not Call request any time during the message by invoking an automated interactive voice and/or keypress-activated opt-out mechanism. Instead, after approximately thirty or forty seconds of the telemarketing message, the recordings contained statements such as, “[i]f you’d like more information and to choose whether or not to receive future calls about special offers and promotions, press 1 now or call” a toll-free number, or “[t]o make sure you’ll receive pre-recorded exclusive J. Jill savings and event messages – like this one, please press 1 now or call” a toll-free number.

18. When consumers who answered Defendants' outbound telephone calls delivering prerecorded messages advertising for the Talbots brand or the J. Jill brand invoked the automated key pad mechanism described in the messages, the telemarketers who made calls on behalf of Defendant did not connect the outbound calls immediately and, instead, connected the consumers to additional recordings and additional advertising.

VIOLATIONS OF THE TELEMARKETING SALES RULE

19. In numerous instances on or after December 1, 2008, Talbots caused telemarketers to make outbound telephone calls to persons that delivered prerecorded messages that did not comply with 16 C.F.R. § 310.4(b)(1)(v)(~~B~~)(A) or (B), because the messages did not disclose that the recipients of the call could assert a Do Not Call request immediately after disclosure of the identity of the seller, the purpose of the call and the nature of the goods or services.
20. In numerous instances on or after December 1, 2008, Talbots caused telemarketers to make outbound telephone calls that were answered in person by a consumer and delivered a prerecorded message that did not comply with 16 C.F.R. § 310.4(b)(1)(v)(~~B~~)(i)(A) because the messages did not inform the consumer that he or she could invoke an automated mechanism to assert a Do Not Call request at any time during the message, and the telemarketers who made calls on behalf of Defendant did not immediately disconnect the call when the automated mechanism was invoked.

CONSUMER INJURY

21. 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.

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

Respectfully submitted,

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