



UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Lois C. Greisman
Associate Director
Division of Marketing Practices

November 10, 2016

Michael Bills
132 S 600 East, Suite 204
Salt Lake City, UT 84102

Re: September 11, 2009 Staff Opinion Letter on Soundboard Technology

Dear Mr. Bills:

We are writing to you regarding the informal staff opinion letter we provided to your former company, Call Assistant, LLC, on September 11, 2009.¹ Our September 2009 letter responded to Call Assistant's inquiry regarding whether the Telemarketing Sales Rule's ("TSR") provisions governing outbound telemarketing calls that deliver prerecorded messages² apply to calls utilizing soundboard technology, which is technology that allows a live agent to communicate with a call recipient by playing recorded audio snippets instead of using his or her own live voice. In the September 2009 letter, staff stated its opinion that the technology, as described by Call Assistant, would not be subject to the prerecorded message provisions of the TSR. Staff's opinion was based on important features that Call Assistant highlighted about its technology – i.e., that for the entire duration of a call made using the technology, a single live agent stays with the call from beginning to end, listens to every word spoken by the call recipient

is terminated in response to consumers questions. Indeed, media reports also have taken note of this phenomenon, which some in the press have dubbed telemarketing “robot” calls.³ Simply put, since we issued the letter in 2009, staff has seen evidence of the widespread use of soundboard technology in a manner that does not represent a normal, continuous, two-way conversation between the call recipient and a live person. This is inconsistent with the principles we laid out in our September 2009 letter as well as our understanding of the technology at the time we issued the letter.⁴ Moreover, this type of use does not provide the consumer benefits upon which we based our September 2009 opinion.

In response to rising complaints and concerns, staff reached out to the Professional Association for Customer Engagement (“PACE”), which is a trade association representing call centers, and the Soundboard Association, a trade organization representing manufacturers and users of soundboard technology. During the last few months, we have had multiple productive discussions and meetings with PACE and the Soundboard Association to learn more about soundboard technology and obtain industry input regarding the regulatory status of that technology. Both PACE and the Soundboard Association were responsive to requests, provided meaningful input to assist staff in its review of this technology, and highlighted the potential benefits of responsible soundboard use. Staff carefully considered the input of PACE and the Soundboard Association.

A fundamental premise of our September 2009 letter was that soundboard technology was a surrogate for the live agent’s actual voice. A human being cannot conduct separate conversations with multiple consumers at the same time using his or her own voice. Nonetheless, some companies are routinely using soundboard technology in precisely this manner, and these companies are improperly using our September 2009 letter to justify their actions in court proceedings⁵ and in investigations. Indeed, Call Assistant noted publicly that

³ See, e.g., Sean Gallagher, *The New Spam: Interactive Robo-Calls From the Cloud as Cheap as E-Mail*, ARS TECHNICA, (Apr. 15, 2015), <http://arstechnica.com/information-technology/2015/04/the-new-spam-interactive-robot-calls-from-the-cloud-as-cheap-as-e-mail>; Alexis C. Madrigal, *Almost Human: The Surreal, Cyborg Future of Telemarketing*, THE ATLANTIC, (Dec. 20, 2013), <http://www.theatlantic.com/technology/archive/2013/12/almost-human-the-surreal-cyborg-future-of-telemarketing/282537/>; Alexis C. Madrigal, *The Only Thing Weirder Than a Telemarketing Robot*, THE ATLANTIC, (Dec. 13, 2013), <http://www.theatlantic.com/technology/archive/2013/12/the->

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Robby H. Birnbaum
Greenspoon Marder
One Boca Place, 2255 Glades Road, Suite 400-E
Boca Raton, FL 33431
Counsel for Avatar Technologies, Inc.