

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), 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 for Defendants’ violations of Section 5(a) of the FTC Act, 15 U.S.C.

**THE TELEMARKETING SALES RULE
AND THE NATIONAL DO NOT CALL REGISTRY**

8. The Commission is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The Commission enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The Commission also enforces the Telemarketing Act, 15 U.S.C. §§ 6101-6108. Pursuant to the Telemarketing Act, the Commission promulgated and enforces the TSR, 16 C.F.R. Part 310, which prohibits deceptive and abusive telemarketing acts or practices.
9. Congress directed the Commission to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108. The Commission adopted the original TSR in 1995, extensively amended it in 2003, and amended certain provisions thereafter. 16 C.F.R. Part 310.
10. Among other things, the 2003 amendments to the TSR established a do-not-call registry, 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.
11. 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, or by otherwise contacting law enforcement authorities.

A telemarketer violates this prohibition on abandoning calls if it plays a prerecorded message when a person answers rather than connecting the recipient of the call to a live sales representative within two (2) seconds of the recipient's completed greeting.

18. As amended, effective September 1, 2009, the TSR prohibits initiating a telephone call that delivers a prerecorded message to induce the purchase of any good or service unless the seller has obtained from the recipient of the call an express agreement, in writing, that evidences the willingness of the recipient of the call to receive calls that deliver prerecorded messages by or on behalf of a specific seller. The express agreement must include the recipient's telephone number and signature, must be obtained after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the seller to place prerecorded calls to such person, and must be obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service. 16 C.F.R. § 310.4(b)(1)(v)(A).
19. The TSR requires that telemarketers disclose in an outbound telephone call, including any outbound telephone call that delivers a prerecorded message, the following information:
 - a. The identity of the seller;
 - b. That the purpose of the call is to sell goods or services; and
 - c. The nature of the goods or services.

The telemarketer must disclose this information truthfully, promptly, and in a clear and conspicuous manner. 16 C.F.R. §§ 310.4(b)(1)(v)(B)(ii), 310.4(d).

20. 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 a

Defendants' services in the marketers' own name. These marketers, described by Defendants as "Private Label" resellers, include JGRD, Inc., a Pennsylvania corporation, which sold access to Defendants' services to others under the fictitious name "VoiceBlaze.com." Defendants have sent hundreds of millions of prerecorded messages for JGRD, Inc., and other Private Label resellers.

25. Defendants have the ability to simultaneously make thousands of telephone calls that deliver prerecorded messages, and can place clients in contact with more than one million potential customers each day.
26. Defendants offer and provide clients with training on how to select the telephone numbers, prerecorded messages, and period during which Defendants' service will broadcast the client's message.
27. Defendants offer and provide clients with lists of telephone numbers that Defendants' service will call to deliver the client's prerecorded messages.
28. Defendants offer and provide clients with recording services to create prerecorded messages that Defendants' service will broadcast through telephone calls.

2. Defendants' Use of Voice Broadcasting for Telemarketing

29. Through their voice broadcasting services, Defendants initiate and have substantially assisted others in initiating telephone calls to induce the purchase of goods or services by consumers by delivering prerecorded messages. When they do so, Defendants are "telemarketers" under the TSR or provide substantial assistance or support to others that are "telemarketers" under the TSR. 16 C.F.R. § 310.2(cc).

30. Defendants know that their services are used to deliver prerecorded messages to induce the purchase of goods or services by consumers, and have initiated or substantially assisted others in initiating telephone calls to deliver prerecorded messages promoting the sale to consumers of auto warranties, carpet cleaning services, insurance for individuals, debt relief, and other consumer services.
31. In marketing their voice broadcasting services, Defendants have encouraged the use of voice broadcasting services to deliver prerecorded messages designed to induce the purchase of goods or services by consumers. Defendants have specifically advertised voice broadcasting services as a means to market and generate leads for auto warranties and financial services. Defendants have allowed other marketers to advertise Defendants' voice broadcasting services as a means to market and generate leads for insurance products, mortgage and finance services, and travel offers.
32. Defendants have access to the prerecorded messages delivered by their voice broadcasting services, and have listened to the contents of some of these prerecorded messages.
33. Prior to October 2010, when Defendants were aware that clients were using their voice broadcasting services for prerecorded messages designed to induce the purchase of goods or services by consumers, they did not take any

that resellers or others offering Defendants' services screen clients or prerecorded messages for this purpose.

34. Prior to October 2010, Defendants did not restrict the use of their voice broadcasting services to prevent the delivery of prerecorded messages that are prohibited by the TSR, or to prevent clients using their services for telemarketing from violating the TSR. Even after October 2010, Defendants continued to allow Private Label resellers, like JGRD, Inc., to use their voice broadcasting services to deliver prerecorded messages that are prohibited by the TSR, and to use their services for telemarketing that violated the TSR.
35. Defendants do not require that clients using their voice broadcasting services to make outbound telephone calls to consumers demonstrate that they have registered to obtain access to the National Do Not Call Registry, have excluded numbers on the National Do Not Call Registry from lists of numbers to be called, or are using Defendants' services solely for telephone calls that are exempt from compliance with the National Do Not Call Registry.
36. Defendants have provided voice broadcasting services for telemarketing campaigns that they knew or consciously avoided knowing were illegally making calls to persons whose numbers were listed on the National Do Not Call Registry at the time the calls were made.
37. Defendants do not require that clients using their voice broadcasting services to make outbound telephone calls to consumers promptly, clearly, and truthfully identify the seller providing the goods or services promoted in the prerecorded messages that are delivered.

38. Since at least 2008, Defendants have, through their voice broadcasting services, initiated or substantially assisted others in initiating outbound telephone calls that deliver prerecorded messages throughout the United States to induce purchases by consumers as part of plans, programs, or campaigns conducted to induce the purchase of goods or services by use of one or more telephones and which involved more than one interstate telephone call. In doing so, Defendants have initiated or substantially assisted others in making tens of millions of outbound telephone calls that violate the TSR by, among other things:

- a. initiating outbound telephone calls to telephone numbers on the National Do Not Call Registry;
- b. conducting voice broadcasting telemarketing campaigns that abandoned calls by playing a prerecorded message after the calls were answered by a person;
- c. delivering prerecorded messages to persons, answering machines, and voice mail systems on or after September 1, 2009, when amendments to the TSR prohibited the delivery of such prerecorded messages; and
- d. failing to disclose the identity of clients that caused the call to be made by delivering prerecorded messages that do not identify the seller.

39. Defendants conducted the campaigns described in Paragraph 38 knowing or consciously

services were made to induce the purchase of goods and services by consumers, and that the telephone calls and prerecorded messages did not comply with the TSR.

40. In particular, Defendants initiated or substantially assisted others that initiated more than 47 million outbound telephone calls to deliver prerecorded messages offering carpet and upholstery cleaning services during the period from February 2008 through October 2010. These calls included more than 20 million calls to persons whose telephone numbers were listed on the National Do Not Call Registry at the time of the call, and more than 13 million calls that were abandoned when the recipient of the call answered and the call was not connected to a live representative.
41. Defendants initiated or substantially assisted others that initiated more than 44 million outbound telephone calls to deliver prerecorded messages offering auto warranties in 2008. These calls included numerous calls to persons whose telephone numbers were listed on the National Do Not Call Registry at the time of the call, and at least 7.8 million calls that were abandoned when the recipient of the call answered and the call was not connected to a live representative. The prerecorded messages did not identify the seller.
42. Defendants initiated or substantially assisted others that initiated more than 137 million outbound telephone calls to deliver prerecorded messages offering debt relief services during the period from June 2008 to July 2009. These calls included numerous calls to persons whose telephone numbers were listed on the National Do Not Call Registry at the time of the call, and at least 33 million calls that were abandoned when the recipient of

of the call answered and the call was not connected to a live representative. The prerecorded messages did not identify the seller.

46. Defendants initiated or substantially assisted others that initiated more than 1.9 million outbound telephone calls to deliver prerecorded messages offering subscriptions to satellite dish broadcasting during the period from November 2008 through January 2009. These calls included more than 540,000 calls that were abandoned when the recipient of the call answered and the call was not connected to a live representative.
47. Defendants initiated or substantially assisted others that initiated more than 2 million outbound telephone calls to deliver prerecorded messages marketing burial insurance during the period from October 2008 to March 1, 2011. These calls included numerous calls to persons whose telephone numbers were listed on the National Do Not Call Registry at the time of the call, and more than 410,000 calls that were abandoned when the recipient of the call answered and the call was not connected to a live representative. The prerecorded messages did not identify the seller.

VIOLATIONS OF THE TELEMARKETING SALES RULE

Count I

Calls to Persons Registered on the National Do Not Call Registry

48. In numerous instances, in connection with telemarketing, Defendants have engaged in, or caused others to engage in, initiating 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
Abandoning Calls

49. I

Count V

Assisting and Facilitating Abusive Telemarketing Acts or Practices

54. In numerous instances, Defendants have provided substantial assistance or support to sellers or tele

CONSUMER INJURY

56. Consumers in the United States have suffered and will suffer injury as a result of Defendants' violations of the TSR. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

57. Defendants have violated the TSR as described above with knowledge or knowledge fairly implied on the basis of objective circumstances that such act is unfair or deceptive and is prohibited by the Rule, as set forth in Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).
58. 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), authorizes this Court to award monetary civil penalties of up to \$11,000 for each violation of the TSR on or before February 9, 2009, see 16 C.F.R. § 1.98(d) (2009), and up to \$16,000 for each violation of the TSR after February 9, 2009. 74 Fed. Reg. 857 (Jan. 9, 2009).
59. Defendants' 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).
60. This Court, in the exercise of its equitable jurisdiction, may award ancillary relief to remedy injury caused by Defendants' violations of the TSR and the FTC Act.

