

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FEDERAL TRADE COMMISSION, *et al.*,

Plaintiffs,

v.

REPAIR ALL PC, LLC, *et al.*,

Defendants.

CASE NO. 1:17CV0869

JUDGE DAN AARON POLSTER

STIPULATED ORDER FOR PERMANENT INJUNCTION
AND MONETARY JUDGMENT AS TO DEFENDANTS
WEBTECH WORLD LLC, ONLINE ASSIST LLC, AND MOHIT MALIK

Plaintiffs the Federal Trade Commission (“FTC” or “Commission”) and the State of Ohio, Office of Attorney General, (collectively, “Plaintiffs”), filed their Complaint for Permanent Injunction and Other Equitable Relief (“Complaint”), pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), and the Ohio Consumer Sales Practice Act, R.C. § 1345.01 *et seq.* (“CSPA”). Plaintiffs and Defendants WebTech World LLC, Online Assist LLC, and Mohit Malik (collectively, the “New Jersey Defendants”) stipulate to the entry of this Stipulated Order for Permanent Injunction and Monetary Judgment (“Order”) to resolve all matters in dispute in this action between them.

THEREFORE, IT IS ORDERED as follows:

FINDINGS

1. This Court has jurisdiction over this matter.
2. The Complaint charges that Defendants participated in deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and the CSPA, R.C. 1345.02 and

1345.03(6), in the advertising, marketing, promoting, offering for sale, and sale of Tech Support Products or Services.

3. Only for purposes of this action, New Jersey Defendants admit the facts necessary to establish jurisdiction.

4. New Jersey Defendants waive any claim that they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agree to bear their own costs and attorney fees.

5. New Jersey Defendants waive all rights to appeal or othe

government or governmental subdivision or agency, or any other group or combination acting as an entity.

4. “**Malik Companies**” means, individually, collectively, or in any combination, iBrain Technology LLC, Online Techhelp LLC, PCCure Expert LLC, Techcloud Solutions LLC, Technopad LLC, WebTech Nuts Infosoft LLC, and their successors, assigns, affiliates, or subsidiaries.

5. “**Tech Support Product or Service**” means any plan, program, or software, marketed to repair, maintain, or improve a computer’s performance or security, including, but not limited to, registry cleaners, anti-virus programs, virus and malware removal, and computer or software diagnostic services.

6. “**Telemarketing**” means any plan, program, or campaign that is conducted to induce the purchase of goods or services by use of one or more telephones, and which involves a telephone call, whether or not covered by the Telemarketing Sales Rule.

ORDER

I. BAN ON TECH SUPPORT PRODUCTS OR SERVICES

IT IS HEREBY ORDERED that New Jersey Defendants are permanently restrained and enjoined from:

A. Advertising, marketing, promoting, offering for sale, selling, or providing, any Tech Support Product or Service;

B. Assisting or providing consulting services for others engaged in, or receiving any proceeds from, advertising, marketing, promoting, offering for sale, selling, or providing any Tech Support Product or Service; and

C. Owning, controlling, or serving as an officer, director, or manager of any business entity advertising, marketing, promoting, offering for sale, selling, providing, or assisting or providing consulting services for others engaged in advertising, marketing, promoting, offering for sale, selling, or providing, any Tech Support Product or Service.

II. PROHIBITION AGAINST DECEPTIVE TELEMARKETING

IT IS FURTHER ORDERED that New Jersey Defendants, their officers, agents, employees, and attorneys, and all other Persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the Telemarketing of any product or service, are permanently restrained and enjoined from:

A. Making a false or misleading statement to induce any Person to pay for goods or services;

B. Violating the Telemarketing Sales Rule, 16 C.F.R. Part 310, attached as **Attachment A**; and

C. Violating the CSPA, R.C. § 1345.02 and § 1345.03, attached as **Attachment B**.

III. PROHIBITION AGAINST MISREPRESENTATIONS

IT IS FURTHER ORDERED that New Jersey Defendants, their officers, agents, employees, and attorneys, and all other Persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, marketing, promoting, offering for sale, selling, or providing of any goods or services, are permanently restrained and enjoined from misrepresenting, or assisting others in misrepresenting, expressly or by implication:

A. That New Jersey Defendants are part of, affiliated with, certified or authorized by, or acting on behalf of any entity;

B. That New Jersey Defendants have detected security or performance issues on consumers' computers, including, but not limited to, system errors, viruses, spyware, malware, or the presence of hackers;

C. Any material aspect of the performance, efficacy, nature, or central characteristics of any goods and services;

D. Any material aspect of the nature or terms of any refund, cancellation, exchange, or repurchase policies; or

E. Any other material fact.

IV. PROHIBITION AGAINST COLLECTING ON ACCOUNTS

as New Jersey Defendants stipulate, Capital One Bank must transfer to Plaintiffs within 7 days of entry of this Order; (ii) at least \$1,800.00 within six months of entry of this Order; and (iii) at least \$1,800.00, or the remaining unpaid portion of the \$6,605.00 payment amount, within twelve months of entry of this Order. Such payments must be made by electronic fund transfer in accordance with instructions previously provided by a representative of Plaintiffs. Upon such payments, the remainder of the judgment is suspended as to New Jersey Defendants, subject to the Subsections below.

C. Plaintiffs' agreement to this Order is expressly premised upon the promise by New Jersey Defendants to make payments timely as described in Subsection B above. If, upon motion by any Plaintiff, the Court finds that New Jersey Defendants have defaulted on any obligation to make a payment as required by this Order, then the judgment becomes immediately due as to New Jersey Defendants in the amount specified in Subsection A above, less any payment previously made pursuant to this Section, plus interest computed from the date of entry of this Order.

D. Plaintiffs' agreement to the suspension of part of the judgment is expressly premised upon the truthfulness, accuracy, and completeness of New Jersey Defendants' sworn financial statements and related documents (collectively, "financial representations") submitted to Plaintiffs, namely:

1. The Financial Statement of New Jersey Individual Defendant Mohit Malik signed on October 4, 2017, including the attachments;
2. The Financial Statement of New Jersey Corporate Defendant WebTech World LLC signed on October 4, 2017, including the attachments;

3. The Financial Statement of New Jersey Corporate Defendant Online Assist LLC signed on October 4, 2017, including the attachments;

4. The Financial Statement of PCCure Expert, LLC signed by New Jersey Individual Defendant Mohit Malik on October 4, 2017, including the attachments;

5. The Financial Statement of WebTech Nuts Infosoft, LLC signed by New Jersey Individual Defendant Mohit Malik on October 4, 2017, including the attachments;

6. The Financial Statement of Techcloud Solutions, LLC signed by New Jersey Individual Defendant Mohit Malik on October 4, 2017, including the attachments;

7. The Financial Statement of iBrain Technology, LLC signed by New Jersey Individual Defendant Mohit Malik on October 4, 2017, including the attachments;

8. The Financial Statement of Technopad, LLC signed by New Jersey Individual Defendant Mohit Malik on October 4, 2017, including the attachments;

9. The Financial Statement of Online Techhelp, LLC signed by New Jersey Individual Defendant Mohit Malik on October 4, 2017, including the attachments; and

10. The Declaration of New Jersey Individual Defendant Mohit Malik signed on October 26, 2017, including the attachments.

E. The suspension of the judgment will be lifted as to any New Jersey Defendant if, upon motion by any Plaintiff, the Court finds that Defendant failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial representations identified above.

F. If the suspension of the judgment is lifted, the judgment becomes immediately due as to that Defendant in the amount specified in Subsection A above (which the parties stipulate only for purposes of this Section represents the consumer injury alleged in the

Complaint), less any payment previously made pursuant to this Section, plus interest computed from the date of entry of this Order.

G. New Jersey Defendants relinquish dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order, and in all assets of New Jersey Corporate Defendants and Malik Companies, and may not seek the return of any assets.

H. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of Plaintiffs, in

used for such equitable relief is to be deposited to an account or accounts pursuant to instructions provided by Plaintiff State of Ohio, Office of Attorney General. This money may be used for purposes that may include, but are not limited to, reimbursement of attorneys' fees and costs of investigation and litigation, placement in or application to any consumer protection law enforcement fund, including future consumer protection or privacy enforcement, consumer education, litigation, local consumer aid or revolving funds, defraying the costs of the inquiry leading to this Order, or for other uses permitted by state law, and all at the sole discretion of Plaintiff State of Ohio, Office of Attorney General. Any money not used for such equitable relief or such other purposes is to be deposited to the U.S. Treasury as disgorgement. New Jersey Defendants have no right to challenge any actions Plaintiffs or their representatives may take pursuant to this Subsection.

L. The asset freeze ordered in this case in the Preliminary Injunction Order entered on June 20, 2017 (Doc. 74) is modified as to New Jersey Defendants to permit the payments and transfers identified in this Section. Upon comple

VI. CUSTOMER INFORMATION

IT IS FURTHER ORDERED that New Jersey Defendants, their officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, are permanently restrained and enjoined from directly or indirectly:

A. Failing to provide sufficient customer information to enable Plaintiffs to efficiently administer consumer redress. If a representative of Plaintiffs requests in writing any information related to redress, New Jersey Defendants must provide it, in the form reasonably prescribed by Plaintiffs, within 14 days;

B. Disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, social

VII. COOPERATION

IT IS FURTHER ORDERED that New Jersey Defendants must fully cooperate with representatives of Plaintiffs in this case and in any investigation related to or associated with the transactions or the occurrences that are the subject of the Complaint. New Jersey Defendants must provide truthful and complete information, evidence, and testimony. New Jersey Individual Defendant must appear and New Jersey Corporate Defendants must cause their officers, employees, representatives, or agents to appear for interviews, discovery, hearings, trials, and any other proceedings that any Plaintiff's representative may reasonably request upon 5 days written notice, or other reasonable notice, at such places and times as Plaintiff's representative may designate, without the service of a subpoena. This Section does not preclude Mohit Malik from invoking any Fifth Amendment privilege against self-incrimination.

VIII. ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that New Jersey Defendants obtain acknowledgments of receipt of this Order:

- A. Each New Jersey Defendant, within 7 days of entry of this Order, must submit to the FTC an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For 15 years after entry of this Order, New Jersey Individual Defendant for any

d. Describe in detail whether and how that New Jersey Defendant is in compliance with each Section of this Order; and

e. Provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

2. Additionally, New Jersey Individual Defendant must:

a. Identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences;

b. Identify all business activities, including any business for which he performs services whether as an employee or otherwise and any entity in which he has any ownership interest; and

c. Describe in detail his involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For 15 years after entry of this Order, each New Jersey Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Each New Jersey Defendant must report any change in:

a. Any designated point of contact; or

b. The structure of any New Jersey Corporate Defendant or any entity that Defendant has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

2. Additionally, New Jersey Individual Defendant must report any change in:

X. RECORDKEEPING

IT IS FURTHER ORDERED that New Jersey Defendants must create certain records for 15 years after entry of the Order, and retain each such record for 5 years. Specifically, each New Jersey Corporate Defendant and New Jersey Individual Defendant for any business that such New Jersey Defendant, individually or collectively with any other Defendants, is a majority owner or controls directly or indirectly, must create and retain the following records:

- A. Accounting records showing the reve

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FOR

*r Defendants WebTech World LLC,
Online Assist LLC, and Mohit Malik*

Mohit Malik
Individually and as owner of WebTech World LLC.

*Online Techhelp LLC, PCCure Expert LLC,
Techcloud Solutions LLC, Technopad LLC, and
WebTech Nuts Infosoft LLC*

ATTACHMENT A

TELEMARKETING SALES RULE 16 C.F.R. PART 310

Section Contents

- § 310.1 Scope of regulations in this part.
- § 310.2 Definitions.
- § 310.3 Deceptive telemarketing acts or practices.
- § 310.4 Abusive telemarketing acts or practices.
- § 310.5 Recordkeeping requirements.
- § 310.6 Exemptions.
- § 310.7 Actions by states and private persons.
- § 310.8 Fee for access to the National Do Not Call Registry.
- § 310.9 Severability.

Authority: 15 U.S.C. 6101–6108.

§ 310.1 Scope of regulations in this part.

This part implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101-6108, as amended.

§ 310.2 Definitions.

- (a) *Acquirer* means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.
- (b) *Attorney General* means the chief legal officer of a state.
- (c) *Billing information* means any data that enables any person to access a customer's or donor's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card.
- (d) *Caller identification service* means a service that allows a telephone subscriber to have the telephone number, and, where available, name of the calling party transmitted contemporaneously with the telephone call, and displayed on a device in or connected to the subscriber's telephone.
- (e) *Cardholder* means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.
- (f) *Cash-to-cash money transfer* means the electronic (as defined in section 106(2) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7006(2)) transfer of the value of cash received from one person to another person in a different location that is sent by a money transfer provider and received in the form of cash. The term includes a remittance transfer, as defined in section 919(g)(2) of the Electronic Fund Transfer Act ("EFTA"), 15 U.S.C. 1693a, that is a cash-to-cash transaction; however it does not include any transaction that is (1) an electronic fund transfer as defined in section 903 of the EFTA; (2) covered by Regulation E, 12 CFR part 1005.20, pertaining to gift cards; or (3) subject to the Truth in Lending Act, 15 U.S.C. 1601 et seq. For purposes of this definition, *money transfer provider* means any person or financial institution that provides cash-to-cash money transfers for a person in the normal course of its business, whether or not the person holds an account with such person or financial

- honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.
- (w) *Negative option feature* means, in an offer or agreement to sell or provide any goods or services, a provision under which the customer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer.
 - (x) *Outbound telephone call* means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.
 - (y) *Person* means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.
 - (z) *Preacquired account information* means any information that enables a seller or telemarketer to cause a charge to be placed against a customer's or donor's account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged.
 - (aa) *Prize* means anything offered, or purportedly offered, and given, or purportedly given, to a person by chance. For purposes of this definition, chance exists if a person is guaranteed to receive an item and, at the time of the offer or purported offer, the telemarketer does not identify the specific item that the person will receive.
 - (bb) *Prize promotion* means:
 - (1) A sweepstakes or other game of chance; or
 - (2) An oral or written express or implied representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize.
 - (cc) *Remotely created payment order* means any payment instruction or order drawn on a person's account that is (a) created by the payee or the payee's agent and (b) deposited into or cleared through the check clearing system. The term includes, without limitation, a "remotely created check," as defined in Regulation CC, Availability of Funds and Collection of Checks, 12 CFR part 229.2(fff), but does not include a payment order cleared through an Automated clearinghouse or subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR part 1026, *et seq.*
 - (dd) *Seller* means 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.
 - (ee) *State* means any state of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.
 - (ff) *Telemarketer* means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.
 - (gg) *Telemarketing* means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which: contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term "further solicitation" does

not include providing the customer with information about, or attempting to sell, any rovidingdrovm

- subject of the prize promotion;
- (vi) In the sale of any goods or services represented to protect, insure, or otherwise limit a customer's liability in the event of unauthorized use of the customer's credit card, the limits on a cardholder's liability for unauthorized use of a credit card pursuant to 15 U.S.C. 1643;
 - (vii) If the offer includes a negative option feature, all material terms and conditions of the negative option feature, including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s); and
 - (viii) In the sale of any debt relief service:
 - (A) the amount of time necessary to achieve the represented results, and to the extent that the service may include a settlement offer to any of the customer's creditors or

cancellation,
exchange, or repurchase policies;

- (v) Any material aspect of a prize promotion including, but not limited to, the odds of being able to receive a prize, the nature or value of a prize, or that a purchase or payment is required to win a prize or to participate in a prize promotion;
- (vi) Any material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitability;
- (vii) A seller's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity;
- (viii) That any customer needs offered goods or services to provide protections

upon request to the customer or donor, and the customer's or donor's bank or other billing entity, and which evidences clearly both the customer's or donor's authorization of payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction and the customer's or donor's receipt of all of the following information:

- (A) An accurate description, clearly and conspicuously stated, of the goods or services or charitable contribution for which payment authorization is sought;
- (B) The number of debits, charges, or payments (if more than one);

representative, or agent of the merchant, to present to or deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

- (3) Any person to obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system.
- (d) *Prohibited deceptive acts or practices in the solicitation of charitable contributions.* It is a fraudulent charitable solicitation, a deceptive telemarketing act or practice, and a violation of this Rule for any telemarketer soliciting charitable contributions to misrepresent, directly or by implication, any of the following material information:
 - (1) The nature, purpose, or mission of any entity on behalf of which a charitable contribution is being requested;
 - (2) That any charitable contribution is tax deductible in whole or in part;
 - (3) The purpose for which any charitable contribution will be used;
 - (4) The percentage or amount of any charitable contribution that will go to a charitable organization or to any particular charitable program;
 - (5) Any material aspect of a prize promotion including, but not limited to: the odds of being able to receive a prize; the nature or value of a prize; or that a charitable contribution is required to win a prize or to participate in a prize promotion; or
 - (6) A charitable organization's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity.

§ 310.4 Abusive telemarketing acts or practices.

- (a) *Abusive conduct generally*

obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person;

- (5)
 - (i) Requesting or receiving payment of any fee or consideration for any debt relief service until and unless:
 - (A) The seller or telemarketer has renegotiated, settled, reduced, or otherwise altered the terms of at least one debt pursuant to a settlement agreement, debt management plan, or other such valid contractual agreement executed by the customer;
 - (B) The customer has made at least one payment pursuant to that settlement agreement, debt management plan, or other valid contractual agreement between the customer and the creditor or debt collector; and
 - (C) To the extent that debts enrolled in a service are renegotiated, settled, reduced, or otherwise altered individually, the fee or consideration either:
 - (1) Bears the same proportional relationship to the total fee for renegotiating, settling, reducing, or altering the terms of the entire debt balance as the individual debt amount bears to the entire debt amount. The individual debt amount and

- (6) Disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing; provided, however, that this paragraph shall not apply to the disclosure or receipt of a customer's or donor's billing information to process a payment for goods or services or a charitable contribution pursuant to a transaction;
- (7) Causing billing information to be submitted for payment, directly or indirectly, without the express informed consent of the customer or donor. In any telemarketing transaction, the seller or telemarketer must obtain the express informed consent of the customer or donor to be charged for the goods or services or charitable contribution and to be charged using the identified account. In any telemarketing transaction involving preacquired account information, the requirements in paragraphs (a)(7)(i) through (ii) of this section must be met to evidence express informed consent.
 - (i) In any telemarketing transaction involving preacquired account information and a free-to-pay conversion feature, the seller or telemarketer must:
 - (A) Obtain from the customer, at a minimum, the last four (4) digits of the account number to be charged;
 - (B) Obtain from the customer his or her express agreement to be charged for the goods or services and to be charged using the account number pursuant to paragraph (a)(7)(i)(A) of this section; and,
 - (C) Make and maintain an audio recording of the entire telemarketing transaction.
 - (ii) In any other telemarketing transaction involving preacquired account information not described in paragraph (a)(7)(i) of this section, the seller or telemarketer must:
 - (A) At a minimum, identify the account to be charged with sufficient specificity for the customer or donor to understand what account will be charged; and
 - (B) Obtain from the customer or donor his or her express agreement to be charged for the goods or services and to be charged using the account number identified pursuant to paragraph (a)(7)(ii)(A) of this section; or
- (8) Failing to transmit or cause to be transmitted the telephone number, and, when made available by the telemarketer's carrier, the name of the telemarketer, to any caller identification service in use by a recipient of a telemarketing call; provided that it shall not be a violation to substitute (for the name and phone number used in, or billed for, making the call) the name of the seller or charitable organization on behalf of which a telemarketing call is placed, and the seller's or charitable

- (10) Accepting from a customer or donor, directly or indirectly, a cash-to-cash money transfer or cash reload mechanism as payment for goods or services offered or sold through telemarketing or as a charitable contribution solicited or sought through telemarketing.
- (b) *Pattern of calls.*
 - (1) It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in, the following conduct:
 - (i) Causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number;
 - (ii) Denying or interfering in any way, directly or indirectly, with a person's right to be placed on any registry of names and/or telephone numbers of persons who do not wish to receive outbound telephone calls established to comply with § 310.4(b)(1)(iii)(A), including, but not limited to, harassing any person who makes such a request; hanging up on that person; failing to honor the request; requiring the person to listen to a sales pitch before accepting the request; assessing a charge or fee for honoring the request; requiring a person to call a different number to submit the request; and requiring the person to identify the seller making the call or on whose behalf the call is made;
 - (iii) Initiating any outbound telephone call to a person when:
 - (A) That person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered or made on behalf of the charitable organization for which a charitable contribution is being solicited; or
 - (B) That person's telephone number is on the "do-not-call" registry, maintained by the Commission, of persons who do not wish to receive outbound telephone calls to induce the purchase of goods or services unless the seller or telemarketer
 - (i) Can demonstrate that the seller has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature⁶ of that person; or
 - (ii) Can demonstrate that the seller has an established business relationship with such person, and that

⁶ For purposes of this Rule, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

person has not stated that he or she does not wish to receive outbound telephone calls under paragraph (b)(1)(iii)(A) of this section; or

- (iv) Abandoning any outbound telephone call. An outbound telephone call is “abandoned” under this section if a person answers it and the telemarketer does not connect the call to a sales representative within two (2) seconds of the person’s completed greeting.
- (v) Initiating any outbound telephone call that delivers a prerecorded message, other than a prerecorded message permitted for compliance with the call abandonment safe harbor in § 310.4(b)(4)(iii), unless:
 - (A) In any such call to induce the purchase of any good or service, the seller has obtained from the recipient of the call an express agreement, in writing, that:
 - (i) The seller obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the seller to place prerecorded calls to such person;
 - (ii) The seller obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service;
 - (iii) Evidences the willingness of the recipient of the call to receive calls that deliver

message. The mechanism must:

- (1) Automatically add the number called to the seller's entity-specific Do Not Call list;
- (2) Once invoked, immediately disconnect the call; and

- (iv) The seller or a telemarketer uses a process to prevent telemarketing to any telephone number on any list established pursuant to § 310.4(b)(3)(iii) or 310.4(b)(1)(iii)(B), employing a version

be made before or in conjunction with the description of the prize to the person called. If requested by that person, the telemarketer must disclose the no-purchase/no-payment entry method for the prize promotion; provided, however, that, in any internal upsell for the sale of goods or services, the seller or telemarketer must provide the disclosures listed in this section only to the extent

maintain any required record(s), or if no such agreement exists, the seller shall be responsible for complying with §§ 310.5(a)(1)-(3) and (5); the telemarketer shall be responsible for complying with § 310.5(a)(4).

- (d) In the event of any dissolution or termination of the seller's or telemarketer's business, the principal of that seller or telemarketer shall maintain all records as required under this section. In the event of any sale, assignment, or other change in ownership of the seller's or telemarketer's business, the successor business shall maintain all records required under this section.

§ 310.6 Exemptions.

- (a) Solicitations to induce charitable contributions via outbound telephone calls are not covered by § 310.4(b)(1)(iii)(B) of this Rule.
- (b) The following acts or practices are exempt from this Rule:
- (1) The sale of pay-per-call services subject to the Commission's Rule entitled "Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992," 16 CFR Part 308, *provided*, however, that this exemption does not apply to the requirements of §§ 310.4(a)(1), (a)(7), (b), and (c);
 - (2) The sale of franchises subject to the Commission's Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising," ("Franchise Rule") 16 CFR Part 436, and the sale of business opportunities subject to the Commission's Rule entitled "Disclosure Requirements and Prohibitions Concerning Business Opportunities," ("Business Opportunity Rule") 16 CFR Part 437, *provided*, however, that this exemption does not apply to the requirements of §§ 310.4(a)(1), (a)(7), (b), and (c);
 - (3) Telephone calls in which the sale of goods or services or charitable solicitation is not completed, and payment or authorization of payment is not required, until after a face-to-face sales or donation presentation by the seller or charitable organization, *provided*, however, that this exemption does not apply to the requirements of §§ 310.4(a)(1), (a)(7), (b), and (c);
 - (4) Telephone calls initiated by a customer or donor that are not the result of any solicitation by a seller, charitable organization, or telemarketer, *provided*, however, that this exemption does not apply to any instances of upselling included in such telephone calls;
 - (5) Telephone calls initiated by a customer or donor in response to an advertisement through any medium, other than direct mail solicitation, *provided*, however, that this exemption does not apply to:
 - (i) Calls initiated by a customer or donor in response to an advertisement relating to investment opportunities, debt relief services, business opportunities other than business arrangements covered by the Franchise Rule or Business Opportunity Rule, or advertisements involving offers for goods or services described in §§ 310.3(a)(1)(vi) or 310.4(a)(2)-(4);
 - (ii) Calls to sellers or telemarketers that do not comply with the prohibitions in §§ 310.4(a)(9) or (10); or
 - (iii) Any instances of upselling included in such telephone calls;
 - (6) Telephone calls initiated by a customer or donor in response to a direct mail

- (b) It is a violation of this Rule for any telemarketer, on behalf of any seller, to initiate an outbound telephone call to any person whose telephone number is within a given area code unless that seller, either directly or through another person, first has paid the annual fee, required by § 310.8(c), for access to the telephone numbers within that area code that are included in the National Do Not Call Registry; provided, however, that such payment is not necessary if the seller initiates, or causes a telemarketer to initiate, calls solely to persons pursuant to §§ 310.4(b)(1)(iii)(B)(i) or (ii), and the seller does not access the National Do Not Call Registry for any other purpose.
- (c) The annual fee, which must be paid by any person prior to obtaining access to the National Do Not Call Registry, is \$54 for each area code of data accessed, up to a maximum of \$14,850; provided, however, that there shall be no charge to any person for accessing the first five area codes of data, and provided further, that there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing area codes of data in the National Do Not Call Registry if the person is permitted to access, but is not required to access, the National Do Not Call Registry under this Rule, 47 CFR 64.1200, or any other Federal regulation or law. No person may participate in any a

§ 310.9 Severability.

The provisions of this Rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

1345.02 Unfair or deceptive acts or practices

(A) No supplier shall commit an unfair or deceptive act or practice in connection with a consumer transaction

Such an unfair or deceptive act or practice by a supplier violates this section whether it occurs before, during, or after the transaction.

(B) Without limiting the scope of division (A) of this section, the act or practice of a supplier in representing any of the following is deceptive:

(1) That the subject of a consumer transaction has sponsorship, approval, performance characteristics

64.1190 by the federal communications commission, division (E)(1) of this section does not apply to a provider of commercial mobile radio service insofar as such provider is engaged in the provision of commercial mobile radio service. However, when that exclusion no longer is in effect, division (E)(1) of this section shall apply to such

provider.

(3) The attorney general may initiate criminal proceedings for a prosecution under division (C) of section 1345.99 of the Revised Code by presenting evidence of criminal violation of this section.

1345.03 Unconscionable consumer sales acts or practices.

(A) No supplier shall commit an unconscionable act or practice in connection with a consumer transaction. Such an unconscionable act or practice by a supplier violates this section whether it occurs before, during, or after the transaction.

(B) In determining whether an act or practice is unconscionable, the following circumstances shall be taken into consideration:

(1) Whether the supplier has knowingly taken advantage of the inability of the consumer reasonably to protect the consumer's interests because of the consumer's physical or mental infirmities, ignorance, illiteracy, or inability to understand the language of an agreement;

(2) Whether the supplier knew at the time the consumer transaction was entered into that the price was substantially in excess of the price at which similar property or services were readily obtainable in similar

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

consumer transactions by like consumers;

(3) Whether the supplier knew at the time the consumer transaction was entered into of the inability of the consumer to receive a substantial benefit from the subject of the consumer transaction;

(4) Whether the supplier knew at the time the consumer transaction was entered into that there was no reasonable probability of payment of the obligation in full by the consumer;

(5) Whether the supplier required the consumer to enter into a consumer transaction on terms the supplier knew were substantially one-sided in favor of the supplier;

(6) Whether the supplier knowingly made a misleading statement of opinion on which the consumer was likely to rely to the consumer's detriment;

(7) Whether the supplier has, without justification, refused to make a refund in cash or by check for a returned item that was purchased with cash or by check, unless the supplier had conspicuously posted in the establishment

[REDACTED]