

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

~~Case~~

No. 6:20-cv-2200

COMPLAINT FOR PERMANENT
~~EQUITY~~ INJUNCTION AND OTHER

Plaintiff, the Federal Trade Commission (“FTC” or “the Commission”), for its Complaint alleges:

1. Plaintiff brings this action under Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Section 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. § 6105, to obtain a permanent injunction, rescission or reformation of contracts, damages, disgorgement of ill-gotten monies, restitution, the refund of monies paid, and other equitable relief for Defendants’ acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC’s Telemarketing Sales Rule (“TSR” or “Rule”), as amended, 16 C.F.R. Part 310.

SUMMARY OF ALLEGATIONS

2. As set forth in detail below, Defendants Alcazar Networks Inc. and Gavin Grabias assisted and facilitated violations of the TSR by continuing to provide services to their customers even after knowing or consciously avoiding knowing their customers were using Alcazar’s

services to initiate calls that: (a) were placed to numbers on the National Do Not Call Registry; (b) delivered prerecorded messages; and (c) displayed spoofed caller ID numbers, including displaying “911” as a caller ID number.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345.

4. Venue is proper in this District under 28 U.S.C. § 1391(b)(1), (b)(2), (b)(3), (c)(1), (c)(2), (c)(3), and (d), and 15 U.S.C. § 53(b).

PLAINTIFF

5. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41–58. The FTC 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 FTC also enforces the Telemarketing Act, 15 U.S.C. §§ 6101-6108. Pursuant to the Telemarketing Act, the FTC promulgated and enforces the TSR, 16 C.F.R. Part 310, which prohibits deceptive and abusive telemarketing acts or practices.

DEFENDANTS

6. Defendant Alcazar Networks Inc. (“Alcazar”) is a closely held Pennsylvania corporation with its principal place of business in Trexlertown, PA. Alcazar transacts or has transacted business in this district and throughout the United States.

7. Defendant Gavin Grabias (“Grabias”) is the founder, sole owner, and president of Alcazar. He is one of its only three employees and is actively involved in Alcazar’s day-to-day operations. He is also in charge of Alcazar’s legal compliance and is the sole signatory on Alcazar’s bank accounts. Grabias resides in this district and, in connection with the matters

24. The Telecommunications Act of 1996 provides two definitions relevant to understanding Alcazar's business activities.

25. The first, "information service," means "the offering of a capability for

32. Alcazar’s website has stated that “[o]ur origination service transports Public Switched Telephone Network (PSTN) originated local calls from multiple locations (rate centers) and terminates them to the customer’s softswitch or media gateway via IP or TDM connectivity using local DID telephone numbers.”

33. In its DID provisioning service, Alcazar licenses caller ID numbers to customers for them to display in their outbound calls. Alcazar’s provisioning and licensing of DID numbers is not telecommunications service activity under the Telecommunications Act, nor is it information service activity.

34. Providing interconnected VoIP services to a telemarketer constitutes the provision of substantial support and assistance to a telemarketer under the TSR.

35. Providing DID origination and DID provisioning to a telemarketer also constitutes the provision of substantial support and assistance to a telemarketer under the TSR.

36. Providers of Interconnected VoIP service are required to register with the Federal Communications Commission (“FCC”) by completing the FCC’s Form 499. Alcazar maintained an active registration—listing Grabias as the company president—until July 1, 2014. Since July 1, 2014, Alcazar has failed to maintain an active FCC 499 filer registration.

37. Alcazar has also failed to pay required FCC licensing fees, including contributions to the FCC’s

and costs). *See USA v. Alcazar Networks, Inc.*, No. 5:19-cv-03283-JFL (E.D. Pa. filed July 26, 2019). According to documents attached to the Complaint in that case, the unpaid regulatory fees were for fiscal years 2012-2014. Alcazar was personally served with the Complaint at its offices in October 2019 and Alcazar retained counsel to appear in the case. On March 27, 2020, Alcazar agreed to a settlement under which it would pay \$50,000.

39. From July 1, 2014 through at least May 13, 2020, Alcazar failed to reactivate its FCC 499 registration. It remained delinquent in meeting that obligation, as it had at all times since July 1, 2014.

40. As the Alcazar employee in c\ersrst.9 (n)1 (c20 (s)4 (e)-cjEMC /L (o)-5 (m)0.0-13.8an)1 (c4)

expressly acknowledged that it had received complaints about calls dialed through Bartoli's account.

44. First, on December 1, 2017, the FTC sent a letter to Alcazar asking for the name, address, and place of business of Alcazar's customer or subscriber that dialed a specific telephone call at 12:43 AM. The TSR prohibits telemarketing calls made to a telephone number between 9:00 PM and 8:00 AM of the local time where the called party resides. The letter specifically noted that the written request was "relevant to a law enforcement investigation concerning telemarketing fraud."

45. Alcazar responded and identified Derek Bartoli as the customer or subscriber that dialed the relevant call, but Alcazar's response incorrectly identified Bartoli's company as "Medical Alarms," with an address in the Philippines. In truth, "Medical Alarms" was the name Bartoli assigned to a specific telemarketing campaign. Bartoli's company name was Marketing Consultation Solutions, incorporated and located in Florida.

46. Alcazar had entered into contractual agreements with Marketing Consultation Solutions in Florida, not Medical Alarms.

47. On December 20, 2017, the FTC issued a Civil Investigative Demand ("CID") to Alcazar requesting additional information about Bartoli, Medical Alarms, and the same telephone call previously identified in the FTC's prior letter dated December 1, 2017. In that CID, the FTC identified the subject of the investigation as an inquiry regarding whether the

49. Grabias personally handled Alcazar's response to the FTC's December 20, 2017 CID, corresponding with the FTC about Bartoli on multiple occasions. For example, on the morning of January 2, 2018, Grabias participated as Alcazar's representative during a meet and confer regarding the requirements of the CID. Following the call, the FTC confirmed in writing—and Grabias responded affirmatively—that Grabias understood that the subjects of the CID included all of Alcazar's customers or subscribers that were associated with Bartoli. Grabias confirmed that Mr. Bartoli prepaid for the services provided by Alcazar using a credit card. In responding to that CID, Grabias personally sent the FTC more than a dozen emails and he directed his employees to compile Bartoli's call detail records and other responsive information. As a result, Grabias knew that the FTC was investigating whether Bartoli had violated the TSR.

50. For several months after it responded to the FTC's December 2017 CID, Alcazar continued receiving complaints and inquiries about calls dialed through Bartoli's account from other voice service providers to which Alcazar routed calls, known as upstream line carriers. Alcazar then emailed Bartoli about those complaints.

51. For example, on February 15, 2018, Alcazar sent Bartoli an email stating: "We have received complaints for DID 813-320-0315 telemarketing/scamming Florida residences

53. The following day, on March 1, 2018, Alcazar sent Bartoli yet another email complaining about calls dialed through his account, stating: “We have received more complaints regarding this DID that is assigned to your account. Calls are being reported as receiving spam calls outside of normal business hours and waking people.”

54. Then, on March 15, 2018, Alcazar emailed Bartoli again about calls violating the TSR’s DNC rules, stating: “Alcazar Networks is notifying your company that the following TN’s that are assigned to your company are experiencing high levels of complaints per number. Please note that there are two sets of complaints. The first being complaints directly received, and the second being tied to the FTC DNC complaints.”

55. By no later than March 15, 2018, Alcazar knew, or consciously avoided knowing, that Bartoli was using Alcazar’s services for calls that violated the TSR.

56. Instead, after March 16, 2018, Alcazar continued letting Bartoli use its services. From March 16, 2018 through July 2, 2018, using services provided by Alcazar, Bartoli dialed 107,875,507 calls, of which 57,539,792 were to numbers listed on the DNC Registry for more than 31 days. Many of these calls delivered prerecorded messages, and many of these calls used spoofed caller ID numbers.

57. After March 16, 2018, Alcazar received additional indications that Bartoli was engaged in illegal dialing.

58. On April 25, 2018, the Mississippi Public Service Commission (“Mississippi Commission”), which administers the Mississippi state DNC statute, sent Alcazar a subpoena. The subpoena stated that the Mississippi Commission was serving the subpoena in connection with an investigation about alleged violations of Mississippi’s Do No Call List, which is similar to the FTC’s DNC Registry. The subject line of the subpoena stated: “Alleged Violation of

Miss. Code Ann. §77-3-101 *et seq.*, as amended, by telephonic solicitation of a residential line customer who has subscribed to the Mississippi Public Service Commission’s Do Not Call List pursuant to the Mississippi Telephone Solicitation Act and accompanying rules.”

59. Alcazar—and Grabias, who was in charge of Alcazar’s legal compliance—failed to respond to the subpoena.

60. On May 11, 2018, the Mississippi Commission followed up with a second request that Alcazar respond to its subpoena.

61. On May 21, 2018, Alcazar responded by identifying its customer as “Medical Alarms” with an address in the Philippines. It also provided Derek Bartoli’s name, phone —itl

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65. In addition, many, if not all, of the telemarketing calls Bartoli dialed using Alcazar's services delivered prerecorded messages, in violation of the TSR.

66. Further, many, if not all, of the telemarketing calls Bartoli dialed using Alcazar's services displayed spoofed caller ID numbers, also in violation of the TSR.

67. At an investigational hearing conducted by the FTC on July 26, 2018, Bartoli testified that, while he owned Marketing Consultation Solutions, he never accessed the National Do Not Call Registry to remove numbers on the registry from his calling lists. He also testified that his "Medical Alarms" telemarketing campaigns used prerecorded messages in outbound telemarketing calls to sell medical alert devices. In addition, Bartoli testified that his usual practice was to spoof caller ID numbers for most of his clients, stating that he would set the caller ID "for a random number" where the first six digits matched the number of the consumer he was calling. All of these practices violated the TSR.

68. Bartoli's telemarketing campaigns, including his "Medical Alarms" campaigns, involved millions of interstate telephone calls. Bartoli dialed many of these calls from Florida, using internet service to connect to Alcazar's VoIP servers located in Pennsylvania, in order to reach consumers in states other than Florida or Pennsylvania.

Alcazar Also Assisted and Facilitated Illegally Spoofed Calls Displaying 911 as the Caller ID

69. More than twenty of Alcazar's customers have delivered, transmitted, or routed calls using Alcazar's VoIP services that displayed "911" as the caller ID number.

70. Under prevailing laws, regulations, and industry standards, "911" is a number used only for calling during an emergency. Only a Public Safety Access Point ("PSAP") or a communications center operated for emergency services would have a valid or legal reason to

77. Nonetheless, Alcazar emailed E. Sampark to solicit additional business, noting that the number of minutes E. Sampark had been dialing decreased.

78. Alcazar continued permitting its customers—including E. Sampark—to transmit calls displaying “911” as the caller ID number.

79. After July 2, 2019, Alcazar permitted E. Sampark to dial more than 250,000 additional calls using Alcazar’s VoIP services, including more than 300 calls displaying “911” as the caller ID number, along with numerous others displaying “1911”, “10911, or “11911” as the caller ID number.

80. The FTC issued Alcazar a CID on October 4, 2019 requesting records regarding any customers which had originated, initiated, or routed telephone calls using Alcazar’s services in which “911” was displayed as the caller ID. The CID also specifically requested records related to E. Sampark. The CID stated that the purpose of its investigation was to determine whether Alcazar had assisted and facilitated violations of the TSR.

81. Alcazar responded on October 29, 2019. These responses showed that 24 of Alcazar’s customers had dialed calls which displayed “911” as the caller ID.

82. Between July 2, 2019 and October 29, 2019, Alcazar sent E. Sampark approximately 400 emails. None of them inquires of E. Sampark as to why it was using “911” as a caller ID.

83. Between October 2019 and February 2020, Alcazar permitted E. Sampark and thirteen it9.2.1 (l)4 (y)]TJ911

84. Defendants provided substantial assistance or support to Bartoli and / or his customers, who were “seller[s]” and/or “telemarketer[s]” engaged in “telemarketing,” as defined by the TSR, 16 C.F.R. § 310.2.

85. As set forth above in paragraphs 41 to 68, in numerous instances, in connection with telemarketing, Bartoli and / or his customers:

- a. Initiated or caused the initiation of outbound telephone calls to telephone numbers on the National DNC Registry to induce the purchase of goods or services, in violation of 16 C.F.R. § 310.4(b)(1)(iii)(B);
- b. Initiated or caused the initiation of outbound telephone calls that delivered prerecorded messages to induce the purchase of goods or services, in violation of 16 C.F.R. § 310.4(b)(1)(v); and
- c. Failed to transmit or cause to be transmitted to caller identification services the telephone number and name of the telemarketer making the call, or the customer service number and name of the seller on whose behalf the telemarketer called, in violation of 16 C.F.R. § 310.4(a)(8).

86. At all relevant times, Defendants

89. As set forth above in paragraphs 69 to 83, in numerous instances, in connection with telemarketing,

THIS COURT’S POWER TO GRANT RELIEF

94. 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.

95. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6 of the Telemarketing Act, 15 U.S.C. § 6105, authorize this Court to award damages and grant such relief as the Court finds necessary to redress injury to consumers resulting from Alcazar’s violations of the TSR.

96. This Court, in the exercise of its equitable jurisdiction, may order disgorgement, restitution, the refund of monies paid, and award ancillary relief to prevent and remedy any violation of the TSR or the FTC Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court, as authorized by Sections 5(a), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b), 57b, and Section 6 of the Telemarketing Act, 15 U.S.C. § 6105, and pursuant to its own equitable powers:

A. Enter judgment against Defendants and in favor of Plaintiff for each violation alleged in this Complaint;

B. Enter a permanent injunction to prevent future violations of the TSR and the FTC Act by Defendants; and

C. Award Plaintiff such other and additional relief, including disgorgement and/or damages, the costs of bringing this action, and any other additional relief the Court may determine to be just and proper.

Respectfully submitted,
Alden Abbott
General Counsel

Dated: 12/3/2020

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