

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

DEREK JASON BARTOLI,  
a/k/a Derek Bartoli, individually and  
also d/b/a Phoenix Innovative Solutions LLC,  
Marketing Consultation Solutions LLC, and  
KimRain Marketing LLC,

Defendant.

**Case No. 19-1160**

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

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission, pursuant to Section 16(a)(1) of the Federal Trade Commission Act, 15 U.S.C. § 56(a), for its Complaint alleges:

1. Plaintiff brings this action under Sections 5(a), 5(m)(1)(A), 13(b), 16(a), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), 56(a), and 57b, and Section 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act, Telemarketing Act, 15 U.S.C. § 6105, to obtain monetary civil penalties, a permanent injunction, and other relief for

**THE TELEMARKETING SALES RULE**

4. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108. The FTC adopted the 7 H O H P D U N H W L Q J 6 i D 9 4 , e x t e n s i v e l y a m e n d e d i t i n 2 0 0 3 , and amended certain provisions thereafter. 16 C.F.R. Part 310.

5. Among other things, the 2003 amendments to the TSR established a National Do Not Call Registry. 15 C.F.R. Part 310.11. Consumers who do not wish to receive certain types of telemarketing calls. Consumers can register their telephone numbers on the Registry without charge through a toll-free telephone call or over the Internet at donotcall.gov.

6. Consumers who receive telemarketing calls to their registered numbers can

10. The TSR prohibits sellers and telemarketers from initiating an outbound telephone call to numbers on the Registry. 16 C.F.R. § 310.4(b)(1)(iii)(B).

11. As amended, effective September 1, 2009, the TSR prohibits initiating a robocall, an outbound telephone call that delivers a prerecorded message to induce the purchase of any good or service. 16 C.F.R. § 310.4(b)(1)(v).

12. The TSR requires that sellers and telemarketers transmit or cause to be transmitted the telephone number of the telemarketer and, when made available by the WHOHPDUNHWHU↑V FDUULHU WKHLQIDRUPBWWRKH' WMORHIDQUIN identification service in use by a recipient of a telemarketing call, or transmit the customer service number of the seller on whose behalf the call is made and, when made available by the WHOHPDUNHWHU↑V FDUULHU WKHLQIDRUPBWWRKH' WMORHIDQUIN (8). Transmitting inaccurate caller ID information, or causing inaccurate caller ID information to be transmitted, is commonly FDOOHG<sup>3</sup> VSRRI LQJ '.

13. 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 affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

**DEFENDANT**

14. Defendant Derek Jason Bartoli<sup>3</sup> %DUWRIDown as Derek Bartoli, has been an active participant in the telemarketing industry for many years, serving as WKH<sup>3</sup> Gnd DHOHU<sup>3</sup>, 7 JXor various telemarketing companies, many of which have been the subjects of law enforcement actions. Bartoli is the developer, operator, and provider of a computer-based telephone dialing platform and related information teFKQRORJservices<sup>7</sup> collectively



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*Bartoli Built and Sold the Autodialer for Telemarketing Purposes*

20. Bartoli is experienced in IT, computer, and telephone technologies employed by telemarketing companies. For example, he has set up computer and telephone systems used by operators of telemarketing call centers. He has also created and programmed websites used to solicit consumers and has maintained customer records management or 3 & 5 0 databases used to store information about consumers who have purchased products.

21. Bartoli is also experienced in VICIdial, the open-source call center software that Bartoli used to build and develop the Autodialer. In its basic form, the Autodialer is a server or computer hardware that runs the VICIdial software and connects to a VoIP telephone line.

22. The Autodialer dials D O L V W R I W H O H S K R Q H r e a d s Q X P E H U V 3 O H D G according to the response of call recipients. Bartoli programmed the Autodialer to perform at least two types of G L D O L Q J 3 E U R D G F D V W G L D O L Q J ' D Q G 3 S U H G L F W L known as 3 S U H W R E R F D O O i n i t i a t i n g O u t b o u n d C a l l s that deliver a prerecorded message to consumers on a lead list. If a consumer answers the phone, the robocall pitches a product and then instructs the interested consumer to 3 S U H V I the consumer presses 1, the consumer is transferred to a live telemarketer agent. Predictive dialing involves initiating outbound calls to consumers on a lead list. If a consumer answers the phone, the consumer is either (i) transferred automatically to a live telemarketer agent or (ii) according to Bartoli, presented with a set of prerecorded questions to determine W K H F R Q V X P H U ¶ V L Q W H U H V and W K H Q G H S H Q G L Q J R Q W t r a n s f e r r e d t o a l i v e t e l e m a r k e t e r a g e n t . S I R Q V H V Autodialer enables Bartoli to blast out a large volume of calls quickly and cheaply, with the

ultimate goal of transferring interested consumers to live telemarketer agents who will then pitch the consumers their products.

23. ~~\$ V W K H 3 G L D P O R H U~~ Bartoli identified important steps to prepare the Autodialer to initiate the calls. Among other things, Bartoli would (i) load the lead list on the Autodialer and





nor did Bartoli and his clients have a pre-existing or established business relationship with them. Bartoli initiated these calls to consumers residing in this District and throughout the United States.

31. In the course of the telemarketing campaigns described above, Bartoli initiated or caused to be initiated millions of outbound telephone calls that delivered a prerecorded message. At the time of these robocalls, Bartoli and his clients did not have a written agreement from consumers to receive such calls. Bartoli initiated these calls to consumers residing in this District and throughout the United States.

32. In the course of the telemarketing campaigns described above, Bartoli initiated or caused to be initiated millions of outbound telephone calls with inaccurate or spoofed caller ID information. As a matter of general practice, Bartoli programmed the Autodialer to engage in illegal <sup>3</sup> Q H L J K E R U W S P R L L Q ID displayed is a telephone number that matches W K H I L U V W V L [ G L J L W V R I W K H F D O O I O H F S L H Q W ¶ V W H O H S Bartoli initiated these calls to consumers residing in this District and throughout the United States.

33. % D U W R O L E ¶ and related IT services have become so widely employed in the illegal telemarketing industry that they were used to initiate unlawful telemarketing calls for defendants in three separate law enforcement proceedings and one private class action lawsuit.

34. On March 16, 2016, the United States of America brought an action against Lilly Management and Marketing, LLC, and its principal, Kevin W. Lawrence, in connection with a telemarketing campaign to sell vacation packages. *U.S. v. Lilly Mgmt. & Mktg., LLC, et al.*, No.

defendants initiated illegal robocalls and outbound telephone calls to numbers on the Registry as part of the campaign.

35. Bartoli was the dialer who initiated the millions of unlawful telemarketing calls at issue in the *Lilly* case. Bartoli programmed the Autodialer to do broadcast dialing or press-1 robocalls. In exchange, Bartoli and Phoenix received substantial fees. During a three-month period in April through June 2015, alone, Bartoli initiated 7,227,300 total calls. Of this total, 4,001,397 calls were to telephone numbers that had been listed on the Registry for more than 30 days prior to the date of the calls (a 54% of the total). A significant percentage of the total calls involved robocalls and spoofed caller ID.

36. Bartoli continued to initiate unlawful telemarketing calls for his clients.

37. On July 14, 2016, the FTC and State of Florida brought an action against Lifewatch Inc., MedGuard Alert, Inc. and other defendants in connection with a telemarketing campaign to sell medical alert systems. *FTC v. Lifewatch Inc., et al.*, No. 1:15-cv-05781 (N.D. Ill.). The plaintiffs alleged that the defendants initiated illegal robocalls, outbound telephone calls to numbers on the Registry, and calls with spoofed caller ID as part of the campaign. As one of the third-party telemarketers, Bartoli programmed his Autodialer to do broadcast dialing or press-1 robocalls in his telemarketing campaign for Lifewatch Inc. and MedGuard Alert, Inc. Even after the filing of the *Lifewatch* case, Bartoli continued to provide services to both companies. In exchange, Bartoli, MCS (under the name Senior Care Services), and KimRain received substantial fees.

38. On March 22, 2018, the FTC brought an action against Alliance Security Inc. and other defendants in connection with their telemarketing to sell home security systems. *FTC v.*



initiated these unlawful calls for his clients, including defendants in the *Lifewatch* and *Hearing Better* cases.

*Bartoli Knew the Telephone Calls He Initiated Were Unlawful*

43. Bartoli is knowledgeable RI WKH )7 & ¶ V 7HOHP, DUNING W L QJ 6DOH 5 prohibition against calling telephone numbers on the Registry. Through his telemarketer clients

closed 0 & 6 Bank account after draining all of its funds. Today, Bartoli continues to work as an independent contractor providing IT and programming services.

**VIOLATIONS OF THE TELEMARKETING SALES RULE**

**Count I**

**Calls to Telephone Numbers Listed on the National Do Not Call Registry**

46. In numerous instances, in connection with telemarketing, Bartoli has initiated or caused others to initiate outbound telephone calls to telephone numbers on the Registry, in violation of the TSR, 1

50. Consumers in the United States have suffered and will continue to suffer substantial injury as a result of % D U W R O L ¶ V Y L R O D W L R Q V R I W K H 7 6 the TSR. Absent injunctive relief by this Court, Bartoli is likely to continue to injure consumers and harm the public interest.

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51. 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.

52. 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 grant such relief as the Court finds necessary to redress injury to consumers resulting from % D U W R O L ¶ V Y L R O D W L R Q V R I W K H 7 6

53. Section 5(m)(l)(A) of the FTC Act, 15 U.S.C. § 45(m)(l)(A), as modified by

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

B. Award Plaintiff monetary civil penalties from Defendant for every violation of the TSR;

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

Dated: 6/21/2019\_\_\_\_\_

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