

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 9:17-cv-80032-KAM

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

JUSTIN RAMSEY, individually and as an officer of Data Guru LLC, Tailbone Security LLC, and Prime Marketing LLC;

BRIAN OFFNER, individually and as an officer of Data Guru LLC, Tailbone Security LLC, and Leading Apex LLC,

CHRISTOPHER HERGHELEGIU, individually and as an officer of Data Guru LLC and Tailbone Security LLC

DATA GURU LLC, a Florida limited liability company,

TAILBONE SECURITY LLC, a Florida limited liability company,

LEADING APEX LLC, a Pennsylvania limited liability company,

and

PRIME MARKETING LLC, a Delaware limited liability company,

Defendants.

**STIPULATED FINAL ORDER FOR PERMANENT INJUNCTION
AND CIVIL PENALTY JUDGMENT
AS TO DEFENDANTS JUSTIN RAMSEY AND PRIME MARKETING**

Plaintiff,

of this action, Defendants Justin Ramsey and Prime Marketing LLC admit the facts necessary to establish jurisdiction.

4. Defendants Justin Ramsey and Prime Marketing LLC 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 attorneys' fees. Defendants Justin Ramsey and Prime Marketing LLC waive and release any claims that they may have against the Commission and its agents that relate to this action.

5. Defendants Justin Ramsey and Prime Marketing LLC and the Commission waive all rights to appeal or otherwise challenge or contest the validity of this Order.

DEFINITIONS

For the purpose of this Order, the following definitions apply:

A. **“Defendant Prime Marketing”** means Prime Marketing LLC, a Delaware Limited Liability Company, and its successors and assigns, individual, collectively, or in any combination.

B. **“Defendant Ramsey”** means Justin Ramsey.

C. **“Defendants”** means Defendant Ramsey and Defendant Prime Marketing.

D. **“Caller Identification Service”** means a service that allows a telephone subscriber to have the telephone number, and, where available the name of the calling party transmitted contemporaneously with the telephone call, and displayed on a device in or connected to the subscriber's telephone.

F. **“Established Business Relationship”** means a relationship between a Seller and a person based on: (a) the person’s purchase, rental, or lease of the Seller’s goods or services or a financial transaction between the Seller and person, within the eighteen months immediately preceding the date of the Telemarketing call; or (b) the person’s inquiry or application regarding a product or service offered by the Seller, within the three months immediately preceding the date of a Telemarketing call.

G. **“Lead Generator”** means any person that provides, in exchange for consideration, consumer information to a Seller or Telemarketer for use in the marketing of any goods or services.

H. **“National Do Not Call Registry”** means the “do-not-call” registry of telephone numbers maintained by the Commission pursuant to 16 C.F.R. § 310.4(b)(1)(iii)(B).

I. **“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.

J. **“Person”** means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

K. **“Representatives”** means Defendants’ officers, agents, employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise.

L. **“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, whether or not such person is under the jurisdiction of the Commission.

M. **“Telemarketer”** means any person who, in connection with Telemarketing, initiates or receives telephone calls to or from a customer or donor, whether or not such person is under the jurisdiction of the Commission.

N. **“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.

ORDER

I. Permanent Ban on Calling Telephone Numbers Listed on the National Do Not Call Registry

IT IS ORDERED that Defendant Ramsey and Defendant Prime Marketing, whether acting directly or through an intermediary, are permanently restrained and enjoined from initiating, causing others to initiate, or assisting others in initiating any Outbound Telephone Call to any telephone number listed on the National Do Not Call Registry more than thirty one (31) days after the date on which such number is added to the National Do Not Call Registry.

II. Permanent Ban on Selling Lists of Data Containing Telephone Numbers Listed on the

initiating, causing others to initiate, or assisting others in initiating any Outbound Telephone Call that plays or delivers a prerecorded message, unless Defendant Ramsey and Defendant Prime Marketing prove that:

- A. The Outbound Telephone Call is placed to a business telephone number; *and*
- B. The Outbound Telephone Call is to induce the purchase of goods (other than nondurable office or cleaning supplies) or services by the business or to solicit a charitable contribution by the business.

It shall not be a violation of this Order for Defendants to transmit a prerecorded message for compliance with 16 C.F.R. §310.4(b)(4)(iii).

IV. Permanent Ban on

- C. Displays a telephone number that cannot receive inbound calls;
- D. Displays a telephone number that is not equipped to process requests from consumers asking to be added to an Entity Specific Do Not Call List; *or*
- E. Displays a number that is not equipped to process requests from consumers asking to be added to the Seller's Entity Specific Do Not Call List.

V. Prohibition Against Abusive Telemarketing Practices

IT IS FURTHER ORDERED that, in connection with Telemarketing, Defendant Ramsey and Defendant Prime Marketing and their Representatives are permanently restrained and enjoined from engaging in, causing others to engage in, or assisting others engaging in, any of the following practices:

- A. Initiating any Outbound Telephone Call to a person on behalf of a Lead Generator, Seller, Telemarketer, or any other third-party when that person has previously stated that he or she does not wish to receive an Outbound Telephone Call made by or on behalf of that Lead Generator, Seller, Telemarketer, or third-party.
- B. Failing to disclose truthfully, promptly, and in a clear and conspicuous manner: (i) the identity of the Seller, (ii) that the purpose of the call is to sell goods or services, and (iii) the nature of the goods or services.
- C. Violating the Telemarketing Sales Rule, 16 C.F.R. Part 310, attached as Appendix A.

VI. Monetary Judgment for Civil Penalty and Partial Suspension as to Defendant Ramsey and Defendant Prime Marketing

IT IS FURTHER ORDERED that:

A. Judgment in the amount of Two Million Two Hundred Thousand Dollars (\$2,200,000) is entered in favor of the Commission against Defendant Ramsey and Defendant Prime Marketing, jointly and severally, as a civil penalty.

B. Defendant Ramsey and Defendant Prime Marketing are ordered to pay to the Commission Sixty-Five Thousand Dollars (\$65,000), which, as Defendant Ramsey and Defendant Prime Marketing stipulate, undersigned counsel holds in escrow for no purpose other than payment to the Commission. Such payment must be made within seven (7) days of entry of this Order by electronic fund transfer in accordance with instructions previously provided by a representative of the Commission. Upon such payment, the remainder of the judgment is suspended, subject to the Subsections below.

C. The Commission's agreement to the suspension of part of the judgment is expressly premised upon the truthfulness, accuracy, and completeness of Defendant Ramsey and Defendant Prime Marketing's sworn financial statements and related documents (collectively, "financial representations") at the time submitted to the Commission, namely:

1. The Financial Statement of Defendant Justin Ramsey signed on November 11, 2015, including the attachments and documents submitted with the Financial Statement;
2. The Updated Financial Statement of Defendant Justin Ramsey signed on December 9, 2015, including the attachments and documents submitted with the Financial Statement;

3. The Updated Financial Statement of Defendant Justin Ramsey signed on December 21, 2016, including the attachments and documents submitted with the Financial Statement;
4. The Financial Statement of Defendant Prime Marketing signed by Justin Ramsey on January 12, 2017, including the attachments and documents submitted with the Financial Statement;
5. The Declaration of Justin Ramsey dated February 7, 2017, including the attachments and documents referenced in that Declaration which were previously submitted to the Commission on or about January 23, 2017.

D. The suspension of the judgment will be lifted as to either Defendant if, upon motion by the Commission, the Court finds that either 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.

E. If the suspension of the judgment is lifted, the judgment becomes immediately due as to one or both Defendants, as appropriate, in the amount specified in Subsection A above (which the parties stipulate only for purposes of this Section represents the amount of the civil penalty for the violations alleged in the Complaint), less any payment previously made pursuant to this Section, plus interest computed from the date of entry of this Order.

F. Defendant Ramsey and Defendant Prime Marketing relinquish dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and maer Ordntrua2(u)2

G. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order.

H. Defendant Ramsey and Defendant Prime Marketing agree that the judgments against them represent civil penalties owed to the government of the United States, are not compensation for actual pecuniary loss, and, therefore, as to Defendant Ramsey and Defendant Prime Marketing, are not subject to discharge under the Bankruptcy Code pursuant to 11 U.S.C. § 523(a)(7).

I. Defendant Ramsey acknowledges that his Taxpayer Identification Number (Social Security Number), which he previously submitted in connection with the Financial Statements referenced in Section VI.C., above, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.

VII. Cooperation

IT IS FURTHER ORDERED that Defendant Ramsey and Defendant Prime Marketing must fully cooperate with representatives of the Commission in this case and in any investigation related to or associated with the transactions or the occurrences that are the subject of the Complaint. Defendant Ramsey and Defendant Prime Marketing must provide truthful and complete information, evidence, and testimony. Defendant Ramsey and Defendant Prime Marketing must appear for interviews, discovery, hearings, trials, and any other proceedings that a Commission representative may reasonably request upon fourteen days written notice, in the form of a letter stating the dates, times, and places designated for compliance, and without requiring the service of a subpoena. Further, to assist the Commission with any investigation related to or associated with the transactions or the occurrences that are the subject of the Complaint, and with monitoring Defendant Ramsey and Defendant Prime Marketing's

compliance with this order, Defendant Ramsey and Defendant Prime Marketing consent, for purposes of the Electronic Communications Privacy Act, in relevant part at 18 U.S.C. §§ 2701-2712, to the disclosure, by electronic communications service providers and remote computing service providers of the contents of their auto-dialed, telemarketing, or pre-recorded telephone communications and records or other information pertaining to their auto-dialed, telemarketing, or pre-recorded telephone communications. Defendant Ramsey and Defendant Prime Marketing further agree to execute, within fourteen days of a request from the Commission, any forms or other documents evidencing their consent that may be required by such electronic communications service providers or remote computing service providers.

VIII. Order Acknowledgments

IT IS FURTHER ORDERED that Defendant Ramsey and Defendant Prime Marketing obtain acknowledgments of receipt of this Order:

A. Each Defendant, within seven days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For five years after entry of this Order, Defendant Justin Ramsey for any business that he, individually or collectively with any other Defendant, is the majority owner or controls directly, or indirectly, and Defendant Prime Marketing, must deliver a copy of this Order, including Appendix A, to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and other Representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within seven days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

C. For five years after entry of this Order, Defendant Ramsey and Defendant Prime Marketing must deliver a copy of this Order, including Appendix A, to: (1) any individual or business that provides them with access to or use of an automated dialing platform; and (2) any Lead Generator or Telemarketer with whom they transact business. Delivery must occur within seven days of entry of this Order for current providers. For all others, delivery must occur before they begin providing services.

D.

with each Section of this Order; and (e) provide a copy of each Order

services whether as an employee or otherwise and any entity in which he has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.

C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Defendant within fourteen days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *FTC v. Justin Ramsey, et. al.*, Matter Number 1323254.

X. Recordkeeping

IT IS FURTHER ORDERED that Defendant Ramsey and Defendant Prime Marketing must create certain records for ten years after entry of the Order, and retain each such record for five years. Specifically, Defendant Ramsey and Defendant Prime Marketing, for any business that they, individually or collectively are a majority owner or control directly or indirectly, must create and retain the following records:

A. Accounting records showing the revenues from all goods or services sold;

B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;

C. Records of all consumer complaints concerning the subject matter of the Order, whether received directly or indirectly, such as through a third party, and any response;

D. All records, including contracts, relating to any person or entity from whom Defendant Ramsey or Defendant Prime Marketing purchased leads or phone numbers; and

E. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission.

XI. Compliance Monitoring

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendant Ramsey and Defendant Prime Marketing's compliance with this Order, including the financial representations upon which part of the judgment was suspended and any failure to transfer any assets as required by this Order:

A. Within fourteen days of receipt of a written request from a representative of the Commission, each Defendant must: (1) submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; (2) appear for depositions; and (3) produce documents for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

B. For matters concerning this Order, the Commission is authorized to communicate directly with each Defendant. Each Defendant must permit representatives of the Commission to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.


SO STIPULATED AND AGREED:

FEDERAL TRADE COMMISSION

Ian L. Barlow
Attorneys
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

(202) 326-3395 (facsimile)
rditch@ftc.gov, lbarlow@ftc.gov
Ramsey
Individually

FOR DEFENDANTS:


Justin Ramsey
and as an owner and managing
member of Prime Marketing, LLC

3/10/17
Date

Mitchell N. Roth,
Roth Jackson Gibbons Condlin, PLC
8200 Greensboro Drive, Suite 820
McLean, Virginia 22102
Phone: (703) 485-3536
Fax: (703) 485-3525
Attorney for Defendants Justin Ramsey and
Prime Marketing LLC

Date

Appendix A

(Telemarketing Sales Rule)

§ 310.2

16 CFR Ch. I (1...1...16 Edition)

(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) Charitable contribution means any donation or gift of money or any other thing of value.

(g) Commission means the Federal Trade Commission.

(h) Credit means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(i) Credit card means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(j) Credit card sales draft means any record or evidence of a credit card transaction.

(k) Credit card system means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.

(l) Customer means any person who is or may be required to pay for goods or services offered through telemarketing.

(m) Debt relief service means any program or service represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a person and one or more unsecured creditors or debt collectors, including, but not limited to, a reduction in the balance, interest rate, or fees owed by a person to an unsecured creditor or debt collector.

(n) Donor means any person solicited to make a charitable contribution.

(o) Established business relationship means a relationship between a seller and a consumer based on:

(1) the consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and seller, within the eighteen (18) months immediately preceding the date of a telemarketing call; or

(2) the consumer's inquiry or application regarding a product or service offered by the seller, within the three (3) months immediately preceding the date of a telemarketing call.

(p) Free-to-pay conversion means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period.

(q) Investment opportunity means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.

(r) Material means likely to affect a person's choice of, or conduct regarding, goods or services or a charitable contribution.

(s) Merchant means a person who is authorized under a written contract with an acquirer to 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.

(t) Merchant agreement means a written contract between a merchant and an acquirer to 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.

(u) 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.

Federal Trade Commission

(v) 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.

(w) Person means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

(x) 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.

(y) Prize means anything offered, or

For purposes of this definition, chance

and demand at the time of the offer or the time of the offer, the telemarketer does not identify the specific

§ 310.3

sent by a money transfer provider and received in the form of cash. 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 institution. The term cash-to-cash money transfer 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 1005.20, pertaining to gift cards; or
- (3) Subject to the Truth in Lending Act, 15 U.S.C. 1601 et seq.

(g) Cash reload mechanism is a device, authorization code, personal identification number, or other security measure that makes it possible for a person to convert cash into an electronic (as defined in section 106(2) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7006(2)) form that can be used to add funds to a general-use prepaid card, as defined in Regulation E, 12 CFR 1005.2, or an account with a payment intermediary. For purposes of this definition, a cash reload mechanism is not itself a general-use prepaid debit card or a swipe reload process or similar method in which funds are added directly onto a person's own general-use prepaid card or account with a payment intermediary.

* * * * *

(cc) Remotely created payment order means any payment instruction or order drawn on a person's account that is created by the payee or the payee's agent and 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 Payment, 12 CFR 201.48T n. -0.00281fffU.S.bnnm thayP drawn on a Payment order

Federal Trade Commission

- (v) All material costs or conditions to receive or redeem a prize that is the subject of the prize promotion;
- (vi) In the sale of any goods or serv-

§ 310.4

16 CFR Ch. I (1...1...16 Edition)

(3) Requesting or receiving payment of any fee or consideration from a person for goods or services represented to recover or otherwise assist in the return of money or any other item of value paid for by, or promised to, that person in a previous telemarketing transaction, until seven (7) business days after such money or other item is delivered to that person. This provision shall not apply to goods or services provided to a person by a licensed attorney;

(4) Requesting or receiving payment of any fee or consideration in advance of 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 the entire debt amount are those owed at the time the debt was enrolled in the service; or

(2) Is a percentage of the amount saved as a result of the renegotiation, settlement, reduction, or alteration. The percentage charged cannot change from one individual debt to another. The amount saved is the difference between the amount owed at the time the debt was enrolled in the service and the

amount actually paid to satisfy the debt.

(ii) Nothing in § 310.4(a)(5)(i) prohibits requesting or requiring the customer to place funds in an account to be used for the debt relief provider's fees and for payments to creditors or debt collectors in connection with the renegotiation, settlement, reduction, or other alteration of the terms of payment or other terms of a debt, provided that:

(A) The funds are held in an account at an insured financial institution;

(B) The customer owns the funds held in the account and is paid accrued interest on the account, if any;

(C) The entity administering the account is not owned or controlled by, or in any way affiliated with, the debt collectors or any other person, if any;

(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

(B) 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 organization's customer or donor service telephone number, which is answered during regular business hours.

(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);

(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:

(i) 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 signature ~~of~~

be placed ish to receive

§ 310.4

16 CFR Ch. I (1...1...16 Edition)

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 prerecorded messages by or on behalf of a specific seller; and

(iv) Includes such person's telephone number and signature;⁶⁶⁵ and

(B) In any such call to induce the purchase of any good or service, or to induce a charitable contribution from a member of, or previous donor to, a non-profit charitable organization on whose behalf the call is made, the seller or telemarketer:

(i) Allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call; and

(ii) Within two (2) seconds after the completed greeting of the person called, plays a prerecorded message that promptly provides the disclosures required by § 310.4(d) or (e), followed immediately by a disclosure of one or both of the following:

(A) In the case of a call that could be answered in person by a consumer, that the person called can use an automated interactive voice and/or keypress-activated opt-out mechanism to assert a Do Not Call request pursuant to § 310.4(b)(1)(iii)(A) at any time during the 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

⁶⁶⁵ 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.

(3) Be available for use at any time during the message; and

(B) In the case of a call that could be answered by an answering machine or voicemail service, that the person called can use a toll-free telephone number to assert a Do Not Call request pursuant to § 310.4(b)(1)(iii)(A). The number provided must connect directly to an automated interactive voice or keypress-activated opt-out mechanism that:

(1) Automatically adds the number called to the seller's entity-specific Do Not Call list;

(2) Immediately thereafter disconnects the call; and

(3) Is accessible at any time throughout the duration of the telemarketing campaign; and

(iii) Complies with all other requirements of this part and other applicable federal and state laws.

(C) Any call that complies with all applicable requirements of this paragraph (v) shall not be deemed to violate § 310.4(b)(1)(iv) of this part.

(D) This paragraph (v) shall not apply to any outbound telephone call that delivers a prerecorded healthcare message made by, or on behalf of, a covered entity or its business associate, as those terms are defined in the HIPAA Privacy Rule, 45 CFR 160.103.

(2) It is an abusive telemarketing act or practice and a violation of this Rule for any person to sell, rent, lease, purchase, or use any list established to comply with § 310.4(b)(1)(iii)(A), or maintained by the Commission pursuant to § 310.4(b)(1)(iii)(B), for any purpose except compliance with the provisions of this Rule or otherwise to prevent telephone calls to telephone numbers on such lists.

(3) A seller or telemarketer will not be liable for violating § 310.4(b)(1)(ii) and (iii) if it can demonstrate that, as part of the seller's or telemarketer's routine business practice:

(i) It has established and implemented written procedures to comply with § 310.4(b)(1)(ii) and (iii);

(ii) It has trained its personnel, and any entity assisting in its compliance, in the procedures established pursuant to § 310.4(b)(3)(i);

(iii) The seller, or a telemarketer or another person acting on behalf of the

Federal Trade Commission

§ 310.4

seller or charitable organization, has maintained and recorded a list of telephone numbers the seller or charitable organization may not contact, in compliance with § 310.4(b)(1)(iii)(A);

(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 of the "do-not-call" registry obtained from the Commission no more than thirty-one (31) days prior to the date any call is made, and maintains records documenting this process;

(v) The seller or a telemarketer or another person acting on behalf of the seller or charitable organization, monitors and enforces compliance with the procedures established pursuant to § 310.4(b)(3)(i); and

(vi) Any subsequent call otherwise violating § 310.4(b)(1)(ii) or (iii) is the result of error.

(4) A seller or telemarketer will not be liable for violating § 310.4(b)(1)(iv) if:

(i) The seller or telemarketer employs technology that ensures abandonment of no more than three (3) percent of all calls answered by a person, measured over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues.

(ii) The seller or telemarketer, for each telemarketing call placed, allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call;

(iii) Whenever a sales representative is not available to speak with the person answering the call within two (2) seconds after the person's completed greeting, the seller or telemarketer promptly plays a recorded message that states the name and telephone number of the seller on whose behalf the call was placed⁶⁶⁶; and

(iv) The seller or telemarketer, in accordance with § 310.5(b)-(d), retains records establishing compliance with § 310.4(b)(4)(i)-(iii).

⁶⁶⁶ This provision does not affect any seller's or telemarketer's obligation to comply with relevant state and federal laws, including but not limited to the TCPA, 47 U.S.C. 227, and 47 CFR part 64.1200.

(c) Calling time restrictions. Without the prior consent of a person, it is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in outbound telephone calls to a person's residence at any time other than between 8:00 a.m. and 9:00 p.m. local time at the called person's location.

(d) Required oral disclosures in the sale of goods or services. It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer in an outbound telephone call or internal or external upsell to induce the purchase of goods or services to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:

(1) The identity of the seller;

(2) That the purpose of the call is to sell goods or services;

(3) The nature of the goods or services; and

(4) That no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered and that any purchase or payment will not increase the person's chances of winning. This disclosure must 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 that the information in the upsell differs from the disclosures provided in the initial telemarketing transaction.

(e) Required oral disclosures in charitable solicitations. It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer, in an outbound telephone call to induce a charitable contribution, to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:

(1) The identity of the charitable organization on behalf of which the request is being made; and

§ 310.5

amount paid by the customer for the goods or services;⁶⁶⁷

(4) The name, any fictitious name used, the last known home address and telephone number, and the job title(s) for all current and former employees directly involved in telephone sales or solicitations; provided, however, that if the seller or telemarketer permits fictitious names to be used by employees, each fictitious name must be traceable to only one specific employee; and

(5) All verifiable authorizations or records of express informed consent or express agreement required to be provided or received under this Rule.

(b) A seller or telemarketer may keep the records required by § 310.5(a) in any form, and in the same manner, format, or place as they keep such records in the ordinary course of business. Failure to keep all records required by § 310.5(a) shall be a violation of this Rule.

(c) The seller and the telemarketer calling on behalf of the seller may, by written agreement, allocate responsibility between themselves for the recordkeeping required by this Section. When a seller and telemarketer have entered into such an agreement, the terms of that agreement shall govern, and the seller or telemarketer, as the case may be, need not keep records that duplicate those of the other. If the agreement is unclear as to who must 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 main-

tain 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);

anations isot coveli-erdand thy-pnt exj 0.16

anat doeeme tomail licitations provided,

⁶⁶⁷ For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 et seq., and Regulation Z, 12 CFR 226, compliance with the recordkeeping requirements under the Truth in Lending Act, and Regulation Z, shall constitute compliance with § 310.5(a)(3) of this Rule.

§ 310.7

or donor in response to an advertisement relating to investment opportunity

Federal Trade Commission

action on the Commission, if feasible,
prior to its initiating an action under
this Rule. The notice shall be sent to
the Office of the Director, Bureau of

§ 310.9

16 CFR Ch. I (1...1...16 Edition)

of data for the remainder of the annual period.

(e) Access to the National Do Not Call Registry is limited to telemarketers, sellers, others engaged in or causing others to engage in telephone calls to consumers, service providers acting on behalf of such persons, and any government agency that has law enforcement authority. Prior to accessing the National Do Not Call Registry, a person must provide the identifying information required by the operator of the registry to collect the fee, and must certify, under penalty of law, that the person is accessing the registry solely to comply with the provisions of this Rule or to otherwise prevent telephone calls to telephone numbers on the registry. If the person is accessing the registry on behalf of sellers, that person also must identify each of the sellers on whose behalf it is accessing the registry, must provide each seller's unique account number for access to the national registry, and must certify, under penalty of law, that the sellers will be using the information gathered from the registry solely to comply with the provisions of this Rule or otherwise to prevent telephone calls to telephone numbers on the registry.

[75 FR 48516, Aug. 10, 2010; 75 FR 51934, Aug. 24, 2010, as amended at 77 FR 51697, Aug. 27, 2012; 78 FR 53643, Aug. 30, 2013; 79 FR 51478, Aug. 29, 2014]

EFFECTIVE DATE NOTE : At 80 FR 77560, Dec. 14, 2015, § 310.8 was amended by revising paragraph (c), effective Feb. 16, 2016. For the convenience of the user, the revised text is set forth as follows:

§ 310.8 Fee for access to the National Do Not Call Registry.

* * * * *

(c) The annual fee, which must be paid by any person prior to obtaining access to the National Do Not Call Registry, is \$60 for each area code of data accessed, up to a maximum of \$16,482; 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 arrangement to share the cost of accessing the National Do Not Call Registry, including any arrangement with any telemarketer or service provider to divide the costs to access the registry among various clients of that telemarketer or service provider.

* * * * *

§ 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.