

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

STIPULATED ORDER FOR PERMANENT INJUNCTION AND MONETARY JUDGMENT
AS TO DEFENDANTS DATADECK LLC AND ROMIL BHATIA

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 seq (“CSPA”). Plaintiffs and Defendants Datadeck LLC and Romil Bhatia (collectively, the “Bhatia 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, Bhatia Defendants admit the facts necessary to establish jurisdiction.

4. Bhatia 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. Bhatia Defendants 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:

1. “Bhatia Defendants” means Bhatia Individual Defendant and Bhatia Corporate Defendant, individually, collectively, or in any combination.

a. “Bhatia Corporate Defendant” means Datadeck LLC, and its successors, assigns, or subsidiaries.

b. “Bhatia Individual Defendant” means Romil Bhatia, and by whatever names he is known.

2. “Defendants” means, individually, collectively, or in any combination, Repair All PC, LLC, Pro PC Repair LLC, I Fix PC LLC, WebTech World LLC, Online Assist LLC, Datadeck LLC, I Fix PC, also d/b/a Techers247, Jessica Marie Serrano, Dishant Khanna, Mohit Malik, Romil Bhatia, Lalit Chadha, and Roopkala Chadha.

3. “Person” means a natural person, organization, or other legal entity, including a corporation, limited liability company, partnership, proprietorship, association, cooperative,

II. PROHIBITION AGAINST DECEPTIVE TELEMARKETING

IT IS FURTHER ORDERED that Bhatia 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.

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 Bhatia Defendants, subject to the Subsections below.

C. Plaintiffs' agreement to this Order is expressly premised upon the promise by Bhatia Defendants to make payments timely as described in Subsection B above. If, upon motion by any Plaintiff, the Court finds that Bhatia Defendants have defaulted on any obligation to make a payment as required by this Order, then the judgment becomes immediately due as to Bhatia 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 Bhatia Defendants' sworn financial statements and related documents (collectively, "financial representations") submitted to Plaintiffs, namely:

1. The Financial Statement of Bhatia Individual Defendant Romil Bhatia signed on July 12, 2017, including the attachments;
2. The Financial Statement of Bhatia Corporate Defendant Datadeck LLC signed by Bhatia Individual Defendant Romil Bhatia in July 2017, including the attachments;
3. The Financial Statement of Veda Canada Inc. dba IFix PC signed by Bhatia Individual Defendant Romil Bhatia on August 8, 2017, including the attachments; and
4. The Financial Statement of Travelohub Inc. signed by Bhatia Individual Defendant Romil Bhatia on August 9, 2017, including the attachments.

E. The suspension of the judgment will be lifted as to any Bhatia 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. Bhatia 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 Bhatia Corporate Defendant, 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, including in a proceeding to enforce their rights to any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.

I. The facts alleged in the Complaint establish all elements necessary to sustain an action by Plaintiffs pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.

J. Bhatia Defendants acknowledge that their Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which Bhatia Defendants previously submitted to Plaintiffs, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. §7701.

K. All money paid to Plaintiffs pursuant to this Order may be deposited into a fund administered by the FTC or its designee on behalf of Plaintiffs to be used for equitable relief,

including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Plaintiffs decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, Plaintiffs may apply any remaining money for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the practices alleged in the Complaint. Any money not 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. Bhatia 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 21, 2017 (Doc. 77) is modified as to Bhatia Defendants to permit the payments and transfers identified in this Section. Upon completion of those payments and transfers, the asset freeze is dissolved as to Bhatia Defendants.

M. The FTC may request any tax-related information, including amended tax returns and any other filings, that Bhatia Defendants have the authority to release. Within 14 days of receipt of a written request from a representative of the FTC, Bhatia Defendants must take all

necessary steps (such as filing a completed IRS Form 4506 or 8821) to cause the Internal Revenue Service or other tax authority to provide the information directly to the FTC.

VI. CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Bhatia 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, Bhatia 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 security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), that any Bhatia Defendant obtained prior to entry of this Order; and

C. Failing to destroy such customer information in all forms in their possession, custody, or control within 30 days after receipt of written direction to do so from a representative of the FTC.

Provided, however, that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by law, regulation, or court order.

VII. COOPERATION

IT IS FURTHER ORDERED that Bhatia 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. Bhatia Defendants must provide truthful and complete information, evidence, and testimony. Bhatia Individual Defendant must appear and Bhatia Corporate Defendant must cause its 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 Romil Bhatia from invoking any Fifth Amendment privilege against self-incrimination.

VIII. ORDER ACKNOWLEDGMENTS

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

A. Each Bhatia 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, Bhatia Individual Defendant for any business that he, individually or collectively with any other Defendants, is the majority owner or controls directly or indirectly, and Bhatia Corporate Defendant, must deliver a copy of this Order to:

1. All principals, officers, directors, and LLC managers and members;
2. All employees, agents, and 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 7 days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which a Bhatia Defendant delivered a copy of this Order, that Bhatia Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

IX. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Bhatia Defendants make timely submissions to the Commission:

A. One year after entry of this Order, each Bhatia Defendant must submit a

- d. Describe in detail whether and how that Bhatia 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, Bhatia Individual Defendant must:

a. Name, including aliases or fictitious name, or residence address; or

b. Title or role in any business activity, 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 identify the name, physical address, and any Internet address of the business or entity.

C. Each Bhatia Defendant must submit to Plaintiffs notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Bhatia Defendant within 14 days of its filing.

D. Any submission to Plaintiffs 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 representative of Plaintiffs in writing, all submissions to Plaintiffs 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; and State of Ohio, Office of Attorney General, Consumer Protection Section, 615 West Superior Avenue, Floor 11, Cleveland, Ohio 44113. The subject line must begin:

X. RECORDKEEPING

IT IS FURTHER ORDERED that Bhatia Defendants must create certain records for 15 years after entry of the Order, and retain each such record for 5 years. Specifically, Bhatia Corporate Defendant and Bhatia Individual Defendant for any business that such Bhatia

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, Plaintiffs are authorized to communicate directly with each Bhatia Defendant. Bhatia Defendants must permit representatives of Plaintiffs to interview any employee or other person affiliated with any Bhatia Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. Plaintiffs may use all other lawful means, including posing, through its representatives as consumers, suppliers, or other individuals or entities, to Bhatia Defendants or any individual or entity affiliated with Bhatia Defendants, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

D. Upon written request from a representative of Plaintiffs, any consumer reporting agency must furnish consumer reports concerning Bhatia Individual Defendant, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. §1681b(a)(1).

XII. RETENTION OF JURISDICTION


IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO ORDERED, this 26th day of January, 2018.

s/ Dan Aaron Polster
JUDGE DAN AARON POLSTER

SO STIPULATED AND AGR

FOR PLAINTIFFS:


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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

- 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 debt collectors, the time by which the debt relief service provider will make a bona fide settlement offer to each of them;
 - (B) to the extent that the service may include a settlement offer to any of the customer's creditors or debt collectors, the amount of money or the percentage of each outstanding debt that the customer must accumulate before the debt relief service provider will make a bona fide settlement offer to each of them;
 - (C)

- 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 a customer already has pursuant to 15 U.S.C. 1643;
 - (ix) Any material aspect of a 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); or
 - (x) Any material aspect of any debt relief service, including, but not limited to, the amount of money or the percentage of the debt amount that a customer may save by using such service; the amount of time necessary to achieve the represented results; the amount of money or the percentage of each outstanding debt that the customer must accumulate before the provider of the debt relief service will initiate attempts with the customer's creditors or debt collectors or make a bona fide offer to negotiate, settle, or modify the terms of the customer's debt; the effect of the service on a customer's creditworthiness; the effect of the service on collection efforts of the customer's creditors or debt collectors; the percentage or number of customers who attain the represented results; and whether a debt relief service is offered or provided by a non-profit entity.
- (3) Causing billing information to be submitted for payment, or collecting or attempting to collect payment for goods or services or a charitable contribution, directly or indirectly, without the customer's or donor's express verifiable authorization, except when the method of payment used is a credit card subject to protections of the Truth in Lending Act and Regulation ³ Z, a debit card subject to the protections of the Electronic Fund Transfer Act and Regulation ⁴ E, such authorization shall be deemed verifiable if any of the following means is employed:
- (i) Express written authorization by the customer or donor, which includes the customer's or donor's signature⁵;
 - (ii) Express oral authorization which is audio-recorded and made available

³ Truth in Lending Act, 15 U.S.C. 1601 ~~et~~ seq., and Regulation Z, 12 CFR Part 1026.

⁴ Electronic Fund Transfer Act, 15 U.S.C. 1693 ~~et~~ seq., and Regulation E, 12 CFR Part 1005.

⁵ For purposes of this Rule, the term "signature" include an electronic or digital form of signature, to

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);
- (C) The date(s) the debit(s), charge(s), or payment(s) will be submitted for payment;
- (D) The amount(s) of the debit(s), charge(s), or payment(s);
- (E) The customer's or donor's name;
- (F) The customer's or donor's billing information, identified with sufficient specificity such that the customer or donor understands what account will be used to collect payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction;
- (G) A telephone number for customer or donor inquiry that is answered during normal business hours; and
- (H) The date of the customer's or donor's oral authorization; or

(iii)

or the customer's or donor's billing information, and that includes call of [TJ -0.0002 Tc -0

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- 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 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 is an abusive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:
 - (1) Threats, intimidation, or the use of profane or obscene language;
 - (2) Requesting or receiving payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating until:
 - (i) The time frame in which the seller has represented all of the goods or services will be provided to that person has expired; and
 - (ii) The seller has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved. Nothing in this Rule should be construed to affect the requirement in the Fair Credit Reporting Act, 15 U.S.C. 1681, that a consumer report may only be obtained for a specified permissible purpose;
 - (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 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

- (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.

- 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
 - (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 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 and not of failure to obtain any information necessary to comply with a request pursuant to § 310.4(b)(1)(iii)(A) not to receive further calls by or on behalf of a seller or charitable organization.
- (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 pro6Tw T* rketer ur pr-1.3(if:s.)JTJ EMC /Lb

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

solicitation, including solicitations via the U.S. Postal Service, facsimile transmission, electronic mail, and other similar methods of delivery in which a solicitation is directed to specific address(es) or person(s), that clearly, conspicuously, and truthfully discloses all material information listed in § 310.3(a)(1) of this Rule, for any goods or services offered in the direct mail solicitation, and that contains no material misrepresentation regarding any item contained in § 310.3(d) of this Rule for any requested charitable contribution; provided, however, that this exemption does not apply to:

- (i) Calls initiated by a customer in response to a direct mail solicitation relating to prize promotions, investment opportunities, debt relief services, business opportunities other than business arrangements covered by the Franchise Rule or Business Opportunity Rule, or 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; and
- (7) Telephone calls between a telemarketer and any business to induce the purchase of goods or services or a charitable contribution by the business, except calls to induce the retail sale of nondurable office or cleaning supplies; provided, however, that § 310.4(b)(1)(iii)(B) and § 310.5 of this Rule shall not apply to sellers or telemarketers of nondurable office or cleaning supplies.

§ 310.7 Actions by states and private persons.

- (a) Any attorney general or other officer of a state authorized by the state to bring an action under the Telemarketing and Consumer Fraud and Abuse Prevention Act, and any private person who brings an action under that Act, shall serve written notice of its 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 Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, and shall include a copy of the state's or private person's complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the state or private person shall serve the Commission with the required notice immediately upon instituting its action.
- (b) Nothing contained in this Section shall prohibit any attorney general or other authorized state official from proceeding in state court on the basis of an alleged violation of any civil or criminal statute of such state.

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

- (a) It is a violation of this Rule for any seller to initiate, or cause any telemarketer to initiate, an outbound telephone call to any person whose telephone number is within a given area code unless such seller, either directly or through another person, first has paid the annual fee, required by § 310.8(c), for access to telephone numbers within that area code that are included in the National Do Not Call Registry maintained by the Commission under § 310.4(b)(1)(iii)(B); 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.

ATTACHMENT B

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, accessories, uses, or benefits that it does not have;
- (2) That the subject of a consumer transaction is of a particular standard, quality, grade, style, prescription, or model, if it is not;
- (3) That the subject of a consumer transaction is new, or unused, if it is not;
- (4) That the subject of a consumer transaction is available to the consumer for a reason that does not exist;
- (5) That the subject of a consumer transaction has been supplied in accordance with a previous representation if

it has not, except that the act of a supplier in furnishing similar merchandise of equal or greater value as a good

[REDACTED]

commercial mobile radio service insofar as such provider is engaged in the provision of commercial mobile radio service. However, when that provider is engaged in the provision of commercial mobile radio service, it is not a common carrier.

[REDACTED]

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

[REDACTED]

transaction.

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

[REDACTED]