

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

**VERSATILE MARKETING SOLUTIONS,
INC.**, a Massachusetts corporation, also doing
business as VMS Alarms, VMS, Alliance
Security, and Alliance Home Protection,

and

JASJIT GOTRA, individually and as an
officer of Versatile Marketing Solutions, Inc.,

Defendants.

Case No. 1:14-cv-10612

**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 (“FTC” or “Commission”), pursuant to Section 16(a)(1) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 56(a)(1), 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 (the “Telemarketing Act”), 15 U.S.C. § 6105, to obtain monetary civil penalties, a permanent injunction, and other relief for Defendants’ violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC’s Telemarketing Sales Rule (the “TSR” or “Rule”), as amended, 16 C.F.R. Part 310 (2013).

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(m)(1)(A), 53(b), and 56(a). This action arises under 15 U.S.C. § 45(a).

3. Venue is proper in this District under 28 U.S.C. §§ 1391(b)-(c) and 1395(a), and 15 U.S.C. § 53(b). Defendants reside in and transact business in this District.

DEFENDANTS

4. Defendant Versatile Marketing Solutions, Inc., (“VMS”), also doing business as VMS Alarms, VMS, Alliance Security, or Alliance Home Protection, is a for-profit Massachusetts corporation with its principal place of business at 2720 N. Stemmons Freeway, Suite #300, Dallas, TX 75207. VMS is a seller and telemarketer that initiates outbound telephone calls to induce consumers to purchase goods or services from VMS. VMS transacts or has transacted business in this district.

5. Defendant Jasjit Gotra is the founder, chief executive officer, registered agent, and owner of VMS. In connection with the matters alleged herein, Gotra resides in or has transacted business in this District. At all times material to this Complaint, acting alone or in concert with others, Gotra has had the authority and responsibility to prevent or correct unlawful telemarketing practices of VMS, and has formulated, directed, controlled, or participated in the acts and practices of VMS, including the acts and practices set forth in this Complaint.

6. At all times relevant to this complaint, Defendants have maintained a substantial course of trade or business in marketing goods or services via the telephone, in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

THE TELEMARKETING SALES RULE
AND THE NATIONAL DO NOT CALL REGISTRY

7. Congress directed the Commission to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108. The Commission adopted the original TSR in 1995, extensively amended it in 2003, and amended certain provisions thereafter. 16 C.F.R. Part 310.

8. Among other things, the 2003 amendments to the TSR established a do-not-call registry, maintained by the Commission (the “National Do Not Call Registry” or “Registry”), of consumers who do not wish to receive certain types of telemarketing calls. Consumers can register their telephone numbers on the Registry without charge either through a toll-free telephone call or over the Internet at donotcall.gov.

9. Consumers who receive telemarketing calls to their registered numbers can complain of Registry violations the same way they registered, through a toll-free telephone call or over the Internet at donotcall.gov, or by otherwise contacting law enforcement authorities.

10. The FTC allows sellers, telemarketers, and other permitted organizations to access the Registry over the Internet at telemarketing.donotcall.gov, to pay the fee(s) if required, and to download the numbers not to call.

11. Under the TSR, a “telemarketer” means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor. 16 C.F.R. § 310.2(cc). A “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. *Id.* § 301.2(aa).

12. Under the TSR, an “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. 16 C.F.R. § 310.2(v).

13. 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).

14. The TSR prohibits sellers and telemarketers from initiating an outbound telephone call to any consumer when that consumer 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. 16 C.F.R. § 310.4(b)(1)(iii)(A).

15. 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).

DEFENDANTS’ BUSINESS PRACTICES

16. VMS is a “seller” and “telemarketer” engaged in “telemarketing,” as those terms are defined in the TSR.

17. VMS is a seller of home security systems and home security monitoring services.

18. VMS is also a telemarketer that initiates outbound telephone calls to consumers in the United States to induce the purchase of its home security goods and services.

19. VMS has engaged in telemarketing by a plan, program, or campaign conducted to induce the purchase of goods or services by the use of one or more telephones and which involves more than one interstate telephone call.

20. VMS’s telemarketing operation involves two steps. First, VMS buys sales leads from lead generation companies, where the lead generation companies represent that the leads

have given their permission to be called about home security systems and home security monitoring. Second, VMS calls the leads to induce the purchase of VMS's home security goods and services.

21. VMS has bought and called millions of sales leads from various lead generators. Between November 2011 and July 2012, VMS initiated more than 2 million outbound telephone calls to consumers to market and sell its home security goods and services.

22. Using these leads to induce the purchase of VMS's goods or services, VMS initiated millions of outbound telephone calls to telephone numbers on the National Do Not Call Registry. Between November 2011 and July 2012 VMS made at least 1 million outbound telephone calls to phone numbers listed on the National Do Not Call Registry.

23. Using these leads to induce the purchase of VMS's goods or services, VMS has initiated hundreds of thousands of outbound telephone calls consumers who have previously informed VMS that they do not wish to receive calls by or on behalf of VMS. Between November 2011 and July 2012, VMS placed at least one-hundred thousand outbound telephone calls to phone numbers of consumers who had previously asked VMS not to contact them.

24. During its telemarketing calls, VMS tells consumers that they have been selected to receive a free home security system so long as the consumer agrees to purchase a multi-year home security monitoring plan.

25. VMS claims that it buys most of its sales leads from lead generators which purport that they have obtained consumers' express consent to receive telemarketing calls about a home security system or that the consumer has requested additional information about having a home security system installed in their home.

26. For example, VMS bought leads for more than four years from a lead generation company that called consumers purportedly to conduct a “safety survey.”

27. The “safety survey” calls were placed to consumers whose telephone numbers were listed on the National Do Not Call Registry and to consumers who had not given the lead generator or VMS permission or consent to call them.

28. The “safety survey” included generic questions such as, “Do you have at least 2 smoke detectors in your home?”, “Do you have fire extinguishers in your home?”, and “[W]hen it comes to protecting the home and family, would your main concern [sic] for fires, burglaries or medical emergencies?”.

29. The “safety survey” would then ask consumers to provide their name and indicate whether they owned their homes.

30. The “safety survey” would then close with the following: “For participating in our survey, there is a chance you could be selected to receive a new G.E. Life Safety System. If you are selected, when would be the best time to reach you?”

31. If a consumer provided a time to call and indicated that he or she was a homeowner, the lead generator sold the consumer’s name and telephone number as a home security lead.

32. VMS purchased thousands of these “safety survey” home security leads. At its peak, VMS bought 20,000 “safety survey” home security leads every month.

33. At no time during these “safety survey” lead generation calls did the lead generator indicate to consumers that they would be receiving a follow-up call from VMS.

34. The “safety survey” was not a bona fide survey. Rather, the lead generator used “safety survey” as a pretext to identify consumers who might be interested in purchasing a home security system or home security monitoring services and receive calls regarding such interest.

35. VMS also has purchased leads from lead generators who, since September 1, 2009, have used outbound telephone calls that deliver prerecorded messages. These types of calls are commonly referred to as “robocalls.”

36. For example, VMS bought leads from lead generators that use robocalls often featuring a male voice claiming to be “Tom from Home Protection.” These robocalls typically cite FBI burglary statistics and ask consumers to press “1” to hear about the installation of a free home security system, often if the consumer is willing to place a small sign in his or her yard. Consumers who press “1” on their telephones in response to the robocall message then hear a message telling them that a representative will call them back shortly about the free home security system.

37. If a consumer presses “1” on their telephone in response to the robocall to indicate interest in a free home security system, these lead generators sell the consumer’s telephone number as a home security lead.

38. VMS purchased thousands of these robocall-generated home security leads.

39. At its peak, VMS bought 20,000 robocall-generated home security leads from one such lead generator every week.

40. These home security lead generation robocalls were sent to consumers whose telephone numbers were listed on the National Do Not Call Registry and to consumers who had not given the lead generators their express written consent to receive robocalls from the lead generators or VMS.

41. The home security lead generation robocalls did not inform consumers that VMS would be contacting them about the installation of a free home security system.

42. VMS has received numerous complaints about both the “safety survey” and robocall lead generation calls.

43. When VMS called the leads it purchased from the “safety survey” and robocall lead generators, many consumers complained to VMS that they had received a robocall and/or that they had been called despite the fact that their phone numbers were on the National Registry.

VIOLATIONS OF THE TELEMARKETING SALES RULE

Count I

Calls to Persons Registered on the National Do Not Call Registry

44. In numerous instances, in connection with telemarketing, Defendants have initiated or caused others to initiate an outbound telephone call to a person’s telephone number on the National Do Not Call Registry in violation of the TSR. 16 C.F.R. § 310.4(b)(1)(iii)(B).

Count II

Ignoring Entity-Specific Do Not Call Requests

45. In numerous instances, in connection with telemarketing, Defendants have initiated or caused others to initiate an outbound telephone call to a person who has previously stated that he or she does not wish to receive such a call made by or on behalf of the seller whose goods or services are being offered in violation of the TSR. 16 C.F.R. § 310.4(b)(1)(iii)(A).

CONSUMER INJURY

46. Consumers in the United States have suffered and will suffer injury as a result of Defendants’ violations of the TSR. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

47. 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.

48. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, and as implemented by 16 C.F.R. § 1.98(d), authorizes this Court to award monetary civil penalties of up to \$11,000 for each violation of the TSR on or before February 9, 2009, see 16 C.F.R. § 1.98(d) (2009), and up to \$16,000 for each violation of the TSR after February 9, 2009, 16 C.F.R. § 1.98(d) (2013). Defendants' violations of the TSR were committed with the knowledge required by Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

49. This Court, in the exercise of its equitable jurisdiction, may award ancillary relief to remedy injury caused by Defendants' violations of the TSR and the FTC Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court, as authorized by Sections 5(a), 5(m)(1)(A), and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), and pursuant to its own equitable powers:

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

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

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

D. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Dated: 3/10/14

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA:

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