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CLEGG, U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

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16 IN THE UNITED STATES DISTRICT COURT
 17 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 18 WESTERN DIVISION

19
 20 UNITED STATES OF AMERICA,
 21 Plaintiff,
 22 v.
 23 DIRECTV, Inc., a California Corporation;
 24 D.R.D., Inc. also d/b/a Power Direct,
 an Ohio Corporation;
 25 Daniel R. Delfino, individually and
 26 as an officer of D.R.D., Inc.;
 27 Nomrah Records also d/b/a Direct
 Activation, a Florida Corporation;
 28

) SACV05 1211
) Civ. No.

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

DOC 10

1 Mark Harmon, individually and as an)
 officer of Nomrah Records;)
 2)
 3 Communication Concepts, LLC also d/b/a)
 Rogers Group, a Tennessee Corporation;)
 4)
 5 Jim Turner, individually and as an)
 officer of Communication Concepts;)
 6)
 7 American Communications of the Triad,)
 a North Carolina Corporation;)
 8)
 9 Michael Gibson, individually and as an)
 officer of American Communications of)
 the Triad;)
 10)
 11 Global Satellite, LLC. also d/b/a)
 Mavcomm, a California Corporation;)
 12)
 13 William King, individually and as an)
 officer of Global Satellite, also)
 d/b/a Mavcomm; and)
 14)
 15 Michael Gleason, individually and as an)
 officer of Global Satellite, also)
 d/b/a Mavcomm,)
 16)
 17 Defendants.)

16 Plaintiff, the United States of America, acting upon
 17 notification and authorization to the Attorney General by the
 18 Federal Trade Commission ("FTC" or "Commission"), pursuant to
 19 Section 16(a)(1) of the Federal Trade Commission Act ("FTC Act"),
 20 15 U.S.C. § 56(a)(1), for its complaint alleges:

21 1. Plaintiff brings this action under Sections 5(a),
 22 5(m)(1)(A), 13(b), 16(a) and 19 of the FTC Act, 15 U.S.C.
 23 §§ 45(a), 45(m)(1)(A), 53(b), 56(a) and 57b, and Section 6
 24 of the Telemarketing and Consumer Fraud and Abuse Prevention
 25 Act (the "Telemarketing Act"), 15 U.S.C. § 6105, to obtain
 26 monetary civil penalties, a permanent injunction, and other
 27 equitable relief for Defendants' violations of Section 5(a)
 28 of the FTC Act, 15 U.S.C. § 45(a), and the FTC's

1 Telemarketing Sales Rule (the "TSR" or "Rule"), 16 C.F.R.
2 Part 310, as amended by 68 Fed. Reg. 4580, 4669 (January 29,
3 2003).

4 JURISDICTION AND VENUE

5 2. This Court has subject matter jurisdiction over this action
6 pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and
7 15 U.S.C. §§ 45(m)(1)(A), 53(b), 56(a) and 57b. This action
8 arises under 15 U.S.C. § 45(a).

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

11 DEFENDANTS

12 4. DIRECTV, Inc. ("DIRECTV") is a California corporation with
13 its principal place of business at 2230 East Imperial
14 Highway, El Segundo, California 90245. Defendant DIRECTV is
15 a seller of DIRECTV programming. DIRECTV transacts or has
16 transacted business in the Central District of California.

17 5. Defendant D.R.D., Inc. is an Ohio corporation with its
18 principal place of business at 2320 Superior Avenue,
19 Cleveland, Ohio 44114. Defendant D.R.D., Inc. is a
20 telemarketer that initiates or initiated outbound telephone
21 calls to induce consumers to purchase goods or services from
22 DIRECTV. Defendant D.R.D., Inc. transacts or has transacted
23 business in the Central District of California.

24 6. Defendant Daniel R. Delfino is an officer of D.R.D., Inc.
25 Acting alone or in concert with others, he has formulated,
26 directed, controlled or participated in the acts or
27 practices set forth in the complaint. Defendant Delfino
28 resides, transacts or has transacted business in the Central

1 District of California.

2 7. Defendant Nomrah Records is a Florida corporation with its
3 principal place of business at 774 South North Lake Blvd.,
4 Suite 1016, Altamonte Springs, Florida 32701. Defendant
5 Nomrah Records is a telemarketer that directly or through
6 another entity initiates or initiated outbound telephone
7 calls to induce consumers to purchase goods or services from
8 DIRECTV. Nomrah Records transacts or has transacted
9 business in the Central District of California.

10 8. Defendant Mark Harmon is an officer of Nomrah Records.
11 Acting alone or in concert with others, he has formulated,
12 directed, controlled or participated in the acts or
13 practices set forth in the complaint. Defendant Harmon
14 resides, transacts or has transacted business in the Central
15 District of California.

16 9. Defendant Communication Concepts is a Tennessee corporation
17 with its principal place of business at 4802 Old Hickory
18 Blvd., Hermitage, Tennessee 37076. Defendant Communication
19 Concepts is a telemarketer that directly or through another
20 entity initiates or initiated outbound telephone calls to
21 induce consumers to purchase goods or services from DIRECTV.
22 Communication Concepts transacts or has transacted business
23 in the Central District of California.

24 10. Defendant Jim Turner is an officer of Communication
25 Concepts. Acting alone or in concert with others, he has
26 formulated, directed, controlled or participated in the acts
27 or practices set forth in the complaint. Defendant Turner
28 resides, transacts or has transacted business in the Central

1 District of California.

2 11. Defendant American Communications of the Triad ("American
3 Communications") is a North Carolina corporation with its
4 principal place of business at 120 Westview Place, High
5 Point, North Carolina 27260. Defendant American
6 Communications is a telemarketer that directly or through
7 another entity initiates or initiated outbound telephone
8 calls to induce consumers to purchase goods or services from
9 DIRECTV. American Communications transacts or has
10 transacted business in the Central District of California.

11 12. Defendant Michael Gibson is an officer of American
12 Communications. Acting alone or in concert with others, he
13 has formulated, directed, controlled or participated in the
14 acts or practices set forth in the complaint. Defendant
15 Gibson resides, transacts, or has transacted business in the
16 Central District of California.

17 13. Defendant Global Satellite is a California corporation with
18 its principal place of business at 6-A Liberty, Suite 200,
19 Aliso Viejo, California 92656. Global Satellite was
20 previously named Mavcomm. Defendant Global Satellite is a
21 telemarketer that directly or through another entity
22 initiates or initiated outbound telephone calls to induce
23 consumers to purchase goods or services from DIRECTV.
24 Global Satellite transacts or has transacted business in the
25 Central District of California.

26 14. Defendant William King is an officer of Global Satellite.
27 Acting alone or in concert with others, he has formulated,
28 directed, controlled or participated in the acts or

1 practices set forth in the complaint. Defendant King
2 resides, transacts or has transacted business in the Central
3 District of California.

4 15. Defendant Michael Gleason is an officer of Global Satellite.
5 Acting alone or in concert with others, he has formulated,
6 directed, controlled or participated in the acts or
7 practices set forth in the complaint. Defendant Gleason
8 resides, transacts or has transacted business in the Central
9 District of California.

10 THE TELEMARKETING SALES RULE

11 AND THE NATIONAL DO NOT CALL REGISTRY

12 16. Congress directed the FTC to prescribe rules prohibiting
13 abusive and deceptive telemarketing acts or practices
14 pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108,
15 in 1994. On August 16, 1995, the FTC adopted the
16 Telemarketing Sales Rule (the "Original TSR"), 16 C.F.R.
17 Part 310, which became effective on December 31, 1995. On
18 January 29, 2003, the FTC amended the TSR by issuing a
19 Statement of Basis and Purpose ("SBP") and the final amended
20 TSR (the "Amended TSR"). 68 Fed. Reg. 4580, 4669.

21 17. Among other things, the Amended TSR established a "do-not-
22 call" registry, maintained by the Commission (the "National
23 Do Not Call Registry" or "Registry"), of consumers who do
24 not wish to receive certain types of telemarketing calls.
25 Consumers can register their telephone numbers on the
26 Registry without charge either through a toll-free telephone
27 call or over the Internet at www.donotcall.gov.

- 1 18. Consumers who receive telemarketing calls to their
2 registered numbers can complain of Registry violations the
3 same way they registered: through a toll-free telephone call
4 or over the Internet, or by otherwise contacting law
5 enforcement authorities.
- 6 19. Since October 17, 2003, sellers and telemarketers have been
7 prohibited from calling numbers on the Registry in violation
8 of the Amended TSR. 16 C.F.R. § 310.4(b)(1)(iii)(B).
- 9 20. Since September 2, 2003, sellers, telemarketers, and other
10 permitted organizations have been able to access the
11 Registry over the Internet at telemarketing.donotcall.gov to
12 download the registered numbers.
- 13 21. Since October 1, 2003, sellers and telemarketers have been
14 prohibited from abandoning any outbound telephone call by
15 not connecting the call to a representative within two (2)
16 second of the consumer's completed greeting. 16 C.F.R.
17 § 310.4(b)(1)(iv).
- 18 22. A "seller" is any person who, in connection with a
19 telemarketing transaction, provides, offers to provide, or
20 arranges for others to provide goods or services to the
21 customer in exchange for consideration. 16 C.F.R.
22 § 310.2(z).
- 23 23. A "telemarketer" is any person who, in connection with
24 telemarketing, initiates or receives telephone calls to or
25 from a customer or donor. 16 C.F.R. § 310.2(bb). A
26 telemarketer may initiate calls by hiring, retaining or
27 using another person to make the calls, or by actually
28 placing the calls itself.

- 1 24. "Person" means any individual, group, unincorporated
2 association, limited or general partnership, corporation, or
3 other business entity. 16 C.F.R. § 310.2(v).
- 4 25. It is a violation of the Amended TSR for a telemarketer
5 subject to the FTC's jurisdiction to call a number on the
6 Registry, or for a seller to cause a telemarketer subject to
7 the FTC's jurisdiction to do so. 16 C.F.R.
8 § 310.4(b)(1)(iii)(B).
- 9 26. It is a violation of the Amended TSR for a telemarketer
10 subject to the FTC's jurisdiction to "abandon" an outbound
11 telemarketing call, or for a seller to cause a telemarketer
12 subject to the FTC's jurisdiction to do so. 16 C.F.R.
13 § 310.4(b)(1)(iv). An outbound telephone call is abandoned
14 under this section if a person answers it and the
15 telemarketer does not connect the call to a sales
16 representative within two (2) seconds of the person's
17 completed greeting. 16 C.F.R. § 310.4(b)(1)(iv).
- 18 27. The use of pre-recorded message telemarketing, where a sales
19 pitch to a live consumer begins with or is made entirely by
20 a pre-recorded message, violates the Amended TSR because the
21 telemarketer is not connecting the call to a sales
22 representative within two seconds of the person's completed
23 greeting.
- 24 28. It is a violation of the Amended TSR for any person to
25 provide substantial assistance or support to any
26 telemarketer when that person knows or consciously avoids
27 knowing that the telemarketer is engaged in any practice
28

1 that violates § 310.4 of the Amended TSR. 16 C.F.R.
2 § 310.3(b).

3 29. A seller is liable for providing substantial assistance or
4 support to any telemarketer when the seller knows or
5 consciously avoids knowing that the telemarketer is engaged
6 in any practice that violates § 310.4 of the Amended TSR.

7 30. Substantial assistance means more than a mere casual or
8 incidental dealing with a seller or telemarketer that is
9 unrelated to a violation of the Rule. TSR SBP, 60 Fed. Reg.
10 43842 at 43852 (Aug. 23, 1995).

11 31. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C.
12 § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C.
13 § 57a(d)(3), a violation of the Amended TSR constitutes an
14 unfair or deceptive act or practice in or affecting
15 commerce, in violation of Section 5(a) of the FTC Act, 15
16 U.S.C. § 45(a).

17 DEFENDANTS' BUSINESS ACTIVITIES

18 32. Defendants are "seller[s]" or "telemarketer[s]" engaged in
19 "telemarketing," as defined by the Amended TSR, 16 C.F.R.
20 § 310.2.

21 33. Defendant DIRECTV is a seller of DIRECTV satellite
22 television programming. Defendant DIRECTV sells programming
23 to consumers throughout the United States. Consumers must
24 enter into contracts directly with DIRECTV to obtain the
25 programming.

26 34. Defendant DIRECTV markets its programming through a variety
27 of methods, including telemarketing.

- 1 35. Defendant DIRECTV entered into oral or written contractual
2 agreements with D.R.D., Nomrah Records, Communication
3 Concepts, American Communications and Global Satellite (the
4 "telemarketing Defendants").
- 5 36. The telemarketing Defendants are or were telemarketers of
6 DIRECTV programming.
- 7 37. Beginning on or about October 1, 2003, the telemarketing
8 Defendants have engaged in telemarketing on behalf of
9 Defendant DIRECTV.
- 10 38. Consumers who were contacted by the telemarketing Defendants
11 had to enter into separate agreements with Defendant DIRECTV
12 to obtain DIRECTV programming.
- 13 39. Beginning on or about October 17, 2003, the telemarketing
14 Defendants have directly, or through intermediaries, placed
15 outbound telephone calls to consumers' telephone numbers on
16 the National Do Not Call Registry.
- 17 40. Beginning on or about October 1, 2003, Defendant Global
18 Satellite has directly, or through intermediaries, abandoned
19 outbound telephone calls to consumers by failing to connect
20 the call to a representative within two (2) seconds of
21 consumers' completed greeting.
- 22 41. Acting on behalf of Defendant DIRECTV, Defendant D.R.D.
23 placed outbound telemarketing calls to consumers on the
24 Registry. For example, DIRECTV provided a customer contact
25 list to D.R.D. that, when the area codes were updated,
26 contained the telephone numbers of consumers who were on the
27 National Do Not Call Registry. On or after October 17,
28

1 2003, D.R.D. used the lead list provided by Defendant
2 DIRECTV and called consumers on the National Registry.
3 42. Acting on behalf of Defendant DIRECTV, the telemarketing
4 Defendants, beginning on or about October 17, 2003, have
5 placed outbound calls to consumers on the National Do Not
6 Call Registry. Defendant DIRECTV has offered to provide or
7 provided financial payments, such as hourly rates of pay and
8 commissions, for the telemarketing Defendants' marketing
9 services.
10 43. Acting on behalf of Defendant DIRECTV, Defendant Global
11 Satellite, beginning on or about October 1, 2003, has
12 abandoned outbound telephone calls to consumers by failing
13 to connect the call to a representative within two (2)
14 seconds of the consumer's completed greeting.
15 44. Defendant DIRECTV offered to provide or provided financial
16 payments to Defendant Global Satellite, such as commissions,
17 for marketing services.
18 45. Beginning on or about October 1, 2003, Defendant DIRECTV has
19 provided substantial assistance and support to at least
20 Global Satellite even though Defendant DIRECTV knew or
21 consciously avoided knowing that at least Global Satellite
22 was engaged in violations of § 310.4 of the TSR.
23 46. Defendant DIRECTV provides substantial assistance to
24 telemarketers by offering to pay or paying hourly rates and
25 commissions for marketing services, allowing telemarketers
26 to market DIRECTV goods or services, entering into contracts
27 with consumers contacted by the telemarketers, providing
28 services to consumers contacted by the telemarketers, and

1 collecting money from consumers contacted by the
2 telemarketers.

3 47. At all times relevant to this complaint Defendants have
4 maintained a substantial course of trade or business in the
5 offering for sale and sale of goods or services via the
6 telephone in or affecting commerce as "commerce" is defined
7 in Section 4 of the FTC Act, 15 U.S.C. § 44.

8 VIOLATIONS OF THE TELEMARKETING SALES RULE

9 Count I

10 (All Defendants - Violating the National Do Not Call Registry)

11 48. In numerous instances, in connection with telemarketing,
12 Defendants engaged in or caused others to engage in
13 initiating an outbound telephone call to a person's
14 telephone number on the National Do Not Call Registry in
15 violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B).

16 Count II

17 (Defendants DIRECTV and Global Satellite - Abandoning Calls)

18 49. In numerous instances, in connection with telemarketing,
19 Defendants DIRECTV and Global Satellite have abandoned or
20 caused others to abandon an outbound telephone call *i.e.*, to
21 fail to connect the call to a sales representative within
22 two (2) seconds of the completed greeting of the person
23 answering the call, in violation of the TSR, 16 C.F.R.
24 § 310.4(b)(1)(iv) and § 310.4(b)(4).

25 Count III

26 (Defendant DIRECTV - Assisting and Facilitating)

27 50. Defendant DIRECTV has provided substantial assistance and
28 support to at least Defendant Global Satellite even though

1 Defendant DIRECTV knew or consciously avoided knowing that
2 at least Defendant Global Satellite was engaged in
3 violations of § 310.4 of the TSR. Defendant DIRECTV,
4 therefore, has violated 16 C.F.R. § 310.3(b).

5 CONSUMER INJURY

6 51. Consumers in the United States have suffered and will suffer
7 injury as a result of Defendants' violations of the TSR.
8 Absent injunctive relief by this Court, Defendants are
9 likely to continue to injure consumers and harm the public
10 interest.

11 THIS COURT'S POWER TO GRANT RELIEF

12 52. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers
13 this Court to grant injunctive and other ancillary relief to
14 prevent and remedy any violation of any provision of law
15 enforced by the FTC.

16 53. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A),
17 as modified by Section 4 of the Federal Civil Penalties
18 Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as
19 amended, and as implemented by 16 C.F.R. § 1.98(d) (1997),
20 authorizes this Court to award monetary civil penalties of
21 not more than \$11,000 for each violation of the TSR.
22 Defendants' violations of the TSR were committed with the
23 knowledge required by Section 5(m)(1)(A) of the FTC Act, 15
24 U.S.C. § 45(m)(1)(A).

25 54. This Court, in the exercise of its equitable jurisdiction,
26 may award ancillary relief to remedy injury caused by
27 Defendants' violations of the Rule and the FTC Act.
28

1 PRAYER FOR RELIEF

2 WHEREFORE, Plaintiff requests that this Court, as authorized
3 by Sections 5(a), 5(m)(1)(A), 13(b) and 19 of the FTC Act, 15
4 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b) and 57b, and pursuant to its
5 own equitable powers:

- 6 1. Enter judgment against Defendants and in favor of Plaintiff
7 for each violation alleged in this complaint;
8 2. Award plaintiff monetary civil penalties from Defendants for
9 every violation of the TSR;
10 3. Permanently enjoin Defendants from violating the TSR and the
11 FTC Act;
12 4. Order Defendants to pay the costs of this action; and
13 5. Award Plaintiff such other and additional relief as the
14 Court may determine to be just and proper.

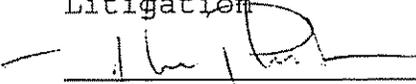
15 Dated: December 12, 2005

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