

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

**ENTREPRENEURIAL STRATEGIES,
LTD.;** and

DALE ALLISON, JR.,

Defendants.

Civil No. 2:06-CV-15 (WCO)

**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), and 16(a) of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), and 56(a), 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 equitable relief for defendants’ violation 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”), 16 C.F.R. Part 310, as amended by 68 Fed. Reg. 4580, 4669 (January 29, 2003).

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

4. Defendant Entrepreneurial Strategies, Ltd. (“Entrepreneurial Strategies”), is a for-profit Georgia corporation with its principal place of business at 90 Blue Ridge Street, Blairsville, Georgia. Entrepreneurial Strategies transacts or has transacted business in this District.
5. Defendant Dale Allison, Jr. (“Allison”), is the chief executive officer of

defendant Entrepreneurial Strategies. In connection with the matters alleged herein, Allison resides or has transacted business in this District. At all times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of defendant Entrepreneurial Strategies, including the acts and practices set forth in this complaint.

COMMERCE

6. At all times relevant to this complaint, defendants' course of business, including the acts and practices alleged herein, has been 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 FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108, in 1994. On August 16, 1995, the FTC adopted the Telemarketing Sales Rule, 16 C.F.R. Part 310, which became effective

on December 31, 1995. On January 29, 2003, the FTC amended the TSR by issuing a Statement of Basis and Purpose and the final amended TSR (the “Amended TSR”). 68 Fed. Reg. 4580, 4669.

8. The Telemarketing Act incorporates the jurisdictional limitations of the FTC Act. The Commission cannot enforce the Telemarketing Act and, therefore, the TSR, against corporations that are not organized for their own profit or the profit of their members within the meaning of Section 4 of the FTC Act, 15 U.S.C. § 44.
9. The Amended 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.
10. Since October 17, 2003, sellers and telemarketers have been prohibited from calling numbers on the Registry pursuant to Section 310.4(b)(1)(iii)(B) of the Amended TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B) (“the Do Not Call regulation” or “the DNC regulation”).

11. The Commission had earlier announced on April 3, 2003, that the DNC regulation would become effective on October 1, 2003. 68 Fed. Reg. 16238-16247 (2003).
12. The TSR prohibits a person from providing “substantial assistance or support” to any seller or telemarketer when that person “knows or consciously avoids knowing” that the seller or telemarketer is engaged in any act or practice that violates Sections 310.3(a), (c), or (d), or Section 310.4 of the Rule, including the DNC regulation. 16 C.F.R. § 310.3(b).
13. Defendants have provided document preparation or consulting services to persons who are “sellers” or “telemarketers” engaged in “telemarketing” as those terms are defined in the TSR. 16 C.F.R. §§ 310.2(z), (bb), and (cc).
14. 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 ACTIVITIES

15. Defendants provide business consulting services to for-profit and nonprofit corporations.
16. Beginning in September 2003, defendants provided business consulting services to Dale Buird, Jr. ("Buird"), and certain companies controlled by him.
17. Buird operated a for-profit business that solicited consumers to enroll in debt management programs called Debt Specialist of America, Inc. ("DSA"), a Florida corporation. DSA engaged in telemarketing. DSA caused prerecorded messages to be left on consumers' answering machines or voice mail systems stating that DSA could consolidate and obtain vastly lower rates of interest on the consumers' credit card debts. Consumers who telephoned DSA in response to these messages reached a DSA representative who elaborated on these claims and who sought consumers' agreement to enroll in a debt management program. DSA received a large fee -- usually hundreds of dollars -- from each consumer who agreed to enroll in the program.
18. Buird requested defendants' assistance in evading compliance with the Do

Not Call regulation. Buird sought to continue calling consumers whose numbers were protected by the National Do Not Call Registry in order to maximize the reach of his telemarketing campaign, and thus the potential revenues generated from the campaign.

19. In September 2003, Buird and defendant Allison discussed: (1) that the DNC regulation was slated to go into effect on October 1, 2003; (2) Buird's belief that companies organized as nonprofit, tax exempt corporations were exempt from compliance with the DNC regulation; (3) that Allison would secure the organization of a new nonprofit, tax exempt corporation for Buird -- Debt Management Foundation Services, Inc. ("DMFS") -- prior to October 1, 2003; and (4) how Buird could continue taking profits from his debt management business.
20. Defendants, their employees, or agents drafted articles of incorporation and bylaws for DMFS and, on or about September 22, 2003, sent these articles of incorporation to the Florida Secretary of State's office for filing. These articles represent that DMFS is organized exclusively for religious, charitable, scientific, literary, and educational purposes, within the meaning of Section 501(c)(3) of the Internal Revenue Code.

21. Defendants, their employees, or agents also drafted an application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code for DMFS and, on or about October 1, 2003, sent the DMFS application for tax exempt status to the IRS for filing.
22. Allison assisted Buird in devising and later implementing a plan to siphon profits from DMFS. This plan involved transferring funds from DMFS to a for-profit corporation controlled by Buird, and characterizing certain DMFS funds paid to Buird as payments on a note owed to Buird by DMFS.
23. Sometime in September 2003, Buird began operating his debt management marketing business under the DMFS name.
24. Between October 2003 and February 2004, DMFS left millions of messages on the answering machines or voice mail systems of consumers whose numbers were registered on the National Do Not Call Registry. In October 2003, Buird and Allison discussed the fact that DMFS was generating calls to such consumers. Allison received at least one complaint from such a consumer directly.
25. Notwithstanding the charitable purposes stated in the DMFS articles of incorporation prepared by defendants, Buird operated DMFS in essentially

the same manner that he operated DSA.

26. DMFS was never recognized by the IRS as a tax exempt corporation.
27. Buird or his companies paid defendant Entrepreneurial Strategies for the document preparation and consulting services described above.
28. On July 20, 2004, the FTC filed a lawsuit in the United States District Court for the Middle District of Florida against DMFS, DSA, Dale Buird, Jr., and certain other entities. *FTC v. Debt Management Foundation Services, Inc.*, No. 8:04-CV-1674-T-17MSS. Among other things, the Commission alleges in this suit that: (1) notwithstanding its incorporation papers, DMFS is organized to carry on business for its own profit or that of its members within the meaning of Section 4 of the FTC Act; (2) it is not exempt from compliance with the Do Not Call regulation; and (3) DMFS violated this regulation by engaging or causing telemarketers to engage in initiating outbound telephone calls to persons when those persons' telephone numbers were on the Registry.

COUNT ONE
VIOLATION OF THE TELEMARKETING SALES RULE

29. Defendants have provided substantial assistance or support to a seller or telemarketer when defendants knew or consciously avoided knowing the seller or telemarketer was engaged in, or causing telemarketers to engage in, initiating outbound telephone calls to any person when that person's telephone number was protected by the National Do Not Call Registry, in violation of Section 310.4(b)(1)(iii)(B) of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B).
30. Defendants' acts or practices alleged in Paragraph 29 constitute assisting and facilitating a TSR violation, in violation of Section 310.3(b) of the TSR, 16 C.F.R. § 310.3(b).

CONSUMER INJURY

31. 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

32. 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.
33. 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) (1997), authorizes this Court to award monetary civil penalties of not more than \$11,000 for each violation of the TSR. 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).

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), and 53(b), and pursuant to its own equitable powers:

- A. Enter judgment against defendants and in favor of plaintiff for the violation alleged in this complaint;
- B. Award plaintiff monetary civil penalties from each defendant for the alleged

violation;

- C. Permanently enjoin defendants from violating the TSR; and
- D. Award plaintiff such other and additional relief as the Court may determine to be just and proper.

Dated: _____

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Respectfully Submitted,

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