

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. _____ -Civ.

07-81051
CIV-ZLOCH
MAGISTRATE JUDGE
SNOW

UNITED STATES OF AMERICA

Plaintiff,

v.

ADT SECURITY SERVICES, INC., a

Delaware Corporation

Defendant.

**CONSENT DECREE AND
ORDER FOR CIVIL
PENALTIES, 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 the "Commission"), has commenced this action by filing the complaint herein, and Defendant ADT Security Services, Inc. ("Defendant" or "ADT"), has waived service of the summons and the complaint. The parties, represented by the attorneys whose names appear hereafter, have agreed to settlement of this action without adjudication of any issue of fact or law, and without Defendant admitting liability for any of the violations alleged in the complaint.

THEREFORE, on the joint motion of the parties, it is hereby **ORDERED, ADJUDGED AND DECREED** as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345 and 1355, and 15 U.S.C. §§ 45(m)(1)(A), 53(b), 56(a), and 57b.
2. Plaintiff and Defendant consent to jurisdiction and venue in this District.
3. The activities of Defendant are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. The complaint states a claim upon which relief may be granted against Defendant, under Sections 5(a), 5(m)(1)(A), 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), and 57b.
5. Defendant hereby waives all rights to appeal or otherwise challenge or contest the validity of this Order.
6. Defendant has agreed that this Order does not entitle Defendant to seek or to obtain attorneys' fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. § 2412, and Defendant further waives any rights to attorneys' fees that may arise under said provision of law.
7. Defendant denies any violations of the Telemarketing Sales Rule or any provisions of law cited in paragraph 4 above, but has entered into this Consent Decree ("Order") freely and without coercion in order to settle and resolve Plaintiff's claims

against it.

8. Entry of this Order is in the public interest.

DEFINITIONS

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

1. "Defendant" or "ADT" means ADT Security Services, Inc., its subsidiaries, officers, agents, servants, and employees.

2. The "Telemarketing Sales Rule" or "Rule" means the FTC Rule entitled "Telemarketing Sales Rule," 16 C.F.R. § 310, attached hereto as Appendix A.

3. "Customer" means any person who is or may be required to pay for goods or services offered through telemarketing.

4. "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.

5. "Person" means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

6. "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. The term does not include the solicitation of sales through the mailing of a catalog which: contains a written description or illustration of the goods or services offered for sale; includes the business

address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term "further solicitation" does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call or in a substantially similar catalog.

7. "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 Federal Trade Commission.

8. "Telemarketer" means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.

9. "Authorized Telemarketer" means a person that has received express, written authorization from ADT to use telemarketing to market ADT goods or services.

10. "National Do Not Call Registry" means the National Do Not Call Registry maintained by the Federal Trade Commission pursuant to 16 C.F.R. § 310.4(b)(1)(iii)(B).

11. "Established business relationship" means a relationship between the 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 person and seller, within the eighteen (18) 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 (3) months immediately preceding the date of a telemarketing call.

12. "ADT goods or services" means ADT residential security monitoring services and all other goods or services attendant to such residential security monitoring services.

13. "Authorized Marketer" means any person authorized by ADT to offer and sell ADT goods or services.

14. "Authorized Dealer" means any person with whom ADT has entered into an agreement authorizing that person to offer and install security systems incorporating ADT goods or services.

15. "Third party monitoring service" means a qualified, objective, independent third-party monitoring service experienced in successfully monitoring and reporting on compliance with the Do Not Call provisions of the Telemarketing Sales Rule.

ORDER

I. PROHIBITION AGAINST AN ABUSIVE PATTERN OF TELEMARKETING CALLS

IT IS HEREBY ORDERED that, in connection with telemarketing ADT goods or services, ADT is permanently restrained and enjoined

from engaging in, or causing telemarketers to engage in, violations of 16 C.F.R. § 310.4(b)(1)(iii) of the Telemarketing Sales Rule, including but not limited to:

A. Initiating any outbound telephone call to a person:

1. More than seven (7) days after that person has stated to ADT, or more than seven (7) days after ADT receives notice from a telemarketer that, he or she does not wish to receive an outbound telephone call made by or on behalf of ADT, unless the provisions of 16 C.F.R. § 310.4(b)(3) (the Telemarketing Sales Rule Do Not Call safe harbor) are met;
2. After 31 days have passed since that person's telephone number has been on the National Do Not Call Registry, unless:
 - a. ADT has obtained the express agreement, in writing, of such person to place calls to that person, clearly evidencing such person's authorization that calls made by or on behalf of ADT may be placed to that person, and including the telephone number to which the calls may be placed and the signature of that person; or
 - b. ADT has an established business relationship with such person, and that person has not stated to ADT or a telemarketer that he or she does not wish to receive outbound telephone calls pursuant to § 310.4(b)(1)(iii)(A) of the Telemarketing Sales Rule;

or

- c. The provisions of 16 C.F.R. § 310.4(b)(3) (the Telemarketing Sales Rule Do Not Call safe harbor) are met.
- B. If the Commission amends the Telemarketing Sales Rule, in whole or part, ADT and its Authorized Telemarketers, Authorized Marketers, and Authorized Dealers shall, in connection with telemarketing ADT goods or services, comply with all applicable requirements of the amended Rule, on and after the effective date of any such amended Rule.

II. MONITORING OF AUTHORIZED TELEMARKETERS

IT IS FURTHER ORDERED that, in connection with the marketing of ADT goods or services, Defendant is hereby permanently restrained and enjoined from:

- A. Failing to conduct a reasonable due diligence investigation of a person before making the person an Authorized Telemarketer, to ensure that the person has established and actively enforces effective policies and procedures for compliance with the Telemarketing Sales Rule, including procedures to prevent the initiation of outbound telemarketing calls to numbers on the National Do Not Call Registry, in violation of 16 C.F.R. § 310.4(b)(1)(iii);
- B. Failing to have a written contract with each Authorized Telemarketer;

- C. Failing to include in the written contract with each Authorized Telemarketer requirements that the Authorized Telemarketer comply with all provisions of the Telemarketing Sales Rule, including, but not limited to, § 310.4(b)(1)(iii);
- D. Failing to monitor, directly or through a third-party monitoring service approved by ADT, outbound telemarketing campaigns conducted by an Authorized Telemarketer to determine whether any telemarketing call is placed only to a telephone number that is:
 - 1. Not on the National Do Not Call Registry and not on an individual do not call list maintained by ADT or any of its Authorized Telemarketers; or
 - 2. On the National Do Not Call Registry, *provided* that the customer either has given his or her express agreement in writing to receive telemarketing calls from ADT at that number, or has an established business relationship with ADT;
- E. Failing to conduct a reasonable due diligence investigation of any third-party monitoring service before approving it for use by an Authorized Telemarketer;
- F. Failing to receive and review monthly reports from any third-party monitoring service used by an Authorized Telemarketer regarding the Authorized Telemarketer's compliance with the Do Not Call provisions of the TSR;

G. Providing any monetary compensation for any telemarketing-related sales or activities, including, but not limited to, hourly rates of pay or commissions, to any Authorized Telemarketer after ADT knows or should have known that such Authorized Telemarketer has, in connection with telemarketing ADT goods or services:

1. Failed to fulfill contract requirements with respect to compliance with the Telemarketing Sales Rule, or
2. Violated the Telemarketing Sales Rule;

H. Continuing to do business with any Authorized Telemarketer that fails to fulfill contract requirements with respect to compliance with the Telemarketing Sales Rule, or violates any provision of the Telemarketing Sales Rule.

Provided, however, that this Paragraph does not prohibit Defendant from entering into a service agreement or contract with a consumer who was called by an Authorized Telemarketer that fails to fulfill contract requirements with respect to compliance with 16 C.F.R. § 310.4 of the Telemarketing Sales Rule, or violates any provision of 16 C.F.R. § 310.4 of the Telemarketing Sales Rule, including, but not limited to, § 310.4(b)(1)(iii), or fails to comply with Paragraph I of this Order.

III. MONITORING OF AUTHORIZED DEALERS

IT IS FURTHER ORDERED that, in connection with the marketing of ADT goods or services, Defendant is hereby permanently restrained and enjoined from:

A. Failing to enter into and maintain a written contract with each Authorized Dealer that:

1. Prohibits the Authorized Dealer from engaging in telemarketing to offer and install security systems incorporating ADT monitoring services until ADT conducts a reasonable due diligence investigation of the Authorized Dealer to confirm that it has established and actively enforces effective policies and procedures for compliance with all provisions of the Telemarketing Sales Rule, including procedures to prevent the initiation of outbound telemarketing calls to numbers on the National Do Not Call Registry, in violation of 16 C.F.R. § 310.4(b)(1)(iii);
2. Includes a requirement that the Authorized Dealer comply with all provisions of the Telemarketing Sales Rule, including, but not limited to, 16 C.F.R. § 310.4(b)(1)(iii);
3. Prohibits the Authorized Dealer from engaging in telemarketing to offer and install security systems incorporating ADT monitoring services unless and until Defendant has accepted the Authorized Dealer's written certification that it has established and actively enforces

effective policies and procedures for compliance with all provisions of the Telemarketing Sales Rule, including, but not limited to, § 310.4(b)(1)(iii);

4. Requires any Authorized Dealer who has not provided the certification in Paragraph III.A.3 to provide annually to ADT written certification that the Authorized Dealer will not engage in telemarketing to offer and install security systems incorporating ADT monitoring services and has not engaged in telemarketing to offer and install security systems incorporating ADT monitoring services in the last twelve (12) months;
- B. Authorizing any Authorized Dealer to engage in telemarketing to offer and install security systems incorporating ADT goods or services unless and until the Authorized Dealer has retained a third-party monitoring service, approved by ADT, that commits to provide and subsequently does provide a monthly do-not-call compliance report to ADT based on a review of all outbound telemarketing calls placed by the Authorized Dealer for the previous month;
- C. Failing to receive and review reports, received directly or through a third-party monitoring service as described in Paragraph III.B, of outbound telemarketing campaigns conducted by an Authorized Dealer to determine whether any outbound telemarketing call is initiated in violation of 16 C.F.R. § 310.4 of the Telemarketing Sales Rule, or in

violation of the Authorized Dealer's written contract with ADT;

- D. Failing to conduct a reasonable due diligence investigation of any third-party monitoring service before approving it for use by an Authorized Dealer;
- E. Providing any monetary compensation for a minimum of twelve (12) months for any telemarketing-related sales or activities, including, but not limited to, hourly rates of pay or commissions, to any Authorized Dealer after ADT knew or should have known that such Authorized Dealer has, in connection with offering security systems incorporating ADT goods or services:
 - 1. Failed to fulfill contract requirements with respect to compliance with the Telemarketing Sales Rule, or
 - 2. Violated the Telemarketing Sales Rule.
- F. Accepting, for a minimum of twelve (12) months, the certification described in Paragraph III.A.3 from any Authorized Dealer that fails to fulfill contract requirements with respect to compliance with the Telemarketing Sales Rule, or violates any provision of the Telemarketing Sales Rule, in connection with offering and installing security systems incorporating ADT goods or services.

Provided, however, that this Paragraph does not prohibit Defendant from entering into a service agreement or contract with a consumer who was called by an Authorized

Dealer in violation of 16 C.F.R. § 310.4 of the Telemarketing Sales Rule, or in violation of the Authorized Dealer's written contract with ADT, or by an Authorized Dealer that fails to comply with Paragraph I of this Order.

IV. MONITORING OF AUTHORIZED MARKETERS

IT IS FURTHER ORDERED that, in connection with marketing ADT goods or services by an Authorized Marketer, ADT is hereby permanently restrained and enjoined from:

- A. Failing to monitor Authorized Marketers as provided in Paragraph V; and
- B. Doing business with and providing any monetary compensation, including but not limited to hourly rates of pay or commissions, to any Authorized Marketer who ADT knows or should know is engaged in violations of the Telemarketing Sales Rule.

Provided, however, that this Paragraph does not prohibit ADT from entering into a service agreement or contract with a consumer who was called by an Authorized Marketer in violation of 16 C.F.R. § 310.4 of the Telemarketing Sales Rule, or by an Authorized Marketer who has engaged in any of the conduct described in subparagraph B of this Paragraph of this Order.

V. ADDITIONAL MONITORING

IT IS FURTHER ORDERED that with regard to Authorized Telemarketers, Authorized Dealers, and Authorized Marketers, ADT shall:

A. Develop, implement, adequately staff, and continuously operate and maintain, a system to receive and retain complaints related to telemarketing ADT goods or services that are received by telephone, mail, and e-mail. ADT shall take all reasonable steps to obtain, record, retain, and make easily accessible to ADT and, upon reasonable request, the FTC, all relevant information regarding all complaints related to the Telemarketing Sales Rule due to telemarketing of ADT goods or services or security systems incorporating ADT monitoring services, including but not limited to: (1) the consumer's name, address, and telephone number; (2) the substance of the complaint, including the name of any person referenced; and (3) the nature and result of any investigation conducted concerning the complaint; (4) the name, telephone number, and address of the Authorized Dealer or Authorized Marketer or Authorized Telemarketer which made the call that was the basis for the complaint; (5) the date of the call; and (6) any relevant information for determining whether a violation of the Telemarketing Sales Rule has occurred. The system for complaints related to the Telemarketing Sales Rule shall be capable of producing and shall produce monthly reports that show (1) the aggregate number of complaints relating to telemarketing, (2) the total number and type of complaints related to the Telemarketing Sales

Rule for each Authorized Telemarketer, (3) the total number and type of complaints related to the Telemarketing Sales Rule for each Authorized Dealer, and (4) the total number and type of complaints related to the Telemarketing Sales Rule for each Authorized Marketer;

- B. Promptly investigate each consumer complaint relating to telemarketing and take all reasonable steps to identify the person whose activities prompted the complaint; and
- C. For a period of 5 (five) years, and beginning six months from the entry of this Order, determine from a randomly selected sample of 10% of all accounts acquired within the previous six months from Authorized Dealers and Authorized Marketers how the customers were solicited and note and keep records of any response indicating that any person was initially solicited by an outbound telephone call. For each customer who indicates that he or she was contacted initially through outbound telemarketing, ADT shall request information from the customer to determine if the call violated the Telemarketing Sales Rule, and shall identify the Authorized Dealer, or, where possible, the Authorized Marketer, who initiated the outbound telephone call, and shall use this information to monitor compliance with this Order.

VI. PROHIBITION ON ASSISTING AND FACILITATING

IT IS FURTHER ORDERED that, in connection with the marketing of ADT goods or services, Defendant is hereby permanently restrained and enjoined from providing substantial assistance and support to any seller or telemarketer when ADT knows or consciously avoids knowing that the seller or telemarketer is engaged in one or more violations of the Telemarketing Sales Rule.

VII. CIVIL PENALTY

IT IS FURTHER ORDERED that judgment in the amount of two million dollars (\$ 2,000,000.00) is hereby entered against ADT Security Services, Inc. as a civil penalty pursuant to Section 5(m)(1)(A) of the Federal Trade Commission Act, 15 U.S.C. § 45(m)(1)(A).

- A. Within five (5) business days of receipt of notice of the entry of this Order, Defendant shall transfer the civil penalty payment in the form of a wire transfer or certified or cashier's check made payable to the Treasurer of the United States. The check or written confirmation of the wire transfer shall be delivered to: Director, Office of Consumer Litigation, U.S. Department of Justice Civil Division, P.O. Box 386, Washington, DC 20044. The cover letter accompanying the check shall include the title of this litigation and a reference to DJ# 102-3427.
- B. In the event of default on the payment required to be made by this Paragraph, the entire unpaid civil penalty,

together with interest computed under 28 U.S.C. § 1961 -- accrued from the date of default until the date of payment -- shall be immediately due and payable.

- C. Defendant shall cooperate fully with Plaintiff and the Commission and their agents in all attempts to collect the amount due pursuant to this Paragraph if Defendant fails to pay fully the amount due at the time specified herein. In such an event, ADT agrees to provide Plaintiff and the Commission with its federal and state tax returns for the preceding two years, and to complete new standard financial disclosure forms fully and accurately within ten (10) business days of receiving a request from Plaintiff or the Commission to do so. ADT further authorizes Plaintiff and the Commission to verify all information provided on the financial disclosure form from ADT with all appropriate third parties, including but not limited to financial institutions.
- D. In accordance with 31 U.S.C. § 7701, ADT Security Services, Inc. is hereby required, unless ADT Security Services, Inc. has done so already, to furnish to Plaintiff and the FTC, Defendant's taxpayer identifying number(s) (social security numbers or employer identification numbers) which shall be used for purposes of collecting and reporting on any delinquent amount arising out of ADT Security Services, Inc.'s relationship with the government.

- E. ADT agrees that the facts as alleged in the complaint filed in this action shall be taken as true for the purpose of a nondischargeability complaint in any bankruptcy proceeding.
- F. Proceedings instituted under this Paragraph are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.
- G. This Order resolves all allegations in the Complaint against ADT and nothing in this Paragraph permits the Commission to seek any additional remedies for the conduct alleged in the complaint against ADT.

VIII. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order,

- A. Within thirty (30) days of receipt of written notice from a representative of the Commission or Plaintiff, ADT shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in ADT's possession, or direct or indirect control, to inspect the business operation.
- B. In addition, the Commission and Plaintiff are authorized to monitor compliance with this Order by all other lawful

means, including but not limited to the following:

1. Obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45; and
 2. Posing as consumers and suppliers to ADT, or to any of ADT's employees, or to any other entity managed or controlled in whole or in part by ADT, without the necessity of identification or prior notice; and
- C. ADT shall permit representatives of the Commission or Plaintiff to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

Provided, however, that nothing in this Order shall limit 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, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

IX. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

- A. For a period of three (3) years from the date of entry of

this Order, Defendant shall notify the Commission of any changes in corporate structure that may affect compliance obligations arising under this Order, including but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary or parent that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided that*, with respect to any proposed change in the corporation about which ADT learns less than thirty (30) days prior to the date such action is to take place, ADT shall notify the Commission as soon as is practicable after obtaining such knowledge;

- B. One hundred eighty (180) days after the date of entry of this Order, ADT shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which it has complied and is complying with this Order. This report shall include:
1. A copy of each acknowledgment of receipt of this Order, obtained pursuant to Paragraph XI of this Order;
 2. Any changes required to be reported pursuant to subparagraph (A) of this Paragraph;
 3. A list of all Authorized Telemarketers, Authorized

Marketers, and Authorized Dealers that ADT knows are engaged in or have been engaged in telemarketing of ADT goods or services within the 180 days after the date of entry of this Order, including the trade names and any other names under which, to ADT's knowledge, these entities do business, and the telephone numbers these entities use or used in telemarketing, including any numbers programmed to be transmitted for caller identification purposes.

C. Once every twelve months, starting after the 180-day report required in Paragraph IX.B above is provided, for a period of three (3) years, ADT shall provide a written report to the FTC that includes a reasonably detailed description of all monitoring activity taken by ADT pursuant to Paragraphs II, III, IV, and V of this Order. The report shall also be served upon the Board of Directors of ADT. The report shall include as applicable, but is not be limited to, the following:

1. A reasonably detailed description of the due diligence review ADT performed on prospective Authorized Telemarketers and Authorized Dealers and the results of the due diligence review;
2. The names, addresses and telephone numbers of all Authorized Telemarketers, Authorized Marketers, and Authorized Dealers ADT knows engaged in telemarketing in

- the last twelve (12) months, and the dates they became authorized to telemarket ADT goods or services;
3. The names, address and telephone numbers of all Authorized Telemarketers, Authorized Marketers, and Authorized Dealers who have been terminated by Defendant for reasons related to telemarketing, the date of the terminations and the specific reasons for termination;
 4. At the end of each quarter, starting after the 180-day report required in Paragraph IX.B above is provided for a period of three years, ADT will provide a description of all outbound telemarketing campaigns conducted by ADT or its Authorized Telemarketers during the previous quarter, including, for each campaign, the dates during which each campaign was in place and the average number of calls made each day. At the Commission's discretion, in each quarter, it may request detailed data for up to three days for one telemarketing campaign or one day each for each campaign. For each selected day, ADT will supply the names of the entities making the calls, the telephone numbers each entity called, the basis for any established business relationship between ADT and a person at the number called, or if such person does not have an established business relationship with ADT, the reason why that person was called;
 5. A detailed description of the methodology and results of

ADT's investigation of any call by an Authorized Telemarketer, Authorized Marketer or Authorized Dealer to a telephone number on the National Do Not Call Registry which shall include, but not be limited to, (a) the date of the call, (b) whether there is an existing business relationship with the consumer, and (c) if there is an existing business relationship, the date it began;

6. Evidence showing that ADT developed, implemented, staffed, and operated a system for complaints related to telemarketing pursuant to this Order;
7. Evidence showing that ADT took all reasonable steps to capture, record and retain every complaint relating to telemarketing that it received;
8. Evidence showing that ADT took all reasonable steps to obtain, record, and retain all relevant information regarding all complaints relating to telemarketing ADT goods or services, including, to the extent provided by the complainant or discovered through investigation: (1) the consumer's name, address, and telephone number; (2) the substance of the complaint, including the date of the call and the name of any person referenced; and (3) the name(s) and telephone number(s) of the Authorized Telemarketer, Authorized Marketer, or Authorized Dealer that contacted the consumer; (4) the nature and result of any investigation conducted concerning the complaint;

9. Evidence showing that ADT's system for complaints related to telemarketing produced monthly reports pursuant to Paragraph V of this Order;
 10. A summary of the aggregate number of complaints relating to telemarketing and the total number and type of telemarketing complaints for each Authorized Telemarketer, Authorized Dealer, or Authorized Marketer; and
 11. Evidence showing that ADT promptly investigated each consumer complaint relating to telemarketing and took all reasonable steps to identify the person whose activities prompted the consumer complaint.
- D. For the purposes of this Order, ADT shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director for Enforcement
Federal Trade Commission
601 New Jersey Ave., NW
Washington, DC 20580
Re: United States v. ADT, Civ. No.

The Commission shall, unless otherwise directed by ADT's officers or attorneys, mail all written notifications to ADT to:

General Counsel
ADT Security Services, Inc.
One Town Center Road
Boca Raton, FL 33486-1010

- E. For the purposes of this Order, ADT shall, unless otherwise directed by a representative of Plaintiff, identify all written notifications to Plaintiff as provided in reference to DJ# 102-3427, and mail them to:
Director, Office of Consumer Litigation
U.S. Department of Justice - Civil Division
P.O. Box 386
Washington, DC 20044.
- F. For purposes of the compliance reporting and monitoring required by this Order, representatives of Plaintiff and the Commission are authorized to communicate directly with corporate counsel of ADT.

X. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, ADT and its successors and assigns shall maintain and make available to Plaintiff or Commission, within thirty (30) days of the receipt of a written request, business records demonstrating compliance with the terms and provisions of this Order.

XI. DISTRIBUTION OF ORDER BY DEFENDANT

IT IS FURTHER ORDERED that, ADT shall deliver copies of this Order as directed below:

- A. ADT must deliver a copy of this Order to all officers and directors. ADT shall also deliver a copy of this Order to all of its employees who have managerial responsibility for telemarketing ADT goods or services, handling telemarketing complaints, or maintaining records relating to

telemarketing complaints or other telemarketing activities. For the current officers, directors and employees described above, delivery of this Order shall be within ten (10) days of service of this Order on ADT. For a period of three (3) years from the date of entry of this Order, for new managerial personnel responsible for telemarketing ADT goods or services, handling telemarketing complaints, or maintaining records relating to telemarketing complaints or other telemarketing activities, delivery shall occur prior to them assuming their responsibilities with ADT.

XII. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT

IT IS FURTHER ORDERED that ADT, within five (5) business days of receipt of this Order as entered by the Court, must submit to Plaintiff and the Commission a truthful sworn statement acknowledging receipt of this Order.

XIII. FEES AND COSTS

IT IS FURTHER ORDERED that each party to this Order hereby agrees to bear its own costs and attorneys' fees incurred in connection with this action.

XIV. SEVERABILITY

IT IS FURTHER ORDERED that the provisions of this Order are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions shall remain in full force and effect.

XV. RETENTION OF JURISDICTION

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

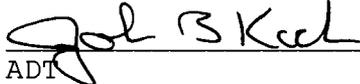
XVI. COMPLETE SETTLEMENT

The parties, by their respective counsel, hereby consent to entry of the foregoing Order which shall constitute a final judgment and order in this matter. The parties further stipulate and agree that the entry of the foregoing Order shall constitute a full, complete and final settlement of this action.

SO ORDERED this 20TH day of NOVEMBER 2007 at
Ft. Lauderdale, Florida.
WJZ


UNITED STATES DISTRICT JUDGE

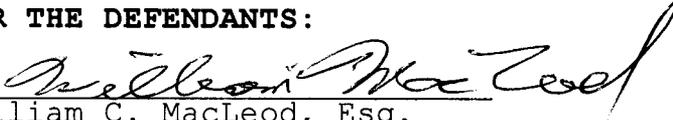
FOR THE DEFENDANTS:

WJZ


ADT
By: JOHN B. KOCH
President, ADT Security Services, Inc.
One Town Center Road
Boca Raton, FL 33486-1010

(Signatures continue on next page)

FOR THE DEFENDANTS:



William C. MacLeod, Esq.
Kelley Drye Collier Shannon
3050 K Street, N.W. - Suite 400
Washington, DC 20007

(Signatures continue on next page)

**FOR THE PLAINTIFF:
FOR THE UNITED STATES OF AMERICA:**

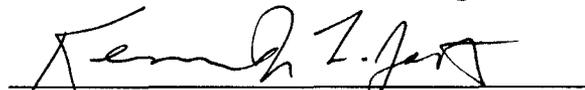
PETER D. KEISLER
Assistant Attorney General
Civil Division
U.S. DEPARTMENT OF JUSTICE

R. ALEXANDER ACOSTA
United States Attorney
Southern District of Florida



Assistant United States Attorney (Bar No.)
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Federal Trade Commission

§ 310.1

ALTERNATIVE FUELED VEHICLE BUYERS GUIDE

Before Selecting An Alternative Fueled Vehicle Consider:

- FUEL TYPE AND AVAILABILITY:** Know which fuel(s) power this vehicle. Determine whether refueling and/or recharging facilities that meet your driving needs are readily available.
- OPERATING COSTS:** Fuel and maintenance costs for AFVs differ from gasoline or diesel-fueled vehicles and can vary considerably. Visit www.fueleconomy.gov.
- PERFORMANCE/CONVENIENCE:** Vehicles powered by different fuels differ in their ability to start a cold engine, how long it takes to refill the vehicle's tank to full capacity, acceleration rates, and refueling methods.
- ENERGY SECURITY/RENEWABILITY:** Consider where and how the fuel powering this vehicle is typically produced.
- EMISSIONS:** Emissions are an important factor. For more information about how the vehicle you are considering compares to others, visit www.epa.gov/greenvehicle.

Additional Information

DEPARTMENT OF ENERGY (DOE)
 For more information about AFVs, contact DOE's National Alternative Fuels Hotline, 1-800-423-1DOE, or visit DOE's Alternative Fuels Data Center website, www.afdc.doe.gov.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA)
 For more information about vehicle safety, contact NHTSA's Auto Safety Hotline, 1-800-424-0393.

The information on this label is required by the Federal Trade Commission, 16 CFR Part 308.
 For more information call toll-free (877) FTC-HELP or visit www.ftc.gov.

← 7.5 inches →

← 7 inches →

Figure 6

[60 FR 26955, May 19, 1995, as amended at 69 FR 55339, Sept. 14, 2004]

**PART 310—TELEMARKETING SALES
 RULE**

- Sec.
- 310.1 Scope of regulations in this part.
- 310.2 Definitions.
- 310.3 Deceptive telemarketing acts or practices.
- 310.4 Abusive telemarketing acts or practices.
- 310.5 Recordkeeping requirements.
- 310.6 Exemptions.
- 310.7 Actions by states and private persons.

- 310.8 Fee for access to the National Do Not Call Registry.
- 310.9 Severability.

AUTHORITY: 15 U.S.C. 6101-6108.

SOURCE: 68 FR 4669, Jan. 29, 2003, unless otherwise noted.

§ 310.1 Scope of regulations in this part.

This part implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101-6108, as amended.

§ 310.2**16 CFR Ch. I (1-1-07 Edition)****§ 310.2 Definitions.**

(a) *Acquirer* means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.

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

(n) *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.

(o) *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.

(p) *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.

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

(r) *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.

(s) *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.

(t) *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.

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(u) *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.

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

(w) *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.

(x) *Prize* means anything offered, or purportedly offered, and given, or purportedly given, to a person by chance. For purposes of this definition, chance exists if a person is guaranteed to receive an item and, at the time of the offer or purported offer, the telemarketer does not identify the specific item that the person will receive.

(y) *Prize promotion* means:

(1) A sweepstakes or other game of chance; or

(2) An oral or written express or implied representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize.

(z) *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.

(aa) *State* means any state of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(bb) *Telemarketer* means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.

(cc) *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. The term does not include the solicitation of sales through the mailing of a catalog

which contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term "further solicitation" does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call or in a substantially similar catalog.

(dd) *Upselling* means soliciting the purchase of goods or services following an initial transaction during a single telephone call. The upsell is a separate telemarketing transaction, not a continuation of the initial transaction. An "external upsell" is a solicitation made by or on behalf of a seller different from the seller in the initial transaction, regardless of whether the initial transaction and the subsequent solicitation are made by the same telemarketer. An "internal upsell" is a solicitation made by or on behalf of the same seller as in the initial transaction, regardless of whether the initial transaction and subsequent solicitation are made by the same telemarketer.

§ 310.3 Deceptive telemarketing acts or practices.

(a) *Prohibited deceptive telemarketing acts or practices.* It is a deceptive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Before a customer pays¹ for goods or services offered, failing to disclose

¹When a seller or telemarketer uses, or directs a customer to use, a courier to transport payment, the seller or telemarketer must make the disclosures required by § 310.3(a)(1) before sending a courier to pick up payment or authorization for payment, or

Continued

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truthfully, in a clear and conspicuous manner, the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer;²

(ii) All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer;

(iii) If the seller has a policy of not making refunds, cancellations, exchanges, or repurchases, a statement informing the customer that this is the seller's policy; or, if the seller or telemarketer makes a representation about a refund, cancellation, exchange, or repurchase policy, a statement of all material terms and conditions of such policy;

(iv) In any prize promotion, the odds of being able to receive the prize, and, if the odds are not calculable in advance, the factors used in calculating the odds; that no purchase or payment is required to win a prize or to participate in a prize promotion and that any purchase or payment will not increase the person's chances of winning; and the no-purchase/no-payment method of participating in the prize promotion with either instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate;

(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 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; and

(vii) If the offer includes a negative option feature, all material terms and

directing a customer to have a courier pick up payment or authorization for payment.

²For 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 disclosure requirements under the Truth in Lending Act and Regulation Z shall constitute compliance with §310.3(a)(1)(i) of this Rule.

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).

(2) Misrepresenting, directly or by implication, in the sale of goods or services any of the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer;

(ii) Any material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a sales offer;

(iii) Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer;

(iv) Any material aspect of the nature or terms of the seller's refund, 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; or

(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).

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(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 Z,³ or a debit card subject to the protections of the Electronic Fund Transfer Act and Regulation E.⁴ 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 signature;⁵

(ii) Express oral authorization which is audio-recorded and made available 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) The number of debits, charges, or payments (if more than one);

(B) The date(s) the debit(s), charge(s), or payment(s) will be submitted for payment;

(C) The amount(s) of the debit(s), charge(s), or payment(s);

(D) The customer's or donor's name;

(E) 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;

³Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR part 226.

⁴Electronic Fund Transfer Act, 15 U.S.C. 1693 *et seq.*, and Regulation E, 12 CFR part 205.

⁵For 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.

(F) A telephone number for customer or donor inquiry that is answered during normal business hours; and

(G) The date of the customer's or donor's oral authorization; or

(iii) Written confirmation of the transaction, identified in a clear and conspicuous manner as such on the outside of the envelope, sent to the customer or donor via first class mail prior to the submission for payment of the customer's or donor's billing information, and that includes all of the information contained in §§310.3(a)(3)(ii)(A)-(G) and a clear and conspicuous statement of the procedures by which the customer or donor can obtain a refund from the seller or telemarketer or charitable organization in the event the confirmation is inaccurate; *provided*, however, that this means of authorization shall not be deemed verifiable in instances in which goods or services are offered in a transaction involving a free-to-pay conversion and preacquired account information.

(4) Making a false or misleading statement to induce any person to pay for goods or services or to induce a charitable contribution.

(b) *Assisting and facilitating.* It is a deceptive telemarketing act or practice and a violation of this Rule for a person to provide 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 §§310.3(a), (c) or (d), or §310.4 of this Rule.

(c) *Credit card laundering.* Except as expressly permitted by the applicable credit card system, it is a deceptive telemarketing act or practice and a violation of this Rule for:

(1) A merchant to present to or deposit into, or cause another 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;

(2) Any person to employ, solicit, or otherwise cause a merchant, or an employee, representative, or agent of the merchant, to present to or deposit into

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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.* It 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.* It 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

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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 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) Disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing; *provided*, however, that this paragraph shall not apply to the disclosure or receipt of a customer's or donor's billing information to process a payment for goods or services or a charitable contribution pursuant to a transaction;

(6) Causing billing information to be submitted for payment, directly or indirectly, without the express informed consent of the customer or donor. In any telemarketing transaction, the seller or telemarketer must obtain the express informed consent of the customer or donor to be charged for the

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goods or services or charitable contribution and to be charged using the identified account. In any telemarketing transaction involving preacquired account information, the requirements in paragraphs (a)(6)(i) through (ii) of this section must be met to evidence express informed consent.

(1) 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)(6)(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)(6)(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)(6)(ii)(A) of this section; or

(7) 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 signature⁶ of that person; or

(ii) has an established business relationship with such person, and that person has not stated that he or she does not wish to receive outbound telephone calls under paragraph (b)(1)(iii)(A) of this section; or

(iv) Abandoning any outbound telephone call. An outbound telephone call is "abandoned" under this section if a person answers it and the telemarketer

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.

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does not connect the call to a sales representative within two (2) seconds of the person's completed greeting.

(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.

(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 per day per calling campaign;

(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 placed⁷; and

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

(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

⁷This 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.

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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

(2) That the purpose of the call is to solicit a charitable contribution.

[68 FR 4669, Jan. 29, 2003, as amended at 69 FR 16373, Mar. 29, 2004]

§ 310.5 Recordkeeping requirements.

(a) Any seller or telemarketer shall keep, for a period of 24 months from the date the record is produced, the following records relating to its telemarketing activities:

(1) All substantially different advertising, brochures, telemarketing scripts, and promotional materials;

(2) The name and last known address of each prize recipient and the prize awarded for prizes that are represented, directly or by implication, to have a value of \$25.00 or more;

(3) The name and last known address of each customer, the goods or services purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services;⁸

(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

⁸For 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.

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 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

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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 and Business Opportunity Ventures," ("Franchise Rule") 16 CFR Part 436, *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 calls initiated by a customer or donor in response to an advertisement relating to investment opportunities, business opportunities other than business arrangements covered by the Franchise Rule, or advertisements involving goods or services described in §§310.3(a)(1)(vi) or 310.4(a)(2)-(4); or to 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 calls initiated by a customer in response to a direct mail solicitation relating to prize promotions, investment opportunities, business opportunities other than business arrangements covered by the Franchise Rule, or goods or services described in §§310.3(a)(1)(vi) or 310.4(a)(2)-(4); or to any instances of upselling included in such telephone calls; and

(7) Telephone calls between a telemarketer and any business, except calls to induce the retail sale of non-durable 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 non-durable 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

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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.

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

(c) The annual fee, which must be paid by any person prior to obtaining access to the National Do Not Call Registry, is \$62 per area code of data accessed, up to a maximum of \$17,050; *provided*, however, that there shall be no charge for the first five area codes of data accessed by any person, 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 the National Do Not Call Registry without being required under this Rule, 47 CFR 64.1200, or any other Federal law. Any person accessing the National Do Not Call Registry may not participate in any arrangement to share the cost of accessing the 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.

(d) After a person, either directly or through another person, pays the fees set forth in § 310.8(c), the person will be provided a unique account number which will allow that person to access the registry data for the selected area codes at any time for twelve months following the first day of the month in which the person paid the fee ("the annual period"). To obtain access to additional area codes of data during the first six months of the annual period, the person must first pay \$62 for each additional area code of data not initially selected. To obtain access to additional area codes of data during the second six months of the annual period, the person must first pay \$31 for each additional area code of data not initially selected. The payment of the additional fee will permit the person to access the additional area codes 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

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this Rule or otherwise to prevent telephone calls to telephone numbers on the registry.

[68 FR 45144, July 31, 2003, as amended at 69 FR 45585, July 30, 2004; 70 FR 43280, July 27, 2005; 71 FR 43054, July 31, 2006]

§ 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.

PART 311—TEST PROCEDURES AND LABELING STANDARDS FOR RECYCLED OIL

Sec.

- 311.1 Definitions.
- 311.2 Stayed or invalid parts.
- 311.3 Preemption.
- 311.4 Testing.
- 311.5 Labeling.
- 311.6 Prohibited acts.

AUTHORITY: 42 U.S.C. 6363(d).

SOURCE: 60 FR 55421, Oct. 31, 1995, unless otherwise noted.

§ 311.1 Definitions.

As used in this part:

(a) *Manufacturer* means any person who re-refines or otherwise processes used oil to remove physical or chemical impurities acquired through use or who blends such re-refined or otherwise processed used oil with new oil or additives.

(b) *New oil* means any synthetic oil or oil that has been refined from crude oil and which has not been used and may or may not contain additives. Such term does not include used oil or recycled oil.

(c) *Processed used oil* means re-refined or otherwise processed used oil or blend of oil, consisting of such re-refined or otherwise processed used oil and new oil or additives.

(d) *Recycled oil* means processed used oil that the manufacturer has determined, pursuant to section 311.4 of this part, is substantially equivalent to new oil for use as engine oil.

(e) *Used oil* means any synthetic oil or oil that has been refined from crude oil, which has been used and, as a result of such use, has been contami-

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nated by physical or chemical impurities.

(f) *Re-refined oil* means used oil from which physical and chemical contaminants acquired through use have been removed.

§ 311.2 Stayed or invalid parts.

If any part of this rule is stayed or held invalid, the rest of it will remain in force.

§ 311.3 Preemption.

No law, regulation, or order of any State or political subdivision thereof may apply, or remain applicable, to any container of recycled oil, if such law, regulation, or order requires any container of recycled oil, which container bears a label in accordance with the terms of § 311.5 of this part, to bear any label with respect to the comparative characteristics of such recycled oil with new oil that is not identical to that permitted by § 311.5 of this part.

§ 311.4 Testing.

To determine the substantial equivalency of processed used oil with new oil for use as engine oil, manufacturers or their designees must use the test procedures that were reported to the Commission by the National Institute of Standards and Technology ("NIST") on July 27, 1995, entitled "Engine Oil Licensing and Certification System," American Petroleum Institute ("API") Publication 1509, Thirteenth Edition, January, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of API Publication 1509, "Engine Oil Licensing and Certification System," may be obtained from the American Petroleum Institute, 1220 L Street, NW., Washington, DC 20005, or may be inspected at the Federal Trade Commission, Public Reference Room, room 130, 600 Pennsylvania Avenue, NW., Washington, DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/

REASONS FOR SETTLEMENT

This statement accompanies the final orders executed by defendants ADT Security Services, Inc., ("ADT"); Alarm King, Inc. ("Alarm King"), James L. Roche, and Debra A. Roche; and Direct Security Services, Inc. ("DSSI"), Gary Tidball, and Steven Dockery. The final orders enjoin these defendants from violating the Telemarketing Sales Rule ("Rule"), 16 C.F.R. Part 310, including the National Do Not Call Registry provisions. The order with ADT provides for a civil penalty of \$2 million. The order with Alarm King provides for a civil penalty of \$2,363,115, which will be suspended upon Alarm King's payment of \$20,000, due to its inability to pay. Likewise, the order with DSSI provides for a civil penalty of \$80,000, which will be suspended upon DSSI's payment of \$25,000, due to its inability to pay.

Pursuant to Section 5(m)(3) of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45(m)(3), the Commission hereby sets forth its reasons for settlement by entry of the final orders:

On the basis of the allegations contained in the complaint, the Commission believes that a civil penalty of \$2 million against ADT, a civil penalty of \$2,363,115 against Alarm King, suspended upon Alarm King's payment of \$20,000, and a civil penalty of \$80,000 against DSSI, suspended upon DSSI's payment of \$25,000, constitute the appropriate amounts on which to base the settlements. The provisions enjoining defendants from failing to comply with certain provisions of the Rule, including its Do Not Call requirements, should assure defendants' future compliance with the law. With the entry of the final orders, the time and expense of litigation will be avoided.

For the foregoing reasons, the Commission believes that the settlements by entry of the attached final orders are justified and well within the public interest.