

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	Civ. No. 09-cv-2929
)	
v.)	
)	SECOND AMENDED
VOICE TOUCH, INC., a Florida)	COMPLAINT FOR INJUNCTIVE
corporation, dba Voice Touch,)	AND OTHER EQUITABLE
)	RELIEF
NETWORK FOUNDATIONS, LLC, a)	
Delaware corporation,)	
)	
VOICE FOUNDATIONS, LLC, a)	
Delaware corporation,)	
)	
JAMES A. DUNNE,)	
)	
MAUREEN E. DUNNE, and)	
)	
DAMIAN KOHLFELD,)	
)	
Defendants.)	

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), for its second amended complaint, alleges as follows:

1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101, *et seq.*, to secure preliminary and permanent injunctive relief, restitution, disgorgement of ill-gotten gains, and other equitable relief for Defendants’ deceptive acts or practices in

violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC's Trade Regulation Rule entitled "Telemarketing Sales Rule" ("TSR"), 16 C.F.R. Part 310.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, as well as pursuant to 15 U.S.C. §§ 45(a), 53(b), 57b, and 6105(b).

3. Venue in the United States District Court for the Northern District of Illinois is proper under 28 U.S.C. § 1391(b) and (c), as well as under 15 U.S.C. § 53(b).

THE PARTIES

4. Plaintiff, the Federal Trade Commission, is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The Commission enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The Commission also enforces the TSR, 16 C.F.R. Part 310, which prohibits deceptive or abusive telemarketing acts or practices. The Commission is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and the TSR and to secure such equitable relief, including restitution for injured consumers, as may be appropriate in each case. 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).

5. Defendant Voice Touch, Inc. ("Voice Touch"), is a Florida corporation with its principal place of business located in Daytona Beach, Florida. Voice Touch transacts or has transacted business in this District and throughout the United States.

6. Defendant Network Foundations, LLC (“Network Foundations”), is a Delaware corporation with its principal place of business located in Chicago, Illinois. Network Foundations has transacted business in this District and throughout the United States.

7. Defendant Voice Foundations, LLC (“Voice Foundations”), is a Delaware corporation with its principal place of business located in Chicago, Illinois. Voice Foundations has transacted business in this District and throughout the United States.

8. Defendant James A. Dunne is an officer, director, and/or owner of Defendant Voice Touch. 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 Voice Touch, including the acts and practices set forth in this complaint. He resides in Florida and transacts, or has transacted, business in this District and throughout the United States.

9. Defendant Maureen E. Dunne is an officer, director, and/or owner of Defendant Voice Touch. At all times material to this complaint, acting alone or in concert with others, she has formulated, directed, controlled, or participated in the acts and practices of Voice Touch, including the acts and practices set forth in this complaint. She resides in Florida and transacts, or has transacted, business in this District and throughout the United States.

10. Defendant Damian Kohlfeld is an officer, director, member, and/or owner of Defendants Network Foundations and Voice Foundations. 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 Network Foundations and Voice Foundations, including the acts and practices set forth in this complaint. He transacts, or has transacted, business in this District and throughout the United States.

COMMERCE

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

DEFENDANTS’ DECEPTIVE BUSINESS PRACTICES

12. Defendants sell a telemarketing service that delivers prerecorded voice messages through telephone calls. This service is known as “voice broadcasting” or “robocalling.”

13. Since at least 2007, Defendants have sold their telemarketing services, including their voice broadcasting service, to numerous clients that purport to sell extended automobile warranties over the telephone (“warranty telemarketers”) to consumers throughout the United States.

14. Through their robocalling campaigns conducted on behalf of several warranty telemarketers, Defendants have caused tens of millions of consumers to receive deceptive telemarketing solicitations in blatant violation of the TSR, including the National Do Not Call Registry, and the FTC Act. Defendants’ illegal telephone calls have generated tens of thousands of complaints from consumers, businesses, government entities, and emergency management call centers.

Defendants' Prerecorded Messages

15. In providing voice broadcasting services, Defendants use automated dialers to place telemarketing calls that deliver prerecorded messages to telephone numbers included in Defendants' database.

16. In numerous instances, Defendants script and record these prerecorded messages themselves. They then deliver the prerecorded messages through telemarketing calls to millions of consumers.

17. In numerous instances, Defendants' telemarketing calls deliver prerecorded messages that inform recipients that their automobile warranty is expiring, or is about to expire, and then give call recipients the option to speak with a "warranty specialist." One such prerecorded telemarketing message broadcast by Defendants on behalf of a client stated:

By now you should have received your written note regarding your vehicle warranty expiring. This call is to give you a final opportunity to extend coverage before it is too late. Press 1 now to speak to a warranty specialist regarding your options on your vehicle. Vehicles today are over 70-percent electronic which has forced labor rates to increase to over \$100 an hour. If you would like to protect yourself from costly repairs and obtain the peace of mind of having your vehicle covered, then press 1 now to speak to a warranty advisor. Press 9 if you would like to have a representative remove you from this offer.

Defendants broadcast this message indiscriminately. Defendants often have no information on whether a call recipient's warranty is expiring or not.

18. Defendants also sometimes broadcast prerecorded telemarketing messages that inform recipients that their automobiles are subject to a recall, and give call recipients

the option to speak to a representative about the alleged recall. One such prerecorded telemarketing message broadcast by Defendants on behalf of a client stated:

Now, find out what car manufacturers hope you never notice. Your vehicle is subject to a recall or a service bulletin. Press 1 for free information on your vehicle. There is currently over a half-million cars that have been recalled or are covered under service bulletins. Press 1 now to see if your vehicle is on the list. Press 9 if you do not want to take advantage of this free service.

Defendants broadcast this message indiscriminately. Defendants have no information on whether a call recipient's vehicle is subject to a recall or not.

19. When recipients of Defendants' robocalls press "1" to speak to a "warranty specialist" or sales representative, Defendants transfer the calls to their client's call center.

20. Both in the robocalls and in call recipients' subsequent conversations with live representatives, Defendants and their clients also have represented, expressly or by implication, that they are affiliated with the call recipient's automobile dealership or manufacturer. Defendants and their clients first make this representation in the robocalls, and that representation then is reinforced by Defendants' clients after Defendants transfer call recipients to their clients' call centers. Neither Defendants, nor their clients, are affiliated with call recipients' automobile dealerships or manufacturers.

Defendants' Illegal Dialing Practices

21. In broadcasting their prerecorded messages to consumers across the United States, Defendants, and their clients, the warranty telemarketers, engage in a number of illegal practices. Among other things, Defendants regularly call consumers who have previously asked Defendants or their clients not to call them again or who have registered on

the National Do Not Call Registry. They also illegally abandon calls, and regularly “spoof” their calls by transmitting phony Caller ID information so that call recipients do not know the source of the calls.

22. Since at least 2007, acting on behalf of their clients, Defendants have initiated outbound telephone calls to persons who previously have stated that they do not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered.

23. Since at least 2007, acting on behalf of their clients, Defendants have initiated outbound telephone calls to telephone numbers on the National Do Not Call Registry.

24. Since at least 2007, acting on behalf of their clients, Defendants have made numerous outbound telemarketing calls in which Defendants failed to connect the call to a sales representative within two (2) seconds of the call recipient’s completed greeting. Instead of connecting the recipient of the call to a sales representative, Defendants, acting on behalf of their clients, have delivered a prerecorded voice message to the call recipient.

25. In numerous telemarketing calls placed since at least 2007, Defendants, acting on behalf of their clients, have not transmitted their telephone number or name to call recipients’ Caller ID services, nor have Defendants transmitted their client’s name or service telephone number. Instead, Defendants, acting on behalf of their clients, have transmitted non-functional or phony telephone numbers to the Caller ID services used by the recipients of Defendants’ telemarketing calls.

26. Because Defendants transmit non-functional or false caller identification

information, they do not transmit a number that call recipients can use to identify the seller or telemarketer, or that call recipients can use to contact the seller or telemarketer to ask to be placed on the seller's entity-specific do not call list.

27. In numerous instances, Defendants, acting on behalf of their clients, have placed telemarketing calls delivering prerecorded voice messages that fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call: the identity of the seller; that the purpose of the call is to sell goods or services; or the nature of the goods or services.

28. Since at least 2007, Defendants, on behalf of their clients, have called telephone numbers in various area codes without Defendants or their clients first paying the annual fee for access to the telephone numbers within area codes that are included in the National Do Not Call Registry.

29. Since at least 2007, Defendants have provided substantial assistance and support to their clients, several warranty telemarketers, even though Defendants knew or consciously avoided knowing that those warranty telemarketers were engaged in violations of Sections 310.3(a) and 310.4 of the TSR.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

29. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices in or affecting commerce. Misrepresentations or omissions of material facts constitute deceptive acts or practices prohibited by Section 5(a).

COUNT ONE

Misrepresentation of Material Facts

30. In numerous instances, in the course of telemarketing their clients' products and services, Defendants have represented, expressly or by implication, that:

- a. they are calling from, on behalf of, or are otherwise affiliated with the manufacturer or dealer of the consumer's automobile;
- b. expiration of the consumer's original automobile warranty is imminent; and
- c. they otherwise have specific information about whether the consumer's vehicle is the subject of a recall

31. In truth and in fact, in numerous of those instances:

- a. Defendants are not calling from, nor on behalf of, nor are they otherwise affiliated with the manufacturer or dealer of the consumer's automobile;
- b. expiration of the consumer's original automobile warranty is not imminent; and
- c. Defendants do not otherwise have specific information about whether the consumer's vehicle is the subject of a recall.

32. Therefore, the representations set forth in Paragraph 30 are false and misleading and constitute deceptive acts and practices in violation of Section 5(a) of the FTC Act.

THE TELEMARKETING SALES RULE

33. 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, *et seq.*, 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. 68 Fed. Reg. 4580, 4669. On August 29, 2008, the FTC amended the TSR again. 73 Fed. Reg. 51164, 51204.

34. Defendants are “telemarketers” engaged in “telemarketing” as those terms are defined in the TSR, 16 C.F.R. § 310.2(bb) and (cc).

35. Defendants have provided telemarketing services on behalf of persons who are “sellers” or “telemarketers” engaged in “telemarketing” as those terms are defined in the TSR, 16 C.F.R. § 310.2(bb) and (cc).

36. Defendants have initiated “outbound telephone calls” on behalf of persons who are “sellers,” as those terms are defined in the TSR, 16 C.F.R. § 310.2(u) and (z).

37. The TSR prohibits sellers and telemarketers from misrepresenting, directly or by implication, that they are affiliated with, or endorsed or sponsored by, any person or government entity. 16 C.F.R. § 310.3(a)(2)(vii).

38. The TSR prohibits telemarketers and sellers from making any false or misleading statement to induce any person to pay for goods or services. 16 C.F.R. § 310.3(a)(4).

39. The TSR requires telemarketers in an outbound telephone call to disclose

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

- a. the identity of the seller;
- b. that the purpose of the call is to sell goods or services; and
- c. the nature of the goods or services.

16 C.F.R. § 310.4(d)(1), (2) and (3).

40. Among other things, the TSR, as amended in 2003, 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 www.donotcall.gov.

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

42. Since October 17, 2003, sellers and telemarketers have been prohibited from calling numbers on the Registry. 16 C.F.R. § 310.4(b)(1)(iii)(B).

43. Since December 31, 1995, sellers and telemarketers have been prohibited from initiating an outbound telephone call to any person when 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. 16 C.F.R. § 310.4(b)(1)(iii)(A).

44. Since October 17, 2003, sellers and telemarketers have been generally prohibited from calling any telephone number within a given area code unless the seller first has paid the annual fee for access to the telephone numbers within that area code that are included in the National Do Not Call Registry. 16 C.F.R. § 310.8(a) and (b).

45. Since January 29, 2004, sellers and telemarketers have been prohibited from 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. 16 C.F.R. § 310.4(a)(7).

46. Since October 1, 2003, sellers and telemarketers have been prohibited from "abandoning" any outbound telephone call. 16 C.F.R. § 310.4(b)(1)(iv). An outbound telephone call is "abandoned" if a person answers it and the telemarketer does not connect the call to a sales representative within two (2) seconds of the person's completed greeting. *Id.*

47. Since December 1, 2008, sellers and telemarketers have been prohibited from initiating an outbound telephone call that delivers a prerecorded message unless, among other things, the message immediately discloses: 1) the identity of the seller; 2) that the purpose of the call is to sell goods or services; and 3) the nature of the goods or services. 16 C.F.R. § 310.4(b)(1)(v)(B)(ii).

48. It is a violation of the TSR for any 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 practice that violates Sections 310.3(a), (c) or

(d), or 310.4 of the Rule. 16 C.F.R. § 310.3(b).

49. 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).

VIOLATIONS OF THE TELEMARKETING SALES RULE

COUNT TWO

Making False and Misleading Statements

50. In numerous instances, in the course of telemarketing their clients' products and services, Defendants have represented, expressly or by implication, that:

- a. they are calling from, on behalf of, or are otherwise affiliated with the manufacturer or dealer of the consumer's automobile;
- b. expiration of the consumer's original automobile warranty is imminent; and
- c. they otherwise have specific information about whether the consumer's vehicle is the subject of a recall.

51. In truth and in fact, in numerous of those instances:

- a. Defendants are not calling from, nor on behalf of, nor are they otherwise affiliated with the manufacturer or dealer of the consumer's automobile;
- b. expiration of the consumer's original automobile warranty is not imminent; and

c. Defendants do not otherwise have specific information about whether the consumer's vehicle is the subject of a recall.

52. The representations set forth in Paragraph 50 were made to induce persons to pay for goods or services.

53. The representations set forth in Paragraph 50 are deceptive telemarketing acts or practices in violation of the TSR, 16 C.F.R. § 310.3(a)(2)(vii) or § 310.3(a)(4).

COUNT THREE

Assisting and Facilitating Deceptive Telemarketing Acts or Practices

54. In numerous instances, Defendants have provided substantial assistance or support, including, but not limited to voice broadcasting services, as described in Paragraphs 15 through 20, to sellers or telemarketers whom Defendants knew or consciously avoided knowing induced consumers to pay for goods and services through the use of false or misleading statements, in violation of the TSR, 16 C.F.R. § 310.3(a)(2)(vii) or § 310.3(a)(4).

55. Defendants' substantial assistance or support as alleged in Paragraph 54 is a deceptive telemarketing act or practice that violates the TSR, 16 C.F.R. § 310.3(b).

COUNT FOUR

Ignoring Do Not Call Requests

56. In numerous instances, in connection with telemarketing, Defendants have initiated an outbound telephone call to a person who 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, in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(A).

COUNT FIVE

Ignoring the National Do Not Call Registry

57. In numerous instances, in connection with telemarketing, Defendants have engaged in initiating an outbound telephone call to a person's telephone number on the National Do Not Call Registry in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B).

COUNT SIX

Abandoning Calls

58. In numerous instances, in connection with telemarketing, Defendants have abandoned, or caused others to abandon, an outbound telephone call by failing to connect the call to a sales representative within two (2) seconds of the completed greeting of the person answering the call, in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iv).

COUNT SEVEN

Failing to Transmit Caller ID

59. In numerous instances, in connection with telemarketing, Defendants have failed to transmit or cause to be transmitted the telephone number and name of the telemarketer or seller to any caller identification service in use by a recipient of a telemarketing call, in violation of the TSR, 16 C.F.R. § 310.4(a)(7).

COUNT EIGHT

Failing to Make Required Oral Disclosures

60. In numerous instances, in the course of telemarketing products and services, Defendants have failed to disclose promptly and in a clear and conspicuous manner to the

person receiving the call:

- a. the identity of the seller;
- b. that the purpose of the call is to sell goods or services; and
- c. the nature of the goods or services.

61. Defendants' practice as alleged in Paragraph 60 is an abusive telemarketing practice that violates the TSR, 16 C.F.R. § 310.4(d)(1), (2), and (3).

COUNT NINE

Initiating Unlawful Prerecorded Messages

62. In numerous instances on or after December 1, 2008, in connection with telemarketing, Defendants have initiated outbound telephone calls delivering prerecorded messages that do not promptly provide the disclosures required by § 310.4(d) of the TSR.

63. Defendants' practice as alleged in Paragraph 62 is an abusive telemarketing practice that violates the TSR, 16 C.F.R. § 310.4(b)(1)(v)(B)(ii).

COUNT TEN

Assisting and Facilitating Abusive Telemarketing Acts or Practices

64. In numerous instances, Defendants have provided substantial assistance or support, including, but not limited to voice broadcasting services, as described in Paragraphs 15 through 20, to sellers or telemarketers whom Defendants knew or consciously avoided knowing were engaged in violations of § 310.4 of the TSR.

65. Defendants' substantial assistance or support as alleged in Paragraph 64 is a deceptive telemarketing act or practice that violates the TSR, 16 C.F.R. § 310.3(b).

COUNT ELEVEN

Failing to Pay National Registry Fees

66. In numerous instances, in connection with telemarketing, Defendants have initiated outbound telephone calls to a telephone number within a given area code on behalf of a seller who has not, either directly or through another person, paid the required annual fee for access to the telephone numbers within that area code that are included in the National Do Not Call Registry, in violation of the TSR, 16 C.F.R. § 310.8.

CONSUMER INJURY

67. Consumers throughout the United States have suffered and continue to suffer injury as a result of Defendants' unlawful acts and practices. In addition, Defendants have been unjustly enriched as a result of their unlawful practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, enrich themselves unjustly, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

68. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the Commission.

69. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), authorize this Court to grant such relief as the Court finds necessary to redress injury to consumers or other persons resulting from Defendants' violations of the TSR, including damages and the refund of money.

70. The Court, in the exercise of its equitable jurisdiction, may award other ancillary relief to remedy injury caused by Defendants' law violations.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, the Federal Trade Commission, requests that this Court, as authorized by Sections 13(b) and 19 of the FTC Act, 15 U.S.C. § 53(b) and 57b, Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), and pursuant to its own equitable powers:

71. Award plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief, including, but not limited to, a temporary restraining order, a preliminary injunction, and an order freezing assets;

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

73. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act and the TSR, including, but not limited to, restitution and the disgorgement of ill-gotten gains; and

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

Respectfully Submitted,

WILLARD K. TOM
General Counsel

DATED: September 16, 2009

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