

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

RECEIVED

MAY 24 2010

MICHAEL W. DOBBINS
CLERK, U. S. DISTRICT COURT

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

ASIA PACIFIC TELECOM, INC, a foreign
corporation, also d/b/a ASIA PACIFIC
NETWORKS,

REPO B.V., a foreign corporation,

SBN PERIPHERALS, INC., a California
corporation, also d/b/a SBN DIALS,

JOHAN HENDRIK SMIT DUYZENTKUNST,
individually and as an officer or owner of
ASIA PACIFIC TELECOM, INC., REPO B.V.,
and SBN PERIPHERALS, INC.,

and

JANNEKE BAKKER-SMIT DUYZENTKUNST,
individually and as an officer of REPO B.V.,

Defendants.

10C 3168

JUDGE HART

MAGISTRATE JUDGE DENLOW

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), for its Complaint,
alleges:

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

obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendants' 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 pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b).

3. Venue is proper in this district under 28 U.S.C. §§ 1391(b), (c) and (d), and 15 U.S.C. § 53(b).

PLAINTIFF

4. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC 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 FTC is also charged with enforcement of the Telemarketing Act, 15 U.S.C. §§ 6101-6108. Pursuant to the Telemarketing Act, the FTC promulgated and enforces the TSR, 16 C.F.R. Part 310, which prohibits deceptive or abusive telemarketing acts or practices.

5. 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 as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).

DEFENDANTS

6. Defendant Asia Pacific Telecom, Inc. (“Asia Pacific”), also doing business as Asia Pacific Networks, is a foreign corporation which holds itself out as having its principal places of business in Kowloon, Hong Kong; Almere, Netherlands; and the Northern Mariana Islands. Asia Pacific transacts or has transacted business in this District and throughout the United States.

7. Defendant Repo, B.V. (“Repo”), is a Dutch corporation with its principal place of business in Almere, Netherlands. Repo transacts or has transacted business in this District and throughout the United States.

8. Defendant SBN Peripherals, Inc. (“SBN”), also doing business as SBN Dials, is a California corporation with its principal place of business in Agoura Hills, California. SBN transacts or has transacted business in this District and throughout the United States.

9. Defendant Johan Hendrik Smit Duyzentkunst (“Smit”) is an officer, director, or owner of Defendants Asia Pacific, Repo, and SBN. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. He resides in California and, in connection with the matters alleged herein, transacts or has transacted business in this District and throughout the United States.

10. Defendant Janneke Bakker-Smit Duyzentkunst (“Bakker-Smit”) is a director of Defendant Repo. At all times material to this Complaint, acting alone or in concert with others, she has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. She resides in California and, in connection with the

matters alleged herein, transacts or has transacted business in this District and throughout the United States.

11. Defendants Asia Pacific, Repo, and SBN (collectively, “Corporate Defendants”) have operated as a common enterprise while engaging in the unlawful acts and practices alleged below. The Corporate Defendants have commingled funds and have common ownership, officers, managers, business functions, employees, and office locations that have been used to conduct the business practices described below. Because these Corporate Defendants have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged below. Individual Defendants Smit and Bakker-Smit have formulated, directed, controlled, had the authority to control, or participated in the acts and practices of the Corporate Defendants that constitute the common enterprise.

COMMERCE

12. At all times material 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’ BUSINESS ACTIVITIES

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

14. Since at least 2008, Defendants have sold their telemarketing services, including their robocalling services, to numerous clients that purport to sell a variety of products and services over the telephone to consumers throughout the United States.

15. Through their robocalling campaigns conducted on behalf of clients, Defendants have caused tens of millions of consumers to receive deceptive and abusive 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 to the FTC alone from consumers. Indeed, during 2009, a single telephone number used by Defendants in connection with their telemarketing activities (301-882-9986) generated nearly 14,000 Do Not Call complaints to the FTC, more than any other telephone number during this period.

Defendants' Deceptive Telemarketing Practices

16. In providing robocalling services, Defendants use automated dialers to place telemarketing calls that deliver prerecorded messages to telephone numbers.

17. In numerous instances, Defendants' calls deliver prerecorded messages informing recipients that Defendants possess, or are calling on behalf of a third party that possesses, specific information about the call recipient's credit card or automobile warranty.

18. In fact, in many of those instances, Defendants neither possess, nor are they calling on behalf of a third party that possesses, specific information about the call recipient's credit card or automobile warranty.

19. In numerous instances, Defendants' calls deliver prerecorded messages informing recipients that Defendants are calling from, on behalf of, or are otherwise affiliated with the manufacturer or dealer of the call recipient's automobile or the call recipient's credit card issuer.

20. In fact, in many of those instances, Defendants are not calling from, nor on behalf of, nor are they otherwise affiliated with the manufacturer or dealer of the call recipient's automobile or the call recipient's credit card issuer.

21. In numerous instances, Defendants' calls deliver prerecorded messages informing recipients that expiration of the call recipients' original automobile warranty is imminent.

22. In fact, in many of those instances, expiration of the call recipient's original automobile warranty is not imminent.

23. In numerous instances, Defendants' calls deliver prerecorded messages informing recipients that Defendants will substantially lower their credit card interest rate in all or virtually all instances or will save them thousands of dollars in a short time in all or virtually all instances as a result of lowered credit card interest rates.

24. In fact, in many of those instances, call recipients do not receive substantially lower credit card interest rates and do not save thousands of dollars in a short time as a result of lowered credit card interest rates.

25. In numerous instances, Defendants' calls deliver prerecorded messages informing recipients that they have won or been specially selected to receive a vacation travel package.

26. In fact, in many of those instances, the call recipient has neither won nor been specially selected to receive a vacation travel package. The package is available to consumers only if they pay various fees and costs to Defendants or to Defendants' clients.

27. When recipients of Defendants' robocalls press "1" to speak to a sales representative, Defendants transfer the calls to their client's boiler room.

28. In call recipients' subsequent conversations with live representatives, Defendants or their clients have repeated the claims made in the prerecorded messages and discussed above in Paragraphs 17, 19, 21, 23, and 25.

Defendants' Abusive Telemarketing Practices

29. In broadcasting their prerecorded messages to consumers across the United States, Defendants engage in a number of abusive telemarketing practices.

30. Since at least 2008, 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.

31. Since at least 2008, Defendants have initiated outbound telephone calls to telephone numbers on the National Do Not Call Registry.

32. Since at least 2008, 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.

33. In numerous instances on or after September 1, 2009, Defendants made outbound calls that delivered prerecorded messages to induce the sale of goods or services when the persons to whom these telephone calls were made had not expressly agreed, in writing, to authorize the seller to place prerecorded calls to such person.

34. In numerous instances, Defendants 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.

Assisting and Facilitating Deceptive and Abusive Telemarketing Practices

35. Since at least 2008, Defendants have provided substantial assistance and support to their clients, by, among other things, engaging in the conduct set forth in Paragraphs 13-34, even though Defendants knew or consciously avoided knowing that the clients were engaged in violations of Sections 310.3(a) or 310.4 of the TSR.

VIOLATIONS OF THE FTC ACT

36. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.”

37. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

COUNT ONE

Misrepresentation of Material Facts

38. In numerous instances, in connection with telemarketing their clients’ products and services, Defendants have represented, directly or indirectly, expressly or by implication, that:

- A. Defendants possess, or are calling on behalf of a third party that possesses, specific information about the call recipient’s credit card or automobile warranty;
- B. Defendants are calling from, on behalf of, or are otherwise affiliated with the manufacturer or dealer of the call recipient’s automobile or the issuer of the call recipient’s credit card;
- C. Expiration of the call recipient’s original automobile warranty is imminent;

- D. Call recipients will substantially lower their credit card interest rates in all or virtually all instances;
- E. Call recipients will save thousands of dollars in a short time in all or virtually all instances as a result of lowered credit card interest rates; or
- F. Call recipients have won or been specially selected to receive a vacation travel package.

39. In truth and in fact, in numerous instances in which Defendants have made the representations set forth in Paragraph 38 of this Complaint:

- A. Defendants neither possess, nor are they calling on behalf of a third party that possesses, specific information about the call recipient's credit card or automobile warranty;
- B. Defendants are not calling from, nor on behalf of, nor are they otherwise affiliated with the manufacturer or dealer of the call recipient's automobile or the issuer of the call recipient's credit card;
- C. Expiration of the call recipient's original automobile warranty is not imminent;
- D. Call recipients did not receive substantially lower credit card interest rates;
- E. Call recipients did not save thousands of dollars in a short time as a result of lowered credit card interest rates; or
- F. Call recipients have neither won nor been specially selected to receive a vacation travel package. The package is available to

consumers only if they pay various fees and costs to Defendants or to Defendants' clients.

40. Therefore, Defendants' representations as set forth in Paragraph 38 of this Complaint are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

THE TELEMARKETING SALES RULE

Background and Application of the TSR

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

42. 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).

43. Defendants are "telemarketer[s]" engaged in "telemarketing" as those terms are defined in the TSR, 16 C.F.R. § 310.2(bb) and (cc).

44. Defendants have provided telemarketing services on behalf of persons who are "seller[s]" or "telemarketer[s]" engaged in "telemarketing" as those terms are defined in the TSR, 16 C.F.R. § 310.2(z), (bb) and (cc).

45. Defendants have initiated "outbound telephone calls" on behalf of persons who are "seller[s]," as those terms are defined in the TSR, 16 C.F.R. § 310.2(u) and (z).

TSR Prohibitions on Deceptive Conduct

46. The TSR prohibits sellers and telemarketers from misrepresenting, directly or by implication, any material aspect of the nature or central characteristics of the goods or services that are the subject of a sales offer. 16 C.F.R. § 310.3(a)(2)(iii).

47. 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).

48. 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).

49. 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).

TSR Prohibitions on Abusive Conduct

50. 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.

51. 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).

52. The TSR also prohibits sellers and telemarketers 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).

53. The TSR also prohibits sellers and telemarketers from “abandoning” any outbound telephone calls. 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.*

54. Since December 1, 2008, the TSR has prohibited a telemarketer from engaging, and a seller from causing a telemarketer to engage, in initiating an outbound telephone call that delivers a prerecorded message unless the message promptly discloses:

- 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(b)(1)(v)(B)(ii).

55. As amended, effective September 1, 2009, the TSR prohibits initiating a telephone call that delivers a prerecorded message to induce the purchase of any good or service unless the seller has obtained from the recipient of the call an express agreement, in writing, that evidences the willingness of the recipient of the call to receive calls that deliver prerecorded messages by or on behalf of a specific seller. The express agreement must include the recipient’s telephone number and signature, must be obtained after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the seller to place prerecorded calls

to such person, and must be obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service. 16 C.F.R. § 310.4(b)(1)(v)(A).

Assisting and Facilitating Violations of the TSR

56. 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).

VIOLATIONS OF THE TELEMARKETING SALES RULE

COUNT TWO

Making False and Misleading Statements

57. In numerous instances, in the course of telemarketing their clients' goods and services, Defendants have made false and misleading statements, directly or by implication, to induce consumers to pay for goods or services, including, but not limited to, misrepresentations that:

- A. Defendants possess, or are calling on behalf of a third party that possesses, specific information about the call recipient's credit card or automobile warranty;
- B. Defendants are calling from, on behalf of, or are otherwise affiliated with the manufacturer or dealer of the call recipient's automobile or the issuer of the call recipient's credit card;
- C. Expiration of the call recipient's original automobile warranty is imminent;

- D. Call recipients will substantially lower their credit card interest rates in all or virtually all instances;
- E. Call recipients will save thousands of dollars in a short time in all or virtually all instances as a result of lowered credit card interest rates; or
- F. Call recipients have won or been specially selected to receive a vacation travel package.

58. Defendants' acts or practices, as described in Paragraph 57 above, are deceptive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.3(a)(2)(iii), § 310.3(a)(2)(vii), or § 310.3(a)(4).

COUNT THREE

Assisting and Facilitating Deceptive Telemarketing Acts or Practices

59. In numerous instances, Defendants have provided substantial assistance or support, including, but not limited to robocalling services, as described in Paragraphs 13 through 28, 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)(iii), § 310.3(a)(2)(vii) or § 310.3(a)(4).

60. Defendants' substantial assistance or support as alleged in Paragraph 59 above violates the TSR, 16 C.F.R. § 310.3(b).

COUNT FOUR

Failing to Honor Do Not Call Requests

61. In numerous instances, in connection with telemarketing, Defendants have engaged in initiating 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

Violating the National Do Not Call Registry

62. 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

63. 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 Make Required Oral Disclosures

64. In numerous instances, in the course of telemarketing goods and services, Defendants have made outbound telephone calls in which they or the seller 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.

65. Defendants' acts or practices, as described in Paragraph 64 above, are abusive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.4(d).

COUNT EIGHT

Initiating Unlawful Prerecorded Messages on or After December 1, 2008

66. In numerous instances, on or after December 1, 2008, in the course of telemarketing goods and services, Defendants have initiated outbound telephone calls delivering prerecorded messages that, in violation of § 310.4(b)(1)(v)(B)(ii), do not promptly disclose 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.

COUNT NINE

Initiating Unlawful Prerecorded Messages on or After September 1, 2009

67. In numerous instances on or after September 1, 2009, Defendants have initiated outbound telephone calls delivering prerecorded messages to induce the purchase of goods or services when the persons to whom these telephone calls were made had not expressly agreed, in writing, to authorize the seller to place prerecorded calls to such person.

68. Defendants' acts or practices, as described in Paragraph 67 above, are abusive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.4(b)(1)(v)(A).

COUNT TEN

Assisting and Facilitating Abusive Telemarketing Acts or Practices

69. In numerous instances, Defendants have provided substantial assistance or support, including, but not limited to robocalling services, as described in Paragraphs 13 through 34, to sellers or telemarketers whom Defendants knew or consciously avoided knowing were engaged in violations of § 310.4 of the TSR.

70. Defendants' substantial assistance or support as alleged in Paragraph 69 above violates the TSR, 16 C.F.R. § 310.3(b).

CONSUMER INJURY

71. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act and the TSR. In addition, Defendants have been unjustly enriched as a result of their unlawful acts and practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

72. 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 FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

73. 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 resulting from Defendants' violations of the TSR, including the rescission or reformation of contracts, and the refund of money.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff FTC, pursuant to 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 the Court's own equitable powers, requests that the Court:

A. 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, temporary and preliminary injunctions, an order freezing assets, immediate access, and the appointment of a receiver;

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

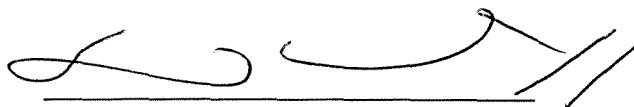
C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act and the TSR, including but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

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

Respectfully Submitted,

WILLARD K. TOM
General Counsel

DATED: May 24, 2010



STEVEN M. WERNIKOFF
JAMES H. DAVIS
Federal Trade Commission
55 West Monroe Street, Suite 1825
Chicago, Illinois 60603
(312) 960-5634 [telephone]
(312) 960-5600 [facsimile]

Attorneys for Plaintiff
FEDERAL TRADE COMMISSION