FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

October 27, 2004

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
AND FACSIMILE

Mr. John C. Terruso
Vice President and Counsel
Equity One
301 Lippincott Drive,
Suite 100
Marlton, NJ, 08053
Fax: 856-396-2700

RE: EB-04-TC-031

Dear Mr. Terruso:

This is an official **CITATION**, issued pursuant to section 503(b)(5) of the Communications Act of 1934, as amended (the Communications Act), 47 U.S.C. § 503(b)(5), for violations of the Federal Communications Commission's rules that govern telephone solicitations and unsolicited advertisements.[1] As explained below, future violations of the Commission's rules in this regard may subject your company to monetary forfeitures.

By letter dated February 27, 2004, the Telecommunications Consumers Division of the Commission's Enforcement Bureau notified you of consumer complaints regarding telemarketing calls that your company, or an entity acting on behalf of your company, made to telephone lines that are contained in the National Do-Not-Call Registry, and provided you an opportunity to submit information to demonstrate the lawfulness of those calls.[2] You responded by letter dated March 22, 2004,[3] and by supplemental letters dated May 18, 2004,[4] and July 21,

[1] 47 C.F.R. § 64.1200. A copy of these rules is enclosed for your convenience.

[2] We have attached the 6 complaints on which this citation is based. Complaints are from the states of California, Florida, Oregon, and Pennsylvania.

[3] Letter from John C. Terruso, Vice President and Counsel, Equity One, to Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, FCC (March 22, 2004).

[4] Letter from John C. Terruso, Vice President and Counsel, Equity One, to Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, FCC (May 18, 2004).

2004.[5] You do not dispute making such calls, but claim that they were made in error. Although you provide detailed explanations for the errors that led to most of the calls, you state that you were unable to identify the exact cause of the errors in several cases.[6] You further state that the errors were possibly the result of local branches erroneously using unscrubbed telemarketing lists, but that you are not able to provide any evidence of that.[7] This explanation is insufficient to establish that you were in compliance with our rules in these cases. Accordingly, we issue this citation.

Section 64.1200(c)(2) of the Commission's rules generally prohibits the delivery of telephone solicitations to residential telephone numbers that are contained in the National Do-Not-Call registry except in certain limited situations. Under the Communications Act and the Commission's rules, a "telephone solicitation" is "the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person."[8] Calls made by or on behalf of tax-exempt nonprofit groups are not considered to be telephone solicitations. Similarly, calls that are made to a person who either has provided prior express invitation or permission to call[9] or has an established business relationship[10] with the caller are not considered to be telephone solicitations. Finally, the rules permit telephone solicitations to a consumer whose number is listed on the National Do-Not-Call Registry if that consumer has a personal relationship with the individual making the calls.[11]

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[5] Letter from John C. Terruso, Vice President and Counsel, Equity One, to Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, FCC (July 21, 2004) (*July 21 Letter*).

[6] *July 21 Letter* at 1.

[7] *July 21 Letter* at 1.

[8] 47 U.S.C. § 227(a)(3); 47 C.F.R. § 64.1200(f)(9).

[9] Prior express invitation or permission to call a number contained on the National Do-Not-Call Registry must be evidenced by a signed, written agreement between a consumer and seller. The agreement must include both the consumer's consent to be called by the particular seller and the telephone number to which such calls may be placed. 47 C.F.R. § 64.1200(c)(2)(ii).

[10] An "established business relationship" means "a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of the subscriber's purchase or transaction with the entity within the eighteen (18) months immediately preceding the date of the telephone call or on the basis of the subscriber's inquiry or application regarding products or services offered by the entity within the three months immediately preceding the date of the call, which relationship has not been previously terminated by either party." 47 C.F.R. § 64.1200(f)(3). The established business relationship exception does not apply when a telephone subscriber has made a company-specific do-not-call request. A company-specific do-not-call request terminates an established business relationship for telemarketing purposes even if the requester continues to do business with the company. 47 C.F.R. § 64.1200(f)(3)(i); *see also Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991,* Report and Order, 7 FCC Rcd 8752, 8766 n.47, 8770 n.63 (1992); *see also* H.R. Rep. 102-317, 1st Sess., 102nd Cong. at 15 (1991); *Charvat v. Dispatch Consumer Services, Inc.,* 95 Ohio St. 3d 505, 769 N.E.2d 829 (2002).

[11] 47 C.F.R. § 64.1200(c)(2)(iii). A "personal relationship" exists if the recipient of the call is a "family member, friend, or acquaintance of the telemarketer making the call." 47 C.F.R. § 64.1200(f)(11).

Accordingly, under the Commission's rules it is unlawful to deliver a telephone solicitation to a residential telephone line unless (1) the call is made by or on behalf of a tax-exempt nonprofit group; (2) the call is made by a person who has a personal relationship with the called party; (3) the called party has provided signed, written consent for the call to be made; or (4) the called party has made a purchase from, or had a transaction with, the caller within the 18 months immediately preceding the call or has made an inquiry or application regarding the caller's products or services within the three months immediately preceding the call, and the called party has not specifically asked the caller to stop all telemarketing calls.

Entities making telephone solicitations must honor do-not-call registrations no later than three months after a number is placed on the National Do-Not-Call Registry, and for a period of no less than five years. To accomplish this, section 64.1200(c)(2)(i)(D) requires entities making telephone solicitations to use a version of the National Do-Not-Call Registry obtained no more than three months before any telephone solicitation is made, and to document this process. An entity that does not claim one of the exemptions set forth above is not liable for calling a telephone number on the National Do-Not-Call Registry only if it is able to demonstrate that it has fully complied with the Commission's standards governing use of the National Do-Not-Call Registry as set out in section 64.1200(c)(2)(i)(A)-(E) of the rules, and that the particular telephone solicitation call was the result of error. Your company, therefore, does not qualify for this exemption from liability.

If, after receipt of this citation, you violate the Communications Act or the Commission's rules in any manner described herein, the Commission may impose monetary forfeitures not to exceed $11,000 for each such violation or each day of a continuing violation. [12]

You may respond to this citation within 30 days from the date of this letter either through (1) a personal interview at the Commission's Field Office nearest to your place of business, or (2) a written statement. Your response should specify the actions that you are taking to ensure that you do not violate the Commission's rules governing telephone solicitation and unsolicited advertisements, as described above.

The nearest Commission field office appears to be the New York Office, 201 Varick Street, Room 1151, New York, NY 10014-4870. Please call Al McCloud at 202-418-2499 if you wish to schedule a personal interview. You should schedule any interview to take place within 30 days of the date of this letter. You should send any written statement within 30 days of the date of this letter to:

[12] *See* 47 C.F.R. § 1.80(b)(3).

Kurt A. Schroeder
Deputy Chief
Telecommunications Consumers Division
Enforcement Bureau
Federal Communications Commission
445-12th Street, S.W.
Rm. 4-C222
Washington, D.C. 20554

Reference EB-04-TC-031 when corresponding with the Commission.

Reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need including as much detail as you can. Also include a way we can contact you if we need more information. Please allow at least 5 days advance notice; last minute requests will be accepted, but may be impossible to fill. Send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau:

For sign language interpreters, CART, and other reasonable accommodations: 202-418-0530 (voice), 202-418-0432 (tty);

For accessible format materials (braille, large print, electronic files, and audio format): 202-418-0531 (voice), 202-418-7365 (tty).

Under the Privacy Act of 1974, 5 U.S.C. § 552(a)(e)(3), we are informing you that the Commission's staff will use all relevant material information before it, including information that you disclose in your interview or written statement, to determine what, if any, enforcement action is required to ensure your compliance with the Communications Act and the Commission's rules.

The knowing and willful making of any false statement, or the concealment of any material fact, in reply to this citation is punishable by fine or imprisonment under 18 U.S.C. § 1001.

Thank you in advance for your anticipated cooperation.

Sincerely,

Kurt A. Schroeder
Deputy Chief, Telecommunications Consumers Division
Enforcement Bureau
Federal Communications Commission

Enclosures