

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
WARRIOR CUSTOM GOLF, INC.)	File No. EB-03-TC-036
a.k.a. WARRIOR GOLF)	NAL/Acct. No. 200432170004
)	FRN: 0012264933
Apparent Liability for Forfeiture)	
)	

ADOPTING ORDER

Adopted: June 8, 2006

Released: June 12, 2006

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) of the Federal Communications Commission and Warrior Custom Golf, Inc. a.k.a. Warrior Golf (“WCG” or the “company”). The Consent Decree terminates an investigation initiated by the Enforcement Bureau into possible noncompliance by WCG with the statute and rules governing unsolicited, prerecorded advertising messages, section 227 of the Communications Act of 1934, as amended (the “Act”) and section 64.1200 of the Commission’s Rules.¹

2. The Bureau and WCG have negotiated the terms of a Consent Decree that would resolve this matter and terminate the investigation. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. Accordingly, **IT IS ORDERED**, pursuant to Section 4(i) of the Communications Act of 1934, as amended,² that the attached Consent Decree **IS ADOPTED**.

¹ See 47 U.S.C. § 227(b)(1)(B); 47 C.F.R. §§ 64.1200(a)(2); see also *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003) (*TCPA Revisions Report and Order*).

²47 U.S.C. § 154(i).

5. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED**.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau

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CONSENT DECREE

I. INTRODUCTION

1. The Enforcement Bureau (“Bureau”) of the Federal Communications Commission (the “FCC”) and Warrior Custom Golf, Inc. a.k.a. Warrior Golf (“WCG” or the “company”),¹ by their counsel and authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into possible noncompliance by WCG with the statute and rules governing unsolicited, prerecorded advertising messages, section 227 of the Communications Act of 1934, as amended (the “Act”) and section 64.1200 of the Commission’s Rules.²

II. BACKGROUND

2. On April 29, 2003, in response to a consumer complaint alleging that WCG had left three, unsolicited, prerecorded advertisement messages on the consumer’s voicemail, the Commission staff issued a citation³ to WCG, pursuant to section 503(b)(5) of the Act.⁴ The staff cited WCG for delivering one or more prerecorded, unsolicited advertisements to a residential telephone line, in violation of section 227 of the Act and

¹ WCG is headquartered at 15 Mason, Suite A, Irvine, CA 92618.

² See 47 U.S.C. § 227(b)(1)(B); 47 C.F.R. §§ 64.1200(a)(2); see also *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003) (*TCPA Revisions Report and Order*).

³ See Citation from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, issued to WCG on April 29, 2003 (“*April 29, 2003 Citation*”).

⁴ See 47 U.S.C. § 503(b)(5) (requiring the Commission to issue citations to parties who do not hold a Commission license or other authorization, for violations of the Act or of the Commission’s rules and orders).

the Commission's rules and orders.⁵ According to the complaining consumer, the unsolicited advertisements offered the opportunity to try custom golf clubs without charge and requested that the consumer call a toll-free number to take advantage of the special offer.⁶

3. Despite the citation's warning that subsequent violations could result in the imposition of monetary forfeitures, the Commission received additional consumer complaints indicating that WCG apparently continued to send illegal prerecorded, unsolicited advertisements after receiving the citation.⁷ The complaints indicated that the prerecorded messages were substantially the same as those described in the citation. Accordingly, on December 8, 2004, the Bureau issued a Notice of Apparent Liability ("NAL") to WCG,⁸ finding that the company had apparently willfully or repeatedly violated section 227 of the Act and the Commission's rules and orders, by delivering at least four unsolicited, prerecorded advertising messages to at least three consumers.⁹ The NAL proposed a total forfeiture of \$23,500, representing \$4,500 for each of three violations, plus \$10,000 for a fourth violation, where WCG continued to deliver the messages to a consumer even after repeated requests to refrain.

III. DEFINITIONS

4. For the Purposes of this Consent Decree, the following definitions shall apply:

⁵ See 47 U.S.C. § 227; 47 C.F.R. § 64.1200.

⁶ See consumer complaint from Todd Pollard, dated August 15, 2002, which was attached to the *April 29, 2003 Citation*.

⁷ See the following consumer complaints: 1) Monte J. Dye, IC No. 04-W7795243, received February 16, 2004 (stating that prerecorded message was received on February 15, 2004); 2) Andrew Pong, IC No. 04-W7875742, received February 27, 2004 (stating that prerecorded message was received on February 15, 2004); and 3) Mark James, received February 20, 2004 (stating that prerecorded messages were received November 13, 2003 and February 13, 2004). All complainants signed declarations stating that they did not have established business relationships with WCG. With regard to the prerecorded message received by Mark James on November 13, 2003, WCG entered into a Tolling Agreement (the "Agreement") with the Bureau, whereby the one-year statute of limitations set forth in 47 U.S.C. § 503(b)(6) was tolled from September 10, 2004 until the earlier of: (a) the date the FCC releases a NAL regarding any of the alleged violations described in the Agreement; (b) the date the FCC informs WCG in writing that it has terminated the investigation; or (c) 180 days after the date of the Agreement. See the Agreement, signed on behalf of Kurt Schroeder of the Bureau on September 2, 2004 and by Brendan Flaherty, President of WCG, on September 10, 2004.

⁸ See *Warrior Custom Golf, Inc. a.k.a. Warrior Golf*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd. 23,648 (Enf. Bur. 2004).

⁹ See 47 U.S.C. § 227; 47 C.F.R. § 64.1200.

(a) “WCG,” or the “Company” means Warrior Custom Golf, Inc., Warrior Golf, and all d/b/a entities of the company, including all subsidiaries, commonly-owned affiliates, successors, and assigns.

(b) The “FCC” or the “Commission” means the Federal Communications Commission.

(c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.

(d) “Parties” means WCG and the Bureau.

(e) “Adopting Order” means an Order of the Bureau adopting the terms and conditions of this Consent Decree.

(f) “Effective Date” means the date on which the Bureau adopts the Adopting Order.

(g) “Final Order” means an order that is no longer subject to administrative or judicial reconsideration, review, appeal, or stay.

(h) “Investigation” means the investigation commencing with the citation issued by the Enforcement Bureau to WCG on April 29, 2003 regarding possible noncompliance by WCG with the requirements contained in section 227(b)(1)(B) of the Act and section 64.1200(a)(2) of the Commission’s Rules during the period April 29, 2003 through October 30, 2004, including, for purposes of this Consent Decree, all complaints that were or could have been made against WCG for prerecorded messages delivered during the same period.

(i) “Act” means the Communications Act of 1934, as amended.

(j) “Telemarketing” means “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.” 47 C.F.R. § 64.1200(f)(7).

(k) “Telephone Solicitation” means “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.” 47 C.F.R. § 64.1200(f)(9).

(l) “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).

III. AGREEMENT

5. WCG agrees that the Bureau has jurisdiction over it and the subject matter contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

6. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement of the Investigation between WCG and the Bureau. In express reliance on the covenants and representations contained herein, the Bureau agrees to terminate the Investigation. In consideration for the termination of this Investigation and in accordance with the terms of this Consent Decree, WCG agrees to the terms, conditions, and procedures contained herein.

7. The Parties agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance by WCG with the requirements of the Act or the Commission’s rules or orders. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, WCG does not admit or deny any noncompliance, violation or liability associated with or arising from its actions or omissions involving the Act or the Commission’s rules that are the subject of this Consent Decree.

8. In consideration for the termination of the Investigation in accordance with the terms of this Consent Decree, WCG agrees to voluntarily implement a Telemarketing Compliance Program consisting of the components delineated below.

(a) WCG agrees that it will not conduct or have any involvement with telemarketing activities or any other calling programs that utilize prerecorded messages, regardless of the prior express consent from, or the real or perceived established business relationship with, the called party, and regardless of whether the calls are made for commercial or non-commercial purposes or made by or on behalf of an actual or purported tax-exempt nonprofit organization. WCG agrees that it will instruct all employees accordingly in writing, and will not retain any third parties for such purposes.

(b) Not later than 60 days after the Effective Date, and every 180 days thereafter, WCG will submit a written report to the Bureau of its compliance with this Consent Decree, including in the first report, its progress in implementing its Compliance Program.

(c) WCG agrees that in the event it violates any of the provisions of this Consent Decree, it waives its right to first receive a citation under section 503(b) concerning such violation(s) before the Bureau may issue a Notice of Apparent Liability.

(d) WCG will maintain and make available to the Bureau, within 14 days of receipt of any specific request from the Bureau, business records documenting its compliance with the terms and provisions of this Consent Decree.

9. The parties agree and acknowledge that this Consent Decree shall constitute a final settlement of the Investigation. The Bureau agrees that, in the absence of material new evidence related to these matters, it will not use the facts developed in this Investigation to institute, on its own motion, any new proceedings, formal or informal, or to take any actions on its own motion against the Company concerning the matters that were the subject of this Investigation. Consistent with the foregoing, nothing in this Consent Decree limits the Commission's authority to consider and adjudicate any complaint that may be filed pursuant to sections 208 of the Communications Act, as amended,¹⁰ and to take any action in response to such complaint.

10. In consideration of Warrior Custom Golf's payment on April 27, 2006, of the full forfeiture amount (\$23,500) proposed in the NAL, the parties agree that no voluntary contribution to the United States Treasury is necessary for settlement of this matter.

11. The Company waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree, provided the Order adopts the Consent Decree without change, addition, or modification.

12. The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau through incorporation of such provisions by reference in an Adopting Order of the Bureau, which shall immediately terminate the Investigation.

13. The Company's decision to enter into this Consent Decree is expressly contingent upon issuance of an Order that is consistent with this Consent Decree, and which adopts the Consent Decree without change, addition, or modification.

14. In the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

15. If the Commission, or the United States on behalf of the Commission, brings a judicial action to enforce the terms of the Adopting Order, neither the Company nor the Commission will contest the validity of the Consent Decree or Adopting Order, and the Company will waive any statutory right to a trial *de novo*.

16. Any violation of the Consent Decree or the Adopting Order will constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

¹⁰ 47 U.S.C. § 208.

17. The Company represents and warrants that neither the Company nor any of its representatives, employees, agents or any other person acting under, by, through, or on behalf of the Company, directly or indirectly, or through any corporate or other device, shall state, represent or imply that the FCC, or any other governmental unit or subdivision thereof, approved or authorized any practice, act, advertisement or conduct of the Company as a result of this Consent Decree, other than the standards and actions set forth in this Decree.

18. The Parties also agree that if any provision of the Consent Decree conflicts with any subsequent rule or order adopted by the Commission, where compliance with the provision would result in a violation, that provision will be superseded by such Commission rule or order.

19. By this Decree, the Company does not waive or alter its right to assert and seek protection from disclosure of any privileged or otherwise confidential and protected documents and information, or to seek appropriate safeguards of confidentiality for any competitively sensitive or proprietary information. The status of materials prepared for, reviews made and discussions held in the preparation for and implementation of the Company's compliance efforts under this Agreement, which would otherwise be privileged or confidential, are not altered by the execution or implementation of the terms of this Decree and no waiver of such privileges is made by this Agreement.

20. The Companies represent and warrant that they shall not effect any change in their form of doing business or its organizational identity or participate directly or indirectly in any activity to form a separate entity or corporation which engages in acts prohibited in this Consent Decree or for any other purpose which would otherwise circumvent any part of this Decree or the obligations of this Decree.

21. The Parties agree that the requirements of this Consent Decree shall expire twenty-four (24) months from the Effective Date.

