

1 GREGORY A. BROWER
United States Attorney
2 District of Nevada
ROBERT R. EDELMAN
3 Assistant United States Attorney
Nevada Bar. No. 8438
4 333 Las Vegas Blvd. South, Suite 5000
Las Vegas, Nevada 89101
5 Phone: (702)388-6336
Facsimile: (702)388-6787
6 Email: Robert.Edelman@usdoj.gov

7 ALAN PHELPS (Appearing under LR IA 10-3)
Trial Attorney
8 U.S. Department of Justice
Office of Consumer Litigation
9 P.O. Box 386
Washington, DC 20044
10 Phone: (202) 307-6154
Facsimile: (202) 514-8742
11 Email: Alan.Phelps@usdoj.gov

12 Attorneys for the United States of America.

13 **UNITED STATES DISTRICT COURT**

14 **DISTRICT OF NEVADA**

15 UNITED STATES OF AMERICA,)
)
16 Plaintiff,) Case No.
)
17 v.)
)
18 STAR SATELLITE, LLC, also doing business)
as TENAYA MARKETING; WALTER ERIC)
19 MYERS, individually and as an officer of)
STAR SATELLITE LLC;)
20 Defendants, and)
21)
22 THE MYERS IRREVOCABLE TRUST,)
CINDY MYERS and ZACHARY T. BALL in)
their capacities as Trustees, KATIE MYERS)
23 and M [REDACTED] M [REDACTED],)
)
24 Relief Defendants.)
)
25 _____)

26 **COMPLAINT FOR CIVIL PENALTIES, PERMANENT INJUNCTION AND OTHER
EQUITABLE RELIEF**

1 Plaintiff, the United States of America, acting upon notification and authorization to the
2 Attorney General by the Federal Trade Commission (“FTC” or “Commission”), pursuant to
3 Section 16(a)(1) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 56(a)(1), for its
4 complaint alleges:

5 1. Plaintiff brings this action under Sections 5(a), 5(m)(1)(A), 13(b), 16(a) and 19 of the
6 FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), 56(a) and 57b, and Section 6 of the
7 Telemarketing and Consumer Fraud and Abuse Prevention Act (the “Telemarketing Act”), 15
8 U.S.C. § 6105, to obtain monetary civil penalties, a permanent injunction, and other equitable
9 relief from Defendants and Relief Defendants for violations of Section 5(a) of the FTC Act, 15
10 U.S.C. § 45(a), and the FTC’s Telemarketing Sales Rule (the “TSR” or “Rule”), 16 C.F.R.
11 Part 310, as amended by 68 Fed. Reg. 4580, 4669 (January 29, 2003).

12 **JURISDICTION AND VENUE**

13 2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331,
14 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(m)(1)(A), 53(b), 56(a) and 57b. This action arises
15 under 15 U.S.C. § 45(a).

16 3. Venue is proper in this District under 28 U.S.C. §§ 1391 (b)-(c) and 1395(a), and 15
17 U.S.C. § 53(b).

18 **DEFENDANTS**

19 4. Defendant Star Satellite LLC (“Star Satellite”) is a Utah company with its principal place
20 of business at 1252 S. Alpine Way, Provo, Utah 84606. Star Satellite transacts or has transacted
21 business in the District of Nevada.

22 5. Defendant Walter Eric Myers is an officer of Star Satellite. Acting alone or in concert
23 with others, he has formulated, directed, controlled or participated in the acts or practices set forth
24 in the complaint. Defendant Myers transacts or has transacted business in the District of Nevada.

25 6. The Myers Irrevocable Trust, Cindy Myers in her role as Trustee, Zachary T. Ball in his
26 role as Trustee, Katie Myers as a Beneficiary of the Trust, and M ██████ M ██████ as a Beneficiary of

1 the Trust are Relief Defendants. The Myers Irrevocable Trust transacts or has transacted business
2 in the District of Nevada.

3 **THE TELEMARKETING SALES RULE**

4 **AND THE NATIONAL DO NOT CALL REGISTRY**

5 7. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive
6 telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108, in
7 1994. On August 16, 1995, the FTC adopted the Telemarketing Sales Rule (the “Original TSR”),
8 16 C.F.R. Part 310, which became effective on December 31, 1995. On January 29, 2003, the
9 FTC amended the TSR by issuing a Statement of Basis and Purpose (“SBP”) and the final
10 amended TSR (the “Amended TSR”). 68 Fed. Reg. 4580, 4669.

11 8. Since October 1, 2003, sellers and telemarketers have been prohibited from abandoning
12 any outbound telephone call in violation of the Amended TSR. 16 C.F.R. § 310.4(b)(1)(iv).

13 9. A “seller” is any person who, in connection with a telemarketing transaction, provides,
14 offers to provide, or arranges for others to provide goods or services to the customer in exchange
15 for consideration. 16 C.F.R. § 310.2(z).

16 10. A “telemarketer” is any person who, in connection with telemarketing, initiates or
17 receives telephone calls to or from a customer or donor. 16 C.F.R. § 310.2(bb).

18 11. “Person” means any individual, group, unincorporated association, limited or general
19 partnership, corporation, or other business entity. 16 C.F.R. § 310.2(v).

20 12. Telemarketers are prohibited from abandoning an outbound telemarketing call, and
21 sellers are prohibited from causing a telemarketer to do so in violation of the Amended TSR. 16
22 C.F.R. § 310.4(b)(1)(iv). An outbound telephone call is abandoned if a person answers it and the
23 telemarketer does not connect the call to a sales representative within two (2) seconds of the
24 person's completed greeting. 16 C.F.R. § 310.4(b)(1)(iv).

25 13. The use of pre-recorded message telemarketing, where a sales pitch to a live consumer
26 begins with or is made entirely by a pre-recorded message, violates the Amended TSR because the

1 telemarketer is not connecting the call to a sales representative within two (2) seconds of the
2 person's completed greeting.

3 14. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and Section
4 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the Amended TSR constitutes an
5 unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the
6 FTC Act, 15 U.S.C. § 45(a).

7 15. Defendants are "seller[s]" and/or "telemarketer[s]" engaged in "telemarketing," as
8 defined by the Amended TSR, 16 C.F.R. § 310.2.

9 **DEFENDANTS' BUSINESS ACTIVITIES**

10 16. Defendant Star Satellite marketed Dish Network satellite television programming to
11 consumers throughout the United States.

12 17. Defendant Star Satellite marketed Dish Network satellite television programming
13 through a variety of methods, including telemarketing.

14 18. Since on or after October 1, 2003, Star Satellite has directly, or through intermediaries,
15 abandoned outbound telemarketing calls to consumers by failing to connect the call to a
16 representative within two (2) seconds of the consumer's completed greeting.

17 19. The Relief Defendants in this case were unjustly enriched to the extent that they received
18 funds or assets derived from the unlawful practices of Star Satellite complained of herein. The
19 Relief Defendants have no legitimate claim to funds or assets derived from the unlawful practices
20 of Star Satellite complained of herein.

21 20. At all times relevant to this complaint Defendants have maintained a substantial course of
22 trade or business in the offering for sale and sale of goods or services via the telephone in or
23 affecting commerce as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

24 //

25 //

26

1 **VIOLATIONS OF THE TELEMARKETING SALES RULE**

2 **Count I**

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

7 **DISGORGEMENT OF RELIEF DEFENDANTS' ILL-GOTTEN GAINS**

8 **Count II**

9 22. Since on or after October 1, 2003, Star Satellite has directly, or through intermediaries,
10 violated the TSR by abandoning outbound telemarketing calls to consumers by failing to connect
11 the call to a representative within two (2) seconds of the consumer's completed greeting.

12 23. Relief Defendants have received funds or benefitted from funds which are traceable to
13 funds obtained by Defendants' in connection with their violations of the TSR.

14 24. The Relief Defendants will be unjustly enriched if they are not required to disgorge the
15 funds or the value of the benefit they received as a result of the Defendants' violations of the TSR.

16 25. By reason of the foregoing, the Relief Defendants hold funds and assets in constructive
17 trust.

18 26. The Relief Defendants should be required to disgorge the funds and assets, or the value
19 of the benefit they received from those funds and assets, which are traceable to Defendants'
20 violations of the TSR.

21 **CONSUMER INJURY**

22 27. Consumers in the United States have suffered and will suffer injury as a result of
23 Defendants' violations of the TSR. Absent injunctive relief by this Court, Defendants are likely to
24 continue to injure consumers and harm the public interest.

25 //

26 //

1 **THIS COURT'S POWER TO GRANT RELIEF**

2 28. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive
3 and other ancillary relief to prevent and remedy any violation of any provision of law enforced by
4 the FTC.

5 29. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4
6 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended,
7 and as implemented by 16 C.F.R. § 1.98(d) (1997), authorizes this Court to award monetary civil
8 penalties of not more than \$11,000 for each violation of the TSR. Defendants' violations of the
9 TSR were committed with the knowledge required by Section 5(m)(1)(A) of the FTC Act, 15
10 U.S.C. § 45(m)(1)(A).

11 30. This Court, in the exercise of its equitable jurisdiction, may award ancillary relief to
12 remedy injury caused by Defendants' violations of the Rule and the FTC Act.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff requests that this Court, as authorized by Sections 5(a),
15 5(m)(1)(A), 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b) and 57b, and
16 pursuant to its own equitable powers:

- 17 1. Enter judgment against Defendants and in favor of Plaintiff for each violation alleged in
18 this complaint;
- 19 2. Award plaintiff monetary civil penalties from Defendants for every violation of the TSR;
- 20 3. Impose a constructive trust on any ill-gotten gains derived from the acts or practices
21 complained of herein and passed to the Relief Defendants;
- 22 4. Permanently enjoin Defendants from violating the TSR and the FTC Act;
- 23 5. Order Defendants to pay the costs of this action; and
- 24 6. Award Plaintiff such other and additional relief as the Court may determine to be just and
25 proper.

26 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

DATED: June 19, 2008

Respectfully Submitted,

GREGORY A. BROWER
United States Attorney

ROBERT R. EDELMAN
Assistant United States Attorney

/S/ Alan Phelps
ALAN PHELPS
Trial Attorneys
U.S. Department of Justice

OF COUNSEL:

LOIS C. GREISMAN
Associate Director for Marketing Practices
Federal Trade Commission

ALLEN HILE, JR.
Assistant Director for Marketing Practices

RUSSELL DEITCH
GARY IVENS
Attorneys
Federal Trade Commission
600 Pennsylvania Ave., N.W., Room 288
Washington, D.C. 20580

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

PROOF OF SERVICE

I, Alan Phelps, certify that the following individuals were served the **Complaint for Civil Penalties, Permanent Injunction and Other Equitable Relief** on this date by the below identified method of service:

Electronic Case Filing

U.S. Mail

Jeffrey L. Shields
Zions Bank Building Suite 900
10 East South Temple
Salt Lake City, Utah 84133-1115
Phone: 801.530.7374
Fax: 801.364.9127
jlshields@cnmlaw.com

Lee S. McCullough III
5255 North Edgewood Drive, #100
Provo, UT 84604
Phone: 801-765-0279
lee@lsmlaw.net

DATED: This 19th day of June, 2008.

/S/ Alan Phelps
ALAN PHELPS
TRIAL ATTORNEY