

06/02/2023 01:33 PM Westmoreland County 23CI02138

MERNA T. HOFFMAN
Deputy Attorney General
PA Attorney I.D. No. 312897
15th Floor, Strawberry Square
Harrisburg, PA 17120
Email: mhoffinan@attorneygeneral.gov

**IN THE COURT OF COMMON PLEAS
OF WESTMORELAND COUNTY, PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA,	:	
BY MICHELLE A. HENRY	:	
ATTORNEY GENERAL,	:	
Petitioner,	:	CIVIL DIVISION
	:	
v.	:	
	:	
MAMMOTH MARKETING GROUP, LLC.;	:	
Respondent.	:	

ASSURANCE OF VOLUNTARY COMPLIANCE

AND NOW, comes the Commonwealth of Pennsylvania, by Attorney General, Michelle A. Henry (“Commonwealth” or “Petitioner”), which caused an investigation to be made into the business practices of Mammoth Marketing Group, LLC, (“Respondent”) pursuant to the Pennsylvania *Unfair Trade Practices and Consumer Protection Law*, 73 P.S. § 201-1 *et seq.* (“*Consumer Protection Law*”); the Pennsylvania *Telemarketer Registration Act*, 73 P.S. § 2241 *et seq.* (“*TRA*”), and the Federal *Telemarketing Sales Rule*, 16 C.F.R. 310 *et seq.* (“*TSR*”), and in support thereof states the following:

DEFINITIONS

“**Telemarketing**” or “**Telemarketing Campaign**” shall mean a “plan, program or campaign which is conducted to induce the purchase of goods or services..., by use of one or more telephones and which involves more than one telephone call,” as defined by 73 P.S. § 2242 and 16 C.F.R. § 310.2(gg).

“**Telephone Solicitation Call**” shall mean a “call made to a residential, business or wireless telephone subscriber for the purpose of soliciting the sale of any consumer goods or services or for the purpose of obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services,” as defined by 73 P.S. §2242.

“**Outbound Telephone Call**” shall mean a “telephone call initiated by a telemarketer to induce the purchase of goods or services...” as defined by 16 C.F.R. § 310.2(x).

“**Telemarketer**” shall mean “[a]ny person or business which, in connection with telemarketing, initiates or receives telephone calls to or from a consumer in this Commonwealth, or when the person or business acting in connection with telemarketing is located within this Commonwealth when such calls are initiated or received, as defined by 73 P.S. §2242 and 16 C.F.R. § 310.2(ff).

“**Telephone Subscriber**” shall mean any person residing, or entity located, within the Commonwealth of Pennsylvania that utilizes wire line telephone service numbers and/ or wireless telephone service numbers.

“**DNC List**” or “**Do Not Call List**” shall mean “a list of residential, business or wireless telephone subscribers who have notified the list administrator of their desire not to receive telephone solicitation calls,” as defined by 73 P.S. § 2242.

“**VOIP**” shall refer to Voice over Internet Protocol.

“**Express Consent**” shall mean a written and signed agreement whereby a Telephone Subscriber, who is on the DNC list, authorizes a specific Telemarketer to place outbound calls to the Telephone Subscriber’s telephone number.

PARTIES

WHEREAS, Petitioner is the Commonwealth of Pennsylvania, by Attorney General Michelle A. Henry, with offices located at 15th Floor, Strawberry Square, Harrisburg, Pennsylvania 17120;

WHEREAS, Respondent Mammoth Marketing Group, LLC, is an Ohio Limited Liability Company with a principal place of business located at 9378 Mason Montgomery Road, Suite 237, Mason, Ohio, 45040;

BACKGROUND

WHEREAS, Respondent has engaged in trade and commerce within the Commonwealth of Pennsylvania by advertising, marketing, offering to sell, selling, and/or providing health insurance, specifically Medicare benefits, to Pennsylvania consumers;

WHEREAS, Respondent advertised, marketed, and offered to sell health insurance by making Outbound Telephone Calls and Telephone Solicitation Calls by targeting Pennsylvania Telephone Subscribers;

WHEREAS, pursuant to Section 2243(a) of the *TRA*, 73 P.S. § 2243(a), a Telemarketer is required to register with the Pennsylvania Office of Attorney General at least 30 days prior to offering for sale consumer goods or services through any medium;

WHEREAS, at all times relevant and material hereto, Respondent failed to register as a Telemarketer before initiating the Telemarketing calls, as required by Section 2243 of the *TRA*, 73 P.S. § 2243(a);

WHEREAS, at all times relevant and material hereto, the Commonwealth alleges that Respondent conducted the Telemarketing calls by utilizing a VoIP system;

WHEREAS, pursuant to Section 2245 of the *TRA*, 73 P.S. § 2245, Telemarketers are required to promptly disclose to any consumer during the initial telephone contact the purpose of the call, the name of the telemarketer or telemarketing business, and what the telemarketer or telemarketing business is selling;

WHEREAS, based on the Commonwealth's investigation, the Commonwealth alleges that Respondent made solicitation calls to Telephone Subscribers without first clearly, affirmatively, and expressly stating (1) the identity of the seller, (2) the purpose of the call is to sell goods or services, (3) the nature of the goods or services; and (4) that no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered, as required by Section 201-2(4)(xvii) of the *Consumer Protection Law*, 73 P.S. § 201-2(4)(xvii);

WHEREAS, based on the Commonwealth's investigation, the Commonwealth alleges that Respondent failed to disclose to the Telephone Subscriber (1) the purpose of the call, (2) the name of the telemarketer or telemarketing business, and (3) what the telemarketer or telemarketing business is selling, as required by Section 2245 of the *TRA*, 73 P.S. § 2245;

WHEREAS, the Commonwealth maintains a DNC list of Pennsylvania Telephone Subscribers;

WHEREAS, pursuant to Section 2245.2(a) of the *TRA*, 73 P.S. § 2245.2(a) and Section 310.4(b)(1)(iii)(B)(1) of the *TSR*, 16 C.F.R. § 310.4(b)(1)(iii)(B)(1), a Telemarketer is prohibited from placing Telemarketing Calls to Telephone Subscribers on the DNC List, unless the Telemarketers obtains the Express Request or Express Consent from the Telephone Subscriber;

WHEREAS, based on the Commonwealth's investigation, the Commonwealth alleges that Respondent failed to obtain the Express Request or Express Consent from Telephone Subscribers on the DNC List before initiating the Outbound Calls;

WHEREAS, pursuant to Section 2245.2(a) of the *TRA*, 73 P.S. § 2245.2(a), “[N]o telemarketer shall initiate or cause to be initiated a telephone solicitation call to a telephone number of a residential or business telephone subscriber who does not wish to receive telephone solicitation calls and has caused his name, address and telephone number to be enrolled on a [DNC] list”;

WHEREAS, at all times relevant and material hereto, Respondent failed to obtain the Express Consent from the Telephone Subscribers on the DNC List before placing the Outbound Calls, as required by Section 310.4(b)(1)(iii)(B)(1) of the *TSR* and Section 2245.2(a) of the *TRA*, 16 C.F.R. § 310.4(b)(1)(iii)(B)(1) and 73 P.S. § 2245.2(a);

WHEREAS, pursuant to Section 2245(a)(9) of the *TRA*, engaging in any deceptive or abusive telemarketing act or practice in violation of the *TSR* is also a violation of the *TRA*, 73 P.S. § 2245(a)(9);

WHEREAS, pursuant to Section 2246(a) of the *TRA*, 73 P.S. § 2246(a), a violation of the *TRA* is also a violation of the *Consumer Protection Law*;

VIOLATIONS

WHEREAS, based upon the Commonwealth’s investigation, the Commonwealth alleges that Respondent has engaged in conduct, which violates the *TRA*, *TSR*, and *Consumer Protection Law*, as more fully set forth below:

1. Offering for sale goods or services without registering as a telemarketer with the Office of Attorney General, in violation of Section 2243(a) of the *TRA*, 73 P.S. § 2243(a);
2. Initiating or causing to be initiated telephone solicitation calls to consumers without registering as a telemarketer in violation of Section 2243(b) of the *TRA*, 73 P.S. § 2243(b);
3. Failing to provide a surety bond in the sum of \$50,000 in a form prescribed by the Office of Attorney General for the indemnification of any person suffering a loss as the

result of any fraud, misrepresentation, or violation of the *Consumer Protection Law* in violation of Section 2244(b) of the *TRA*, 73 P.S. § 2244(b);

4. Failing to disclose to the Telephone Subscriber (1) the purpose of the call, (2) the name of the telemarketer or telemarketing business, and (3) what the telemarketer or telemarketing business is selling, in violation of Section 2245 of the *TRA*, 73 P.S. § 2245;
5. Initiating or causing to be initiated telephone solicitation calls to consumers who registered their names, telephone numbers, and addresses on the DNC list, in violation of Section 2245.2(a) of the *TRA*, 73 P.S. § 2245.2(a);
6. Failing to obtain an “express request” from consumers on the DNC list prior to initiating telemarketing calls, as required by Section 2242 of the *TRA*, 73 P.S. § 2242; and
7. Failing to obtain an Express Consent to contact consumers who have registered their phone numbers on the DNC list, as required by Section 310.4(b)(1)(iii)(B)(1) of the *TSR*, 16 C.F.R. § 310.4(b)(1)(iii)(B)(1), including, but not limited to:
 - a. Failing to obtain a written agreement clearly evidencing the consumer’s authorization that calls made by or on behalf of a specific party may be placed to the consumer’s telephone number; and
 - b. Failing to obtain the consumer’s signature;

WHEREAS, Section 2245(a)(9) of the *TRA* prohibits engaging in any deceptive or abusive telemarketing acts or practices in violation of *TSR*, 73 P.S. § 2245(a)(9);

WHEREAS, pursuant to Section 2246(a) of the *TRA*, a violation of the *TRA* is a violation of the *Consumer Protection Law*, 73 P.S. § 2246(a);

WHEREAS, the aforesaid acts and practices constitute “unfair methods of competition” and/or “unfair or deceptive acts or practices,” as prohibited by Section 201-3 of the *Consumer Protection Law*, as defined by Section 201-2(4)(ii), (iii), (xvii), and (xxi) by:

1. Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services, in violation of Section 201-2(4)(ii) of the *Consumer Protection Law*, 73 P.S. § 201-2(4)(ii);

2. Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another, in violation of Section 201-2(4)(iii) of the *Consumer Protection Law*, 73 P.S. § 201-2(4)(iii);
3. Making solicitation calls of goods or services over the telephone without first clearly, affirmatively, and expressly stating:
 - a. the identity of the seller,
 - b. the purpose of the call is to sell goods or services,
 - c. the nature of the goods or services,
 - d. that no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered, 73 P.S. § 201-2(4)(xvii);in violation of Section 201-2(4)(xvii) of the *Consumer Protection Law*, 73 P.S. § 201-2(4)(xvii); and
4. Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding, in violation of Section 201-2(4)(xxi) of the *Consumer Protection Law*, 73 P.S. § 201-2(4)(xxi);

WHEREAS, Respondent neither admits nor denies the Commonwealth's allegations;

WHEREAS, Respondent agrees to refrain from violating the *Telemarketer Registration Act*, *Telemarketing Sales Rule*, and *Consumer Protection Law*, and desires to comply with the civil laws of the Commonwealth; and

WHEREAS, this Assurance of Voluntary Compliance is accepted by the Commonwealth pursuant to Section 201-5 of the *Consumer Protection Law*, 73 P.S. § 201-5, in lieu of commencing statutory proceedings under Sections 201-4 or 201-8 of the *Consumer Protection Law*, 73 P.S. §§ 201-4, 201-8.

SETTLEMENT TERMS

NOW THEREFORE, having conducted trade and commerce within the Commonwealth, Respondent agrees for itself, its successors, assigns, officers, partners, and affiliates, as follows:

- I. The Recitals set forth above are incorporated herein as though fully set forth.**
- II. Injunctive and Affirmative Relief:**

A. Respondent shall comply with any and all provisions of the *Consumer Protection Law* and any amendments thereto, and is permanently enjoined from any violation thereof.

B. Respondent shall comply with any and all provisions of the *TRA* and any amendments thereto, and is permanently enjoined from any violation thereof.

C. Respondent shall comply with any and all provisions of the *TSR* and any amendments thereto, and is permanently enjoined from any violation thereof.

III. Monetary Relief

A. **Required Payment** – Upon the signing of this Assurance of Voluntary Compliance, Respondent shall pay to the Commonwealth a total payment of FIFTY-SIX THOUSAND SEVEN HUNDRED FIFTY and 00/100 Dollars (\$56,750.00), which shall be allocated as follows:

1. **Civil Penalties** in the amount of FIFTY THOUSAND and 00/100 Dollars

(\$50,000.00) shall be paid upon Respondent’s execution of the Assurance of Voluntary Compliance which shall be allocated as follows:

- a. ONE HUNDRED and 00/100 Dollars (\$100.00) to be allocated as the statutory remittance pursuant to Section 2245.2(k)(2) of the *TRA*, 73 P.S. §2245.2(k)(2), which shall be placed in an escrow account and distributed on a pro-rata basis to consumers who were listed on the do-not-call list at the time they were called by Respondent and filed complaints with the Commonwealth; and
- b. FORTY-NINE THOUSAND NINE HUNDRED and 00/100 Dollars (\$49,900.00) to be distributed to the Commonwealth of Pennsylvania, Department of Treasury.

2. **Costs of Investigation** in the amount of SIX THOUSAND SEVEN HUNDRED FIFTY and 00/100 Dollars (\$6,750.00) to be distributed to the Commonwealth of Pennsylvania, Office of Attorney General, as costs of this investigation to be deposited into an interest-bearing account from which both principal and interest shall be expended for public protection and educational purposes.

B. **Form of Payment** - All payments made by Respondent to the Commonwealth, pursuant to this Assurance of Voluntary Compliance, shall be in the form of a certified check, cashier's check, or money order made payable to the "Commonwealth of Pennsylvania, Office of Attorney General" and shall be forwarded to Merna T. Hoffman, Deputy Attorney General, Bureau of Consumer Protection, Strawberry Square, 15th floor, Harrisburg, PA 17120.

IV. Miscellaneous Terms

A. The "Effective Date" of this Assurance of Voluntary Compliance shall be the day it is filed with the Westmoreland County Court of Common Pleas.

B. In accordance with Section 201-5 of the *Consumer Protection Law*, this Assurance of Voluntary Compliance shall not be considered an admission of violation for any purpose. 73 P.S. § 201-5.

C. Westmoreland County Court of Common Pleas shall maintain jurisdiction over the subject matter of this Assurance of Voluntary Compliance and over Respondent for the purpose of enforcing its terms.

D. Nothing in this Assurance of Voluntary Compliance shall be construed to waive any individual right of action by a consumer or a local, state, federal, or other governmental entity.

E. Time shall be of the essence with regard to Respondent's obligations hereunder.

F. Respondent further agrees to execute and deliver all authorizations, documents and instruments which are reasonably necessary to carry out the terms and conditions of this Assurance of Voluntary Compliance, whether required prior to, contemporaneous with or subsequent to the Effective Date, as defined herein.

G. Respondent understands and agrees that if it made any false statement in or related to this Assurance of Voluntary Compliance, that such statement was made pursuant to and under penalty of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

H. This Assurance of Voluntary Compliance may be executed in any number of counterparts and by different signatories on separate counterparts, each of which shall constitute an original counterpart hereof and all of which together shall constitute one and the same document. One or more counterparts of this Assurance of Voluntary Compliance may be delivered by facsimile or electronic transmission with the intent that it or they shall constitute as original counterpart hereof.

I. This Assurance of Voluntary Compliance sets forth all of the promises, covenants, agreements, conditions and understandings between the parties, and supersedes all prior and contemporaneous agreements, understandings, inducement or conditions, express or implied. There are no representations, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this Assurance of Voluntary Compliance that are not fully expressed herein or attached hereto. Each party specifically warrants that this Assurance of Voluntary Compliance is executed without reliance upon any statement or representation by any other party hereto, except as expressly stated herein.

J. Respondent agrees by the signing of this Assurance of Voluntary Compliance that it shall abide by each of the aforementioned provisions and that the breach of any one of those

terms shall be sufficient warrant for the Commonwealth of Pennsylvania to petition this Court, or any court of competent jurisdiction, to assess the penalties provided under Section 201-8, 201-9, and 201-9.1 of the *Consumer Protection Law*, and to order any other equitable relief which the Court deems necessary or proper.

K. Any failure of the Commonwealth to exercise any of its rights under this Assurance of Voluntary Compliance shall not constitute a waiver of its rights hereunder.

{SIGNATURES ON THE FOLLOWING PAGES}

06/02/2023 01:33 PM Westmoreland County 23CI02138

WHEREFORE, intending to be legally bound, the parties have hereto set their hands and seals.

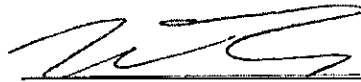
FOR THE PETITIONER:

**COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL**

**MICHELLE A. HENRY
ATTORNEY GENERAL**

Date: June 2, 2023

By:



MERNA T. HOFFMAN
Deputy Attorney General
PA Attorney I.D. No. 312897
15th Floor, Strawberry Square
Harrisburg, PA 17120
Telephone: (717) 787-4679
Email: mhoffman@attorneygeneral.gov

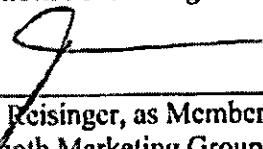
06/02/2023 01:33 PM Westmoreland County 23CI02138

Date: 5/24/2023

By:


FOR THE RESPONDENT:

Mammoth Marketing Group, LLC,


James Reisinger, as Member
Mammoth Marketing Group, LLC

Date: 6/1/23

By:


Evan M. Goldman, Esquire
Greenspoon Marder LLP
1037 Raymond Blvd.
Suite 900
Newark, NJ 07102
PA ID# 325447
Attorney for Respondent

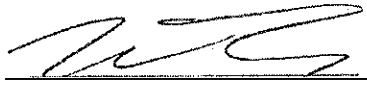
IN THE COURT OF COMMON PLEAS
OF WESTMORELAND COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	
BY MICHELLE A. HENRY	:	
ATTORNEY GENERAL,	:	
Petitioner,	:	CIVIL DIVISION
	:	
v.	:	
	:	
MAMMOTH MARKETING GROUP, LLC.;	:	
Respondent.	:	

CERTIFICATE OF SERVICE

I, MERNA T. HOFFMAN, do hereby certify that on the date set forth below the Assurance of Voluntary Compliance was served upon the following via USPS regular first class mail and E-Mail as follows:

David A. Schnobrick, Esquire
Greenspoon Marder LLP
One Boca Place
2255 Glades Road, Suite 400-E
Boca Raton, FL 33431
David.Schnobrick@gmlaw.com
Attorney for Respondent

Date: June 2, 2023 By: 
MERNA T. HOFFMAN
DEPUTY ATTORNEY GENERAL
PA Attorney I.D. No. 312897
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120
Telephone: 717.787.9707
Email: mhoffman@attorneygeneral.gov

IN THE COURT OF COMMON PLEAS
OF WESTMORELAND COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,
BY MICHELLE A. HENRY
ATTORNEY GENERAL,
Petitioner,

v.

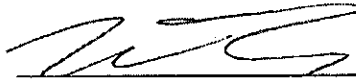
MAMMOTH MARKETING GROUP, LLC.;
Respondent.

:
:
:
: CIVIL DIVISION
:
:
:
:
:

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Date: June 2, 2023

By:



MERNA T. HOFFMAN
DEPUTY ATTORNEY GENERAL

06/02/2023 01:33 PM Westmoreland County 23CI02138