



**FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

July 18, 2002

Ad Resources, Inc.
d/b/a/ Dining and Shopping Spree
d/b/a/ Conroe Dining and Shopping Spree
17047 El Camino Real, Suite 215
Houston, Texas 77059
Attention: Phillip Read

Ad Resources, Inc.
d/b/a/ Dining and Shopping Spree
d/b/a/ Conroe Dining and Shopping Spree
17045 El Camino Real, Suite 105
Houston, Texas 77058
Attention: Phillip Read

Ad Resources, Inc.
d/b/a/ Dining and Shopping Spree
d/b/a/ Conroe Dining and Shopping Spree
4130 SW HK Dodgen Loop
Temple, Texas 76504
Attention: Phillip Read

Ad Resources, Inc.
d/b/a/ Dining and Shopping Spree
d/b/a/ Conroe Dining and Shopping Spree
2222 Rio Grande Street, #D110
Austin, Texas 78705-5135
Attention: Phillip Read

Specialized Marketing Consultants¹
17047 El Camino Real, Suite 215
Houston, Texas 77058
Attention: Chuck McCulley

RE: EB-02-TC-132

Dear Correspondents:

This is an official **CITATION** issued pursuant to section 503(b)(5) of the Communications Act of 1934, as amended (the Act), for violations of the Act, and the Federal Communications Commission's rules that govern telephone solicitation.²

It has come to our attention that your company, or an entity acting on behalf of your company, delivered a telephone solicitation to a residential telephone line despite a previous do-not-call request by a member of the household. Section 64.1200(e) of the Commission's rules requires entities that make telephone solicitations to residential telephone subscribers to follow certain procedures to ensure that the subscribers are able to stop such solicitation calls. Specifically, entities that advertise through telephone solicitation must (1) develop written

¹ The Telecommunications Consumers Division has obtained information that Mr. Chuck McCulley of Specialized Marketing Consultants has acknowledged in writing this company's legal affiliation with Ad Resources, Inc.

² 47 U.S.C. § 227; 47 C.F.R. § 64.1200.

policies for maintaining a do-not-call list and make such written policies available upon demand; (2) inform and train their personnel engaged in any aspect of telephone solicitation about the existence and use of the do-not-call list; (3) place consumers who request not to receive telephone solicitations on the do-not-call list; and (4) honor each do-not-call request for ten years from the time the request is made.³ In addition, the Commission has found that it is unlawful to call a residential telephone line to deliver a telephone solicitation if any member of the household has made a do-not-call request.⁴

Under the 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;" calls that are made either by tax-exempt nonprofit organizations or to any person who has provided prior express invitation or permission to call or has an established business relationship with the caller are not considered telephone solicitations.⁵

The attached information provided to the Commission indicates that your company failed to honor a do-not-call request that was made by or on behalf of a residential telephone subscriber who does not have an established business relationship with your company and did not expressly invite or authorize the call. That action violates section 64.1200(e)(2)(vi) of the Commission's rules.

It has also come to our attention that your company has delivered one or more prerecorded unsolicited advertisements to residential telephone lines (see attachment). The Act and the Commission's Rules prohibit transmission of unsolicited advertisements through prerecorded messages to residential telephone lines except under the very limited circumstances described in the Rules.⁶ The term "unsolicited advertisement" is defined in the Communications Act and the Commission's rules as "any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission."⁷ The attached information provided to the Commission indicates that your company delivered such unsolicited advertisements, through prerecorded messages, to one or more residential telephone subscribers who do not have an established business relationship with your company and had not expressly

³ 47 C.F.R. § 64.1200(e).

⁴ *Consumer.Net v. AT&T, Order*, 15 FCC Rcd 281, 298 (1999).

⁵ 47 U.S.C. § 227(a)(3); 47 C.F.R. § 64.1200(f)(3).

⁶ The Commission's rules make it unlawful to "initiate any telephone call using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party unless the call is initiated for emergency purposes or ... is not made for a commercial purpose, is made for a commercial purpose but does not include the transmission of any unsolicited advertisement, [is made] to any person with whom the caller has an established business relationship at the time the call is made, or [is made by or on behalf of] a tax-exempt nonprofit organization. 47 C.F.R. § 64.1200(a)(2), (c); *see also* 47 U.S.C. § 227(b)(1)(B) (prohibiting all prerecorded calls to residential lines "unless the call is initiated for emergency purposes or is exempted by rule or order by the Commission....").

⁷ 47 U.S.C. 227(a)(4); 47 C.F.R. 64.1200(f)(5).

invited or authorized the call(s). Those actions violate section 64.1200(a)(2) of the Commission's rules.

Separately, it appears that your company may have violated other Commission rules governing prerecorded messages and telephone solicitation. Under section 64.1200(e)(2)(iv), any telephone solicitation – whether live or prerecorded – must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and an address or telephone number (which may not be for an autodialer or prerecorded message player) at which the person or entity may be contacted.⁸ According to the attached information received by the Commission, it appears that your telephone solicitation did not contain all the required information.

Subsequent violations of the Communications Act, and the Commission's rules and orders of the type described herein may result in the imposition of monetary forfeitures not to exceed \$11,000 for each such violation or each day of a continuing violation.⁹

Pursuant to section 503(b)(5) of the Communications Act, you may request a personal interview at the Commission's Field Office nearest to your place of business. The nearest office appears to be the Dallas Office at 9330 LBJ Freeway, Room 1170, Dallas, Texas 75243, which you can contact by telephone at (214) 575-6361. You must schedule the interview to take place within 21 days of the date of this citation. You should be prepared to discuss when your company recorded the do-not-call request(s) referenced in the attached consumer correspondence and why your company failed to honor such request(s). You also will be expected to discuss your procedures for training your company's telephone solicitors as to do-not-call responsibilities, and to specify what steps your company has taken to ensure future compliance with the Commission's do-not-call rules. Finally, you must supply a copy of your company's written do-not-call policy as required by section 64.1200(e)(2)(i) of the Commission's rules. Alternatively, you may submit a written statement addressing the specified topics, and attaching your company's written do-not-call policy, to the following address within 21 days of the date of this citation:

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

⁸ 47 C.F.R. § 64.1200(e)(2)(iv). In addition, the Act and the Commission's rules impose separate identification requirements for prerecorded messages. Under section 227(d)(3)(A) of the Act, all prerecorded messages "shall, *at the beginning* of the message, state clearly the identity of the business, individual, or other entity initiating the call, and ... shall, during or after the message, state clearly the telephone number or address of such business, other entity, or individual." 47 U.S.C. § 227(d)(3)(A) (emphasis added); *see also* 47 C.F.R. § 64.1200(d)(e)(2)(iv) (imposing identification requirements for prerecorded messages delivered by automatic telephone dialing systems).

⁹ *See* 47 C.F.R. § 1.80(b)(3).

You should reference EB-02-TC-132 when corresponding with the Commission.

As required by the Privacy Act of 1974, 5 U.S.C. § 552(a)(e)(3), you are hereby notified that the Commission's staff will use all relevant material information to determine what, if any, enforcement action is required to ensure your compliance with the Commission's rules. This will include any information that you disclose in your interview or written statement. If you choose not to respond to this citation and a Notice of Forfeiture is issued, your unresponsiveness will be considered in our assessment of a forfeiture amount.

Finally, you should be aware that 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