



Queensland University of Technology
Brisbane Australia

This may be the author's version of a work that was submitted/accepted for publication in the following source:

[McGregor-Lowndes, Myles & Hannah, Frances](#)
(2021)

ACPNS Legal Case Notes Series: 2021-32 Federal Trade Commission and Ors vs. Associated Community Services Inc. and Ors.
[Working Paper]

This file was downloaded from: <https://eprints.qut.edu.au/209698/>

© The Australian Centre for Philanthropy and Nonprofit Studies (ACPNS)

Disclaimer: The material included in this document is produced by QUT's Australian Centre for Philanthropy and Nonprofit Studies (ACPNS) with contribution from some authors outside QUT. It is designed and intended to provide general information in summary form for general informational purposes only. The material may not apply to all jurisdictions. The contents do not constitute legal advice, are not intended to be a substitute for legal advice and should not be relied upon as such. You should seek legal advice or other professional advice in relation to any particular matters you or your organisation may have.

License: Creative Commons: Attribution 4.0

Notice: *Please note that this document may not be the Version of Record (i.e. published version) of the work. Author manuscript versions (as Submitted for peer review or as Accepted for publication after peer review) can be identified by an absence of publisher branding and/or typeset appearance. If there is any doubt, please refer to the published source.*

https://www.ftc.gov/system/files/documents/cases/us_dis_mied_2_21cv10174_consent_judgment_against_defendants_acs_cps_and_r_.pdf

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



FEDERAL TRADE COMMISSION AND ORS VS. ASSOCIATED COMMUNITY SERVICES INC. AND ORS

United States District Court, Eastern District of Michigan, Southern Division Settlement Decision, 4 March 2021

Whether charitable fundraising telephone solicitations were deceptive or illegal.

Key words: Charitable fundraising, USA, Fundraising Telephone Calls, Robocalls, Harassment of Donors, Abusive and Threatening Conduct

1. This Federal Trade Commission (FTC) complaint was settled on 4 March 2021, pending court approval. The complaint alleged the defendants violated the FTC Act, the Telemarketing Sales Rule (TSR) and numerous state laws.
2. The complaint concerned very large telefunding operations affecting 67 million consumers across the US who received 1.3 billion deceptive charitable fundraising calls. Most of these calls were robocalls which are illegal in most instances under the TSR. The defendants collected more than \$110 million using their deceptive solicitations.
3. The complaint was brought in conjunction with 38 states and the District of Columbia, as well as 46 state agencies. The complaint alleged that the defendants had made the calls since at least 2008 on behalf of numerous organizations that claimed to support homeless veterans, victims of house fires, breast cancer patients, children with autism, and other causes that well-meaning Americans were enticed to support through the defendants' high-pressure tactics.
4. The FTC stated that the defendants knew that the organizations for which they were fundraising spent little or no money on the charitable causes they claimed to support. In some cases this was as little as one-tenth of one percent. The defendants kept at least 90 cents of every dollar they solicited.
5. The complaint also alleged that Associated Community Services (ACS) and another defendant, Directele, knowingly violated the TSR by using soundboard technology in telemarketing calls, which, in Directele's case, mostly originated from India and the Philippines.
6. With soundboard technology, an operator plays pre-recorded messages to consumers instead of speaking with them naturally. Use of such pre-recorded messages in calls to first time donors violates the TSR. Use of the

technology in calls to prior donors also violates the TSR unless call recipients are affirmatively told about their ability to opt out of all future calls and provided with a mechanism to do so. The defendants did not make that disclosure.

7. Additionally, the complaint charged ACS with making harassing calls, noting that ACS called more than 1.3 million phone numbers more than ten times in a single week, and 7.8 million numbers more than twice in an hour. More than 500 phone numbers were called 5,000 times or more.
8. The ACS defendants were the subject of 20 prior law enforcement actions for their fundraising practices. They stopped operating in September 2019. An individual defendant, Gilstorf, then purchased Directele and The Dale Corporation (another defendant) in October 2019 and, with Lia (another individual defendant), Directele allegedly continued the deceptive fundraising and illegal telemarketing practices from that date.
9. The terms of the settlement were directed to both the corporations involved and to their individual directors. In the case of ACS, each of the defendants were permanently prohibited from conducting or consulting on any fundraising activities and from conducting telemarketing of any kind to sell goods or services. In addition, they were prohibited from using any existing donor lists and from further violations of state charitable giving laws, as well as from making any misrepresentation about a product or service.
10. There were monetary penalties applied to each of the ACS defendants of \$110,063,843, which were suspended due to an inability to pay, except for one director who was required to turn over the proceeds of the sale of a vacation home in Michigan, and another who was required to turn over \$450,000 from an unstated source.
11. In the case of Directele and the Dale Corporation and their controllers, each of the defendants were permanently prohibited from any fundraising work or consulting on behalf of any charitable organization or any nonprofit organization that claimed to work on behalf of causes similar to those outlined in the complaint. They were also prohibited from using robocalls for any form of telemarketing, using abusive calling practices, or making any misrepresentation about a product or service. In addition, the defendants were required to clearly and conspicuously disclose when a donation they were requesting was not tax deductible.
12. Monetary penalties of \$110,063,843 were applied to each of the defendants, partially suspended because of inability to pay. One director was required to sell his ski boat and turn over the net proceeds of the sale, one was required to pay \$25,000 and two others, subject to an additional penalty of \$1.6 million, \$10,000 each.
13. In addition, the two corporate defendants, Directele Inc. and The Dale Corporation, were required to cease operations and dissolve.

IMPLICATIONS



This very large legal settlement unfortunately did not result in any correspondingly large financial recoupment. However, the funds to be surrendered by the defendants will be paid to an escrow fund held by the State of Florida,

and following a motion by the participating states and approval by the court, be contributed to one or more legitimate charities that support causes similar to those for which the defendants solicited.

VIEW THE CASE



This case may be viewed at

https://www.ftc.gov/system/files/documents/cases/us_dis_mied_2_21cv10174_consent_judgment_against_defendants_acs_cps_and_r.pdf

Read more notable cases in [The Australian Nonprofit Sector Legal and Accounting Almanac series](#).

Author: McGregor-Lowndes, Myles & Hannah, Frances M.

Email: acpns@qut.edu.au

Date of creation: April 2021

Number of case: 2021-32

Disclaimer: The material included in this document is produced by QUT's [Australian Centre for Philanthropy and Nonprofit Studies](#) (ACPNS) with contribution from some authors outside QUT. It is designed and intended to provide general information in summary form for general informational purposes only. The material may not apply to all jurisdictions. The contents do not constitute legal advice, are not intended to be a substitute for legal advice and should not be relied upon as such. You should seek legal advice or other professional advice in relation to any particular matters you or your organisation may have.

Creative Commons Licence:



This work is licensed under a [Creative Commons Attribution 4.0 International License \(CC-BY\)](#)



ACPNS SUPPORTING THE SECTOR

QUT's Australian Centre for Philanthropy and Nonprofit Studies is a small centre with BIG impact. Since 2001 it has taken a leading role in nonprofit teaching and research, benefiting the sector here in Australia and beyond.

RESEARCH

COURSES

RESOURCES

EVENTS

QUT Business School
The Australian Centre for Philanthropy
and Nonprofit Studies

qut.edu.au/business/acpns