

STATE OF NEW YORK
DEPARTMENT OF STATE

In the Matter of the Alleged Violations of the
Do Not Call Registry

- by -

CONSENT ORDER
2019-C-081601

Byte Success Marketing, LLC

1. The New York State Department of State is an executive agency of the State of New York charged with the regulation of the "Do Not Call" law and the enforcement of § 399-z of the General Business Law.
2. This enforcement action against Byte Success Marketing, LLC (referred to as "Respondent") was initiated based upon a review of complaints received by the Department alleging violations of New York State General Business Law § 399-z and 19 New York Codes, Rules and Regulations (NYCRR), Part 221.
3. The Department alleges violations of New York General Business Law 399-z and 19 NYCRR Part 221.
4. The Department's staff conducted an investigation, which investigation resulted in the commencement of the above-captioned administrative action.
5. By executing this Consent Order, Respondent affirmatively waives its right to a hearing in the manner provided by law, consents to the issuance and entry of this Order and agrees to be bound by the terms, provisions and conditions contained herein.
6. In executing this Consent Order, Respondent enters into this agreement to resolve and settle allegations contained in a Demand Letter issued on August 16, 2019, bearing Department File # 2019-C-081601, and subsequent complaint lists provided by the Department to Respondent, and the Department's Notice of Apparent Liability dated December 24, 2021. Respondent represents that all violations under investigation by the Department, regarding a pattern of business practices which allegedly violated the relevant sections of the General Business Law have been, or will be rectified, in accordance with the terms set forth herein.
7. To resolve the Department's allegations presently under investigation, Respondent admits that it has not demonstrated consent sufficient to the Department for seventy-one (71) violations of New York General Business Law section 399-z(5), to wit: being a company that utilizes telemarketing and having made or caused to be made seventy-one (71) unsolicited telemarketing sales calls to customers when said customer's telephone numbers were on the national do-not-call registry, established by the Federal Trade Commission, for a period of thirty-one (31) days prior to the date each call was made.
8. For the seventy-one (71) violations referenced in paragraph 7, the Department and Respondent agree to a civil penalty of \$35,500, subject to the conditions set forth below.

9. Respondent is aware that the Department is investigating additional violations of New York General Business Law section 399-z. The Department consents to close and discontinue the investigation into those additional violations, with prejudice, and seek neither prosecution nor penalty, if Respondent (1) is not adjudicated to have violated any provision of New York General Business Law section 399-z within the next twelve months, and (2) satisfies the civil penalty referenced in paragraph 8.

NOW, in consideration of the above premises, the parties consent to entry of an **ORDER** with the following terms and conditions:

- TC1. That Respondent shall return the fully executed and notarized Consent Order such that same is received by the Department **on or before March 24, 2022**. The mailing address to send the Consent Order is: NYS Department of State, Division of Consumer Protection, Attn: Paula J. O'Brien, Division Director, One Commerce Plaza, 99 Washington Avenue, Suite 640, Albany, NY 12231.
- TC2. That Respondent shall pay the fine in the amount of **Thirty-Five Thousand Five Hundred Dollars (\$35,500.00)** in the form of a certified check, or money order, payable to "NYS Department of State," **on or before March 31, 2022**.
- TC3. That the Consent Order herein expressly depends upon representations made by Respondent both oral or written, formal or informal which relate to the subject matter of the Consent Order and that such representations have fully, accurately and truthfully disclosed all relevant facts to the Department. If any such representation is determined to be limited, inaccurate or untruthful, the Department shall not be bound by the terms herein and shall initiate any lawfully authorized action against Respondent.
- TC4. The effective date of this Order shall be the date on which the Secretary of State or his designee signs the same. The Department will provide Respondent with a fully executed copy of this Order as soon as practicable after the Secretary of State, or his designee signs the same.
- TC5. The failure of Respondent to comply fully and in timely fashion with any provision of this Order shall constitute a default and a failure to perform an obligation under this Order. Such default shall result in a referral to the Office of Attorney General for collection of the civil penalty, in full, pursuant to NY Executive Law § 63. Respondent hereby acknowledges the fine owed under this agreement, accepts the same as valid and waives the right to contest the same. Specifically, the civil penalty is owed by reason of Respondent's violations of, *inter alia*, Section 399-z of the GBL and the regulations promulgated thereunder as further indicated in paragraph 7 above.
- TC6. This Order constitutes the entire agreement of the parties and no provision of the agreement shall be deemed waived or otherwise modified except as is specifically set forth in a writing executed by the Secretary of State or his designee indicating an intent to modify this Order.
- TC7. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting (1) any legal, administrative or equitable rights or claims, actions, suits, causes of action or demand whatsoever that the Department may have against anyone, other than Respondent, its parents, subsidiaries or affiliates; (2) any right of the


Department to enforce administratively or at law or in equity, the terms, provisions and conditions of this Order; or (3) any right of the Department to bring any future action, either administrative or judicial, for any future violations of the applicable laws, the implementing regulations or conditions contained in orders if any, issued by the Department to Respondent.

The penalty per offense set forth in this Consent Order is neither intended to be nor shall not be construed by Respondent as consent by the Department as a benchmark for any penalty that may be imposed upon any determination against Respondent of future violations of New York General Business Law section 399-z.

- TC8. By entering into this Order, the Department expressly waives and releases Respondent, its parents, subsidiaries or affiliates, from all claims or liability arising out of the allegations at issue in File # 2019-C-081601, and any and all complaints based on telephone calls that were made or allegedly made, or other facts that occurred or allegedly occurred, prior to the date of this Order, subject to the provisions contained in paragraph 9 above.

Dated: March ^{21st} ~~17~~, 2022
Albany, New York

NEW YORK STATE
DEPARTMENT OF STATE

By: 
Paula J. O'Brien, Esq.
Director, Division of Consumer Protection

