

January 2004

AN OUNCE OF PREVENTION

Many businesses are surprised to find out about the far reaching boundaries of the state and federal consumer protection laws and the corpulent jurisdiction under those laws of the state Attorneys General and federal enforcement agencies such as the Federal Trade Commission. Unfortunately for many, this realization comes too late.

All fifty states have a general consumer protection statute, most modeled after the federal Unfair or Deceptive Acts or Practices (UDAP) statute. These laws prohibit companies from engaging in unfair or deceptive behavior in a transaction with a consumer. Ohio's UDAP statute is known as the Consumer Sales Practices Act. Ohio's statute was enacted in 1972 and has been interpreted by the courts to apply to a broad range of transactions and untruthful representation by businesses. Many industries are specifically regulated by the administrative rules interpreting the statute, including retailers, the automobile industry, companies going out of business and any company engaging in a marketing program.

Recently, there has been a significant rise in enforcement actions involving state and federal UDAP statutes. A major contributing factor to this increase is the cooperation that exists between the states and federal agencies. This increased cooperation is leading to more actions being brought and ones that involve multiple states in a single action. Often, these are difficult and expensive actions to defend.

So what can a business do to protect itself? Most importantly, to become knowledgeable of the consumer protection laws that apply to your business. Once you know the law, implement policies and procedures that dictate compliance to those laws and train your staff on them. Many companies run afoul of the law because of uninformed employees.

Another effective prevention strategy is to become familiar with how your attorney general's office functions. In Ohio, the attorney general offers a free consumer mediation service. Consumers who feel they have been cheated by a business can file a complaint with the office's Consumer Protection Section, which then attempts to reach a favorable resolution for the consumer. The section tracks all complaints received against a company and often decides who they will pursue an enforcement action against based upon the number of complaints received against a company. Smart business will monitor complaints received against them and work to take corrective action once they receive a complaint.

The bottom line for a company is become informed about the regulations that apply to your business and implement an effective compliance strategy. This newsletter contains two articles that will assist you in that regard. Additionally, we are launching

regular “E-Alerts” to keep you up-to-date on recent developments in this area. Remember, to quote the cliché, “An ounce of prevention is worth a pound of cure.”