

March 2008

Do Not Call Law The New “Perma List”

Last month the President signed H.R. 3541, which extends the time period that an individual’s telephone number stays on the National Do Not Call Registry from 5 years to forever. This event is a good opportunity to highlight the requirements of the federal Do Not Call laws.

The two agencies that primarily regulate telemarketing activities on the federal level are the Federal Communications Commission (“FCC”) and the Federal Trade Commission (FTC). They work cooperatively and with the state attorneys general to enforce the majority of the telemarketing regulations. The FCC is responsible for enforcing the Telephone Customer Protection Act (“TCPA”) and the FTC is responsible for enforcing the Telemarketing Sales Rule (“TSR”). These federal rules may be enforced by the FTC, the FCC, state attorneys general and private litigants. Additionally, the majority of states have their own Do Not Call laws, including Ohio. The Ohio law mirrors the federal laws.

The number of calls a company makes is not important in determining whether a company is telemarketing. It is irrelevant that a company only makes a few calls a month or that all numbers are generated from lead lists. The calls may (and most probably will) be considered part of a “plan, program or campaign” that is regulated by national and state telemarketing laws. Even incoming calls can be regulated by these laws. Political organizations, charities and telephone surveyors are exempt from the regulations.

An obvious provision of the Do Not Call laws is that it is against the law, with some exception, to call any number on the National Do Not Call Registry. A not-so-obvious provision is that it is also against the law for a seller to call any person whose number is within an area code unless the seller first has paid the annual fee for access to the portion of the Registry that includes numbers within that area code. Additionally, the federal laws restrict allowable calling time to between 8:00 a.m. and 9:00 p.m. States have varying calling hour restrictions; for instance, Kentucky limits allowable calling hours to between 10:00 a.m. and 9:00 p.m.

Fines for violations of the laws can be as high as \$11,000 per federal infraction and between \$2,000 and \$25,000 per state infraction depending upon the state. Furthermore, many governmental enforcement agencies have been given the authority through injunctive powers to shut down habitual offenders and private citizens can now bring lawsuits against businesses that violate telemarketing laws.

THE PARAMETERS

The federal law parameters for telemarketing can be summarized as follows:

- A company must download the National Do Not Call Registry (“Registry”), and in some cases a state registry, for any area code which the company telemarkets before placing any call to that area code. Ohio uses the Registry; therefore no additional state download is required if telemarketing is limited to Ohio residents. The registry can be accessed on-line at: <https://telemarketing.donotcall.gov/>. Data for up to five area codes is free. Calling lists must be “scrubbed” by downloading the list at intervals of no more than 31 days.
- A company may not place a telemarketing call to any telephone number listed on the National Registry unless:
 - the customer being called purchased goods or services from the company within the 18 months prior to the call,
 - the customer being called inquired or made an application regarding the company’s goods or services in the three months prior to the call, or
 - the customer has given the company express written permission to call
- A request to be put on a company specific Do-Not-Call list must be recorded immediately. If a customer requests a copy of your Do Not Call policy, it should be provided immediately.
- If an employee upsells during a telephone call placed to the company by a customer, the Do Not Call regulations must be followed.
- Before using an automated or predictive dialing system to market consumers, a company should consult with legal counsel.
- Do not call any residential phone number using an artificial voice or prerecorded message without first checking with legal counsel.
- Do not disconnect a telemarketing call prior to 15 seconds of ring time or four rings, whichever is longer.
- Do not abandon more than three percent of calls that are answered by a person. This means the caller has two seconds to respond to the greeting from the answering party.
- Stay informed. This is an extremely dynamic area of the law and is changing monthly at the federal and state level. Make sure you do your homework.

Michele A. Shuster
 Mac Murray, Cook, Petersen & Shuster
 6530 West Campus Oval, Suite 210
 New Albany, Ohio 43054
 (614) 939-9955
 mshuster@mcpslaw.com