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## **Do Not Call's One Year Anniversary**

On the one year anniversary of the implementation of the National Do Not Call Registry ("Registry"), the FTC is reporting that the Registry has proven to be a "consumer protection triumph." Approximately 65 million telephone numbers have been registered with 428,000 complaints being filed with the FTC. At this one year point, it is a good opportunity to take a look at where telemarketing has evolved.

The regulatory environment for soliciting potential customers over the telephone has dramatically changed. With the advent of the Do Not Call List and stricter telemarketing laws, there are many traps for the unwary. The number of calls a company makes is not important in determining whether a company is telemarketing. It is irrelevant that your company only makes a few calls a month or that only lead lists are used. 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 are regulated by these laws.

The two agencies that primarily regulate marketing 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 and customer protection laws and 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 through private lawsuits. Additionally, the majority of states have their own do not call laws, including Ohio. The Ohio law follows very closely the federal laws.

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 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 has a more restrictive law that limits allowable calling hours to between 10 a.m. and 9 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 law suits against businesses that violate telemarketing laws.

### **THE PARAMETERS**

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

- A. A company must download the National Do Not Call Registry (“National Registry”), and in some cases a state registry, for any area code which the company telemarkets before placing any call to that area code.
- B. A company may not place a marketing call to any phone number listed on the National Registry unless:
  - 1) the customer being called purchased goods or services from the company within the 18 months prior to the call,
  - 2) 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
  - 3) the customer has given the company express written permission to call.
- C. A request to be put on a company specific do-not-call list must be recorded immediately, with records maintained for the next 10 years. If a customer requests a copy of your do not call policy, it should be provided immediately.
- D. If an employee upsells during a phone call placed to the company by a customer, the do not call regulation must be followed.
- E. Before using an automated or predictive dialing system to market consumers, a company should consult with legal counsel.
- F. Do not call any residential phone number using an artificial voice or prerecorded message without first checking to legal counsel.
- G. Do not disconnect a telemarketing call prior to 15 seconds of ring time or four rings, which ever is longer.
- H. 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.

Regardless of whether your company only calls leads provided current customers or your company engages in an active telemarketing campaign, make sure you are familiar with telemarketing laws. Not complying can be costly.

Michele A. Shuster  
Kegler, Brown, Hill & Ritter  
65 East State Street, 18<sup>th</sup> Floor  
Columbus, Ohio 43054  
(614) 462-5400  
[mshuster@keglerbrown.com](mailto:mshuster@keglerbrown.com)