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Practice Areas:

Do-Not-Call Compliance

Teleservices

Automotive

Advertising Compliance

Charitable Matters

Regulatory Compliance

Organized Fundraisers

Privacy

Compliance Audits

Debt Collection

Assisting clients in matters
before state Attorneys General,
FTC & FCC

In This Issue:

- Compliance Planning is Critical
When Debt Collecting

Compliance Planning is Critical When Debt Collecting



Michele Shuster

Other business may not be booming, but debt collection is. Recently our firm received a number of inquiries from clients about debt collection; either their own or for third parties. Debt collection is mainly governed by federal and state fair debt collection practices acts (FDCPA), which prohibit debt collectors from using abusive, unfair, or deceptive practices in debt collections including:

FDCPAs generally prohibit:

- Harassment
- Using False Statements
- Using Unfair Practices

If collecting on behalf of third parties many states require registration and specific disclosures in the collection message. Penalties for violations can cost you more than the amount you're trying to collect; including fines up to \$1,000, plus actual damages and reasonable attorney fees determined by the court. Make sure your outside agent doesn't go too far either. Vicarious liability can lead to liability even without specific knowledge of your vendor's violations. There are many traps for the uninformed in this area; therefore, retaining legal counsel prior to initiating any collections efforts is recommended.

Consumer Complaints Hit an All Time High



Ohio has seen a record high number of consumer complaints in 2009, up 20% from 2008 to a total of 30,259 complaints filed with the Ohio Attorney Generals office. More than \$7 million in restitution, penalties and cost were generated from these complaints. Although this is data for the State of Ohio, it is a snapshot of what the rest of the nation is seeing with its complaints. The years top complaint generating industries include:

- Consumer Complaints Hit An All Time High
- Guidelines For Prerecorded Messages
- Regulatory Updates
 - MPS Updates

Shaun Petersen

automobile, collections, mortgage and foreclosure related and home improvement.

If you are subject to complaints, or in one of these industries please know that it is important to respond to all regulatory complaints in a timely manner. Complaints, especially unanswered ones, are a basis for regulatory action.

Guidelines for Prerecorded Messages



Helen Mac Murray

Prerecorded Sales and Charitable Solicitation Messages

Pursuant to the FTC's new rules, prerecorded sales messages may only be sent to consumers who provided express written consent to receive such calls. Additionally, the FTC requires all sales and charitable solicitation messages to meet other requirements.

- Obtaining Express Consent. Federal law requires solicitor to obtain legally sufficient express written consent.
- Other Federal requirements. Solicitors must provide a specific opt-out mechanisms which allows the consumers to be placed on the company's do not call list.
- State Requirements. Several states prohibit the use of prerecorded messages for solicitation purposes unless certain exemptions apply. Other states allow, but heavily regulate, prerecorded solicitation messages, including registration and specific disclosures.

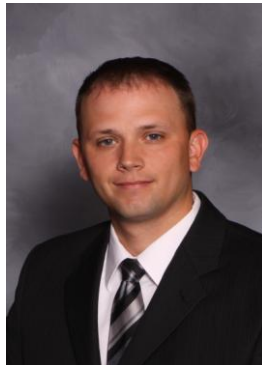
Purely Informational Prerecorded Messages

Informational prerecorded messages are not subject to the FTC's prerecorded message requirements; however, these messages must be carefully crafted.

Regulatory Updates



Michele Shuster



Nick Whisler

FTC Endorsement and Testimonial Guides

The FTC's new rules pertaining to endorsements and testimonials became effective on December 1, 2009. Please click [here](#) for a copy of the FTC's "Guides Concerning the Use of Endorsements and Testimonials in Advertising."

Vonage Multistate Settlement

In November, 2009, Vonage Holdings Corp., a voice-over-IP service provider, agreed to pay \$3 million to 32 states to settle allegations made by these states regarding Vonage's alleged marketing practices and cancellation policies and procedures. Pursuant to the settlement agreement, Vonage must revise how it markets "free" services, money-back guarantees and trial periods. Additionally, Vonage is required to make refunds to eligible consumers who have filed unresolved complaints regarding unauthorized charges from January 2004 to March 2010.

FTC Robocall Suits-

In December, 2009, the FTC filed complaints against several defendants alleging violations of federal telemarketing regulations by making illegal pre-recorded "robocalls" to consumers and using deceptive names in connection with the calls. Other allegations include misrepresentations that consumers could drastically lower the interest rates on their credit cards, charging upfront fees (ranging from \$495 to \$1,495) for services that were never provided and failure to provide promised refunds.

FTC Update-

The FTC released 2009 do not call complaint data – by month, complaint type, population, area code and more, as well as general information about the Registry, including the number of active registrations and consumer complaints since the Registry opened in 2003. Read the report:

www.ftc.gov/os/2009/12/091208dncadatabook.pdf.

The FTC is under new leadership and seems to be laying the groundwork for increased regulatory actions, especially in the privacy and teleservices industries. The first of the year is a good time to make sure your company's safe harbor documents are up-to-date and sufficient.

Missouri Attorney General Lawsuits

On November 12, 2009, Missouri Attorney General Chris Koster filed suit against six businesses in connection with the marketing and selling of vehicle service contracts. On December 29, 2009, Koster's office filed suits against four additional marketers of vehicle service contracts. Allegations in the complaints

include bait and switch tactics, unauthorized credit card charges, misrepresentations regarding the marketers' affiliation with vehicle manufacturers, misrepresentations that consumers' factory warranties were about to expire, non-disclosure of material terms and conditions, unfair cancellation policies and/or procedures and violations of Missouri's No-Call law. In addition to these six lawsuits, Koster's office filed a suit on December 14, 2009 against a California service contract marketer for violations of Missouri's No-Call law.

MPS Updates

MPS Hires New Associate Erica Sherrick

Erica graduated from Thomas M. Cooley Law School in Lansing Michigan in May 2009. While in law school, Erica was involved with Mock Trials and worked at the Michigan Attorney's General Office. She was also a member of Law Review and graduated cum laude. Erica has been with Mac Murray Petersen & Shuster since January 2009.

Please contact us with any questions about the above articles, or updates.

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