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Update on Telemarketing Enforcement, Unsolicited Text Messages to Cell Phones, and State “Do Not Mail” and “Do Not Email” Bills

Telemarketer Agrees to Pay \$1 Million Civil Penalty for Improper Use of Prerecorded Messages

The Federal Trade Commission recently announced that it had reached a settlement with a “voice broadcaster” – a company that provides telemarketing services by delivering only prerecorded messages (rather than using live telemarketers). The action was brought by the FTC and the U.S. Department of Justice against Florida-based telemarketer The Broadcast Team and its principals; the agencies alleged that the company’s automated dialing service called more than 64 million people - some of whom had telephone numbers on the national Do Not Call registry - and delivered prerecorded messages. The Telemarketing Sales Rule (TSR) limits telemarketers’ use of recorded messages by requiring that calls answered by a person be connected to a live representative within two seconds (with certain limited exceptions). The telemarketer agreed to pay a civil fine of \$1 million, to abide by the TSR, and to comply with onerous record-keeping requirements.

This enforcement action confirms a trend that our clients have seen - an increase in civil investigation demands and other inquiries from both state and federal agencies including the Federal Trade Commission, the Federal Communications Commission, the California Attorney General and the Indiana Attorney General relating to telemarketing regulations.

Illinois Attorney General Files Lawsuit against Marketer for Sending Wireless “Spam”

Illinois Attorney General Lisa Madigan filed what appears to be the first state enforcement action against a marketer

for sending unsolicited text message ads to cell phones. The Attorney General claims that C&G Global Enterprises LLC violated the federal Telephone Consumer Protection Act by using an automated dialer to send thousands of text messages to cell phones and the company violated state consumer protection laws by sending text messages that recipients either had to pay to receive or that had the effect of reducing the number of text messages a cell phone user is allowed to receive per month. A few months earlier, Cingular Wireless filed a lawsuit against the same defendant in federal court in Georgia, claiming that the company sent over 5 million text message ads to Cingular cell phone users nationwide.

“Do Not Mail” and “Do Not Email” Bills

At least eleven states have recently introduced bills that would establish “Do Not Mail” and/or “Do Not Email” registries, similar to the national and state Do Not Call registries. For example, New York Assembly Bill 2520 authorizes the creation of a do “Do Not Mail”/“Do Not Email” registry to let residents opt-out of receiving direct mail and commercial email. The bill provides an exemption for direct mail and commercial email sent within an established business relationship that has not been terminated, and direct mail and commercial email sent to an existing customer who has not opted-out of receiving such mail.

South Carolina House Bill 3280 would require each email service provider to establish and maintain a “Do Not Email” database to be operated by the service provider or a third

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party. Residential email subscribers could put their email address on the list and marketers would be prohibited from sending commercial email to an address on the list, unless the marketer has a previously established relationship with the recipient. The bill would also require email marketers to use an "ADV" label on commercial email and an "ADV: ADLT" label on email containing adult content.

Several of the bills will be the subject of committee hearings in the next couple of weeks.

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Advertising and Promotions Group

IVY KAGAN BIERMAN	IBIERMAN@LOEB.COM	310.282.2327
CHRISTIAN D. CARBONE	CCARBONE@LOEB.COM	212.407.4852
MARC CHAMLIN	MCHAMLIN@LOEB.COM	212.407.4855
CRAIG A. EMANUEL	CEMANUEL@LOEB.COM	310.282.2262
KENNETH R. FLORIN	KFLORIN@LOEB.COM	212.407.4966
DANIEL D. FROHLING	DFROHLING@LOEB.COM	312.464.3122
JAMES P. GOODKIND	JGOODKIND@LOEB.COM	310.282.2138
DAVID W. GRACE	DGRACE@LOEB.COM	310.282.2108
MARY E. INNIS	MINNIS@LOEB.COM	312.464.3133
BRUCE L. ISHIMATSU	BISHIMATSU@LOEB.COM	310.282.2322
MICHAEL MALLOW	MMALLOW@LOEB.COM	310.282.2287

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DOUGLAS N. MASTERS	DMASTERS@LOEB.COM	312.464.3144
DOUGLAS E. MIRELL	DMIRELL@LOEB.COM	310.282.2151
DANIEL G. MURPHY	DMURPHY@LOEB.COM	310.282.2215
TERRI J. SELIGMAN	TSELIGMAN@LOEB.COM	212.407.4985
BARRY I. SLOTNICK	BSLOTNICK@LOEB.COM	212.407.4162
BRIAN R. SOCOLOW	BSOCOLOW@LOEB.COM	212.407.4872
JAMES D. TAYLOR	JTAYLOR@LOEB.COM	212.407.4895
EDWARD G. WIERZBICKI	EWIERZBICKI@LOEB.COM	312.464.3155
PO YI	PYI@LOEB.COM	212.407.4045
MICHAEL P. ZWEIG	MZWEIG@LOEB.COM	212.407.4960
