FTC Enforcement Action Reinforces That Consumers Need Not Utter Any "Magic Words" in Requesting to Be Placed on Telemarketers' Internal Do-Not-Call Lists

December 19, 2011 by Ronald London

Also Reinforces That Telemarketing Sales Rule's Caller ID Flexibility Only Goes So Far

The Federal Trade Commission (FTC) has announced a $500,000 settlement of a telemarketing enforcement action that it brought based on allegations that the telemarketer interfered with the right of consumers to be placed on companies' internal do-not-call lists, and that it altered outgoing caller ID to inaccurately display the identity of the calling party. The enforcement action is a reminder that telemarketing customer service reps must be trained to be particularly sensitive to understanding – and effectuating – consumer requests to be added to a company's do-not-call list, even they don't request it in such specific terms.

The settlement resolves a complaint the FTC filed in the federal court for the Northern District of Illinois alleging that Americall, a telemarketer specializing in calls on behalf of banks, credit card issuers, insurance companies, and other financial institutions, violated the FTC's Telemarketing Sales Rule (TSR). The FTC alleged Americall "trains [its] representatives to interfere with entity-specific do-not-call requests" by instructing in training manuals that, absent other, more specific requests, consumer statements like "Don't call me again," "Don't call me back," or "I do not accept solicitation calls," should not result in a consumer's placement on the internal do-not-call list of the entity on whose behalf the agent has called.

In the FTC's view, apparently, these and "similar statements" are sufficient to require that the consumer's phone number be logged on the company's internal do-not-call list. In other words, a consumer need not speak the magic words "put me on your do-not-call list," or any similar invocation, but rather need only assert some general sentiment that the calling party not call again.
But while one could certainly see a statement like "do not call me again" being treated as the equivalent of "put me on your do-not-call list," is it really fair to say that "don't call me back," or the even less specific "I do not accept solicitation calls" all mean "put me on the list" as well? "Don't call me back," for example, is rather non-specific – does it mean don't call again ever, don't call again with regard to your current campaign or offer, or even simply don't call me again anytime soon?

"I do not accept solicitation calls" is an even more generic statement, particularly viewed in the context of whether a consumer is invoking his or her entity-specific do-not-call rights, as it does not even refer to the specific company calling. Treating such non-company-specific language as a do-not-call request is even more curious given that any consumer who "does not accept solicitation calls" can effectuate that desire by being placed on the national (or a state) do-not-call registry.

Such musings, however, may well be irrelevant, insofar as the FTC – the agency charged with enforcing its entity-specific do-not-all rules – appears to consider all the above sentiments sufficient to constitute a do-not-call request. The bottom line, it seems, is that anytime a consumer expresses that s/he does want further calls, that statement must be treated as a do-not-call request. Accordingly,

telemarketing agents should be trained to err more on the sides of caution and over-inclusiveness in what is treated as a do-not-call request.

The FTC's complaint also charged that the telemarketer, armed with knowledge of the names of the companies on whose behalf it placed calls, and thus the ability to properly identify them in outgoing caller ID, altered the calling party name to disguise the identity of Americall and/or its client(s). The complaint gave the example that, in some instances, when calling on behalf of a fire insurance company, the caller ID displayed the promotional phrase "Gas Rebate Center" to entice consumers to answer the phone. While the TSR allows for the identity of either the telemarketer or the company on whose behalf the call is made, the name must fairly identify the caller – before the consumer picks up the phone.

The Americall settlement is a half-million-dollar reminder of the need to properly honor entity-specific do-not-call requests, as well as the need for accurate call ID. The settlement also imposes five years' worth of record-keeping obligations. In its press release announcing the settlement, the Director of the FTC's Bureau of Consumer Protection, David Vladeck, expressed that "When it comes to the Do Not Call provisions, compliance is not rocket science." Nonetheless this case reinforces the need to for companies to stay ever vigilant regarding their telemarketing practices.