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### FTC Report Highlights Lead Generation Dangers

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A Federal Trade Commission (“FTC”) report recently submitted to Congress on the use of the Do Not Call Registry (the “Registry”) by businesses and consumers highlights the dangers in misuse of telemarketing leads. According to the FTC, “marketers claiming a business relationship have improperly placed telemarketing calls to consumers after acquiring the consumers’ telephone numbers from others.” Only in certain circumstances would calls by third- party marketers be permitted to telephone numbers on the Registry after acquiring the number from a lead generator.

Under the FTC’s Telemarketing Sales Rule (“TSR”) National Do Not Call provisions a company may call a consumer with whom it has an “established business relationship” even if the consumer’s number is on the Registry. However, according to the FTC, “telephone calls from telemarketers to phone numbers provided by lead generators generally do not fall within the established business relationship exception because, while the consumers may have a relationship with the lead generator, they do not have an established business relationship with the seller who has purchased the leads.”

Except in limited circumstances, the FTC’s rules generally do not allow a seller to claim that it has a relationship with the consumer such that it can ignore the consumer’s request to not receive telemarketing calls. The FTC report put a spotlight on several enforcement actions that resulted in businesses that made telephone calls to consumers on the Registry after acquiring the consumers’ names from a lead generator being forced to pay civil penalties to settle charges that their calls violated the TSR.

For example, the FTC reported that in one case a “lead generator” collected information on consumer interests through web advertising, by offering coupons or samples, or simply by ‘cold calling’ consumers in order to determine whether the consumer has any interest in a particular product or service, such as debt relief or home alarms.” According to the FTC, the “[l]ead generators responsible for these so called ‘call verified leads’ often fail to remove numbers listed on the Registry before calling consumers.”

The FTC report also details how “some telemarketers and sellers have acquired leads from lead generators and used them in telemarketing campaigns without screening the numbers called to remove numbers listed on the Registry. In this way, a single sales pitch can produce multiple illegal calls, generating one or more calls from both the lead generators and the telemarketer.”

The FTC’s enforcement actions and investigations into the activities of telemarketers and their vendors, including lead generators, highlights the ongoing focus by the FTC into the practices of anyone that sells or buys leads.

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