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FTC Settlement Highlights Lead Generation "Warning Signs"

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A Federal Trade Commission (FTC) **settlement** with a lead buyer highlights the potential pitfalls with using lists from lead generators without considering how the lists were compiled or the requirements under the Telemarketing Sales Rule (TSR). For lead generators, the settlement also provides a useful reminder of common hazards to avoid when developing leads.

The FTC, with the assistance of the U.S. Department of Justice, has settled a complaint against a home security company alleging that it illegally called millions of consumers on the FTC's National Do Not Call (DNC) Registry to pitch home security systems.

According to the FTC, the lead generators that supplied the marketing list represented to the lead buyer that the lead generators had obtained consumers' prior express consent to receive telemarketing calls about a home security system, but in reality, they had not. Instead, the FTC's complaint alleged that the leads were obtained by illegal means through rampant use by the lead generators of prerecorded message calls (also known as "robocalls") from "Tom with Home Protection" and "safety survey" calls that were not bona fide surveys made to phone numbers on the DNC Registry. According to the FTC's complaint, the lead buyer subsequently called these consumers without first checking to see if they had registered their telephone numbers on the DNC Registry in violation of the TSR.

In addition, the FTC alleged that the lead buyer ignored "warning signs" that the lead generators were engaged in illegal telemarketing practices, including that many consumers contacted by the lead buyer complained that they had not given the company permission to call, nor had they given permission to receive a robocall. According to the FTC, even with the complaints mounting, the security company continued to buy leads from the same lead generators and called consumers using those leads.

The stipulated final court order settling the charges prohibits the lead buyer and its owner from:

- making abusive telemarketing calls and from calling any consumer whose number is on the DNC Registry, unless they can prove that they have received written permission to make the call or that they have an established business relationship with that consumer; and
- calling any consumer who has previously told the lead buyer not to call them again.

The order also places restrictions on how defendants can obtain and use lead-generated phone numbers in the future. Finally, the order imposes a \$3.4 million penalty judgment against the defendants, with all but \$320,700 suspended due to their inability to pay. The entire amount will become due if the defendants are found to have misrepresented their financial condition.

While the FTC did not name the lead generator as a co-defendant in this particular case, lead generators should remember that the TSR includes a provision that makes it unlawful to provide substantial assistance or support to any telemarketer that the lead generator knows or consciously avoids knowing is engaged in any act or practice that violates the DNC or other provision of the TSR. The FTC has invoked this "assisting and facilitating" provision in the past against lead generators.

A copy of the FTC's press release, complaint, and settlement against the home security company, Versatile Marketing Solutions, Inc., and its owner is available [here](#).

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