

Sales Rule (TSR) that include provisions focused on robocalls.² Some of these provisions went into effect in December 2008, and others, in September 2009.

The provisions form what I consider a balanced, comprehensive regulatory framework. The new rules – now in effect – expressly prohibit all telemarketing robocalls unless the seller has obtained the call recipient’s prior signed, written agreement to receive such calls from that seller. No longer does an “established business relationship” provide a basis for placing any call that delivers a prerecorded message. A few more things you should know: the written agreement is required regardless of whether the number called is on the National Do Not Call Registry. It also does not matter whether the call delivering a prerecorded message is answered “live” by a person or by an answering machine or voicemail service. Violators of the robocall provisions face penalties of up to \$16,000 per call.

Further, even if the telemarketers and sellers have written permission, the prerecorded message must provide an automated mechanism enabling the recipients to opt out of further calls. If the call could be answered by a person, the recipient of the call must be given the opportunity to make a do-not-call request through an automated interactive voice or keypad-activated opt-out mechanism. If the call could be answered by an answering machine or voicemail service, the message must provide a toll-free number at which the recipient of the call can make a do-not-call request through such an automated mechanism. In a nutshell, all prerecorded messages delivered must disclose that the recipient may assert a do-not-call request in this manner.

² 73 Fed. Reg. 51,163 (2008).

The amendments specify that the opt-out mechanism must be disclosed “immediately” following disclosure of the name of the seller, the purpose of the call, and the nature of the goods or services being sold.³ Moreover, if the recipient invokes the opt-out mechanism, that mechanism must automatically add the number to the seller’s do not call list, and then “immediately” disconnect the call. We want to ensure that the ability of consumers to assert a do-not-call request in response to a prerecorded message is comparable to what happens in a live call. Just as a person who receives a call from a live sales representative may “interrupt the sales pitch immediately to make a do-not-call request, and the sales representative must take that request without delay,” the Rule requires that prerecorded calls give the recipient of the call the opportunity to cut off the sales pitch, assert a do-not-call request, and end the call.⁴

Enforcement of Robocall Regulations and Do Not Call Provisions

The Commission will enforce these provisions fully and already has brought actions alleging violations of the new provisions.

³ 71 Fed. Reg. 58,715, 58,718 (2006).

⁴ 69 Fed. Reg. 67,287, 67,288-89 (2004).

auto warranty was expiring or about to expire.⁷ The complaints also alleged that the defendants violated the robocall provisions. The Defendants agreed to a complete ban on future telemarketing and to pay more than \$650,000 for consumer redress.

And in December 2009, the Commission announced cases against three companies allegedly making millions of robocalls to sell worthless credit-card interest-rate reduction programs for large up-front fees. The court issued an order temporarily halting these companies from making any further robocalls pending trial.⁸

In the past year, the FTC also has sued a variety of companies that have allegedly violated the TSR while conducting calling campaigns delivering bogus charitable solicitations⁹

⁷ Press Release, Auto Warranty Robocallers To Pay \$655,000 and Sell Assets For Consumer Redress (March 25, 2010), <http://www.ftc.gov/opa/2010/03/voicetouch.shtm>.

⁸ Press Release, FTC Sues to Stop Robocalls With Deceptive Credit Card Interest-Rate Reduction Claims (December 8, 2009), <http://www.ftc.gov/opa/2009/12/robocall.shtm>.

⁹ Press Release, New Jersey-Based Telephone Fundraisers Banned from Soliciting Donations; Will Pay \$18.8 Million for Violating FTC Order (March 31, 2010), <http://www.ftc.gov/opa/2010/03/cdg.shtm>; Press Release, Telemarketers Barred from Falsely Telling Consumers that Proceeds from the Sale of Household Goods Will Benefit Charities or the Disabled (April 8, 2010), <http://www.ftc.gov/opa/2010/04/helphands.shtm>.

certification in TSR compliance are the right goals, and the SRO program looks by all accounts to be a great way to achieve those goals.

I fully support your hard work on the SRO program. I am pleased with its progress and look forward to continued discussions with you about it.

Two Areas of Interest

Negative Options: I would now like to discuss two areas that have been ripe for fraud, and where we can do more: negative option marketing and remotely administered checks.

I am sure you are familiar with negative option marketing: it occurs when a marketer takes a consumer's silence as agreement to continue a transaction, such as monthly billing for membership in a discount buying club. While these offers can provide benefits to consumers, they also pose a high risk of deception. Unscrupulous marketers use negative options to trap consumers in a cycle of recurring charges for goods or services they do not want and never knew they purchased.

The FTC and its state law enforcement partners have taken aggressive action against abusive negative option marketing. Indeed, in the past 10 years, the Commission has brought 60 cases against negative option marketers hawking everything from dietary supplements to buyers' clubs. Most recently, we brought a case against a massive get-rich-quick scheme perpetrated by John Beck and several co-defendants, which included telemarketers.

The Defendants in this case allegedly made false and unsubstantiated claims about potential earnings for users of their money-making systems. Through infomercials, they sold the

¹³ Press Release, FTC Cracks Down on Scammers Trying to Take Advantage of the Economic Downturn (July 1, 2009), <http://www.ftc.gov/opa/2009/07/shortchange.shtm>.

¹⁴ Press Release, FTC Issues Staff Report on Age(6se,o0 0 12 317.5143.88 .95999 refBT/TT2 1 Td F

remotely created checks in telemarketing. If we go down this path, I hope you will weigh in on the proposal. As in past TSR proceedings, your input is quite valuable.

Another “Hot” Area:

Let me now move away from issues that clearly and directly impact your industry to a “hot” area that, at a minimum, may have ripple effects on what you do—consumer privacy and, more specifically, the privacy concerns related to behavioral advertising. Ensuring the privacy of consumers’ personal information has been one of the FTC’s top consumer protection priorities for more than a decade.

Over the past several months, we’ve held a series of roundtables to get a current and fuller sense of what consumer privacy is about today. To date, we’ve learned a good deal. First, that consumers have little understanding of commercial information-collection practices. They do not really understand what data is collected about them, how the data is used and shared, and whether and how they can exercise control over their data.

A second and related point is that, although traditional, lengthy privacy notices are not effective, there continues to be an important role for privacy disclosures. Industry is coming up with interesting innovations in this area.

Third, we learned that consumers **DO** care about privacy. One area in particular has garnered lots of attention, namely behavioral targeting.

Target marketing based upon online behavior directly raises thorny privacy issues. In behavioral advertising, companies track consumers’ online activities in order to deliver advertising tailored to the consumers’ interests. For instance, a consumer who lives in Washington, D.C. and searches online for information on the Seattle Mariners might be served ads for airfare sales to Seattle, Seattle hotels, or perhaps Nationals games in the D.C. area.

Often, the companies involved in behavioral advertising are “network advertisers,” who select and deliver advertisements to multiple websites that participate in their networks. They commonly track consumer behavior by placing a file called a “cookie” on a consumer’s computer that tracks which web pages have been visited, what content was viewed, what queries were typed into search engines, and whether the user has clicked on particular advertisements. In many cases, the information collected through the use of cookies is not personally identifiable in the traditional sense of including a consumer’s name and address, but is instead identified with a particular computer or IP address. However, in some cases sufficient amounts of data may be collected that in the aggregate could be analyzed and used to identify a specific person.

Behavioral advertising offers potential benefits for consumers. Online advertising in general helps support free Internet content that many consumers value, and the targeted nature of behavioral advertising makes online advertising more efficient and attractive to advertisers. The practice may also potentially reduce unwanted advertising and increase the amount of advertising that a particular consumer finds relevant and useful. The Commission makes an effort not to stifle innovation and to allow responsible business practices to develop and flourish.

However, behavioral advertising also raises serious privacy concerns. These include the invisibility of the practice to consumers, the lack of effective disclosures about the practice, the potential to develop and store detailed profiles about consumers, and the risk that the data collected for behavioral advertising – including sensitive data regarding health, finance, or children – could fall into the wrong hands or be used for unanticipated purposes.

One year ago, the Commission staff issued a set of revised behavioral advertising self-regulatory principles to encourage the industry to provide more comprehensive and accessible protections to consumers. We did this after holding a workshop on the issue and reviewing

comments from industry members, privacy advocates, and other stakeholders. I urge you to review those principles, which are available on the FTC website.¹⁵

As I mentioned earlier, there are many intertwined pieces in the privacy dialog, beyond the behavioral marketing pieces. Many are asking about our next steps: We intend to continue the collaborative process we started with the roundtables. Given the challenges involved, we aren't about to just pop out a "New Framework" on our own, fully formed and ready for implementation. Instead, we're going to take a little time to put our thoughts together and then likely put them out for public comment – just as we have in prior efforts such as those involving behavioral advertising.

Conclusion–Do Not Call Registry

As I close, let me make a few points about the Do Not Call Registry. I hope you agree with me that the Do Not Call Registry is a huge success. The Registry has been enthusiastically embraced by consumers since it was introduced in 2003, and there are currently over 191 million telephone numbers on the Registry.¹⁶ And, as my colleagues and I have said on many occasions, the success of the DNC Program is, in no small part, a reflection on your members' substantial compliance efforts.

As you probably know, when the Do Not Call Registry was established, registrations were set to expire after five years. However, due to changes implemented by the Do No Call Improvement Act of 2007, registrations are now permanent and do not expire after any particular length of time. In light of this change, the Commission is taking steps to ensure the continued

¹⁵ <http://www.ftc.gov/opa/2007/12/principles.shtm>

¹⁶ Press Release, FTC Approves Two Reports to Congress on the National Do Not Call Registry (Jan 4, 2010), <http://www.ftc.gov/opa/2010/01/donotcall.shtm>.

accuracy of the Registry. We are making efforts to keep up with technology and ensure that abandoned numbers are eliminated from the Registry, while ported numbers – including cell phone numbers, and Voice over Internet Protocol (VoIP) numbers – are not.

In short, the Commission tries to stay on the leading edge of technological and industry developments to make sure that our enforcement efforts remain effective and relevant. I look forward to working with you as our regulatory and enforcement programs continue to evolve. We want to hear from you.