

## *Telemarketing*

The Federal Government, all fifty states, and the District of Columbia have statutes and/or regulations that relate to telemarketing. In addition, legislation is currently under consideration in a majority of states that would amend existing law. Thus, all telemarketing projects should begin with a review of the existing laws. However, below is a starting point of general principles that will allow you to comply with telemarketing laws. These principles apply to unsolicited sales calls to the general public, as well as to previous customers, and to calls from consumer responding to advertising.

### **TELEMARKETING SCRIPTS**

- Telemarketing scripts should make no false or misleading representations. Copies of the scripts should be maintained for future reference.
- Before the sales presentation: Telemarketing scripts should begin with an initial disclosure that includes the following information: 1) the purpose of the call (e.g., to sell product X); 2) the name of the telemarketer; 3) the name and address of the company on whose behalf the call is being made.
- Upon completion of the sale: The telemarketing script should include the following information: 1) explanation of a customer's cancellation rights; 2) the total purchase amount; 3) telemarketer's name; and 4) the company's name and address.

### **WRITTEN CONFIRMATION**

- All sales over the phone should be confirmed in writing. The confirmation should include: 1) the total purchase price; 2) any cancellation or refund policies; 3) company's name, address and phone number; and 4) an accurate description of the product/service purchased.

### **AUTO DIALERS**

- Generally speaking, use of auto dialers for telemarketing purposes is discouraged under the state statutes. However, if you are considering a telemarketing campaign using auto dialers, we can help you develop a procedure that will allow you to conduct the campaign legally.

### **DO NOT CALL LISTS**

- The Federal Trade Commission's Telemarketing Sales Rule, 16 C.F.R. Part 310, makes it an abusive telemarketing act or practice for a telemarketer to call a person who has previously stated that he or she does not wish to receive a call made by a telemarketer. Under the FTC Rule, most companies must maintain their own do-not-call lists, which typically include names and telephone numbers.
- Additionally, the Direct Marketing Association (DMA) maintains a national do-not-call database and twelve states have promulgated statutes that prohibit companies from contacting

consumers on the state-maintained list of consumers who have provided notice that they do not wish to receive telemarketing calls. Most of these statutes instruct the attorney general or the public utility commission to maintain the list and to charge both consumers for placement and telemarketers for use.

#### **CALLER ID BLOCKING**

- Caller ID blocking should not be used.

#### **REGISTRATION**

- Some states require registration before any calls can be made to residents in those states. Because there are many exceptions which may or may not apply, check with your lawyer or call us to assist you in implementing a legal telemarketing campaign.

#### **ABOUT OUR ADVERTISING AND MARKETING PRACTICE**

Kelley Drye Collier Shannon's Advertising & Marketing practice comprises attorneys with proven success in advertising litigation and NAD proceedings; expertise in the area of advertising, promotion marketing, and privacy law; and experience at the FTC, FDA, and the Offices of State Attorneys General. We help leading companies identify risks, respond effectively to inquiries, and prevail in contested proceedings.

#### **ABOUT KELLEY DRYE COLLIER SHANNON**

Kelley Drye Collier Shannon, the Washington, DC office of Kelley Drye & Warren, is an international, multidisciplinary law firm that solves competitive problems for Fortune 500 companies, privately-held corporations, government entities, and trade associations. Founded more than 170 years ago, Kelley Drye & Warren has more than 400 attorneys and professionals practicing in eight locations around the world and specializing in: Advertising and Marketing; Antitrust and Trade Regulation; Corporate; Employee Benefits and Executive Compensation; Environmental; Government Contracts; Government Relations and Public Policy; Homeland Security; Intellectual Property; International Trade and Customs; Labor and Employment; Litigation; Private Clients; Real Estate; Restructuring, Bankruptcy, and Creditors' Rights; Tax; Technology; Telecommunications; and Trade Associations.

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