

“Do Not Call Fines Harm Industry Reform Efforts”

In an announcement sure to please consumer advocacy groups, the FTC announced on November 7 that it has reached six settlements totaling almost \$7.7 million for alleged violations of the National Do Not Call Registry and other telemarketing regulations. The Department of Justice brought the enforcement actions on behalf of the FTC against six companies, including Craftmatic Industries, ADT Security, and Ameriquest Mortgage Company.

Craftmatic's \$4.4 million penalty is the second-largest assessed by the FTC since the October 2003 implementation of the National Do Not Call Registry, behind only the \$5.3 million paid by DirecTV in its 2005 case.

What do these fines mean to your organization?

1. Be informed. Any business that uses the phone for inbound or outbound sales must know the FTC, FCC, and state rules that apply to this industry. The American Teleservices Association (ATA) has offered free one-day seminars across the country this year on current telemarketing laws, and these are an excellent tool to learn how to comply with the rules.
2. Be alert. While there had not been an enforcement act at the federal level for Do Not Call or similar issues this year, the FTC is clearly still active in investigating and prosecuting violators.
3. Be very careful. Despite descriptions of “safe harbor” practices in the FTC and FCC telemarketing rules, no company has yet successfully used those practices in a successful defense against charges of violations.
4. The states are not going away. These fines were for federal rules violations, but there were hundreds of teleservices bills in state legislatures this year.
5. The feds are not going away, either. FTC Chair Deborah Platt Majoras described violators as a “small number of bad actors” in her announcement of these fines, but they clearly show a commitment by the commission to enforce the rules vigorously. FTC's recent decision to make the enrollment of numbers on the National Do Not Call Registry permanent—ahead of Congressional action—also illustrates the point that these rules are now a fact of life for the teleservices industry.
6. Trust in self-regulation will be harder to earn. The ATA has developed and implemented self regulatory organization (SRO) standards that are designed to encourage regulatory compliance across the industry while reducing a demand for future regulations. The publicity of these fines makes trusting the industry a tougher sell for regulators.

Self-regulation is clearly preferable to more state and federal rules, for both consumers and the industry. It will be simpler, fairer, and more consistent in its delivery of respectful and effective

sales and customer service nationwide than the current state/federal arrangement. However, these fines clearly show that a few “bad actors”—who make millions of outbound calls each month—have the capacity to worsen the relationship between the industry and regulators.

It will only be through having as many major players in the field as possible participate in self-regulation—adhering to the rules, respecting consumers’ privacy rights, and delivering great customer experiences—that future, even more restrictive, regulation can be avoided. It is in the best interest of every business that uses the phone to make sales and provide customer service to comply with the rules and police themselves. The alternative is incurring the wrath of consumer backlash in the form of decreasing sales and a worse regulatory environment. The choice is ours.

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