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FTC Seeks Monetary Damages from Violators of the Do Not Call List

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FTC Seeks Monetary Damages from Violators of the Do Not Call List

By Emily Rozwadowski

The Federal Trade Commission has taken its first action seeking civil penalties in the form of monetary damages against a telemarketing company for violating the National Do Not Call Registry.

The Dept. of Justice filed suit in a Nevada District Court against Braglia Marketing Group, LLC, on a referral from the FTC. Braglia makes telephone calls to sell goods or services from other companies.

The FTC authorizes the DOJ to file a complaint when it has reason to believe that a law has been or is being violated and the proceeding will be in the public interest. In general, lawsuits are filed when there are a large number of complaints from consumers, according to Daniel Salsburg, assistant director of the Division of Marketing Practices at the FTC.

> ***"Hopefully these suits will send a message to those few noncompliers."***
>
> -Daniel Salsburg, FTC

In this case, the Telemarketing Sales Rule forbids any company from making outbound calls to any person who has previously stated that he or she does not want to receive calls from the telemarketer or to any person whose phone number is on the National Do Not Call Registry. Additionally, the law forbids abandoning telephone calls. A call is abandoned if the telemarketer does not connect the call to a representative within two seconds after the call is answered. The Telemarketing Sales Rule requires telemarketing companies to pay an annual fee in order to access the phone numbers within a certain area code on the National Do Not Call Registry. The telemarketing company cannot initiate any calls within that area code unless they have paid this fee. The fee is $25 per area code.

Salsburg said there is generally a high rate of compliance among companies. "We are dealing with outliers who don't realize that people don't want to be called," Salsburg said.

The complaint against Braglia alleges that Braglia violated the Telemarketing Sales Rule when it initiated calls to people whose names were on the National Do Not Call Registry, abandoned telephone calls, and failed to pay the required fee to access the National Do Not Call Registry.

Telemarketing companies allege that the Telemarketing Sales Rule violates their free speech rights under the First Amendment. However, the Supreme Court rejected an appeal from The American Teleservices Association, Mainstream Marketing Sales, Inc., and TMG Marketing, Inc., from a lower court decision holding that the Telemarketing Sales Rule is constitutional.

"Hopefully these suits we file will send a message to those few noncompliers," Salsburg said.

Although the suit against Braglia was the first suit where the FTC sought monetary damages, the FTC previously initiated a suit against telemarketing companies seeking a restraining order to enjoin the companies from violating the Telemarketing Sales Rule. The Federal Trade Commission filed a complaint in a Florida District Court against Debt Management Foundation Services, Inc., One Star Marketing, Inc., Debt Specialist of America, Inc., Ameridebt Group, Inc., and Credit Counseling Specialists of America, Inc. alleging that they violated the National Do Not Call Registry and falsely represented that they provide debt consolidation services to customers.

The Florida court issued a temporary restraining order, ordered an asset freeze, and appointed a receiver against Debt Management Foundation Services and the other companies named in the lawsuit on July 20, 2004. The District Court ordered Debt Management Foundation Services to stop advertising, promoting or offering the sale of goods and from making false or misleading statements to consumers. Debt Management Foundation Services was also ordered to stop violating the Telemarketing Sales Rule.

The FTC plans to file more suits against companies for violating the National Do Not Call Registry but current investigations are non-public, said Salsburg.