

Autumn 2008

Introducing the AWSCA

Helen Mac Murray

MCPS is proud to be part of the creation of the Automotive Warranty & Service Contract Association. We are serving as legal counsel to this fledgling group. Although the industry has been plagued with consumer protection issues, a large group of companies who want to clean up the industry have banded together to develop a set of best practices and a certification process to ensure that members are complying with all applicable laws. MCPS has assisted the organization draft its bylaws and best practices and is developing the industry wide certification and audit process.

Please contact Helen if you are interested in joining this group.

FTC Suspends Enforcement of "Red Flags Rule"

Michele Shuster

The Federal Trade Commission will suspend enforcement of the new "Red Flags Rule" until May 1, 2009, to give creditors and financial institutions additional time in which to develop and implement written identity theft prevention programs (ITPP).

The Red Flags Rule was developed pursuant to the Fair and Accurate Credit Transactions (FACT) Act of 2003. Under the Rule, financial institutions and creditors with covered accounts must have ITPP to identify, detect, and respond to patterns, practices, or specific activities that could indicate identity theft.

A company must implement an ITPP if it a "creditor" or "financial institution." FACTA defines a creditor as any entity that regularly extends, renews, or continues credit; any entity that regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who is involved in the decision to extend, renew, or continue credit.

Canada Implements New DNC Law

Brian Cook

Nearly 3.5 million Canadians have registered with their nation's Do-Not-Call List since it was launched on September 30, 2008. The newly implemented law corresponds closely to its U.S. counterpart, with exemptions for registered political parties, charities, polling companies, businesses with products or services a consumer has inquired about in the past six months and businesses that a consumer has had a relationship with in the past 18 months. Telemarketers must subscribe to the National Do Not Call list prior to making any telemarketing calls and pay subscription

fees, which differ depending on an organization's business requirements.

Non-exempt telemarketers are required to register with the National Do Not Call List. Once a consumer asks not to be contacted, his or her name and number must be added to the telemarketer's own internal do not call list within 31 days. All telemarketers, regardless of whether they are exempt, must maintain their own internal do not call lists. In Canada, the name must be tracked along with the phone number. Telemarketers must also purchase a subscription for the area codes they intend to call. A company who violates the law may be subject to penalties of up to \$1,500 for an individual and up to \$15,000 for a corporation, for each violation.

Regulatory Updates

Mississippi:

On September 18th The Mississippi Public Service Commission formally adopted the Mississippi Telephone Solicitation Act. Under the act:

- It will now cost \$1,000 to obtain a Mississippi DNC list, which includes two subcontracting companies calling on their behalf; must pay an additional \$500 for each subsequent contracted company
- A ban on state "holiday" calling in Mississippi.
- Telemarketers must submit an affidavit to the effect that no blocking of caller ID is occurring.
- All telephone numbers to be used by a telephone solicitor for soliciting purposes must be submitted to the Mississippi PSC.
- The effectiveness of a consumer's DNC listing has been shortened
- The complete act can be found [here](#)

California:

CA recently enacted a bill (AB 2059) that requires certain disclosures be made where persons are asked via the mail for permission to conduct telephone solicitation.

For persons NOT on the California DNC list, the mailings must include:

- A request for consent to receive information via telephone
- A clear and conspicuous identification of the sender and of the entity that is requesting permission to call
- The telephone number to which the calls are to be placed
- Notice that the recipient may be contacted by a telephone solicitor.

For persons who ARE on the California DNC list, the mailings must include:

- A request for WRITTEN permission to receive information via telephone.
- Identification for the sender of the mailing and of the entity that is requesting permission to call
- The telephone number to which the call may be placed
- The signature of the recipient authorizing the calls and specified notice (unless there is an established business relationship between the subscriber and the solicitor)

Wisconsin:

In September, the Wisconsin Dept. of Agriculture, Trade and Consumer Protection updated the Wisconsin DNC list to include cell phone numbers.

FTC:

- The FTC is cracking down on operations that claim to remove negative information from consumers' credit reports. The FTC and 24 state agencies have opened fire on 33 such operations.

HIPAA:

The Department of Health and Human Services has released two new HIPAA privacy guides—one for health care providers and one for consumers—explaining when a provider may share a patient's health information with the patient's family, friends or others involved in the patient's care. The guide can be found [here](#).

MCPS Updates

If you would rather not receive upcoming newsletters from MCPS, please respond to this e-mail with the subject line as "Remove from list"

- Michele became a Certified Auditor by the American Teleservices Associations Self Regulatory Organization

- Helen and Michele received BV Ratings from Martindale Hubbell

- Brian and Susan Cook married on September 13th

Mac Murray, Cook, Petersen & Shuster LLP