

## MEMORANDUM

To: The Mandatory Poster Agency

From: Rhonda R. Kunkel

Date: February 7, 2012

Re: Tennessee consumer complaint

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It is my understanding that a Tennessee consumer has called MPA indicating that MPA is violating or on the verge of violating two potential Tennessee statutes, numbers 10762 B, 1096 B. I have conducted research attempting to come up with these statute numbers, and I am unable to locate them. However, I have reviewed various Tennessee laws regarding telemarketing and provide you with the following information.

Tennessee has a Consumer Telemarketing Protection law found at §47-18-1501 et seq. This law provides that it is unlawful to use automatic dialing and announcing devices “for the purpose of advertising or offering for sale . . . any goods . . . **primarily for personal, family or household use.**” Based upon this section, it would appear that the statute is not applicable to MPA’s telephone solicitations since those calls are obviously going to businesses.

Other provisions that are applicable to this Consumer Telemarketing Protection law are the following. It is unlawful to use ADAD equipment to:

1. Call outside the hours of 8 a.m. and 9 p.m.
2. Involves either random or sequential dialing of phone numbers.
3. The recorded message fails to state the name and phone number of the person/organization initiating the call within 25 seconds of the call and at the conclusion of the call.
4. The telephone number stated in paragraph 3 above, is not answered during normal business hours by someone who is an agent of the company, and willing and able to provide information concerning the automatic calls.

These are just a few of the provisions under which it is unlawful to use ADAD equipment.

Again, section §1502 specifically sets forth the reference to “primarily for personal, family, or household use.” Section §1503 states that prior to using ADAD equipment, a company using the equipment is to register with the Tennessee Regulatory Authority in order to receive a permit. Further, a surety bond is required. Section §1504 directs that it is unlawful for a person to connect ADAD equipment to a telephone line unless a permit has been issued. However, it does not appear that these registration requirements are applicable when calls are placed to businesses.

Section §1507 sets forth that it is permissible to use ADAD equipment when:

1. The calls are made in response to calls initiated by the person to whom the automatic call or recorded message is directed;
2. Concern goods/services that have been previously ordered;
3. Relate to collection of lawful debts;
4. Are made by a public school...

These permissible uses appear to be directed at the personal, family or household use.

Section §1511 states that it is an offense to use ADAD equipment to intentionally dial telephone numbers within the state and conceal or misrepresent the number used by the ADAD equipment. The fine is \$2,500 for each violation.

### **Conclusion**

References within this law seems directed toward consumers of goods for primarily personal, family or household use. Therefore, it appears that this law is not applicable to MPA's telephone calls placed to businesses.

Unfortunately, however, this law is unclear. While it is our interpretation that the requirement for a permit is not applicable to MPA since it places calls to businesses, it is possible that the Attorney General may interpret the law differently.

In all events, we recommend that you honor all requests to be removed from call lists.

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Tennessee also has a Consumer Protection Act found at §47-18-101 et seq. As has been similar to other states' Consumer Protection Acts, there are various provisions that may be applicable to MPA's solicitations. The following sections may be applicable and are considered unfair or deceptive acts or practices and are considered unlawful:

1. Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services.
2. Using deceptive representations or designations of geographic origin in connect with goods or services.
3. The act of misrepresenting the geographic location of a person through a business name or listing in a local telephone directory or on the Internet is an unfair or deceptive act or practice affecting the conduct of trade or commerce, if:
  - i. The name misrepresents the person's geographic location; or
  - ii. The listing fails to clearly and conspicuously identify the locality and state of the person's business;
  - iii. Calls to the listed telephone number are routinely forwarded or otherwise transferred to a person's business location that is outside the calling area covered by the local telephone directory, or that is outside the local calling area for the telephone number that is listed on the Internet;

- iv. The person’s business location is located in a county that is not contiguous to a county in the calling area covered by the local telephone directory, or is located in a county that is not contiguous to a county in the local calling area for the telephone number that is listed on the Internet; and
- v. The person does not have a business location or branch, or an affiliate or subsidiary of the person does not have a business location or branch, in the calling area or county contiguous to the local calling area.

**Conclusion**

The Consumer Protection Act is not only applicable to telephone calls, it is also applicable to solicitations. Therefore, we recommend that MPA include on its solicitations the address disclosure which states that MPA is a Michigan corporation and that all orders are filled from its corporate offices in Michigan.

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Tennessee also has Rules of the Tennessee Regulatory Authority regarding “Telephone Solicitation Regulations - Do Not Call Register.” Among the definitions under this rule is a “Telephone solicitation.” A telephone solicitation is defined, in pertinent part, as:

“Any voice communication over a telephone, originating from Tennessee or elsewhere, for the purposes of encouraging the purchase or rental of . . .goods. . .Such calls include, but are not limited to: . . .

Telephone solicitation does not include:

- (a) any voice communication to any residential telephone subscriber with that subscriber’s prior express invitation or permission;
  - 1. . . . .
  - 2. The use of a residential telephone line for the purpose of operating a business constitutes an express invitation or permission for the purposes of these rules.

Calls are only to be placed between 8 a.m. and 9 p.m. A list of persons that do not wish to receive telephone solicitations must be kept. Solicitors are prohibited from using equipment to block caller ID on the residential subscriber’s phone. Telephone solicitors that solicit residential subscribers must register with the Regulatory Authority.

**Conclusion**

Based upon the definition of a telephone solicitation, it appears that calls to business telephone subscribers is not subject to the Do Not Call Registry. Further, based upon the other general regulations, these Rules do not appear to apply to calls placed to an individual’s home that operates a business out of that home.