

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

In The Matter Of Telemarketing Rulemaking -

FTC File No. R411001

**COMMENTS OF LENOX INC. ON THE PROPOSED
REVISIONS TO THE TELEMARKETING SALES
RULE**

INTRODUCTION

Lenox, headquartered in Lawrenceville, New Jersey, is the leading American marketer of fine china, crystal, collectibles, giftware, contemporary tableware, and silver. Lenox is among the oldest names in the fine tableware and giftware business. We have significant operations in Maryland, New Jersey, New York, North Carolina, and Pennsylvania. Additionally, we have retail operations in 31 states.

To many Americans, Lenox is an American icon. Lenox is the fine china and giftware found in more American homes than any other brand. In fact, for over eighty years we have crafted the fine china in America's First Home, the White House. Today, our fine china patterns make up six of the ten most popular on the market. Additionally, our everyday products such as Dansk, Gorham and Kirk Stieff are enjoyed by millions of additional Americans.

Through its Lenox Collections subsidiary, Lenox distributes a wide variety of products through direct consumer marketing. This marketing utilizes direct communication with consumers through product catalogs and increasingly, our industry leading web site. An integral part of both our catalog and internet sales is our ability to build an ongoing business relationship with our customers.

Today, we are writing to offer our comments concerning the proposed revisions to the Telemarketing Sales Rule (TSR).

Lenox supports the recent efforts of the FTC to investigate and eliminate fraud in the industry and supports the TSR as drafted. However, we cannot support the revisions

proposed by the Commission in this proceeding. The proposed revisions place many burdensome restrictions on companies like ours that have ethically used the telephone as a legitimate sales and marketing tool. For the reasons set forth below, Lenox is concerned that the FTC's attempts will do nothing to curtail the abusive and deceptive telemarketing practices of a few bad actors, but will penalize the business practices of reputable companies and will have a disastrous impact on our company's ability to continue to conduct ethical and legal telemarketing programs.

**Creation of a National Do-Not-Call Registry is Not Necessary and if
Implemented Would Curtail the Continued Success of
Lenox Collections**

I. The Lenox Approach to Telemarketing

We believe that Lenox, through its Lenox Collections subsidiary is a leader in using innovative technology to service our customer's needs. The American economy stands at a crossroads. On one side are industries that built this country during the Twentieth Century. On the other side are "new economy" companies that are taking advantage of emerging information and communication technologies such as the internet. Lenox, along with a growing number of other companies, operates in both segments of the economy. Our successful manufacturing and retailing operations comprise one side of our business. At the same time our dynamic direct-to-consumer marketing operations comprise the "new economy" side of our business. It is to our marketing operations that the proposed revisions to the TSR pose a serious threat.

Established companies that hope to continue to grow and prosper in the Twenty-First Century must find ways to harness new communications technologies to interact and market to their customers. If they do not do so these firms and their millions of employees will surely be left behind. We believe Lenox has successfully found a way to merge our existing communication and marketing practices to advancing technology in a way that benefits our customers, our employees and our shareholders.

For years Lenox has successfully utilized traditional printed materials (catalog and brochures) to market to our customers. The internet has created a whole new method for us to reach customers. Now, our customers do not have to wait for the next catalog mailing, but, instead can immediately access online information on all of our products. Additionally, the customer can place orders and track their shipments at any hour of the day or night. Telemarketing provides us with a third tool to communicate with our customers. Whether customers come to us from our catalogs or, increasingly, from our web sites, the telephone enables us to inform our most loyal customers of new products that may interest them. Telemarketing allows us to be where the consumer is while also putting a human touch on an otherwise impersonal retail experience with the voice of a trusted friend. Our practice is limited to contacting only those customers who have already made a purchase from our company, thus eliminating "cold calling" practices.

Enacting a national Do-Not-Call (DNC) list that requires us to first check our existing customer's names against a list of potentially millions of Americans will hobble our direct-to-consumer efforts with untold additional fees. These additional fees will have to be borne by someone. The likelihood is that we will either have to pass these fees along to consumers in higher prices, or reduce our level of telemarketing, thus reducing employment in our operations. Neither of these solutions are attractive. Increasing costs associated with direct-to-consumer marketing, particularly one that incorporates internet marketing technology, runs the risk of smothering in the cradle what is proving to be a very viable business approach for American business.

The Lenox Collections business employs a sophisticated direct-to-consumer telemarketing operation.

In order to be eligible for participation in the Lenox Collections telemarketing campaign a consumer must satisfy several criteria. First, we only telemarket to existing Lenox Collections customers. Additionally, we contact those customers who have actually made a purchase already from us, or specifically expressed an interest in receiving our product mailings. We do not "cold call" prospect for new customers via telemarketing. Second, we will only call customers who have not been called in the last 60 days. Third, we do not telemarket to customers who are part of another concurrent telemarketing program. Fourth, we only telemarket to existing customers who are credit worthy and whose accounts are in good standing.

Our telemarketing efforts take the form of three distinct campaigns:

1. **Direct Mail:** Products that have been promoted by marketing through regular mail channels to our existing database of customers. This is done either as an introductory mailing or a reminder mailing.
2. **Catalog:** Follow up on customers who have been mailed our catalog and have not yet made a purchase.
3. **Gold Club:** Follow up on our Gold Club newsletters. These customers are our VIP customers who receive a newsletter four times a year. We follow up either on the products from the newsletter or the specific product that was created especially for the VIP customers.

Built within the Lenox Collections telemarketing process is a continued mechanism to allow our customers who choose not to be called a means by which to prevent unwanted calls. First, we maintain an internal DNC list of customers who have asked us to be removed from our telemarketing lists. Second, whenever we speak with a customer we advise them that we like to call our customers occasionally to keep them updated on new products as well as to ensure their satisfaction with their Lenox purchases. We ask if it is ok to keep them in our special program and continue to call them. If they do not wish to continue to receive telephone calls we add them to our internal DNC list. Thus, our internal DNC list is continuously updated at the request of our customers.

In relation to other firms and industries our telemarketing operations are small. We employ fifty individuals at one call center with annual employee wages and benefits of over \$1.5 million. Our Lenox Collections operation, to which these fifty employees are attached, employs a total of 387 people with wages and benefits of approximately \$21 million. Consequently, our employees involved in telemarketing represent more than one-eighth of the employment at Lenox Collections. Based upon our business plans we expect high levels of growth at Lenox Collections which include increasing success of our telemarketing operations. Lenox Collections pays local real estate taxes of over \$150,000 and projects capital spending in fiscal year 2003 to be over \$6.5 million.

II. Successful Do-Not-Call Procedures Already Exist

A. Existing Law Provides Adequate Protections Against Unwanted Calls

Existing law already provides an easy and efficient means for consumers to remove their names from telemarketer's DNC lists. They simply do so by asking the telemarketer to remove their names from active call lists. Currently existing DNC systems empower consumers to make their own decisions. Consumers and consumers alone are given the authority to determine which calls they will accept and which they will block. While the FTC contends that it will offer consumer's a similar program through the ability to list companies they will accept calls from, that is clearly an unrealistic option that will cost the FTC too much money to operate. After all, what consumer can be realistically expected to remember to list the name of all companies, including listed companies subsidiaries, from which they wish to continue receiving calls. It is far simpler to keep the current system and allow consumers to request of individual telemarketers that their name be removed from specific call lists. If companies are not honoring these requests then the FTC should utilize its full authority to ensure their compliance with existing law.

In times of federal budget uncertainty such as now, industry, the FTC and the public need to know who will pay for this new DNC system. Will industry be forced to pay a fee as a price of doing business? Will consumers be forced to pay a fee to include their name on the list? Or, will the FTC ask Congress for an appropriation to finance this new system? Does it make sense for anyone to have to pay for a duplicate DNC system? These questions should be answered and debated early in any rulemaking procedure. To date there are no clear answers.

B. The Private Sector Maintains Do Not Call Lists

The industry has also attempted to provide consumers with a one-stop service to remove their names from all calling lists. The Direct Marketing Association's Telephone Preference Service offers consumers an easy, free, nationwide DNC system that has already been created and will not require additional money to be expended by the FTC.

C. Many State Governments Already Manage Their Own Do Not Call Lists

State governments have been leaders in protecting their residents from abusive telemarketing practices. Many states have already moved to address any perceived loopholes in the existing DNC framework. At the present time 20 states have DNC lists and more are being added as we speak. These states contain over 60% of the population of the United States. For example, the Kentucky Legislature recently passed a DNC law that contained exemptions for business that have a preexisting commercial relationship with the recipient of the call. The states, who are in the best position to offer solutions to the concerns raised by their citizens, have looked at this situation and acted in a way that is appropriate for their constituents. The FTC's proposed DNC list will duplicate what to date has been a successful initiative of the states and simply waste taxpayer money.

III. A National Do Not Call List Would Negatively Affect the Continued Success of Our Business

The impact of such a list could have a substantial effect on the number of people that we employ. Direct-to-consumer marketing, utilizing telemarketing as an integral communications strategy, is a fast-growing part of our business. Employment growth in our Lenox Collections business exists because consumers use telemarketing. Our telemarketing efforts increase our revenue stream and the profitability that allows us to invest back into our operations and employ more people across the whole business.

Our consumers enjoy and rely on our telemarketing practices. Many of our customers have an emotional attachment to both our products and our brand name. We have been part of their families for decades. Put simply, they trust us. Many of our customers are collectors who rely on periodic calls from Lenox Collections to inform them of new designs that they might wish to add to their collections. Or, as happens on occasion, of the discontinuation of a design. By working with Lenox Collections our customers became part of our team. They identify with our brands and want to be treated differently. Being able to directly contact these customers is crucial to the continued success and growth of our business. Subjecting this type of telemarketing to increased regulation and the increased costs associated with it will reduce our ability to work directly with our customers to satisfy their information needs.

While many may complain about the business of telemarketing, there is no denying the numbers generated. Lenox complies with the appropriate state and federal laws and honors consumer DNC requests. Last year our telemarketing business had revenues in excess of \$10 million. Without the ability to easily and inexpensively communicate with our customers utilizing telemarketing, we would not have enjoyed this level of sales. In future years we project a strong increase in our sales related to telemarketing. If the national DNC registry is established it is likely that we will not see an increase in our sales and consequently will not be able to hire additional workers into Lenox Collections.

IV. Exemption for Preexisting Commercial Relationships

If the FTC does proceed with revisions to the TSR we suggest that an exemption be created for companies that have an ongoing commercial relationship with those customers to which they are telemarketing. For example, many of our consumers who initially purchase product online or through a catalog welcome periodic calls from Lenox Collections informing them of new products in which they may be interested. Our customers appreciate this service and many have come to rely upon it as a means of keeping their collections current. It is certainly easier for them to rely upon a call from their familiar Lenox sales representative than it is to periodically page through our web sites or leaf through our catalogs. For many consumers in today's busy world our sales calls are often the only way that they ever become aware of new products in which they might be interested.

An exemption protecting the ability to directly contact these consumers will preserve our successful business model. Many of our consumers may wish to add their names to a DNC list to avoid other telemarketers. However, they also wish to continue to receive product updates via telephone from Lenox. A national one size-fits-all DNC list runs the serious risk of eliminating the names of customers who wish to continue to receive calls from select telemarketers. An exemption for calls to existing customers would allow us to continue to provide this valuable service to our loyal consumers. Such an approach would be consistent with the practice in the majority of states that currently operate DNC lists. Additionally, an exemption would be appropriate for companies, such as Lenox, that continually update their internal DNC lists. If the FTC proceeds with creating a national DNC list, a federal exemption approach for preexisting business relationships would make sense and serve to harmonize the federal approach with the majority of state DNC regimes.

Provisions Regarding the Blocking of Caller ID Signals Must Take into Account the Limits of Present Technology

While we support the concept of a prohibition on blocking Caller-Id, it must be clear that the prohibited practice is the deliberate manipulation of the caller-Id signal. As long as no overt actions are taken to disrupt the information, there should be no violation. Currently, we transmit our company name when we directly phone a customer. Many times our customers want to see this name and will avoid other telemarketers but will accept calls from Lenox. Unfortunately, we are often at the mercy of the technology deployed by the local phone companies who carry our calls to our customers. Lenox and other similarly situated companies should not be subject to the enforcement of rules dealing with Caller ID signals if that local phone company, for whatever reason, is unable or unwilling to transmit the Lenox name with the call.

Conclusion

We certainly respect the time the Commission has invested in studying these issues and its commitment to continue modifying these proposals. We urge the Commission to look at the overall negative impact that these proposals will have on jobs and our community. We also urge the Commission to place the issue of telemarketing into the broader context of the evolving American economy. Actions taken today to regulate one form of consumer communication may have negative unintended consequences for other, emerging forms of technology. Thank you for your consideration and we would be happy to assist the Commission in the future as it reviews the telemarketing industry.



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