



April 27, 2000

VIA MESSENGER

Secretary
Federal Trade Commission
Room 159
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Telemarketing Review – Comment. FTC File No. P994414

Ladies and Gentlemen:

This letter is in response to your agency's request for public comments regarding its review of the Telemarketing Sales Rule ("TSR") as published in the Federal Register on February 28, 2000.

The American Resort Development Association ("ARDA") is the Washington, D.C. based trade association representing the vacation ownership industry. Established in 1969, ARDA today has over 800 members, ranging from small, privately held firms to publicly traded companies and international corporations. ARDA's diverse membership includes companies with vacation timeshare resorts, private camp resorts, land development, lots sales, second homes and resort communities; however, the majority of ARDA's membership is related to the timeshare industry. ARDA appreciates the opportunity to comment upon the FTC's review of the Telemarketing Sales Rule, as a substantial number of ARDA's members are affected by this Rule.

The following comments are presented in the order and with the headings as they appeared in the Request for Comments. Although there are many aspects of the Request which affect our members individually, we have responded only to those questions which most substantially affect our industry as a whole.

Celebrating 30 Years of Industry Service

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I. General Questions for Comment

1. Is there a continuing need for the TSR?

Although ARDA members are frustrated by numerous, complex state laws that overlap with Federal law and rules, ARDA believes that there is a continuing need for the TSR. The Rule appears to have been effective in curbing abuses, requiring material disclosure and providing consumers with the ability to opt out of further solicitations. In particular, the requirement of an immediate, reasonable disclosure at the beginning of a call sets a reasonable standard for telemarketers. Without placing an unreasonable burden on telemarketers, this is beneficial to consumers by immediately informing them of the source and reason for the call.

5. Does the Rule overlap or conflict with other federal, state or local government laws or regulations?

The Federal Communications Commission and at least 44 states have some type of law governing telemarketing. Although these laws do not directly conflict with the TSR, they frequently overlap with the TSR by requiring the same basic disclosures at the beginning of a call or requiring a do-not call list. They also substantially extend beyond the scope of the Rule in many instances, which complicates the process of doing business on a national basis.

FCC Rule (47 C.F.R. Part 64): The FCC Rule overlaps substantially with the TSR, but contains sufficient differences that the two laws must be reviewed carefully to be certain of compliance. For example, the FCC Rule applies only to outbound calls; the TSR applies to outbound calls and to inbound calls, unless specifically exempt. The FCC Rule contains a "prior business relationship" exemption; the TSR does not have such an exemption. Accordingly, the FCC exemption is rendered useless, except for calls that are exempt from the FTC Rule.

State Laws: There is a wide variety of state laws, many of which expand on or differ from the FTC Rule's requirements. The hours during which calls can be made differ from the TSR in 5 states. At least 24 states require some type of registration, usually with a bond of \$50,000 to \$100,000. Some states require registration of the company only; others require registration of the

telephone solicitors. Three states require a request to continue the solicitation.

(a) What is the impact on the industry of state-by-state regulation of telemarketing?

The overlap between the TSR and other federal and state laws causes substantial confusion and difficulty for telemarketers who attempt to conscientiously comply with all such laws. The increasing number of state laws imposes a substantial administrative burden, which can generally only be met by large companies.

The most burdensome state-by-state regulation is the wide variety of state do-not-call requirements. Eight states require some form of a do-not-call list, and several other such laws are pending. Some laws require the list to include the name, address and telephone number of the consumer. Others require only the telephone number. Some lists are maintained by the state, others by the telephone company. It is often difficult to obtain a current list. In view of these factors, compliance with these laws becomes an administrative nightmare.

(d) Are there any unnecessary regulatory burdens created by overlapping jurisdictions? What can be done to ease these burdens?

Although it may be difficult to ease the regulatory burdens created by overlapping state laws, there seems to be little rationale for two overlapping federal rules, the TSR and the FCC Rule. Because the federal rules impact all telemarketing procedures, combining these two rules into one comprehensive federal rule would eliminate the burden of complying with two slightly different federal rules.

The growing number of states which require do-not-call lists is a burden to all telemarketers and a particular burden to small businesses, which do not have the means to comply with a wide variety of requirements. Although this represents a potential source of income for states, on the whole the responsible agencies are ineffective in administering the do-not-call lists, thus creating an additional burden.

The burden of compliance with multiple state requirements far outweighs the possibly minimal fiscal benefit to the states and the likelihood of

inadvertent violations. A central, federal do-not-call list that would preempt state laws appears to be the only solution to the variety of state laws imposing this requirement. ARDA favors this approach because of its far greater simplicity and likelihood of compliance arising from uniformity.

IV. Abusive Acts or Practices

19. Section 310.4(b)(2) limits the liability of the seller or telemarketer for violating the “do-not-call” provision in the Rule as long as the seller or telemarketer has instituted certain procedures designed to prevent calls to consumers who have asked not to be called.

(a) What have been the advantages and disadvantages of this provision to the industry?

ARDA believes that the limitation on liability in Section 310.4(b)(2) is an advantage to telemarketers who have instituted adequate procedures, but because of the difficulty in administering a timely list, have made a call in error. There should not be automatic liability when a telemarketer has made a good faith effort to comply. This is particularly true when a telemarketer is attempting not only to comply with federal do-not-call requirements, but also to incorporate state do-not-call requirements into one comprehensive, current list.

V. Recordkeeping

22. Have the recordkeeping provisions for telemarketers been burdensome to sellers and telemarketers?

Recordkeeping provisions under the TSR, in themselves, have not been burdensome to ARDA members. However, there is a substantial burden when TSR requirements are combined with and overlap the numerous and complex state law requirements, particularly with respect to do-not-call lists.

VI. Exemptions

(c) Is the exemption for “face-to-face” transactions still appropriate?

The face-to-face exemption should be retained. By exempting calls in which the sale of goods or services is not completed and payment is not required until after a face-to-face presentation by the seller, the opportunity for abuse and misleading representations is substantially reduced. The same rationale applies to a face-to-face presentation in which the sale is later completed by a telephone call.

(d) Is the exemption for “general media” advertising still appropriate? If the exemption continues to be appropriate, how should the Rule treat solicitations such as classified advertisements, “spam” faxes and email “spam?”

Currently, the general media exemption applies to calls in response to television commercials, infomercials and other forms of mass media advertising. The Commission’s rationale has been that general media advertising does not typically involve the form of deception and abuse that the Federal Trade Commission Act seeks to stem. Further, deceptive general media advertising is already subject to enforcement under the FTC Act. Based on this rationale, the exemption should be extended to any type of general media advertising that is already subject to the FTC Act, including classified advertisements.

ARDA urges the Commission to extend this exemption to general advertising on a website or banner ad. The interactive nature of Internet advertising actually permits the consumer to obtain more information than from an advertisement in a newspaper or on television, as the consumer can often link to additional information. Therefore, the rationale for the “general media” exemption applies equally to Internet advertising.

As noted in the next paragraph, ARDA believes that “spam” faxes and email “spam” should be exempted. However, because such advertising is directed to specific individuals or entities, the “direct mail” exemption is more appropriate.

The “Direct Mail” Exemption

The “direct mail” exemption should be expanded to cover e-mail solicitations which are directed to specific individuals, as well as email “spam” and “spam” faxes, which are essentially the same type of advertising as regular mail. As long as such solicitations clearly and conspicuously (and truthfully) disclose all information required by Section 310.3(a)(1) and do not involve the categories of goods and services that are not subject to the current direct mail exemption, the opportunity for deception and abuse is limited. Consumers have the opportunity to examine the solicitation and to make inquiries based not on oral representations, which may be misleading, but on the written disclosures.

I. Industry Background

Although ARDA has not compiled statistics, telemarketing as defined in the TSR appears to be an increasingly important source of solicitations in the timeshare and vacation ownership industry. That industry has grown substantially for many years. Consumers have responded positively to the rising quality of the leisure product being offered, from both national lodging brand and independent developers, and improved marketing approaches, including telemarketing, to which they are more favorably inclined.

Members of ARDA both employ their own telemarketers and use outside firms. ARDA is aware that the tactics of some telemarketers can be misleading and supports the need for the TSR as a means of curbing deception and abuse.

III. Self-Regulatory Efforts

17. Are industry-sponsored ethical codes effective?

ARDA has a Code of Ethics that is strongly enforced. The Code of Ethics includes a section entitled Solicitation Requirements, which not only encompasses the basic requirements of the TSR, but the requirements of many state laws as well. Members who are not in compliance with federal or state laws are subject to suspension or termination of membership. Although ARDA believes that its Code of Ethics is effective, it nevertheless supports the TSR as a more far-reaching vehicle of enforcement.

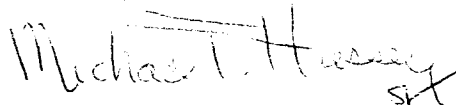
18. Has the industry undertaken efforts to educate members?

ARDA's substantial educational efforts with respect to telemarketing laws and regulations include articles in its publications and seminars. ARDA has published a telemarketing manual that addresses both federal and state telemarketing laws. At ARDA's annual convention, attorneys with expertise in regulation of telemarketing speak on sales and marketing panels, which are heavily attended. Both the Federal and State legislative committees have members who follow telemarketing laws and update the committees and ARDA members on new developments.

To increase compliance with applicable laws and regulations even further, ARDA members also publicize developments and requirements in other ways. These include varied other trade publications and websites which are read on a regular basis by many industry members, the majority of whom are ARDA members, and ongoing client advisories and counseling.

Again, we very much appreciate the opportunity to comment upon your review of the Telemarketing Sales Rule.

Sincerely,

A handwritten signature in black ink that reads "Michael F. Hussey" with a stylized flourish at the end.

Michael F. Hussey
Senior Vice President – Public Affairs

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