



DEPARTMENT OF JUSTICE
CIVIL ENFORCEMENT DIVISION

January 23, 2010

Jeff Kropf
Americans for Prosperity Foundation
P.O. Box 130
Sublimity OR 97385

Sent Via email jkropf@afphq.org

Re: Oregon Automatic Dialing and Announcing Device (ADAD) Calls, or “Robo-Calls”

Dear Mr. Kropf:

The Oregon Department of Justice (DOJ) has received a complaint that you and Americans for Prosperity have made unlawful “robocalls” to Oregonians on the federal Do Not Call Registry. We remind your organization of restrictions pertaining to automated telephone contact with Oregonians.

Federal and state “Do Not Call” laws prohibit unsolicited telephone calls to Oregonians who have subscribed to the National Do Not Call Registry. Telephone calls of a political or informational nature are generally exempt from these state and federal prohibitions against placing unsolicited calls to subscribers on the National Registry. However, calls in which automated devices select and dial numbers and disseminate prerecorded or synthesized voice messages are not exempt from regulation under Oregon law — even when placed for political or informational purposes. Simply put, ADAD calls to subscribers whose telephone numbers are on the Oregon portion of the National Registry are generally prohibited, regardless of whether the purpose of the automated call is political or informational.

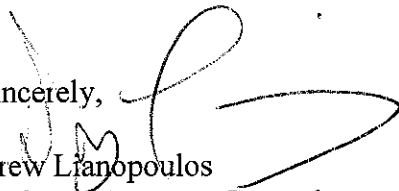
Oregon Revised Statutes 646A.372(2)(c) mandates that telephone numbers of “subscribers who appear on a list compiled for the purpose of informing potential callers that the subscriber does not want to receive telephone solicitations” be removed from ADAD call lists (with limited exceptions) — even if the recorded or synthesized message is of a political or informational nature. For enforcement, this means telephone numbers contained on the Oregon portion of the National Registry. The limited exceptions include those persons with whom the caller has an established business relationship. Established business relationship is defined as “a previous transaction or series of transactions between a caller and a subscriber that occurred within the 18 months preceding a call.” There is no requirement that the previous transaction be of a retail or commercial nature. For example, a person volunteering or providing monetary support for a specific political candidate, campaign or organization, within the 18 months

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preceding an ADAD call from that political candidate, campaign or organization likely has an established business relationship with that political candidate, campaign or organization.

In short, your organization and affiliated entities should “scrub” ADAD call lists against the Oregon portion of the National Do Not Call Registry prior to placing “Robo-Calls” in Oregon — *to the extent such scrubbing is required by Oregon law (ORS 646A.372)*. DOJ appreciates your efforts to ensure compliance with applicable Oregon law, a copy of which is enclosed for your convenience.

Sincerely,



Drew Lianopoulos
Assistant Attorney General
Oregon Department of Justice

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shall forfeit and pay a civil penalty of not more than \$1,000 for an initial violation. For a second or subsequent violation, the mail agent shall forfeit and pay a civil penalty of not more than \$5,000 for each violation.

(2) The Attorney General may bring an action in the name of the state against any mail agent or other person or entity to restrain or prevent any violation of ORS 646A.342 or 646A.344.

(3) The Attorney General may bring an action on behalf of a person to obtain the damages caused to the person by a mail agent's violation of ORS 646A.342 or 646A.344.

(4) The court may award reasonable attorney fees and costs of investigation, preparation and litigation to the Attorney General if the Attorney General prevails in an action under this section. The court may award reasonable attorney fees and costs of investigation, preparation and litigation to a defendant who prevails in an action under this section if the court determines that the Attorney General had no objectively reasonable basis for asserting the claim or no reasonable basis for appealing an adverse decision of the trial court. [Formerly 646.240]

(Delivery of Hazardous Materials)

646A.350 Delivery of unrequested hazardous substances prohibited. No person shall deliver, or cause to be delivered, any hazardous substance, as defined in ORS 453.005 (7), to any residential premises without the prior consent of any occupant of such premises. [Formerly 646.870]

646A.352 Penalty. Violation of ORS 646A.350 is a Class A misdemeanor. [Formerly 646.992]

(Other Mailings or Deliveries)

646A.360 Unsolicited facsimile machine transmissions. (1) If a person receives on a facsimile machine any unsolicited and unwanted advertising material for the sale of any realty, goods or services, the person may give the sender of such material written notice to discontinue further such transmissions. No person who has received such a discontinuance notice shall use a facsimile machine to transmit unsolicited advertising material for the sale of realty, goods or services to the person who gave the discontinuance notice for a period of one calendar year from the date the notice was given.

(2) As used in this section, "facsimile machine" means a machine that electronically transmits or receives facsimiles of documents through connection with a telephone network. [Formerly 646.872]

646A.362 Exclusion of name from sweepstakes promotion mailing list; written request; rules. (1) As used in this section:

(a) "Exclusion request" means a written request to be excluded from a sweepstakes promotion mailing list or to be placed on a list of persons to whom sweepstakes promotions may not be mailed.

(b) "Sweepstakes promotion" has the meaning given that term in ORS 124.005.

(2) Any person who receives a sweepstakes promotion, or a combination of sweepstakes promotions from the same service, in the United States mail, regardless of the identities of the originators of the sweepstakes promotion, may send a written exclusion request to the originator of any sweepstakes promotion.

(3) The exclusion request shall be mailed to the address to which the recipient would have sent a payment for any goods or services promoted in the sweepstakes promotion had the recipient ordered the goods or services instead of mailing an exclusion request.

(4) An originator of a sweepstakes promotion who receives an exclusion request shall exclude the requestor's name from the originator's sweepstakes promotion mailing list or shall place the requestor's name on a list of persons to whom sweepstakes promotions may not be mailed.

(5) The Attorney General shall adopt rules necessary to implement this section.

(6) It is an affirmative defense to a claim or charge of violating subsection (4) of this section that the originator of the sweepstakes promotion had, at the time of the violation, implemented reasonable practices or procedures for preventing a violation. [Formerly 646.879]

646A.365 Check, draft or payment instrument creating obligation for payment. A person may not mail or cause to be sent a check, draft or other payment instrument that, when deposited or cashed, obligates the depositor or payee thereafter to make any payment. This section does not apply to an extension of credit or an offer to lend money. [2007 c.304 §1]

AUTOMATIC DIALING AND ANNOUNCING DEVICES

646A.370 Definitions for ORS 646A.370 to 646A.374. As used in ORS 646A.370 to 646A.374:

(1) "Automatic dialing and announcing device" means an automated device that selects and dials telephone numbers and that, working alone or in conjunction with another device, disseminates a prerecorded or

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synthesized voice message to the telephone number called.

(2) "Call" means an attempt made to contact or a contact made with a subscriber by means of a telephone or telephone line.

(3) "Caller" means a person that attempts to contact or that contacts a subscriber by using a telephone or telephone line.

(4) "Caller identification service" means a telephone service that permits subscribers to see a caller's telephone number before answering the telephone.

(5) "Established business relationship" means a previous transaction or series of transactions between a caller and a subscriber that occurred within the 18 months preceding a call.

(6) "Subscriber" means an individual who has obtained residential or wireless telephone services from a telecommunications provider, or a person who resides with the individual. [2007 c.823 §1]

646A.372 Limits on usage of automatic dialing and announcing device. (1) A caller may not use an automatic dialing and announcing device in order to call a subscriber unless the device is designed and operated so as to disconnect within 10 seconds after the subscriber terminates the call.

(2) A caller may not use an automatic dialing and announcing device that dials telephone numbers randomly or sequentially unless the range of telephone numbers from which the device chooses the number to dial does not include numbers for:

- (a) Fire protection, law enforcement or other emergency agencies;
- (b) Hospital and health care facilities, physician's offices, poison control centers or suicide prevention or domestic violence counseling services; and
- (c) Subscribers who appear on a list compiled for the purpose of informing potential callers that the subscriber does not want to receive telephone solicitations.

(3) Subsection (2)(c) of this section does not apply to a caller who:

- (a) Has an established business relationship with the subscriber;
- (b) Is subject to regulation under the Fair Debt Collection Practices Act, 15 U.S.C. 1692 et seq.;
- (c) Is a representative of a public safety or law enforcement agency; or
- (d) Is a representative of a school district or school if the subscriber is an employee of the school district, a student or the student's parent, guardian or other family member.

(4) A caller who uses an automatic dialing and announcing device may use the device to call a subscriber only between the hours of 9 a.m. and 9 p.m. [2007 c.823 §2]

646A.374 Prohibited actions. (1) A caller who uses an automatic dialing and announcing device in order to call a subscriber may not misrepresent or falsify, either in speaking with the subscriber or in the prerecorded or synthesized voice message disseminated during the call:

(a) The caller's identity and the identity of any person on behalf of whom the caller is making the call;

(b) The telephone number from which the caller is making the call;

(c) The location from which the caller is making the call; or

(d) The purpose for which the caller is making the call.

(2) A caller may not intentionally alter, misrepresent or falsify the information that a caller identification service would ordinarily provide to a subscriber who uses such a service.

(3) A person who provides a caller identification service is not subject to civil liability for a caller's violation of this section. [2007 c.823 §3]

646A.376 Enforcement; civil penalty. Violation of ORS 646A.372 or 646A.374 is an unlawful trade practice subject to enforcement under ORS 646.632. Notwithstanding the provisions of ORS 646.642, a civil penalty imposed for a violation of ORS 646A.372 or 646A.374 may not exceed \$5,000. [2007 c.823 §4]

WARRANTY REGULATION AND ENFORCEMENT

(Enforcement of Express Warranties on New Motor Vehicles)

646A.400 Definitions for ORS 646A.400 to 646A.418. As used in ORS 646A.400 to 646A.418:

(1) "Consumer" means:

(a) The purchaser or lessee, other than for purposes of resale, of a new motor vehicle normally used for personal, family or household purposes;

(b) Any person to whom a new motor vehicle used for personal, family or household purposes is transferred for the same purposes during the duration of an express warranty applicable to such motor vehicle; and

(c) Any other person entitled by the terms of such warranty to enforce the obligations of the warranty.

(2) "Motor vehicle" means a passenger motor vehicle as defined in ORS 801.360 [Formerly 646.315]

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