

Teenage Girls and the Telemarketing Sales Rule

By: Jim Ganther

What do teenage girls have to do with the Telemarketing Sales Rule? More than you might think. I'm a lawyer with five daughters 18 years old and under, so I know of what I speak.



As you may recall, the Telemarketing Sales Rule (TSR) went into effect in 2003 to both implement the Telemarketing and Consumer Fraud and Abuse Prevention Act and preserve the Holy Golden Silence. For Boomers like me, the Holy Golden Silence was that period between approximately 5:00 and 7:00 p.m. when nuclear families sat down together to eat dinners lovingly prepared by mothers wearing pearls. Polite people simply did not call other polite people during the Holy Golden Silence. Desecration of the Holy Golden Silence elicited scorn from my father and energetic violations of the Second Commandment.

Telemarketers, of course, are not polite people. They specialized in calling during the Holy Golden Silence precisely because they knew Boomers and their spawn would be sitting near a wall-mounted telephone whose handset was attached to its base via an actual cord.

And this is where teenage girls enter the equation. My daughters have never seen a functional wall-mounted telephone in their lives. Honest. Helping one such daughter with her homework recently, I was actually asked which was invented first, the fax machine or fire? (Answer: Fire. Your grandfather invented it). They live in a wireless world.

So when we sit together to eat dinner, a tradition still staunchly defended at das Gantherhof, a ringing telephone is not the issue. Rather, it is text messaging, to which my daughters are all addicted. During our Holy Golden Silence, I need to banish the iPhones. They text their friends from under the table. They text "pls ps the btr" to their sisters. They may transmit mutant thumbs to my grandchildren.

In short, technology has overcome the TSR. No one calls anymore – or so it seems. If our landline phone rings, we know it's not someone we want to talk to – people we want to talk to have our cell numbers.

But not all dealerships are technology forward. Some are still rumored to use fax machines. So for those that still use telephone marketing, a brief overview of the Rule may be in order. Here goes.

The Federal Trade Commission (FTC) gives consumers a choice about whether they want to receive most telemarketing calls. Consumers are able to put their phone numbers on a national "Do Not Call" registry. It is illegal for most telemarketers or sellers to call a number listed on the registry. Because a dealership may want to call actual or prospective customers, it is important to know when one may or may not do so.

The TSR – often called the Do Not Call Rule – applies to any effort to sell goods or services through interstate phone calls. This includes dealerships that solicit consumers. It also includes outside telemarketers who solicit sales on behalf of dealerships.

Dealerships and the telemarketers they use are required to search the Do Not Call registry at least quarterly and drop from their call lists the phone numbers of consumers who have registered. The FTC maintains a website that provides this information: <https://telemarketing.donotcall.gov/>.

A consumer who receives a telemarketing call despite being on the registry will be able to file a complaint with the FTC, either online or by calling a toll-free number. Violators could be fined up to \$11,000 per incident.

Fortunately, there are some important exceptions to the TSR. In fact, if it is a dealership's policy to only contact consumers that fall within an exception to the Rule, the dealership may never need to actually compare a consumer's name to the names on the Do Not Call registry.

A dealership or telemarketer may call a consumer with whom it has an established business relationship for up to 18 months after the consumer's last purchase, delivery, or payment – even if the consumer's number is on the Do Not Call registry. This means that dealerships are free to call a customer for 18 months following delivery of a vehicle in a cash transaction, or for 18 months after the last payment in a financed or lease transaction.

This 18 month period resets every time a customer makes another purchase or payment. Thus, if a customer made his last car payment 19 months ago and he is listed on the Do Not Call registry, a dealership cannot make an unsolicited sales call to that person. But if he gets his transmission replaced at that dealership, a new 18 month period is established.

In addition, a dealership may call a consumer for up to three months after the consumer makes an inquiry or submits an application to the dealership. What this means is that a dealership is free to call a potential customer for up to three months after a sales visit to that dealership, or after taking a test drive. And if a consumer has given a dealership written permission, that dealership may call the consumer even if the consumer's number is on the Do Not Call registry.

But beware: if a consumer asks a dealership not to call, the dealership may not call, even if there is an established business relationship. Indeed, a dealership or its telemarketers may not call a consumer – regardless of whether the consumer's number is on the registry – if the consumer has asked to be put on the dealership's internal Do Not Call list.

Some states have their own Do Not Call registries, so a dealership would do well to check with its local counsel to determine if these laws increase its obligations with respect to calling customers.

Dealerships and their telemarketers are required to transmit their telephone number, and if possible, their name, to consumers' caller ID services where it is technologically possible. Transmission of callers' ID information allows consumers to know who is calling (and, presumably, ignore the call).

The following provisions of the Telemarketing Sales Rule also apply to dealerships:

- Dealerships and telemarketers may only call consumers between 8 a.m. and 9 p.m., local time.
- Dealerships and telemarketers must promptly identify themselves as a seller and explain that they're making a sales call before pitching a product or service.
- Dealerships and telemarketers still must disclose all material information about the goods or services they are offering and the terms of the sale. Misrepresenting any terms or conditions of the sale is prohibited.

To be safe, a dealership should assume that every person who visits or does business with the dealership has signed up for the Do Not Call registry. Then, only call those people if they fall within one of the exceptions to the Do Not Call regulations. If you aren't sure that an exception applies, you should compare the consumer's name to those on the Do Not Call registry.

Finally, remember that the Telemarketing Sales Rule primarily applies to sales calls. A dealership is never prohibited from contacting customers to inform them, for example, of recall or other safety-related information.

But to return to our point of departure, technology is moving past telephone solicitations. My daughters and their generation are immune to its fading charms. The real issue for the younger set addresses e-mail and text solicitations: The CAN-SPAM Act.

Yeah, I think I smell another article...