

GUIDELINES FOR TELEMARKETING COMPANIES

In order to assist all companies conducting telemarketing operations from Utah or calling Utah residents from out of state, the Utah Division of Consumer Protection has developed guidelines to be used in all telephone sales. The Utah Telephone Fraud Prevention Act (TFPA), U.C.A. §13-26-1, regulates telemarketing in the state. It defines telemarketing activities and provides a list of prohibited practices and penalties. The Utah Consumer Sales Practices Act (CSPA), U.C.A. §13-11-1, also may affect businesses in matters of disclosure and representations made during telemarketing sales. These guidelines are intended to assist telemarketing companies in establishing procedures to ensure compliance with these laws. By following these guidelines and complying with all relevant statutes, it will also protect telemarketing companies from false complaints filed by consumers.

RIGHT OF RESCISSION-CANCELLATION

Under the TFPA a purchaser has an automatic right of cancellation as defined in Section U.C.A. §13-26-5. The statute requires that a verbal notice be given that the sale may be canceled up to midnight of the third business day after the receipt of the merchandise. Most companies have instituted a system to record that disclosure at the time of purchase to verify that the purchaser received the proper information. The cancellation time period starts on the first business day AFTER the date of the sale. This right of cancellation is for a full refund and no restocking fees or penalties are allowed.

If the company is shipping out products or materials for review, then the cancellation period starts on the first business day AFTER the date the purchaser receives the product or service. Some programs involve access to a website or coaching materials online. If that access is provided on the date of the sale, then the cancellation period still starts on the next business day. Also note that under U.C.A. §13-26-5 (b) that if a solicitor fails to orally advise a consumer of this right to cancel, that such right is extended to 90 days.

Under U.C.A. §13-26-5 (2) it states that all cancellations shall be in writing. At the time of the transaction, the solicitor needs to provide a full mailing address to the consumer and provide instructions that any cancellation requests be mailed to that address and postmarked within the rescission period. This must be done verbally and must also be included in any contract completed at the time of sale. Most companies prefer to have their consumers call them to cancel in order to get the opportunity to “save” the sale. That creates a problem later on when a consumer may cancel verbally and that request is not recorded in customer service records or accepted by the solicitor. Thus, if a consumer does call to cancel and efforts to “save” the sale are not successful, the company representative needs to remind the consumer of the requirement to send the cancellation notice in writing.

The Division will accept cancellations done in writing through email or facsimile also, if a company provides those instructions to the consumer at the time of sale. The main issue is to have written proof of the cancellation and not to rely on verbal statements or claims that can not be substantiated. If a company fails to provide a cancellation process that requires some notification in writing, the Division would have to accept any consumer’s claim that a verbal

notice was given as a valid cancellation. Thus it is incumbent on each solicitor to develop and properly disclose a written cancellation policy.

Many companies are now requiring a signed contract at the time of the sale. That is often done by e-signature online, or by emailing or faxing a contract to be returned. It is suggested that each contract also include the written disclosure of the right to cancel in that contract along with the companies mailing address, facsimile number, or email address to be used. That further discloses the policy to the consumer and protects the business in the event that the verbal recording may be lost.

REFUND POLICY

The refund policy is a separate issue than the required three-day right to cancel a telemarketing sale. Companies may set their own refund or cancellation policies that apply after the required three-day rescission right. Those refunds are governed by the CSPA Rule R152-11-10 Deposits and Refunds section B(2)(a) which states that it is a violation to refuse to make refunds unless the refund policy is clearly indicated by “(ii) adequate verbal or written disclosure if the transaction occurs through the mail, over the telephone, via facsimile machine, via e-mail, or over the Internet;” Such wording as “after that all sales are final” or “no refunds will be given after that time” or similar statements are sufficient to meet this requirement if those are recorded or put in writing and provided to the consumer at the time of the sale.

SCREENING OF PROSPECTIVE CUSTOMERS

Many types of products and services are sold via telephone solicitations. Many are typical retail products with a fixed value and known brand names. Other new products and services include mentoring or coaching programs that cost many thousands of dollars and may not be appropriate for sale to all consumers. These programs often involve internet and website development and coaching that requires more technical expertise and abilities of the prospective purchaser. One section of the CSPA, U.C.A. §13-11-4 (s) states that it is a violation to solicit or enter into a consumer transaction with a person who lacks the mental ability to comprehend the nature and consequences of the consumer transaction or the person’s ability to benefit from the consumer transaction.

This may apply to individuals with disabilities or a mental impairment, but also may apply to senior citizens who are not able to understand the full nature of such a commitment to a coaching or mentoring program that requires technical knowledge and a long-term commitment. Companies should be cognizant of the Division’s commitment to protect senior citizens who are often vulnerable to a sales pitch that might not be in their best interest. Be diligent in screening all prospective customers to ascertain their mental abilities, understanding of the program, and whether it will be beneficial to them.

EXTRA COSTS

Many coaching and mentoring programs involve setting up and programming of websites, investing in real estate strategies, or starting a new business. Many consumers have complained

that they pay large amounts for these programs under the promise that the initial fee is all that they will have to pay. Soon after they are told that there are other ongoing fees and costs which were not disclosed at the outset. If the initial cost for these programs does not cover all the anticipated costs, then those other potential costs need to be fully disclosed at the time of the sale. Failure to disclose all costs and conditions could be deemed a violation of the TFPA U.C.A. §13-26-11 (1) (c) “to make or cause to be made any untrue material statement or fail to disclose a material fact necessary to make any statement made not misleading.”

EARNINGS CLAIMS

Claims of earnings potential or promises of specific earnings in a definite time period should not be made. The telemarketer who makes an initial contact has no ability to determine the future efforts, dedication, education, products to be sold, or work ethics of a prospective consumer. Thus, any claims made to sell a program which represent that a purchaser will be able to recoup the initial investment over any period of time are not acceptable as they cannot be determined or proven at that time. Likewise, claims that a person will be making income within a short period of time or that within a certain time period will be making a certain amount of income are not acceptable.

Such claims would fall under the TFPA U.C.A. §13-26-11 (1) (c) as an “untrue material statement.” These statements lead a prospective purchaser to believe that there is no risk in the transaction as they will at least recover their initial costs or be making significant income in a short period of time. That is clearly not the case as all such programs entail risk and the telemarketing company cannot guarantee that any client will recoup the initial costs or be making any income level within a specified time. Similar claims under the guise of “Warranties” or “Guarantees” that a company will work with a consumer after a program is complete until the consumer has recouped the initial investment are likewise not acceptable under the same reasoning.

Claims and statistics provided in a telemarketing sale that are made based on actual results of participants involved in such programs may be made if they can be documented and proven. Thus, claims that a certain percentage of participants have recouped their investment within a certain time period or that the program has a certain percentage of successful members may be used if there is supporting data.

The Utah Division of Consumer Protection is committed to the protection of consumers and enforcement of all applicable laws. It is also committed to assisting and educating businesses in understanding and complying with all Utah statutes. The Division welcomes contact from any business that may have questions or needs assistance in formulating proper procedures or interpreting the statutes the Division enforces.