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MEMORANDUM

February 18, 2004

To Our Clients and Friends

Re: Do Not Call Ruling

The United States Court of Appeals for the Tenth Circuit has upheld the do not call rules of the Federal Trade Commission (“FTC”) and the Federal Communications Commission (“FCC”). The plaintiffs contended that the rules violated their First Amendment rights because the rules applied to some, but not all, telemarketers. For example, telemarketing engaged in by charities and political entities was not covered by the rules. The court held that the establishment of the do not call registry is a valid regulation of commercial speech because it directly advances the government’s important interests in safeguarding personal privacy and reducing the danger of telemarketing abuse without burdening an excessive amount of speech.

The court noted the following four aspects of the agencies’ rules.

- The do not call registry restricted only commercial sales calls
- The registry targeted speech that invades the privacy of the home
- The rules put the burden on consumers to opt-in to put their names on the do not call registry.
- By blocking telemarketing calls, the registry furthers the government’s interests in combating the danger of abusive telemarketing and preventing the invasion of privacy

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The court noted that the do not call registry is a tool that can be used by consumers to protect their homes against abusive intrusions, similar to posting a “No Solicitation” sign in the front yard to avoid door to door sales calls. In the court’s view, the First Amendment does not prevent the government from giving consumers this option.

The court’s opinion can be found on our web site -
http://www.schwartzandballen.com/whats_new.html.

If you have any questions, please call Gilbert Schwartz, Robert Ballen or Tom Fox at (202) 776-0700.