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MEMORANDUM

August 21, 2008

To Our Clients and Friends

Re: FTC Rule Regarding Prerecorded Telemarketing Calls

The Federal Trade Commission (“FTC”) has amended its Telemarketing Sales Rule (“TSR”) to bar telemarketing calls that involve prerecorded messages unless the consumer has agreed to accept such calls. The provision is effective September 1, 2009. However, beginning December 1, 2008, telemarketers using prerecorded calls will be required to provide consumers with an automated opt-out mechanism.

The FTC’s rule amends the TSR to prohibit telemarketing sales calls that deliver prerecorded messages whether answered by a consumer or by an answering machine unless the seller has previously obtained the recipient's signed, written agreement to receive such calls. The consumer’s permission may be obtained in any manner permitted by the Electronic Signatures In Global and National Commerce Act (E-SIGN Act). The rule does not prevent companies from making prerecorded messages that are informational in nature, such as calls that reconfirm appointments or reservations.

By December 1, 2008, sellers and telemarketers must provide, at the beginning of a prerecorded message, an automated or voice-activated opt-out mechanism so that consumers can opt out from the call. The rule also permits sellers to continue for one year to place prerecorded calls to consumers with whom they have an established business relationship. After the one year period, no prerecorded calls may be made to such consumers without their consent.

A copy of the FTC’s new rule can be found on our website at http://www.schwartzandballen.com/whats_new.html.

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