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Missouri's Telemarketing No-Call List Act (MTNCLA) and Telemarketing Practices Act (MTPA) can provide greater remedies than the TCPA.

Most people hate telemarketing calls, robocalls, and automated faxes. The federal Telephone Consumer Protection Act (TCPA) (and related FCC and FTC regulations) prohibit those unsolicited communications, but there are limitations to the TCPA's scope and remedies. Recipients of telemarketing calls and unsolicited faxes may ask Missouri lawyers to find a way to challenge these communications and seek remedies beyond those available under the TCPA. Missouri's Telemarketing No-Call List Act (MTNCLA)ⁱ and Telemarketing Practices Act (MTPA)ⁱⁱ can provide greater remedies than the TCPA under certain circumstances.

The MTNCLA is analogous to the FTC Do-Not-Call Registry and implementing regulations.ⁱⁱⁱ While the TCPA imposes strict liability, an MTNCLA plaintiff must plead and prove that the caller knew the plaintiff's phone number was listed on Missouri's do-not-call list (which includes Missouri telephone subscribers listed in the FTC Do-Not-Call Registry). The MTNCLA applies to solicitation communications only (i.e., calls, faxes, or texts for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services).^{iv} The MTNCLA allows hefty statutory damages of up to \$5,000 for each violation.

The MTPA law overlaps with the TCPA to the extent it prohibits (1) calls to a consumer's residence at any time other than between 8:00 a.m. and 9:00 p.m.; (2) calling a consumer when the consumer has stated previously that he or she does not wish to receive solicitation calls on behalf of the seller; and (3) utilizing any method to circumvent a Caller ID device. The MTPA also prohibits misrepresentations and inappropriate conduct during telemarketing calls and contains record-keeping requirements. Plaintiffs can recover actual and punitive damages and reasonable attorney's fees.

Individuals in Missouri can still bring actions under the TCPA's robocall and fax provisions in Missouri state court. The relevant section of the TCPA provides: "A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring [an action] in an appropriate court of that State."^v The Missouri Supreme Court interpreted this section to allow private causes of action under the TCPA in Missouri state court without the need for specific enabling legislation by the state.^{vi}

Finally, Missouri's "little FTC Act," the Missouri Merchandising Practices Act (MMPA)^{vii} broadly prohibits deceptive and unfair practices in trade or commerce. An MMPA claim could conceivably include issues like unsolicited calls or faxes to

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the extent those activities involve deception, fraud, or misrepresentation in connection with the sale or advertisement of merchandise for personal, family, or household purposes, provided the communication would cause a reasonable person to purchase merchandise. However, given the existence of two specific Missouri statutes relating to telemarketing and do-not-call regulations (the MTNCLA and MTPA), the MMPA's general proscription of deceptive and unfair trade practices may not apply because of the statutory interpretation doctrine that the specific statute controls the general.

Distinctions between the TCPA and the Missouri's telemarketing laws: the MTNCLA and MTPA

- The TCPA allows treble damages for knowing or willful violations while the MTNCLA requires that a plaintiff plead and prove a knowing violation as an element of the claim. Depending on the violation, the MTPA provides a willful, knowing, or strict liability conduct standard.
- The TCPA allows actual damages or statutory damages of \$500 or up to \$500 depending on the type of violation, while the MTNCLA allows actual damages or statutory damages up to \$5,000. Both the MTNCLA and TCPA allow for injunctive relief. The MTPA has a fee-shifting provision.
- Both the MTNCLA and the TCPA have a 12-month "one-call allowance" rule for private actions. However, under the TCPA and MTPA, businesses cannot call consumers who have stated they do not want to be called by the business.
- The TCPA, MTNCLA and MTPA all contain exemptions for (1) prior express consent, and (2) "Established Business Relationships." The TCPA and MTNCLA contain an affirmative defense for implementation of reasonable practices and procedures to effectively prevent the unlawful telephone solicitations.
- The MTPA also contains exemptions for solicitations, under certain circumstances, when the sale is completed after an in-person presentation; when the consumer may return the merchandise within 14 days; when the consumer calls the seller; and when a misrepresentation resulted from a bona fide error notwithstanding reasonable procedures adopted to avoid the error.
- Both the MTNCLA and the TCPA exempt certain entities and activities including nonprofits and business-to-business communications. The MTPA exempts calls to businesses except calls involving the retail sale of nondurable office and cleaning supplies.
- The MTNCLA has a two-year statute of limitations; the TCPA has a four-year statute of limitations; and the MTPA has a five-year statute of limitations.

Liability

The MTNCLA is analogous to the TCPA's do-not-call provisions, but the MTNCLA does not impose strict liability and extends to faxes and texts. The MTPA primarily targets misrepresentations and inappropriate conduct during telemarketing calls (rather than the initiation of calls) but contains some overlap with the TCPA regulations.

MTNCLA vs TCPA

Like the TCPA's do-not-call provisions, the MTNCLA prohibits people and entities from "mak[ing] or caus[ing] to be made any telephone solicitation to any residential subscriber in [Missouri] who has given notice to the attorney general . . . of such subscriber's objection to receiving telephone solicitations."^{viii} However, unlike the TCPA, the MTNCLA does not impose strict liability. To prevail on an MTNCLA claim, a plaintiff must plead and prove that (1) the phone number is residential, (2) the plaintiff provided notice to the attorney general, and (3) the defendant knew that it was calling someone who had listed his phone on the Missouri do-not-call registry.^{ix}

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The MTNCLA is limited to telemarketing communications to residential subscribers. Thus, robocalls, texts, and faxes unrelated to advertising (such as text messages regarding school closings or containing flight information) are not subject to the MTNCLA. Unlike the TCPA, the MTNCLA does not differentiate between faxes, calls, and text messages and does not differentiate between live telemarketing calls and robocalls. The predicate for MTNCLA liability is the defendant's knowledge that the plaintiff is on the Missouri do-not-call list.

Under the MTNCLA, “[R]esidential subscriber” means a person who, *for primarily personal and familial use*, has subscribed to residential telephone service, wireless service or similar service, or the other persons living or residing with such person.”^x The TCPA and its implementing regulations do not define “residential subscriber.” However, the FCC declined to exempt from the do-not-call rules those calls made to “home-based businesses.”^{xi} Thus, in the view of the FCC, a subscriber's use of a residential phone (including a presumptively residential cell phone) in connection with a home-based business does not necessarily take an otherwise residential subscriber outside the protection of the TCPA.^{xii}

MTPA vs TCPA

Like the FCC regulations implementing the TCPA, the MTPA prohibits solicitation calls to residential addresses before 8 am or after 9 pm.^{xiii} Next, the TCPA and MTPA both prohibit certain caller identification (Caller ID) practices. The TCPA prohibits causing any caller identification service to knowingly transmit misleading or inaccurate caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value.^{xiv} The MTPA prohibits knowingly utilizing any method to block or otherwise circumvent a consumer's use of a caller identification service.^{xv} Finally, the TCPA and MTPA both prohibit solicitation calls after a consumer has requested not to receive further calls.^{xvi} Under the TCPA, a do-not-call request must be honored for 5 years from the time the request is made.^{xvii} The MTPA does not contain an express time limitation but requires that the call to a consumer who has previously required not to receive such solicitation calls by the business be initiated knowingly and willfully.^{xviii}

The MTPA's proscription on causing a telephone to ring or engaging any consumer in telephone conversation repeatedly or continuously in a manner a reasonable consumer would deem to be annoying, abusive, or harassing^{xix} overlaps with several specific violations under the TCPA implementing regulations. For example, the TCPA places limits on “robocalls,” including unsolicited prerecorded telemarketing calls to landline home telephones, and autodialed or prerecorded calls to wireless numbers, emergency numbers, and patient rooms at health care facilities.^{xx} Further, the TCPA regulations prohibit “abandoned” calls where a live sales representative is not connected within two seconds of the called person's completed greeting.^{xxi}

Damages

TCPA, MTNCLA, and MTPA claims can be brought as class actions. Missouri's class action rule (Missouri Supreme Court Rule 52.08) is nearly identical to the federal rule (Federal Rule of Civil Procedure 23). While class actions are well suited for liability and damages issues in TCPA and MTNCLA claims, fact issues regarding causation and damages may weigh against certification of MTPA classes.

TCPA

The TCPA's robocall and fax provisions allow damages for the actual monetary loss or \$500 for each violation, whichever is greater.^{xxii} The TCPA's do-not-call provision allows damages for the actual monetary loss or “up to \$500” for each violation, whichever is greater.^{xxiii} Accordingly, the TCPA's do-not-call damages are weaker than its robocall and fax damages.

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MTNCLA

For each violation of the MTNCLA, the plaintiff may recover the greater of any actual monetary loss or up to \$5,000.^{xxiv} Although the cap on statutory damages under the MTNCLA is much higher than the TCPA, there are no reported appellate court decisions interpreting MTNCLA damages, so it is difficult to say what conduct would justify awarding \$5,000 per violation.

MTPA

The MTPA provides that violations of the Act are a crime and also allows a civil action for actual and punitive damages by a victimized consumer.^{xxv} While the MTPA does not have a statutory damages provision, it does allow fee-shifting.^{xxvi}

Statute of Limitations

MTNCLA claims must be brought within two years after the plaintiff knew or should have known of the occurrence of the alleged violation, or two years after the termination of any proceeding or action arising out of the same violation or violations by the state of Missouri, whichever is later.^{xxvii} The TCPA has a four-year statute of limitations.^{xxviii} The MTPA has a five-year statute of limitations.^{xxix}

Exemptions and Defenses

Attorneys defending MTNCLA and MTPA claims should become familiar with the exemptions and affirmative defenses under those statutes. Many of these exemptions and defenses mirror the TCPA's provisions. Others are unique to the MTNCLA and the MTPA and could be broadly construed. Given the lack of caselaw interpreting the MTNCLA and MTPA, defense attorneys should assert all defenses and exemptions that arguably apply to the communications at issue.

Express Prior Written Consent

The TCPA and the MTNCLA exempt calls, texts, and faxes to consumers who have given the company express prior consent.^{xxx} The MTPA does not regulate faxes; it exempts calls to consumers who have given express prior consent.^{xxxi} The MTNCLA and MTPA do not provide any further guidance on requirement of effective consent or revocation of that consent.

Under the FCC regulations, express written consent must include a “clear and conspicuous disclosure” that (a) the telemarketing calls (or texts) may be made using an automatic telephone dialing system (ATDS) (i.e., robocalls) or an artificial or prerecorded voice; and (b) that providing consent is not a condition to making a purchase.^{xxxii} A consumer may revoke consent at any time. Revocation does not need to be in writing but may be made by “any reasonable method” and will be judged based upon a “totality of the circumstances.”^{xxxiii} The defendant has the burden of proving that the plaintiff gave express permission and no revocation occurred.

Nonprofit Organizations

The TCPA, MTNCLA, and MTPA all exempt calls made by nonprofit organizations. Under the MTNCLA, the communication must be made while the entity is engaged in fundraising and a voice communication must be made by a “bona fide member” of the organization.^{xxxiv} The MTPA contains a nonprofit exemption in its definition of “merchandise.”^{xxxv} It is not clear if pre-recorded (robocall) messages are permitted under the nonprofit exemptions in the MTNCLA and MTPA, but nonprofit fundraising by third-party telemarketing services is clearly prohibited.

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The FCC regulations exempt calls from nonprofit organizations but limit robocalls from nonprofit organizations to no more than three calls within any consecutive 30-day period and require nonprofit organizations to honor a request to opt out of future calls.^{xxxvi}

Established Business Relationship (EBR) Rule

The TCPA, MTNCLA, and MTPA all contain an “Established Business Relationship” (EBR) rule, which allows companies to fax, call, or text, unsolicited advertisements to people with whom they have an EBR. The MTNCLA does not differentiate between faxes, calls, and texts. Under the MTNCLA, an EBR exists when the consumer and the business have a current business or personal relationship or a “business contact” within the past 180 days.^{xxxvii} The MTPA does not regulate faxes; it exempts calls and messages to consumers with whom the seller has an EBR.^{xxxviii} The MTPA defines an EBR as existing until it is terminated by either party.^{xxxix}

Under the TCPA implementing regulations, the definition of an EBR for telemarketing purposes is different than for faxes. For fax advertisements, the EBR does not end until unless and until the recipient indicates he or she no longer wishes to receive faxes, but the company has the burden to prove that recipient, at some point in time, made an inquiry, application, purchase or transaction regarding products or services that the sender offers.^{xl} For telephone solicitations, an EBR means that the consumer has either: (1) purchased, rented or leased the seller’s goods or services or engaged in a financial transaction with the seller within 18 months before the call, or (2) inquired regarding a product or service offered by the seller within three months before the call.^{xli}

One-Call (One-Communication) Allowance

The TCPA’s do-not-call provision, the MTNCLA, and the MTPA all require a plaintiff to show that they received multiple communications. “Telemarketing” under the MTPA is defined as involving more than one telephone call.^{xlii} For calls under the TCPA’s do-not-call provision and communications (calls, faxes, or texts) under the MTNCLA, the plaintiff must show that they received more than one call (or communication) within a 12-month period from the same defendant.^{xliii}

The “one-call allowance” essentially allows solicitation one time per year. However, under the TCPA, the “one-call allowance” applies only to the do-not-call provisions; it does not apply to the fax or robocall provisions. Further, under the MTNCLA, the one-call allowance applies only to private actions; it does not apply to enforcement by the Missouri Attorney General.

Affirmative Defense of Reasonable Compliance Efforts

The TCPA and the MTNCLA both provide for an identical statutory affirmative defense that the defendant “established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations[.]”^{xliiv} The MTNCLA defense applies to all communications (call, fax, and text) pursuant to the MTNCLA definition of “telephone solicitation.”

The TCPA defense is limited to telephone solicitations; the defense does not appear in the TCPA provisions on robocalls or faxes. Further, the TCPA implementing regulations require companies to maintain an internal do-not-call list containing a record of direct requests from the consumer to not receive future telemarketing calls for five years.^{xliiv} This list is separate from the national registry.^{xlii}

Additional MTNCLA and MTPA Exemptions

The MTPA provides exemptions for (1) telephone calls in which the sale of merchandise is completed in person and

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telephone calls in which the sale of merchandise is completed on the phone, but the consumer may return the merchandise within 14 days; (2) certain telephone calls initiated by a consumer; and (3) misrepresentations when the misrepresentation resulted from a bona fide error notwithstanding reasonable procedures adopted to avoid the error. These exemptions are not directly analogous to any TCPA provisions (which concerns the initiation of telemarketing calls rather than the content of calls), so they are not analyzed in this article.

The MTNCLA contains two additional exemptions not found in the TCPA or its implementing regulations.

(3) “Telephone solicitation” . . . does not include communications . . . (d) By or on behalf of any entity over which a federal agency has regulatory authority to the extent that:

- a. Subject to such authority, the entity is required to maintain a license, permit or certificate to sell or provide the merchandise being offered through telemarketing; and
- b. The entity is required by law or rule to develop and maintain a no-call list;

(3) “Telephone solicitation” . . . does not include communications . . . (e) By a natural person responding to a referral, or working from his or her primary residence, or a person licensed by the State of Missouri to carry out a trade, occupation or profession who is setting or attempting to set an appointment for actions relating to that licensed trade, occupation or profession within the state or counties contiguous to the state.

The first provision likely exempts federally regulated entities like banks. The second provision appears to exempt two categories of individuals/entities. First, an individual person responding to a referral could include a professional, such as an attorney, who contacts a prospective client referred to them. The first category also includes communications by a natural person working from his or her primary residence, which would appear to exempt all solicitations by a person when working from their home. The second category, which applies to a person (which may include an entity) licensed to carry out a trade who is setting or attempting to set an appointment in Missouri or contiguous counties, appears to exempt licensed professionals and tradesmen (or their businesses) soliciting work that will be performed in Missouri or counties along Missouri’s borders.

Best Practices for Complying with The MTNCLA and MTPA

The best practices for ensuring TCPA compliance will generally apply to Missouri’s telemarketing laws. Businesses should consider limiting their solicitation activities to the well-established exemptions for EBR and express prior consent. Businesses should tread carefully when taking advantage of the one-call allowance.

Businesses Must Know and Follow Missouri’s Telemarketing Requirements

Under the MTNCLA, telemarketers must clearly state the identity of the person or entity initiating the solicitation at the beginning of such solicitation.^{xlvii} Under both the MTNCLA and the MTPA, businesses may not use any method to block or otherwise circumvent any subscriber's use of a caller identification service.^{xlviii}

Under the MTPA, a telemarketer shall disclose, promptly and in a clear and conspicuous manner, to the consumer receiving the telephone call the following: (1) That the purpose of the telephone call is to make a sale; (2) The telemarketer's identifiable name and the seller on whose behalf the solicitation is being made; (3) The nature of the merchandise or investment opportunity being sold; (4) That no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered. . . ; and (5) If the telephone call is made by any recorded, computer-generated, electronically generated or other voice communication of any kind. The MTPA mandates additional disclosure requirements before a customer pays for merchandise. Finally, sellers

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must comply with certain record-keeping requirements. Sellers should familiarize themselves with these rules.

Should Businesses Systematically Check The Do-Not-Call List?

Under the TCPA, to assert the defense of reasonable compliance efforts, businesses must access the national do-not-call registry no more than 31 days prior to the date any call is made, and maintains records documenting this process.^{xlix} This process of comparing the removing numbers is sometimes referred to as “scrubbing.” The MTNCLA does not have a similar requirement. Since a plaintiff must prove that the defendant knew the plaintiff was on the do-not-call list to establish liability under the MTNCLA, systematically checking Missouri’s do-not-call list or the national registry may not be advisable. On the other hand, failure to do so will bar a valuable defense to the TCPA.

Missouri’s Consumer Protection Statute: The MMPA

- The MMPA applies broadly to deceptive and unfair practices in connection with the sale of goods or services.
- The MMPA has an objective and reasonable consumer standard. Further, the challenged practice must have led the plaintiff to purchase the product.
- There are limited carve-outs for medical malpractice claims, claims relating to new residential construction, entities regulated by the department of insurance, and publishers without knowledge of the misleading advertisement.
- The MMPA remedies include compensatory and punitive damages, injunctions, and attorney fees. The MMPA specifically permits class actions.

MMPA Particulars

Going back to the MMPA, which is designed as a little FTC act, to combat unfair trade practices, the Supreme Court of Missouri has recognized that the MMPA’s language is “unrestricted, all-encompassing and exceedingly broad.”^l The breadth of this statute shows that it may not apply to telemarketing claims. Under the statutory interpretation doctrine that the specific statute controls the general, Missouri state claims relating to telemarketing may be limited to the MTNCLA and MTPA.

Elements of MMPA Claim

To prevail on a claim pursuant to the MMPA, a plaintiff must plead and prove he (1) purchased merchandise; (2) for personal, family, or household purposes; (3) suffered an ascertainable loss of money or property; and (4) as a result of an act declared unlawful by the MMPA.^{li} The MMPA defines “merchandise” to include both goods and services, including professional services.^{lii} Unlawful acts under the MMPA include the use or employment of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact.

Pleading Requirements

Courts analyze MMPA allegations under a heightened pleading standard.^{liii} MMPA claims generally must meet the specificity requirements of FRCP 9(b).^{liiv} Further, in 2020, the state legislature of Missouri amended the MMPA to specifically include the reasonable consumer standard in the statutory requirements for liability and added a causation requirement.^{liiv} The 2020 reforms were prompted by a 678% increase in reported MMPA decisions

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between 2000 and 2009 as Missouri became known as a hot jurisdiction for consumer class actions.^{lvi}

The MMPA now requires a plaintiff to plead and prove that he or she acted “as a reasonable consumer would in light of all circumstances” and empowers judges to “dismiss a claim as a matter of law where the claim fails to show a likelihood that the method, act, or practice alleged to be unlawful would mislead a reasonable consumer.”^{lvii} Further, the MMPA now requires a plaintiff to show that the allegedly unfair business practice would “cause a reasonable person to enter into the transaction” that resulted in damages.^{lviii}

Carve-Outs To The MMPA’s Broad Application

The MMPA does not apply to (1) publishers of allegedly misleading advertisements when the publisher or operator has no knowledge of the intent, design, or purpose of the advertiser, (2) entities regulated by the department of commerce and insurance, (3) claims related to new residential sales provided the buyer purchases an express warranty and the sale contract contains a specific, prominent disclosure, and (4) claims for medical malpractice injury or death.^{lix}

Application of the MMPA to TCPA claims

As noted above, the MTNCLA and MTPA likely preclude application of the MMPA to TCPA claims. “Where one statute deals with a particular subject in a general way, and a second statute treats part of the same subject in a more detailed way, the more general should give way to the more specific.”^{lx} Allowing telemarketing claims to be brought under the MMPA would violate another well-recognized rule of statutory interpretation: “the legislature is not presumed to have intended a meaningless act.”^{lxi} Thus, Missouri state claims relating to telemarketing are likely limited to the MTPA and MTNCLA.

Moreover, the MMPA would not apply to a typical TCPA claim, because the MMPA is predicated upon a “purchase” of merchandise. There must be a relationship between the sale of merchandise and the alleged unlawful action. Thus, the MMPA would not apply to an unsolicited fax or phone call that does not cause a consumer to purchase goods or services. However, unsolicited calls and faxes made in connection with the sale of goods or services may constitute an unlawful practice under the MMPA. For example, lack of good faith in solicitation or advertisement of goods or services constitutes an “unfair practice” within the meaning of the MMPA.^{lxii}

Assuming a plaintiff can establish an unlawful practice under the MMPA predicated on unsolicited calls or faxes, the plaintiff may have difficulty establishing damages. Unlike the TCPA which provides for statutory damages of \$500 per violation, the MMPA does not contain a statutory damages provision. Instead, under the 2020 MMPA reforms, plaintiffs must establish “damages with sufficiently definitive and objective evidence to allow the loss to be calculated with a reasonable degree of certainty.”

In sum, while the MMPA remains a powerful tool for enforcing unfair and deceptive practices due to its broad scope and fee shifting, it is not well suited for TCPA claims. Defendants facing MMPA claims based on unsolicited calls, texts, or faxes should keep in mind the heightened pleading requirement, the purchase element, the reasonable consumer standard for liability and causation, and the ascertainable damages requirement.

ⁱ RSMo §§ 407.1095 et seq.

ⁱⁱ RSMo §§ 407.1070 et seq.

ⁱⁱⁱ The “Do-Not-Call Implementation Act of 2003,” 15 U.S.C. § 6152 et seq. authorized the FCC to issue do-not-call regulations under the TCPA, 47 U.S.C. § 227 et seq.

^{iv} See RSMo § 407.1095(3) (defining “telephone solicitation”).

- ^v 47 U.S.C. Section 227(b)(3).
- ^{vi} *Reynolds v. Diamond Foods & Poultry, Inc.*, 79 S.W.3d 907, 909 (Mo. 2002).
- ^{vii} RSMo § 407.010 et seq.
- ^{viii} *Koeller v. Seemplicity Sec. Inc.*, No. 4:24-CV-00528-SRC, 2024 WL 4751306, at *5 (E.D. Mo. Nov. 12, 2024) (citing RSMo § 407.1098).
- ^{ix} *Id.*
- ^x RSMo § 407.1095(2).
- ^{xi} *In the Matter of R. and Regulations Implementing the Tel. Consumer Protec. Act of 1991*, 20 F.C.C. Rcd. 3788, 3793 (F.C.C. 2005).
- ^{xii} *Chennette v. Porch.com, Inc.*, 50 F.4th 1217, 1224 (9th Cir. 2022).
- ^{xiii} 47 C.F.R. § 64.1200(c)(1).
- ^{xiv} 47 U.S.C. Section 227(e)(1).
- ^{xv} RSMo § 407.1076(11).
- ^{xvi} 47 C.F.R. § 64.1200(d)(6).
- ^{xvii} *Id.*
- ^{xviii} RSMo § 407.1076(4).
- ^{xix} RSMo § 407.1076(3).
- ^{xx} 47 U.S.C. Section 227(b)(1); 47 C.F.R. § 64.1200(a).
- ^{xxi} 47 C.F.R. § 64.1200(a)(7).
- ^{xxii} 47 U.S.C. Section 227(b)(3).
- ^{xxiii} 47 U.S.C. Section 227(c)(5).
- ^{xxiv} RSMo § 407.1107.3(2).
- ^{xxv} RSMo §407.1082.3.
- ^{xxvi} *Id.*
- ^{xxvii} RSMo § 407.1107.
- ^{xxviii} *Aquilar v. Ocwen Loan Servicing, LLC*, 289 F. Supp. 3d 1000, 1004 (D. Minn. 2018) (citing 28 U.S.C. § 1658(a)).
- ^{xxix} *See Huffman v. Credit Union of Texas*, 758 F.3d 963, 969 (8th Cir. 2014) (reasoning that the five-year statute of limitations in § 516.120(2) applies to MMPA claims because they are based upon a liability created by a statute other than a penalty.).
- ^{xxx} RSMo § 407.1095(3) (“Telephone solicitation” . . . does not include communications: (1) To any residential subscriber with that subscriber’s prior express invitation or permission.”); 47 C.F.R. § 64.1200(a).
- ^{xxxi} RSMo § 407.1085.1(4).
- ^{xxxii} 47 C.F.R. § 64.1200(f)(9)(i).
- ^{xxxiii} 47 C.F.R. § 64.1200(a)(10)-(12).
- ^{xxxiv} RSMo § 407.1095(3)(c).
- ^{xxxv} RSMo § 407.1070(8).
- ^{xxxvi} 47 C.F.R. § 64.1200(a)(3)(iv).
- ^{xxxvii} RSMo § 407.1095(3)(b).
- ^{xxxviii} RSMo § 407.1085.1(4).
- ^{xxxix} RSMo § 407.1070(4).
- ^{xl} 47 C.F.R. § 64.1200(f)(6).
- ^{xli} 47 C.F.R. § 64.1200(f)(5).
- ^{xlii} RSMo § 407.1070(10).
- ^{xliiii} RSMo § 407.1107(3); 47 U.S.C. Section 227(c)(5).
- ^{xliv} 47 U.S.C. Section 227(c)(5); RSMo § 407.1107(4).
- ^{xliv} 47 C.F.R. § 64.1200(d).
- ^{xlvi} *Id.*
- ^{xlvii} RSMo § 407.1104(1).

^{xlviii} RSMo § 407.1076(11); RSMo § 407.1104(2).

^{xlix} 47 C.F.R. § 64.1200(c)(2)(i)(D).

^l *Ports Petroleum Co. of Ohio v. Nixon*, 37 S.W.3d 237, 240 (Mo. banc 2001).

^{li} *Klosterman v. Vacation Mgt. Sols., LLC*, 682 S.W.3d 781, 786 (Mo. App. E. Dist. 2023), *reh'g and/or transfer denied* (Jan. 23, 2024).

^{lii} *State ex rel. Hawley v. Robinson*, 577 S.W.3d 823, 830 (Mo. App. 2019) (citing RSMo § 407.010.4.1).

^{liii} *See Ullrich v. CADCO, Inc.*, 244 S.W.3d 772, 777 (Mo. App. E. Dist. 2008) (applying Missouri Rule 55.15 and finding that the plaintiff's petition "included detailed descriptions of the circumstances" and "adequately pleaded his cause of action.").

^{liv} *See Hennessey v. Gap, Inc.*, 86 F.4th 823, 827 (8th Cir. 2023) ("Claims alleging deceptive practices under the MMPA sound in fraud and are subject to Rule 9(b)'s heightened pleading standard.").

^{lv} Jennifer J. Artman & Cary Silverman, *Two Years Since MMPA Reform: How Has It Changed Missouri Consumer Litigation?*, 78 J. Mo. B. 173 (2022).

^{lvi} *Id.*

^{lvii} RSMo §§ 407.025.1.

^{lviii} *Id.*

^{lix} RSMo §§ 407.020.2; 407.025.3.

^{lx} *Casey v. State Board of Registration and Healing Arts*, 830 SW2d 478, 481 (Mo. App. ED 1992).

^{lxi} *Murray v. Missouri Highway & Transportation Commission*, 37 SW3d 228, 233 (Mo. 2001); *State ex rel. Missouri Local Government Retirement System v. Bill*, 935 SW2d 659, 666 (Mo. App. WD 1996) ("We should not interpret statutes in a way which will render some of their phrases to be mere surplusage. We must presume that every word of a statute was included for a purpose and has meaning.").

^{lxii} *Ward v. W. Cnty. Motor Co., Inc.*, 403 S.W.3d 82, 86 (Mo. 2013), *as modified* (May 28, 2013) (citing 15 CSR § 60–8.040, which provides that "[i]t is an unfair practice for any person in connection with the advertisement or sale of merchandise to violate the duty of good faith in solicitation, negotiation and performance, or in any manner fail to act in good faith"). *But see Watson v. Wells Fargo Home Mortg., Inc.*, 438 S.W.3d 404, 408 (Mo. 2014) (holding that lack of good faith in negotiations must be "in connection with" the purchase).