

DO NOT CALL – THE RIGHT TO SILENCE

The intimacy and the private life have a nature of fundamental right written in the 5th article of Brasil's Federal Republic Constitution. These rights are present in every civilized country's constitution that considers the fundamental rights as the base of the Democratic State of Law.

It wouldn't be different, for example, in the United States of America. There is an agency called Federal Trade Commission, whose mission is to protect American consumers from suppliers' abuse. In this case, there is the National Do Not Call Registry, a national registry of consumers that don't want to be bothered by telemarketing companies through the telephone. If this happens, the company must pay a fine for not following the legislation.

Consumers can register their personal numbers, their home telephone number and the mobile number, not to be bothered by telemarketing companies, which most of the time only offer undesired products to the client, bothering him in moments of leisure, or even while socializing with friends or family.

In Brazil, the local authorities didn't consider the subject yet. It would be perfectly possible in our reality to create a similar agency in Brazil, based on similar situations, stopping telemarketing companies' abuse. The Consumer's Defense Code, being an open subsystem related to the consumer's protection, as well as the intimacy and the private life as fundamental rights, without doubts, makes it possible for the States to legislate about the matter. The Federal Constitution allows the Union, the States and the Federal District to legislate competitively about the production and consumption (CF, art. 24, V). In the same category, it is also allowed to legislate competitively about responsibilities for consumers' damages (CF, art. 24, VIII). As if it wasn't enough, there's also permission in the art. 55, § 1º of the Consumer's Defense Code, to legislate competitively about consumption of products and services. There are, after all, many devices in the Federal Constitution, as well as in the Consumer's Defense Code, that allow a greater action of the Legislative Power in this matter, with real effect on the rights to intimacy and private life.

In this way, nothing stops a Federal State to legislate about the matter. This would stop the telemarketing companies from making these unwanted calls to offer credit card services, make researches about clients' satisfaction over products, promote products and any other actions, in the most inappropriate moments. Only exceptional cases, like public utility entities, which already exist in the United States, could be discharged from the state registry.

In this sense, the DF is in ahead. In July 8th the Law n. 4.171/08 which created the registry of the numbers blocked for telemarketing call receiving, named "DON'T BOTHER" was published. The main aspects of this law are: a) it will be a function of PROCON-DF to monitor the enforcement of the law; b) the system begins to work 30 days after the consumer's entry in the registry; c) the system includes the home phone

and the mobiles and d) the fine of R\$ 10.000,00 (ten thousand) to be paid for breaking the law making calls.

Therefore, it's necessary for some aspects of the Consumer's Defense Code, not explored yet, to be studied in a detailed way by national jurists. The legislation in Brazil particularly, shows itself more advanced and tuned with the consumers' needs. What's needed is only a greater organization of consumers in search for their rights, as well as a greater action of law in some questions, like this one, so that these so important institutes can be relevant for our country.

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