

KISS MY APP: PrivacyStar™ App Helps Consumers File FTC Complaints

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First Orion developed PrivacyStar™, a relatively new and increasingly popular smartphone app for the Android and Blackberry. The app's main purpose is to block unwanted calls and text messages, and to provide Caller ID for unknown callers so subscribers may take appropriate action by adding the numbers to their Privacy List. The app also provides a *SmartBlock* capability, which employs the data gathered from PrivacyStar™ usage to automatically block most blocked numbers; *Do Not Disturb*, which forwards all non-blocked incoming calls to voicemail; and more recently, SMS ID and Voice-Activated Directory Assistance functionality (in the Android smartphone).

After garnering much interest from the FTC, the PrivacyStar™ app now also provides an interesting feature that enables subscribers to immediately file a federal complaint against the incoming number. According to First Orion, an estimated 150 million telemarketing calls are being made daily in the United States and of those, as many as 20% may be Do Not Call violations.

Consumers are able to directly report potential Do Not Call Registry and Fair Debt Collection Practices Act violations to the FTC straight from their smartphone. Moreover, PrivacyStar™ complaint data generated by subscribers is automatically fed directly into *Consumer Sentinel*, the secure government database containing information about complaints filed with the FTC, that is available to more than 1,800 law enforcement agencies in the U.S. and abroad for consumer protection purposes. In essence, the PrivacyStar™ app now makes it easier for phone users to file federal complaints. Though the complaint

data filed with the FTC does not distinguish between complaints and inquiries, the app assists the FTC to gather complaint data. The FTC or the relevant law enforcement agency will then decide whether to open an investigation.

Since the app's inception in December 2009, First Orion has announced that PrivacyStar™ subscribers have already blocked over 120 million numbers, and filed over 150,000 complaints directly to the Federal Trade Commission, with over 10,000 complaints being filed per month on average (as of May 19, 2011).

PrivacyStar™ statistics show that 35% of all complaints filed are related to debt collection practices, while about 25% relate to telemarketers. The app's popularity has even extended to protect Canadian phone users, with the availability of the PrivacyStar™ app in Canada to enable Canadian phone users to report telemarketers to Canada's Do Not Call Registry.

Since June 2003, the FCC in coordination with FTC amended its rules pursuant to the *Telephone Consumer Protection Act of 1991* ("TCPA") to incorporate the national Do Not Call list. Violation of Do Not Call laws can result in federal fines of up to \$11,000 and state fines of up to \$25,000 per violation; while violations of the TCPA provides statutory damages, generally ranging from \$500 to \$1500 for each violation. Noted by the U.S. District Court for the Northern District of Illinois in [Abbas v. Selling Source, LLC, No. 09-CV-3413 \(N.D. Ill. Dec. 14, 2009\)](#), a plaintiff may maintain a suit for receiving an unsolicited text messages under the TPCA. Though the meaning of "call" in the TCPA is ambiguous, it does indeed include text messages according to *Abbas*. In reaching its conclusion, the trial court relied in part on the Ninth Circuit's decision in *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 954 (9th Cir. 2009), which noted that "text messaging is a form of communication used primarily between telephones;" as well as relying on the FCC's own interpretation of the TCPA that it applies to text messages.

The introduction of the PrivacyStar™ app has made the filing of federal complaints about unsolicited telephone calls much easier and convenient for

phone users. The relative ease and convenience of filing federal complaints has already significantly helped the FTC to gather complaint data that may result in federal investigations. In light of the PrivacyStar™ app's growing popularity, it is necessary for companies that engage in this form of direct marketing to be aware that this technology is out there and that enforcement agencies are watching.