

February 14, 2020

## LEGAL ALERT

# Regulation of the Do Not Disturb or Antispam system was approved by the Ministry of Economy

On February 13th, 2020 was published in the Official Gazette the “Regulation of the Do Not Disturb or Antispam system”, with the purpose of regulating its existence and functionality. This Regulation seeks to clearly establish consumer's and supplier's rights and duties, as well as the proceedings associated with the Do Not Disturb System, the website tool provided by the National Consumer Service (**SERNAC**).

Hereunder, you will find a brief presentation of the Regulation's content.

### **\*\*THE DO NOT DISTURB SYSTEM\*\***

SERNAC has a tool called “Do Not Disturb System”, an electronic, expeditious and safe system that allows consumers to register and request the suspension of all unwanted promotional or advertising communications sent by suppliers through e-mail, postal mail, phone calls or text messages, exercising their right to **not be contacted by suppliers for advertising or promotional purposes**, according to the rule of Article 28 B of Law No. 19,496 Consumer Protection Act (“CPA”).

This system also allows suppliers that have voluntarily registered in the system to access the suspension requests made by consumers.

### **\*\*DO NOT DISTURB SYSTEM FUNCIONALITY\*\***

Consumers must enter the Do Not Disturb System including the data of the supplier sending the promotional or advertising communications and select the specific communication channels by which they do not wish to keep receiving said communications.

Consumers can access the Do Not Disturb System through the Consumer's Portal (Portal del Consumidor), by using their Unique Password (Clave Única), a SERNAC

password, if they have already registered within the website, or they can register to create a new account. Suppliers can enter the registry of requests of the Do Not Disturb System, hosted in the “Supplier’s Portal” (Portal de Proveedores) of SERNAC, for which they must follow the steps to register in the following link.

Further, each time a consumer’s suspension request is recorded in the Do Not Disturb System is made, it will be considered notified to the supplier through the same system, for which a user name and password will be provided to access SERNAC’s website. Thus, suppliers registered in the “Supplier’s Portal” (Portal de Proveedores) of SERNAC’s website will access the Do Not Disturb System using the provided password.

Notwithstanding the above, SERNAC will inform the advertising suppliers the means or channels for which consumer have requested the suspension of promotional or advertising communications. For this, SERNAC will send an e-mail to the supplier within the next work day after the request has been registered, informing it the requests made by consumers the preceding work day.

From the moment the consumer makes the suspension request in the Do Not Disturb Platform, the advertising or promotional communications are **prohibited**. Nevertheless, suppliers must always check the platform prior to initiate campaigns or send advertising or promotional messages, according to the mechanisms of the Do Not Disturb System.

In case a consumer has requested the suspension of communications both directly to the supplier and through the Do Not Disturb System, the effective date of the exercise of this right will be considered the first one to occur and, therefore, since that date the sending of promotional or advertising communications will be prohibited.

Additionally, the Do Not Disturb System grants the possibility that consumers that have exercised their right to suspend advertising or promotional communications regarding a certain supplier or a specific communication medium or channel to revoke their request at any time. This does not prevent that, afterwards, consumers can exercise their right to suspension again when deemed appropriate.

## **\*\*OVERSEEING OF SERNAC\*\***

The compliance of the suspension of communications to consumers that have requested it, whether directly to the supplier or through the Do Not Disturb System, can be subjected to SERNAC’s overseeing, in virtue of its powers set

forth in the CPA. This, regardless of other legal actions that may be applicable for infringements to the right set forth in Article 28 B of the CPA.

### **\*\*SUPPLIER'S DUTIES REGARDLESS OF THE SYSTEM\*\***

On the other hand, the use of the Do Not Disturb System by the suppliers does not relieve their obligation to include in their communication an e-mail address or an expeditious form, as appropriate, by which consumer can request the suspension of sending promotional or advertising communications.

If a consumer has requested the suspension of unwanted promotional or advertising communications directly to a supplier not registered in the Do Not Disturb Platform, and continues to receive said communications after the request, the consumer can inform said infringement to SERNAC through the means available in the Consumer's Portal (Portal del Consumidor).

This tool is already available in the website of SERNAC and can be viewed in the following link.

Authors: Guillermo Carey; Aldo Molinari