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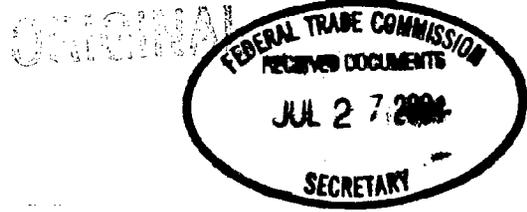
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July 26, 2004



Donald S. Clark, Secretary
Federal Trade Commission
Office of the Secretary
Room H-159 (NXQ)
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: FACT Act Affiliate Marketing Rule, Matter # R411006

Dear Mr. Clark:

I am an attorney licensed to practice law in the State of Ohio who represents direct marketers. Currently, I serve as a member of the Direct Marketing Association's Teleservices Ethics Committee and the Central Ohio Better Business Bureau Board of Trustees. Previously, I served for six years as Chief of the Consumer Protection Section for Ohio Attorney General Betty Montgomery. Following are my comments in response to the Federal Trade Commission's (FTC or Commission) Request for Comments Concerning the FACT Act Affiliate Marketing Rule (Rule) published in the Federal Register on June 15, 2004 representing the interests of some of my marketing clients.

The Fair and Accurate Credit Transactions Act of 2003 (FACT Act)

Pursuant to the FACT Act, the FTC promulgated proposed Rules to provide for consumer notice and an opportunity to prohibit affiliates from using certain information to make or send marketing solicitations to a consumer. In its Request for Comment, the FTC describes the FACT Act amendments to the FCRA to achieve the following goals:

- Enhance the ability of consumers to combat identify theft.
- Increase the accuracy of consumer reports.
- Allow consumers to exercise greater control regarding the type and amount of solicitations they receive.
- Restrict the use and disclosure of sensitive medical information.

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- Promote increasingly efficient national credit markets by establishing uniform national standards in key areas of regulation regarding consumer report information.
- Bolster efforts to improve financial literacy among consumers.

In an attempt to achieve these goals, the new Section 624 of the Fair Credit Reporting Act would prohibit an affiliate from using information it receives to make or send solicitations to a consumer unless the consumer is given notice and a reasonable opportunity to opt out of such use and the consumer does not opt out.

Appropriately, the FTC proposes to limit the Rule's scope of coverage. One proposed exemption permits sharing information when the affiliate receiving the information has its own "pre-existing business relationship" with the consumer. In Section 680.3(i), the proposed Rule narrowly defines "pre-existing business relationship" to specific purchase oriented transactions such as financial contracts, purchase, rental or lease of goods or services and consumer inquiries regarding offers of products or services.

Comments

My affected clients and I laud the goals of the FTC in attempting to protect consumers from privacy violations and identity theft. My affected clients are strongly committed to protecting consumer privacy. They are voluntarily willing to achieve standards far above those set by their respective industries. Notwithstanding this commitment, however, my affected clients have great concerns with regards to the focus of the definition of "pre-existing business relationship" on financial transactions. I urge the Commission to look more broadly at the use of affiliate marketing in the United States today, especially marketing utilized in areas of growing technology including permission facsimile and telephone marketing and the Internet.

Never before has the general public had such a vast resource of readily accessible information available at the touch of a keystroke. The Internet has brought a world of data and information to the average consumer that previously was accessible only in university libraries and the like. The growth of the Internet was tied to the availability of this information. Of course, posting this information was not free. Internet sites began, and continue to this day, to post a variety of advertising on these information laden pages to finance the greater goal of education.

These providers establish business relationships through this exchange of information. Typically, consumers bear no cost or are not required to purchase a product or service to gain access to this information sharing process. As such, this business relationship is not covered under the definition in the proposed Rule of "pre-existing business relationship". I respectfully request that the FTC address this oversight and expand the definition of "pre-existing business relationship" to include a "voluntary exchange of non-medical personally identifiable information where no fee is required."

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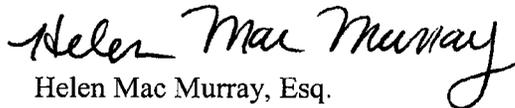
Expanding the definition of "pre-existing business relationship" to include these valuable services will not defeat any of the goals the FTC has articulated that it is attempting to achieve. If a consumer voluntarily responds to an inquiry and provides accurate contact information, it will not prohibit consumers from protecting themselves against identity fraud or inaccurate credit reports. Moreover, it will have no bearing on the other goals cited herein because the consumer must respond to the business' request for information before it is used. Finally, because no dollars exchange hands, the consumer has no financial impact.

In the event that the contact with consumers is initiated by facsimile or telephone, they are also protected by the Telephone Consumer Protection Act (47 U.S.C. §227 *et.seq*) as well as the Telephone Sales Rule (16 C.F.R. 310). These Rules have additional protections of providing opt-out notice for consumers. Therefore, because adequate protections exist for consumers and my suggested modification does not diminish the goals of the proposed Rule, I respectfully request that the FTC modify Proposed Section 680.3(i) as I suggest.

I appreciate the FTC's consideration of my comments made on behalf of my affected clients.

Respectfully submitted,

KEGLER, BROWN, HILL & RITTER, L.P.A.


Helen Mac Murray, Esq.

HMM/lkz