

March 30, 2004

Mr. Donald S. Clark
Office of the Secretary
Federal Trade Commission
Room 159-H
600 Pennsylvania Avenue, NW
Washington, DC 20580

RE: CAN-SPAM Act Rulemaking, Project No. R411008

Dear Secretary Clark:

On behalf of the Association of National Advertisers (ANA), I am writing to express our strong opposition to the establishment of a national Do Not E-mail Registry. Spammers are sophisticated criminals. They will never comply with a Do Not E-mail Registry, so it would not reduce the spam that consumers find objectionable. In fact, this registry will create major new security and privacy risks for consumers, as the government cannot develop a foolproof system for protecting the integrity of the list.

A Do Not E-mail Registry also would add significant new costs and burdens for legitimate marketers, who would be forced to help pay for a regime that will not work. In its mandated report to Congress, we urge the Federal Trade Commission to provide a clear recommendation against the creation of the registry.

ANA is the industry's premier trade association dedicated exclusively to marketing and brand building. We represent more than 340 companies with over 8,000 brands that collectively spend more than \$100 billion annually in marketing communications and advertising. Our members market products and services to both consumers and businesses. Many of our members use e-mail as a valuable tool for communicating with consumers. More information about our association is available at www.ana.net

Spam is a serious and complicated problem and ANA strongly supported passage of the CAN-SPAM Act. While that legislation is not a "silver bullet," it provides important new enforcement tools to the government and ISPs to crack down on illegitimate spammers. We were very pleased when America Online, EarthLink, Microsoft and Yahoo! recently filed lawsuits in several federal courts to attempt to shut down some of the most notorious spammers.

Headquarters:
708 Third Avenue
New York, NY 10017-4270
Telephone: 212 697 5950
Facsimile: 212 661 8057

Washington Office:
1120 20th Street, NW, Suite 520-S
Washington, DC 20036
Telephone: 202 296 1883
Facsimile: 202 296 1430

Internet:
<http://www.ana.net>

There are billions of dollars at stake in the fight against spam. Based on the latest U.S. Census Bureau data, some 12% of the current \$138 billion online commerce marketplace is driven by legitimate commercial e-mail. This translates into a minimum of \$17.5 billion spent in response to commercial e-mails in 2003 for goods and services such as travel, hotels, entertainment, books and clothing. Other surveys have estimated far greater benefits to the U.S. economy from legitimate e-mail sales. A Do Not E-mail Registry would seriously erode this important growing marketplace.

A Do Not E-mail Registry will not solve the spam problem. Rather, it will add new costs and burdens to marketers with no commensurate benefit.

Criminal spammers have consistently demonstrated that they will not comply with the CAN Spam law, just as they have refused to comply with the multiple state anti-spam laws. Only legitimate marketers, who want to play by the rules and respect the wishes of consumers, will be subject to the registry. Therefore, a registry would not be enforceable against the true bad actors and would not reduce the amount of illegitimate spam that chokes the e-mailboxes of consumers.

A Do Not E-mail Registry will result in consumers not receiving information they may actually want, particularly from companies with multiple brands or divisions. For example, some consumers may consent to receiving e-mails from one brand or product line, but also sign up for a registry in an attempt to block unwanted commercial e-mails. Depending on how a company's opt-out regime is structured, a consumer could be blocked from receiving information he wants by placing his e-mail address on a registry.

A Do Not E-mail Registry could also create serious privacy and security risks for those persons who placed their e-mail address on the registry. Illegitimate spammers have demonstrated enormous technological skill in flooding millions of mailboxes with multibillions of messages while avoiding detection or revealing their location. A Do Not E-mail Registry would truly be the "Fort Knox" list of e-mail addresses for a criminal spammer. The government would have to invest extraordinary resources to develop and maintain security for such a registry. It could never develop an absolutely foolproof list at any cost. In our view, none of the multiple options put forward by the FTC as possible approaches for a registry avoid these or other significant problems.

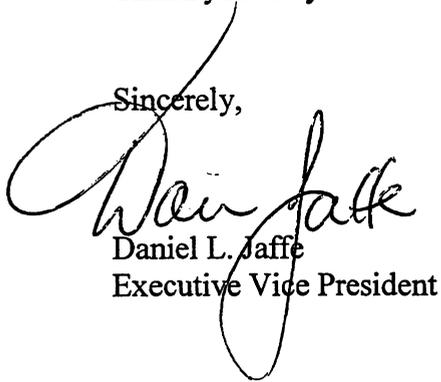
Finally, there would also be significant new costs for legitimate marketers, who would be forced to scrub their lists for each commercial e-mail that is sent out and to help pay for an unworkable regime that does not block a single illegitimate e-mail.

Passage of the CAN SPAM Act was the first step in a long-term, comprehensive effort to fight spam. Enhanced enforcement by the government and the ISPs is now possible. We continue to work with other industry groups to develop technological solutions and self-regulatory efforts to enhance best practices. We want to protect legitimate e-commerce and its associated jobs.

A Do Not E-mail Registry will not solve the spam problem but will simply deliver false hope to consumers. The costs of a registry would be enormous, both for businesses and consumers, and the benefits, if any, would be infinitesimal. We urge the Commission to strongly recommend against the adoption of a Do Not E-mail Registry.

Thank you for your consideration of our views.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Jaffe", written over the typed name and title.

Daniel L. Jaffe
Executive Vice President

Spam/Comments to FTC on registry 3.04