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April 19, 2004

Federal Trade Commission/Office of the Secretary
Room 159-H
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

To: The Federal Trade Commission

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

Dear Commissioners,

My firm owns a service called LeadFactory, which places unchecked and non-incentivized checkbox solicitations to the general public on the Web to voluntarily and knowingly opt in (subscribe) to several of our 1,300+ clients' email-based newsletters.

I am writing to express my concern with the potential that affirmative consent compliant firms might be required to use suppression lists in their emailing processes.

The vast majority of our clients are small American businesses, often with sole proprietors, and these newsletter subscriptions represent one major way for them to expand each of their own respective client bases. Income is earned from the direct sale of goods and services, as well as through advertising, typically using the method known as affiliate marketing.

If my 1,300+ clients, each of whom operate on the principles of affirmative consent, are required to use suppression lists, most of them will go out of business, obviously destroying my own business in the process. LeadFactory grosses about US\$250,000 per year in advertising income. If one makes the reasonable assumption that each of our clients is spending about 20% of their own respective gross on advertising, that implies that our client base collectively grosses over a million dollars a year.

Since most of these businesses also earn their revenue from advertising income through affiliate programs, the same 20% figure points to a total of over six million dollars' worth of actual goods and services flowing through our economy. Of course, much as we'd love to be an exclusive provider, we must recognize that we're not the only channel used for advertising, which in turn pushes the final \$6,250,000 figure much higher.

These millions of dollars fuel jobs both here and abroad, buy goods and services, often from American companies, and are used to pay for all of our children's education, health care, insurance, interest, food, housing, and taxes.

A suppression list requirement would necessarily make almost all of this cashflow disappear. It would also be completely ineffective in addressing the emailing issues which it was originally designed to target.

I've drastically summarized Paul Myers' article below so as to conserve your time, but I do urge you to please read it (attached) at least once if you have not done so already, or read it directly on the Web at:

http://www.talkbiz.net/ramblings/comments.php?id=23_0_1_0_C

Suppression lists will cause the following problems:

1. People unsubscribe from individual lists for many good reasons, but rarely because a specific firm is mentioned in a newsletter's ad for that firm. This proposal would force people to be suppressed from unrelated publications involuntarily, thus limiting the ability for firms to effectively advertise.
2. It's not trivial to determine which specific email triggered a given subscriber to unsubscribe, nor determine specifically which set of ads appeared in that given email.
3. Unsubscribes and suppression list requests can come from viruses and/or forgeries. Both can occur in large quantities, and rarely reflect the subscribers' actual intent.
4. These requirements may very well affect advertisers displayed on a newsletter publisher's website, placing even further burdens on all parties involved.

5. As these lists grow, the technical burdens involved in compliance will increase sharply, thus adding much higher costs to the entire process. One technical problem includes the real potential that removal requests themselves can be lost.

6. Suppression lists have a real potential for being grossly misused by competitors, pranksters and especially spammers.

7. This requirement would force ethical companies to break the one promise that they'd already made to their subscribers of not sharing their mailing list with other entities.

The above risks and costs will quickly outweigh any possible benefit from such additional regulation, and the result will be the death of most, if not all, businesses which ethically use email in an affirmative consent fashion.

I urge the Commission to exempt lists which operate using the principle of affirmative consent from any possible regulations requiring the use of suppression lists.

Sincerely yours,

David Beroff
Owner, note.com LLC
