



Ethics Case Report

February 2009 - February 2010

- This report summarizes the findings of the DMA Committee on Ethical Business Practice ("Ethics Operating Committee") from February 2009 - February 2010. The DMA Ethics Operating Committee handles complaints about member and nonmember marketing organizations. The Committee compares a marketing organization's practices to the DMA's Ethics Guidelines in order to ensure compliance. The DMA's Guidelines for Ethical Business Practice can be found at www.dmaresponsibility.org/Guidelines/.
- Member organizations that do not comply with the requests of the Committee face DMA Board censure, suspension or expulsion. Organizations, whether members or nonmembers, that do not cooperate and whose practices also violate law are referred to law enforcement agencies, and the cases may be publicized.
- During February 2009 - February 2010, 34 cases underwent in-depth review by the DMA Ethics Operating Committee. We are pleased to report that no complaint required further DMA Board action during this period of time, since the issues raised were either resolved by the company or the company was not a DMA member.
- In addition to the 34 in-depth cases reviewed by the Committee, DMA staff handled approximately 4,000 complaints and inquiries from consumers needing assistance with direct response transactions in all channels (online, telephone/mobile, and mail).
- Of note, DMA strengthened its historic Privacy Promise with its new Commitment to Consumer Choice (CCC) program and, in October 2009, announced it would begin enforcement of the CCC. Learn more at www.dmaCCC.org.

Of the 34 cases that underwent in-depth review by the DMA Ethics Operating Committee, four cases were made public by the Committee. Following is a summary of the Committee's findings in those cases. *None of these four companies is a DMA member.*

ECRWSS of Riverview, FL (nonmember) initially responded to the Committee's concerns regarding its policies and procedures for honoring consumers' name removal and do-not-mail requests in a prompt and courteous fashion. However, the company did not reply to further requests from the Committee for additional information. DMA Guidelines require that consumers' name-removal requests should be honored promptly.

Diamond Enterprises of Stockton, CA (nonmember) did not respond to the Committee's concerns about a mailing promotion that appeared to be in the guise of a "service notice," contained questionable use of the term "free," and did not clearly disclose the sender and intent.

US Local Business Association of Washington, DC (nonmember) did not respond to the Committee's concerns about an email solicitation which did not disclose clearly the purpose of its "Best of Local Business" award program. Although the email was

held out to be about the honor of receiving an award from a prestigious organization, the actual purpose seemed to be to sell an award plaque. The company did not provide the Committee sufficient details about the award program and criteria for selecting recipients to ensure that the specific claims made about the award program were accurate. According to DMA Guidelines, all offers should be clear, honest, and complete so that the consumer may know the exact nature of what is being offered. In addition, all marketing contacts should disclose the name of the sponsor and each purpose of the contact, and all descriptions and claims should be in accordance with actual conditions, situations, and circumstances existing at the time of the promotion.

FFS Storage Facility of Las Vega, NV (nonmember) did not respond to the Committee's concerns about promotional postcards sent by FFS Storage Facility that stated "Notice: Merchandise Held for Release" and instructed recipients to check off items of merchandise that they wanted to receive and return the postcard, along with a shipping/release fee, in order to receive the merchandise. The Committee found that the company did not honestly, accurately and clearly state the exact nature of what was being offered, the price, the terms of payment (including all extra charges), and the commitment involved in the placing of an order. The Committee also found that the company did not clearly identify itself as the sender of the postcards and provide a means for recipients to contact the company. The matter was referred to the Federal Trade Commission, United States Postal Inspection Service, and the Nevada Attorney General.

In addition to publicizing the aforementioned cases, the DMA Committee on Ethical Business Practice identified four main issues based on the 34 cases it reviewed from February 2009 – February 2010. Each issue area, summarized below, includes general examples of the cases reviewed by the Committee, along with practical suggestions and helpful reminders to assist marketing organizations with implementing responsible and ethical marketing practices in each area.

1) General allegations that promotions, offered either online or offline, were misleading or deceptive. The reviewed promotions included, for example:

- Overall lack of clarity in advertising, especially as to the promotion's sponsor and/or intent;
- Sweepstakes that did not appear to have a "no purchase" option;
- Misleading envelope copy;
- Promotions for goods or services using confusing and misleading terminology to create a false sense of urgency, such as "Notice: Merchandise Held for Release," "Certified documents enclosed," and "\$2000 fine or 5 years imprisonment for tampering with delivery;"
- Misuse of the term "free" because significant obligations were not clearly and conspicuously disclosed;
- Solicitations that appeared to be invoices for products never ordered;
- Misleading header and other information in email solicitations; and
- Solicitations in the guise of official or government notices.

The Committee successfully resolved most of the cases it handled in that the companies either discontinued or revised the questioned mailings. Some matters were pending further action at the time of this report.

Of note, however, the Committee observed a high number of mortgage loan offers that appeared to be from consumers' actual mortgage holders or from government agencies when this was not the case. The Committee strongly discourages the use of promotions appearing in the guise of government mailings or appearing to be from recipients' mortgage holders. Once opened, the true nature of the mailings is usually clear to recipients; however, the Committee believes that consumer trust is harmed by the creation of false impressions. Further, consumers often believe their privacy is violated when they receive mailings containing the names of current lenders and loan balances. Mortgage-related information may be readily available to marketers, but should be used sensitively and with care not to offend recipients.

2) Enrollment in continuity and advance consent marketing programs, both online and offline, without sufficient, prior, clear and conspicuous notice and consent.

The Committee heard several cases in which consumers were introduced to a continuity or rewards program via an initial free product, free trial offer, or cash-back after making a separate purchase. The Committee questioned what information and disclosures were communicated to consumers in obtaining their advance and informed consent to participate in these continuity and rewards programs. The companies cooperated with the Committee to either discontinue or revise the questioned practices. Some matters were pending further action at the time of this report.

In addition, DMA staff and the Ethics Operating Committee will help advise DMA's Ethics Policy Committee as it reviews and enhances DMA's existing guidelines for advance consent marketing and negative option to ensure they stay ahead of the curve in the face of evolving technology and marketing innovations.

3) Services offering to remove consumers' names from mailing lists that make unsubstantiated and/or misleading claims about the supposed environmental and identity theft protection benefits of signing up for those services. The Committee reviewed the websites and promotional materials of several services that offer, as does DMAchoice (previously known as the DMA's Mail Preference Service), to reduce the amount of unsolicited mail consumers receive. On their websites, the services made unsubstantiated or questionable claims about mail's environmental impact and relation to identity theft.

In general, the Committee:

- questioned claims made as to the effectiveness of the services;
- asked for substantiation of claims asserting identity theft protection and environmental benefits resulting from signing up with the specific services and from name removal generally; and
- asked for corrections regarding misstatements made about DMA's service.

The companies cooperated with the Committee's requests by removing or revising claims made on their websites. One matter was pending further action at the time of this report.

It is important to point out that marketers should not tout their products or services as environmentally-friendly, nor should they disparage or make specific claims about the environmental impact or benefits of a particular form or channel of

communication, without first having reliable and, as necessary, scientific data to support those claims. The term “greenwashing” speaks to a growing trend in green marketing whereby products, policies or practices are presented as environmentally-friendly when they are not, or when there is not sufficient substantiation to support such claims. In addition to DMA Guidelines, which require claims be honest, clear, and complete, marketers should be aware that the Federal Trade Commission maintains and enforces [Guides for the Use of Environmental Marketing Claims \(“Green Guides”\)](#) which it plans to update soon for the first time since 1998.

In addition, please keep in mind that DMA recently enhanced its **Mail Preference Service (MPS)**, unveiling **DMACHoice** – a free, online consumer portal for choice in mailings from commercial marketers and nonprofit organizations. DMA has operated MPS since 1971. Recent enhancements are part of DMA’s overall initiative to meet consumer concerns regarding the receipt of unwanted mail. DMACHoice not only allows consumers to opt out of prospect mail offers from all DMA members, but also to choose to opt out of individual organizations or listed brands of DMA members. DMA members are required to scrub their prospecting lists against the DMACHoice file on a monthly basis. Learn more at www.dmachoice.org.

4) Cases involving important issues related to the use of marketing data. The Committee reviewed several cases in which it requested substantiation that marketers follow DMA’s [Commitment to Consumer Choice \(CCC\)](#) and privacy guidelines. Specifically, the Committee questioned the companies’ policies and procedures for honoring consumer requests to have their names removed from mailing lists; providing notice of an opportunity to opt-out in the initial and subsequent solicitations; and adequately responding to consumers’ requests for the source of mailings

All companies responded to the Committee’s concerns by providing information as to their privacy policies and practices, though one matter was still pending at the time of this report.

Many companies have in place privacy policies and procedures, but do not always adequately train their customer service representatives to properly answer consumers’ questions about how the companies got their names and addresses, which is a source of irritation to many consumers. DMA members are required to be responsive to this question.

In addition, making sure consumers’ requests not to receive promotional mail are honored is essential to building consumer trust, and is a requirement of DMA members. In fact, DMA recently strengthened its long-standing *Guidelines for Ethical Business Practice* and its *Privacy Promise* with the launch of the Commitment to Consumer Choice (CCC), for which enforcement began in October 2009. (See www.dmaCCC.org for more information.) The CCC is applicable to all media, and includes special requirements for mailers, such as:

- Marketers using the mail channel should provide existing and prospective customers with notice of an opportunity to modify or eliminate direct marketing communications. The notice should appear in every commercial mail solicitation.
- Upon request by a consumer, a marketer should disclose the source from which it obtained personally identifiable data about that consumer.
- A consumer’s request for elimination of future marketing offers should be processed (a) within 30 days or as required by law, whichever is the shorter

- time period, and (b) for a period of at least three years from the date of receipt of the request.
- A marketer periodically should provide existing customers with notice of its policy concerning the rental, sale, exchange, or transfer of data about them and of the opportunity to opt out of the marketing process. All such opt-out requests should be honored promptly.

DMA Resources for Responsible Marketing

- DMA's Guidelines for Ethical Business Practices:
www.dmaresponsibility.org/Guidelines
- Do the Right Thing explanatory guide that accompanies the Guidelines:
www.dmaresponsibility.org/DoTheRightThing/
- DMA's consumer preference site for consumer name removal and modification options: www.dmachoice.org
- To file a complaint regarding a marketing or fundraising offer, please include a sample of the offer and use the online form at:
www.dmaresponsibility.org/ComplaintForm

Contact Us

For questions or comments about this report, write to:

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To learn more about the DMA's many other self-regulatory and compliance resources, or to file an ethics complaint, visit
www.dmaresponsibility.org