



## Report on Ethics Committee Findings

**January – July 2007**

The Committee on Ethical Business Practice announced that two companies did not resolve its concerns about allegedly misleading promotional offers. *Star Financial of Irvine, CA* initially responded by revising the questioned mortgage loan promotion, but did not address the Committee's concerns regarding the lack of a privacy policy posted on its Web site.

*ExclusiveGiftCards.com of Delray Beach, FL* did not respond to the Committee's concerns regarding its promotion of "free" gift certificates and confusion as to the source of promotional e-mails; the matter was referred to the Federal Trade Commission (FTC) for its review.

During this period, the Teleservices Ethics Committee also referred three cases to law enforcement agencies for their review of possible legal infractions. *Aristar Resorts of Phoenix, AZ* was referred to the FTC, the Federal Communications Commission (FCC), and the Arizona Attorney General's office because of cell phone calls made without affirmative consent. *DADA USA, Inc. of New York, NY* was referred to the FTC, the FCC, and the New York Attorney General's office for alleged failure to obtain affirmative consumer/parental consent for its ringtone subscription service and to disclose clearly and conspicuously the material terms of its agreement, and alleged failure to promptly honor refund and cancellation requests. *Union Federal Mortgage Corporation of Nanuet, NY* was referred to the FTC, the FCC, the New York Attorney General's office, and the New Jersey Division of Consumer Affairs because of unsolicited automated calls.

*None of those five companies is a DMA member.*

**37 cases heard by the Ethics Committees:**

- 12 – general advertising (both off and online promotions and practices)**
- 12 – telemarketing practices**
- 12 – collection, use and maintenance of marketing data**
- 1 – online marketing (failure to authenticate e-mail)**

*The Committee on Ethical Business Practice reported four main issues:*

**1) General allegations of deception in promotions: These reviewed promotions were typical types of direct marketing offers, both online and offline.**

They included, for example:

- promotions for mortgage loan offers that appeared to be from consumers' actual mortgage holders or from government agencies when this was not the case;
- promotions for publications using confusing terminology such as "welcome back customers" addressed to consumers who had not subscribed in the past;
- "free" offers that had numerous and onerous obligations that were not conspicuously disclosed; and
- enrollment in continuity programs without necessary advance consent disclosures that were clear and conspicuous

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.

**2) Services offering to remove consumers' names from mailing lists: The Committee reviewed the promotional materials of several services that offer, like the DMA's Mail Preference Service (MPS), to greatly reduce the amount of unsolicited mail consumers receive.**

In general, the Committee:

- questioned claims made as to the effectiveness of the services;
- asked for substantiation that marketers were honoring consumer name-removal requests they received from such services; and
- asked for corrections regarding misstatements made about DMA's services

The Committee expressed its concerns that consumers would be confused about the multitude of name-removal services available today, especially in view of the fact that DMA's Mail Preference Service has been in existence for so many years. Key is the point that as long as the services are described accurately and consumers are not misled as to their effectiveness, then there is natural competition, as with any other kind of service, and there may be an opportunity for DMA to work with some of these services to enhance consumers' name-removal choices.

**3) 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 privacy guidelines.**

Specifically, the Committee questioned:

- direct marketers not providing prompt notice to their customers of their policies concerning transferring their names to other marketers;
- customer service representatives not adequately responding to the consumer question “how did you get my name?;”
- database compilers’ use of marketing data for non-marketing purposes (such as “look-up services”); and
- database compilers’ policies and procedures for reviewing promotions ultimately seen by consumers

Most companies responded to the Committee’s concerns by providing information as to their privacy policies and practices, though several matters were outstanding at the time of this report. Many companies do not 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.

Additionally, DMA recently approved new ethics guidelines for database compilers that clarify and expand their responsibilities concerning the collection, use, and transfer of personally identifiable information about consumers. (See [www.the-dma.org/guidelines/DatabaseCompilers](http://www.the-dma.org/guidelines/DatabaseCompilers) for more information.)

**4) Companies not properly authenticating their outgoing e-mails contrary to DMA’s guideline: “Marketers that use e-mail for communication and transaction purposes should adopt and use identification and authentication protocols.” DMA’s E-Mail Authentication Help Center ([www.the-dma.org/emailauthentication](http://www.the-dma.org/emailauthentication)) compiles considerable materials in one place on our Web site to help members comply with this important online requirement.**

More on e-mail authentication:

- it creates a public record against which to validate e-mail messages so that the legitimacy of senders can be verified;
- it protects the integrity of senders’ brands, and improves the likelihood that legitimate e-mail gets through to its intended recipient; and
- all e-mails should be authenticated, including marketing and promotional messages, customer service e-mails, receipts or shipping confirmation e-mails, monthly statements, newsletters, and e-mails sent from mobile devices

The “why-should-we-do this” and “how-to’s” of implementing this guideline are still not widely understood, though they are essential to proving the authenticity of e-mail senders and decreasing spam and phishing attacks. DMA understands that Internet Service Provider gatekeepers will soon not deliver e-mail to customers if the e-mail is not authenticated, which could be compared to not having mail delivered without proper postage.

**Teleservices Ethics Committee cases during this period were in regard to the following issues and concerns:**

- harassing calls to consumers;
- not honoring consumers’ “do not call” requests;
- automated calls, including prerecorded messages and abandoned calls;
- “spoofed” Caller-ID and untraceable calls;
- improper use of the established business relationship a marketer has with a consumer; and
- marketing to consumers’ wireless devices without prior express consent

DMA reminds marketers that sending text messages and calling cell phones without consumer consent is illegal. Several industry educational pieces to assist marketers in knowing the rules concerning wireless have been published by DMA and are available at [www.the-dma.org/guidelines](http://www.the-dma.org/guidelines). (See in particular, *Marketing Mistakes: Reaching Wireless Devices by Telephone, Text Message, or E-mail*.)

Specific concerns of the Committee concerning marketing to wireless devices included marketers’ policies and practices for disclosing the terms of the consumer’s agreement, especially the total costs consumers could incur for signing up for a subscription service, that affirmative consent is necessary to participate in any subscription programs, and that parental consent would have to be obtained where appropriate.

Committee concerns regarding improper use of the established business relationship included companies “borrowing” other marketers’ established business relationships in order to contact consumers who were on the federal Do Not Contact list. Marketers are reminded that it is not appropriate to inconspicuously include language in consumer agreements or other literature that would obligate consumers to receive the marketers’ calls or text messages. Such activity does not engender increased consumer trust in the marketplace, and is definitely not the *right thing to do*.

DMA handles ethics complaints about member and non-member marketers, comparing marketers’ practices to the DMA’s ethics guidelines and asking them to come into compliance. Members who don’t comply with the requests of the Committees face DMA Board public censure, suspension, or expulsion. Non-members that don’t cooperate are referred to law enforcement agencies, if applicable, and their cases are publicized.

***In addition to the 37 in-depth case reviews***, DMA ethics and consumer affairs staff handled 5,478 complaints and inquiries from consumers who needed assistance with: reducing their overall volume of unwanted solicitations; having their names removed from lists of specific marketers; or with marketing transactions. Thirty member companies, randomly selected, were asked to certify their continued compliance with DMA’s *Privacy Promise*.

***Resources for direct marketers include the following:***

- DMA's *Guidelines for Ethical Business Practice*: [www.the-dma.org/guidelines/ethicalguidelines.shtml](http://www.the-dma.org/guidelines/ethicalguidelines.shtml)
- *Do the Right Thing* explanatory guide that accompanies the Guidelines: [www.the-dma.org/guidelines/dotherightthing.pdf](http://www.the-dma.org/guidelines/dotherightthing.pdf)
- Reports on Ethics Committee findings are archived at: [www.the-dma.org/guidelines/ethicscase.shtml](http://www.the-dma.org/guidelines/ethicscase.shtml), and further information about DMA's Ethics Committees is at: [www.the-dma.org/guidelines/ethicalbusinesscommittee.shtml](http://www.the-dma.org/guidelines/ethicalbusinesscommittee.shtml).
- To file a complaint with the Committee on Ethical Business Practice, write to: [ethics@the-dma.org](mailto:ethics@the-dma.org), or use the online form at: [www.the-dma.org/guidelines/EthicsComplaintForm.pdf](http://www.the-dma.org/guidelines/EthicsComplaintForm.pdf).