



The DMA
Ethics Case Report
July - December 2004

- The DMA handles complaints about member and non-member marketers. DMA Ethics Committees compare a marketer's practices to The DMA's ethics guidelines and ask companies 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 do not cooperate are referred to law enforcement agencies, if applicable, and their cases are publicized.
- During the second half of 2004, **21 cases** underwent in-depth review by the Committees.
- In addition, Ethics & Consumer Affairs staff handled 1,220 complaints and inquiries from consumers needing assistance with reducing their overall volume of unwanted mail, telephone calls and e-mail, with having their names removed from the lists of specific marketers, or with direct response transactions.
- Sixty member companies were asked to certify their continued compliance with The DMA Privacy Promise.

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The DMA's Guidelines for Ethical Business Practice can be found at www.the-dma.org/guidelines/ethicalguidelines.shtml.

The 21 cases were as follows:

Collection, Use & Maintenance of Marketing Data
(includes direct mail and online promotions)

Issues alleged in eight cases and actions taken by the Committee on Ethical Business Practice:

1. Consumer complained about organization that did not honor requests not to be solicited again. Committee explained the need to honor “do not solicit” requests from prospects by maintaining in-house suppression files, as well as to honor requests from existing customers. **Case was closed without resolution because the organization, Handicapped Workers of America, Jacksonville, FL, did not respond to Committee contacts.**
2. Postcard solicitation referenced consumer bankruptcy information, which the Committee considered to be sensitive even though the information was derived from public sources. **Company informed Committee that it had ceased promotion.**
3. Consumer alleged that driver’s license information provided at point of retail transaction was used for non-marketing purposes without permission. **Company responded that information collected was used for merchandise return authorization only and not shared with other marketers. Committee did not view practice as violating Guidelines.**
4. Routine *Privacy Promise* monitoring revealed large magazine publisher that declined to sign compliance form attesting that it maintained in-house suppress file and used DMA’s Preference Services. **Case closed after Committee learned the publisher’s service bureaus handled those functions.**
5. Concerns were raised regarding directories of consumer names available for prospecting campaigns, specifically that there seemed to be a lack of advertising content review to ensure that consumers do not receive illegal or unethical promotions. **Case currently undergoing Committee analysis to assess possible Guidelines violations.**
6. Complainant had not “opted in” to receive e-mail from company or its affiliates, as represented in the e-mail. **Committee requested source of e-mail from company; service provider supplied source and subscription information, and suppressed consumer’s name from prospect lists.**
7. Complainant had not “opted in” to receive e-mail from company or its affiliates, as represented in the e-mail, and continued to receive e-mails after requesting that they stop. **Service provider demonstrated its process for honoring clients’ opt-out requests.**
8. Consumer continued to receive numerous e-mail solicitations after requesting name removal. **Case closed after company responded that it had suppressed consumer’s e-mail address and explained its name-removal process.**

General Advertising and Business Issues (includes direct mail and online promotions)

Issues alleged in eight cases and actions taken by the Committee on Ethical Business Practice:

1. Magazine subscription offers that did not clearly detail that acceptance of “free issues” often meant ongoing subscriptions if not cancelled. **Company revised**

promotions in an effort to clarify details of offers; Committee still had concerns with clarity; case pending.

2. Promotional check obligating recipient to ongoing advertising service if cashed. Committee questioned the overall impression of offer, clarity of disclosures and nature of service. **Yellow Pages, Inc. of Anaheim, CA notified Committee of revisions; however, despite several requests, it did not furnish revised promotion to Committee for review. Case forwarded to California Attorney General's office for handling.**
3. Offer for advance consent marketing program not clearly disclosed in mailing pieces. Committee reviewed promotions and contacted company regarding concerns with one of them. **Case closed after Committee was notified that the promotion was discontinued.**
4. Misleading online advertising of "free" products, which had significant qualifications, such as opening a credit card account or signing up for a club membership. Committee requested revisions that would bring the advertising into compliance with Guidelines. **YourGiftCards.com responded that its site was undergoing revisions and it would consider Committee concerns. Despite several requests, no further response was received, and Web changes addressing Committee's concerns were not made.**
5. Sweepstakes promotion viewed as giving a misleading overall impression, specifically that a contribution to the charitable organization was required in order to collect the prize money. **Committee expressed that disclaimer did not clarify that no contribution was required; case pending.**
6. Sweepstakes promotion was viewed as having a misleading overall impression that the recipient definitely won. **Committee asked to review complete package before ruling on potential Guidelines violations; case pending.**
7. E-mail promotion was objectionable for several reasons: complainant had not opted in to receive company's e-mail, as represented; e-mail appeared to be an invoice when it was not; and the nature of the merchandise offered for sale was confusing. **Company substantiated consumer's opt-in with affiliated company, and proposed revisions to the offer; revisions pending Committee review.**
8. Web-based health-related program was viewed as confusing and likely to lead to consumers unintentionally enrolling in continuity plans. **Committee's concerns about confusing Web design and membership information not being prominently disclosed brought to company's attention; response pending Committee's review.**

Teleservices Issues

Issues alleged in five cases and actions taken by the Teleservices Ethics Committee:

1. Complaint raised against fundraising organization that did not display its name and number on Caller ID. **Committee contacted organization named in the call;**

however, case closed after it could not be determined what entity actually placed call.

2. Pre-recorded solicitation for Infolink Technologies Ltd.'s voice message technology viewed as problematic; company responded that such messages are strictly in business-to-business context. **Committee requested, but did not receive, further information on company's practices, and closed case after learning that company's practices are legal in Canada (though not in the US). Infolink of Toronto, Canada had been expelled from The DMA in June 2003.**
3. Pre-recorded message received from debt management company viewed as deceptive. **Committee referred case to FTC for handling.**
4. Telemarketing call received from offshore call center representative on behalf of mortgage company provided misleading information to consumer concerning company's name, services provided and nature of the call. **Committee research found that company was under a Cease and Desist Order in California; case closed and referred to FTC for further handling.**
5. Telephone solicitations from telephone services provider continued to be made to complainant after existing business relationship was ended, company would not provide complainant with its do-not-call policies as requested, and allegedly broadcast invalid company identification. **Committee's concerns brought to company's attention and case is pending.**

Messages from Decisions Made by The DMA's Ethic Operating and Teleservices Committees

The DMA's Privacy Promise is as critical as ever: members who are consumer marketers must (among other things) clearly disclose, in any media, whether they transfer consumer information to other marketers, and must honor name-suppression requests both from their existing and prospective customers. During this period, both Committees reviewed cases in which consumers claimed their opt-out requests were not honored.

Additionally, the Committee on Ethical Business Practice reviewed several cases concerning the circumstances under which marketers may send offers via e-mail. Specifically, complainants stated that they did not request commercial solicitations, contrary to statements made in the e-mails. Statements such as "XYZ Company has been given the right to market to you through our Web site partners and their privacy policies" and "You are receiving this correspondence because you have provided permission via your contest entry -- or other activity -- to receive recurring promotions from various third parties" can be confusing and may appear deceptive to consumers. Consumers cannot reasonably be expected to know whom all such third parties would include. Therefore, they do not understand their actions as giving specific permission to be contacted again.

DMA's Guidelines do not require that permission be received prior to marketers' sending commercial e-mails; the Guidelines require either that permission or notice and the

opportunity to exercise choice be given. However, representations that consumers did opt in, as stated in the above samples, must be accurate. Marketers could, in order to alleviate concerns, perhaps list their marketing partners in any e-mail requesting permission. Such transparency in the marketing process would be a key factor in improving consumer trust.

Every e-mail solicitation must also, of course, contain an opt-out opportunity, which should be easy to find, read, understand and act on. According to CAN-SPAM, opt-out requests must be honored within ten business days. The Committee on Ethical Business Practice found that such requests were not always honored promptly because it was unclear which of the business partners involved was responsible for taking the required action.

An issue emerging once again is that of list review. DMA has long had an Ethics Guideline (Article #35) advising that “List owners, brokers, managers, compilers and users of marketing lists should ascertain the nature of the list’s intended usage for each materially different marketing use prior to the rental, sale, exchange, transfer or use of the list.” Essentially, this means that lists should not be made available or used for any offer that violates the Guidelines, or is unlawful. In light of FTC settlements pertaining to marketing lists, The DMA recently released guidance reminding those in the list industry of their responsibilities to screen offers before list rental. In addition, the Committee on Ethical Business Practice advises list users – in an effort to promote industry compliance with this Guideline -- to question those who would provide them with rented lists without proper screening processes. Widespread industry compliance will serve to protect all those in the list industry as well as the consumers they serve.

It is essential that important facts of an offer not be hidden. Statements, which are in difficult-to-read type, placed inconspicuously within the promotion, or conflict with the overall impression made can be problematic. Marketers should be especially careful when using offers that could be construed as invoices, and in their use of the word “free.” Direct marketing offers, in any medium, should be clear as to the nature of the offer, who is making it, and all costs and obligations incurred by the consumer. Worthwhile offers should not need to use deceptive ploys to generate sales.

A unique case handled during this period concerned a database used solely for merchandise return authorization. The Committee on Ethical Business Practice did not view the set of circumstances presented as violating the Guidelines. It questioned, however, whether a database comprised of consumers who “excessively” returned retail merchandise was subject to the federal Fair Credit Reporting Act (FCRA). The FTC advised that such databases, which are increasingly used by retailers to avoid merchandise return scams, possibly were subject to the FCRA.

Resources for Marketers

All of the following are available via *The DMA's Quick URL Reference Guide*:

www.the-dma.org/guidelines/quickreference.shtml

Do the Right Thing (examples and questions regarding the ethics guidelines)

Online Marketing Guidelines

Privacy Promise Member Compliance Guide

Guidance to List Industry on FTC Legal Interpretation

Alert for Marketers: Proper Use of Prerecorded Messages

For more information about DMA's ethics guidelines, the Committee on Ethical Business Practice or the Teleservices Ethics Committee, contact ethics and consumer affairs department staff at ethics@the-dma.org.

How to Submit Cases

To submit a case for Committee review, send the *Complaint Form* located at www.the-dma.org/guidelines/EthicsComplaintForm.pdf (or a brief letter) along with a copy of the promotion or an example of the practice that is of concern to:

Marsha Goldberger, director, ethics and consumer affairs *or*

Pat Kachura, senior vice president, consumer affairs

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