

DMA Annual Ethics Compliance Report

2011

The DMA Annual Compliance Report prepared by the DMA's Corporate & Social Responsibility Department on consumer affairs and casework covering 2010-2011.





ETHICS COMPLIANCE REPORT 2011

Summary:

This report summarizes the ongoing consumer affairs, investigation and casework of the DMA's Corporate & Social Responsibility (CSR) department. The DMA CSR Department works with the DMA's Ethics Operating Committee, which handles complaints about both member and nonmember consumer and business marketing practices. The purposes of the self-regulatory program are to ensure consumer concerns are addressed expeditiously, and to protect the marketing industry from unreasonable regulation via a strong self-regulatory mandate. The DMA considers self-regulation to be a key component of its mission in fostering marketing innovation and consumer trust.

The Committee reviews the complaints that come to it by investigating the organizations that are involved in the complaint and their marketing practices. The organization's marketing practices are measured against using DMA's Guidelines for Ethical Business Practices. (See www.dmaresponsibility.org/Guidelines/)

Members that do not comply with the Committee requests for information face DMA censure, suspension or expulsion. Organizations, regardless of membership status that do not cooperate and that may also reflect potentially illegal activity are referred to law enforcement. The Committee meets approximately every 8 weeks to review potential cases and to make its recommendations on appropriate actions for the DMA on the particular matters.

Companies found not in compliance and not taking corrective action are listed at www.dmaresponsibility.org/companycompliance/

During this compliance report review period - February 2010 through November 2011 – the DMA CSR staff processed over 15,000 consumer and company inquiries regarding marketing practices via mail, phone and email. (This is not inclusive of consumer contacts received and referred by the DMA customer service department.) The Ethics Committee met 11 times in this time period and reviewed 64 cases based on marketing offers during this time period through its confidential proceedings.

Of particular note, this compliance period includes a major effort by the DMA to address digital accountability in the marketing industry and to provide businesses and consumers with assistance

in the digital arena. DMA's action in this area is an effort to respond to the Federal Trade Commission's (FTC) request for a strong and effective self-regulatory program for its membership with regard to marketing offers online, and particularly, online behavioral advertising.

Toward that end, the DMA is one of the enforcement bodies for the online-behavioral marketing compliance program of the Digital Advertising Alliance (DAA.) Further, the DMA has now included social, mobile, and Web principles for digital marketers in its Guidelines for Ethical Business Practice. The development of these principles and incorporation of them into DMA's Guidelines was a priority for its Ethics Policy Committee. The Ethics Policy Committee continues to look forward to ensure digital accountability in addition to ongoing traditional marketing compliance. In fact, the DMA's ethics committee has processed more consumer requests and updated more sections of its guidelines than during any other period. This is largely due to the complexity of the new digital landscape and the need to address privacy in a responsible, speedy and effective manner.

The DMA's Corporate and Social Responsibility department launched a consumer complaint process during this period which has seen over 75 online behavioral advertising consumer inquiries in a short period of time. The contacts include requests to learn more about online advertising in general, specific concerns related to email, and specific concerns about the subject matter of the online ads.

In addition to DMA's longstanding mail preference system via www.dmachoice.org, the DAA now offers consumers an opt-out system for OBA via www.aboutads.info or the Advertising Option Icon, which appears on behaviorally-targeted Internet ads.

Public reporting of companies and a summary of the Committee casework follows, DMA Guidelines referenced are located on www.dmaresponsibility.org/Guidelines/.

PUBLIC REPORTS OF NONCOMPLIANCE & FAILURE TO CORRECT

Union Workers Credit Services (Non-member):

This complaint stemmed from a mailing that was an offer for pre-approved membership with a guaranteed \$10,000 credit limit that appeared to be from a credit card company (due to the graphics depicting the Visa and Mastercard logos.) Filling out an activation form allowed an individual to apply for a platinum card with a \$37 activation fee. During its review of the complaint, the Committee noted a disclaimer stating the offer is not affiliated with Mastercard or Visa, but it was insufficient to overcome the overall impression that the offer is from either of these credit card companies. After examination of the fine print, it was determined that the actual offer is for a card that could be used to purchase merchandise or services from Union Workers Credit Services rather than an offer of credit. The Committee believed the DMA Articles may have been violated as follows: Article #1 Honesty and Clarity of Offer, Article #2 Accuracy and Consistency, and Article #3-Clarity of Representations.

The company responded to the Committee's inquiries regarding the lack of clarity of the offer and the overall impression of the offer by presenting legal support for its offer and pointing to disclaimers regarding Visa and Mastercard, but the Committee felt that though the legal issues were addressed, the ethical issue of the overall impression of the mail piece as a credit card offering was not sufficiently addressed. The Committee asked the company to address this concern in a revised mailpiece. The company did not agree that the offer should be changed and instead offered to perform a consumer survey regarding the overall impression of the offer before making any changes. The Committee then learned that the company was sending additional mail identical to the offer that initially concerned the Committee. The Committee concluded that the matter should be made public since the company had adequate time to address the Committee concerns and did not provide a revised mail piece.

Bankers Healthcare Group Inc. (Southwest Ranches, FL, Non-member)

This case stems from a complaint about a mail piece offering a pre-approved \$100,000 loan in a postage-paid envelope. The outer envelope contained a warning regarding fines and penalties of up to 5 years imprisonment for obstructing delivery of the mail piece. The mail piece also featured a seal of the "Department of Medical Finances" at the top of the promotional letter, but text further down indicated this department was actually within the company and is offering a pre-approved loan for a credit amount. The letter asks the recipient to go to a personal website with a provided PIN number or to call a 1-800 number, and provide personal information, including the recipient's Social Security number. Additionally, the letter states that the recipient is eligible to receive an added \$1,000 for "free," with an asterisk that is qualified in fine print that this special offer does not apply to everyone, only to those who accept a "payment factor" of a certain percentage amount.

The Committee found violations of the following DMA Ethics Guidelines: Articles # 1 - Honesty & Clarity of Offer; Article #8 - Disclosure of Sponsor & Intent; Article #10 – Solicitation in the Guise of an Invoice or Governmental Notification (The mail piece looks as though it comes from or is endorsed by a regulatory agency that does not exist.); and Article # 17 - Use of the Word "Free."

The Committee received one inquiry from the company seeking to know what the authority is of the DMA, to learn why the DMA was contacting them. The Committee replied with detailed correspondence regarding its role and reiterated its concerns. No other correspondence followed to clarify or amend the marketing practices and the Committee decided to make the matter public.

National Publication Billing Services (Non-member)

This case stems from a third-party magazine company sending magazine new business/renewal offers to consumers with a higher price than the actual subscription amount in the guise of a bill.

At its January 2010 meeting, the Committee reviewed the complaint and discussed the following

potential violations of Article #10 of DMA's Ethics Guidelines, which stipulates that offers that are likely to be mistaken for bills, invoices, or notices from public utilities or governmental agencies should not be used. The Committee discussed in detail the misleading elements of the mail piece that give the overall impression that the promotion is a bill or invoice, noting that: (1) the words "Billing Services" are in the name (National Publication Billing Service, LLC) located on the promotion, which implies the offer is a bill; (2) there is common billing language used in the promotion, such as "Please Respond By," "Make Check Payable to:," "Return with your payment," "Installment," and "Payment is Due in 30 days when choosing installment payment;" (3) the promotion uses common table layout for a bill; and, (4) the promotion uses language like "Thank You! Your prompt Attention is Appreciated," which suggests a relationship exists with the customer and the words "prompt attention" increases the likelihood that consumers will believe this is a bill and/or urgent matter. The promotion does not clearly and conspicuously inform consumers about the offer, noting that the promotion is "NOT A BILL" in very small font.

The Committee learned that this company was not affiliated with magazines and that it was using the invoicing process to bill existing magazine subscribers and to potentially profit from the difference between the billing amount and the actual amount of the subscription. The magazines had attempted to stop the company from sending renewal invoices to consumers. The Committee decided to make the matter public and referred this matter to the Federal Trade Commission.

SRC Lists (DMA Member-Membership Suspended by DMA Board of Directors)

Staff received dozens of complaints from individuals who had used SRC Lists for leads. Since SRC Lists was a DMA member, dozens of customers of SRC Lists sought help from the DMA to resolve their refund requests. The complainants reportedly found that the leads they received were of poor quality were not the type of leads they had originally been offered by the sales staff of SRC Lists. Additionally, the company provided a 100% money-back guarantee, but once the customer began using the lists, and subsequently found the lists to be of little value, they attempted to contact the company for their money back and were either ignored or put off.

The Committee communicated with SRC Lists regarding potential DMA guideline violations and asked that the company honor the customers' refund requests since there had been a guaranteed offer. SRC Lists responded to the Committee in general and did not respond as far as the refunds or the guarantees that were made. Due to the unprecedented number of complaints, the use of the DMA member logo while not complying with DMA ethical guidelines, the Committee asked that the member be suspended via the DMA Board of Directors and to make the matter public.

The DMA Board agreed and suspended the company in October. The DMA now lists SRC in its non-compliant companies section of the DMA website.

Intercontinental Capital Group (Non-member)

The complainant in this matter received a mail piece that appeared to be from the US Department of Housing and Urban Development (HUD). Even though the letter stated that ICG is not an

agency of the federal government in its opening sentence, the Committee concluded the mail piece in question seemed to be an offer from a governmental authority in violation of DMA's guidelines, specifically, Article #10 – Solicitation in the Guise of an Invoice or Governmental Notification.

The Company did respond to the Committee's concerns, but did not fully address the issue that the mailing appeared to be from a governmental authority. The Committee sought an amended mail piece but did not hear back from the company despite several attempts. The Committee decided to make the matter public.

Republican National Committee (Non-member)

This case stems from a complaint about a mailing from the Republican National Committee (RNC) which appeared to be a census mailing from the Census Bureau, a potential legal violation. This mailing further had potential violations of DMA's Guidelines for Honesty & Clarity and Solicitations in the Guise of Governmental Notifications. The execution is problematic for several reasons:

- Article #1 – With regards to this article, the Committee discussed that the direct mail solicitation uses the thematic creative approach of a Congressional District Census but the actual intent of the piece is to collect contributions to the RNC. The Committee noted several instances of lack of clarity, specifically:
 - It is unclear that the documents are not going to be returned to the government. For example, the reply envelope return address portion reads –“2010 CONGRESSIONAL DISTRICT CENSUS ENCLOSED.”
 - Also, it is unclear that the solicitation is NOT from or affiliated with the US government. For example, the main header on the letter reads “2010 Congressional District Census.”
 - Finally, there is lack of clarity around the voluntary nature of payment. The Committee agreed that consumer may feel obligated to fill in the “Census” and pay the solicitor, due to the misunderstanding that it is a government requirement. In addition, the “Terms of Payment” (in Box #2 on the offer form) suggests that a \$15 donation (if consumer sends only that amount) will be used to defray the cost of processing “my Census Document.” Hence, it is unclear whether this amount would be actually processed as a donation, as well as what the relationship relevancy is from the individual solicited to the cost of processing the Census Document.
- Article #10 – The Committee noted that the form font and layout of the form are consistent with government notifications. Also, the addressee pre-header “Census Document Registered To,” as well as supporting form copy (e.g., “Census Tracking Code,” “2010 Congressional District Census,” etc.) imply that the solicitation is a government census notification. There are no disclaimers anywhere in the piece that say “not affiliated with the US government” or similar language to inform the consumer.
- Articles #31, 32, or 33 – The Committee questioned whether answers to the survey

questions would be tied to the individual and used for marketing purposes. The Committee noted that some of the answers could be considered personally identifiable or “inferred” personally identifiable data. In addition, there was a lack of full disclosure about how the survey questions would be used; the form noted only that: “Survey tallies will be shared with your Congressional leaders.” The Committee discussed whether completion of the survey constituted permission from the consumer to disclose this data to congressional leaders and, if so, whether more informative language was needed to make it clear to the consumer exactly how the data would be used.

The Committee contacted several officials at the RNC over the course of several months. The last response stated that due to changes in staff, the current RNC staff was not responsible for the past mailing. Further, it would not confirm whether the mail piece was going to be sent in its current form again in the future.

The Committee later learned that an identical mail piece was likely going to be mailed out, despite the Committee’s concerns. Due to the lack of response with regards to an amended mail piece, the Committee decided to make the matter public. Please note that the federal law enacted in 2010 (Public Law 111-170, 111th Congress) does not allow the term “census” on a mail piece in the outer wrapper, visible through the envelope, on the outside cover.

Hearing Health Associates (Non-member)

A complainant contacted the Committee with problems s/he was having getting removed from the company’s mail lists. Additionally, the outer envelope of the mailing received by the complainant appeared to come from a government agency with its claim that it is a “Public Hearing Notification”.

The Committee approved a motion to send a letter citing potential violations of Article #31 and Article #10. In addition, the Committee recommended that the Company provide its name and address on the outer envelope. The company responded that it would remove the “Public Hearing Notification” from the outer envelope and would provide contact information on the outer envelope, that it would remove the complainant’s name but did not agree to provide a copy of the revised mail piece. The Committee decided to make the matter public due to the lack of a sample mail piece demonstrating the change.

Resource Stock Advisor (Non-member)

A consumer contacted the DMA seeking name removal from Resource Stock Advisor’s mailing list. Additionally the Committee was concerned that the mailing received by the consumer may present ethical issues by purporting to offer stock advice listing a number of claims on how to achieve wealth. However, the offer included fine print that the offer was not actually intended to be stock advice. The Committee received no response to its correspondence requesting the consumer’s name removal or issues with the offer and decided to make the matter public.

COMMITTEE CASEWORK ISSUES

This is a general summary of the casework and concerns raised during Committee proceedings and resolved without public disclosure of the companies involved:

Environmental Claims

The Committee and staff reviewed instances of websites with environmental claims regarding the impact of mail on the environment and offering a service for a fee to remove consumer names from future mailings by the companies sending mail. The claims were made to consumers concerned about the environmental impact of mail and that by participating in the name removal process the companies would enable consumers to save a tree or multiple trees. The concern is enhanced by the fact that the DMA itself manages the largest no-cost name removal service for consumers and that some of the claims made by these for profit name removal services did not seem plausible. The Committee was in communication with the companies to ensure the claims made are not potentially misleading to consumers, that the services provided were in fact occurring, and that the information and privacy policies of the companies are adhering to the DMA guidelines since the companies are collecting consumer information and charging a fee. The companies reviewed were responsive to the Committee, and the Committee does not expect to report out the companies publicly at this time. The Committee was particularly concerned with DMA Articles #1 (Honesty and Clarity of Offer,) #2 (Accuracy and Consistency.)

Vacation Rentals

Periodically, the DMA is informed of a promotion sent to consumers that seems to be a no-cost airline pass but is really a vacation offer. The airline ticket promotion includes an 800 number to obtain the airline passes. However, once a consumer calls the number, the actual offer is to listen to a particular promotion for a vacation rental. After Committee communications with the companies and its marketers, the DMA succeeded in preventing future offers of this nature from one company and will continue to monitor for future offers since this practice is recurrent. The concerns include Articles # 1 (Honesty and Clarity of Offer), #2 (Accuracy and Consistency), #8 (Disclosure of Sponsor and Intent), and #17 (Use of the Word Free and Other Similar Representations.)

Advance Consent & Post Purchase Web Loyalty Promotions

Advance consent marketing offers that lacked clear terms and conditions were a common concern during this past case review period. Consumers found they had inadvertently agreed to products and services they had no knowledge were being offered when they were online, and then contacted the DMA for help with cancellation of their order to avoid recurring monthly fees. For some consumers such recurring charges were legitimate and were based on their lack of reading the actual terms and conditions that were adequately disclosed, while for others, we did find the disclosures were insufficient and not displayed in a prominent manner nor at the time of purchase.

Further, the DMA followed up on a Senate inquiry into post-purchase web loyalty programs with some of the companies involved in that process. As reported by the news media, the U.S. Senate had held hearings based on investigations regarding such loyalty programs. The staff was concerned that consumers were not aware that their account information was being shared with

third parties for further online sales without their knowledge and consent. In response to DMA inquiries to determine member adherence to DMA guidelines, the companies were responsive to the DMA and resolved committee concerns in a timely manner. Further, the law for advance consent marketing and third party “data pass” was changed so that data pass can no longer take place without the consumer’s advance knowledge and express consent. Further, key disclosures regarding the program benefits are now required. The DMA revised its own member guidelines to be in line with current law, Article #12, Advance Consent; members are encouraged to review prior to establishing an online rewards program.

Email & Phishing

DMA staff acts on phishing requests that arrive via email on an ongoing basis. This past year DMA staff received a number of complaints regarding email messages with offers purporting to be from legitimate marketers. Upon review and correspondence with companies, the matters were examples of phishing. Fraudulent emails purporting to be from legitimate companies were being sent to individual consumers to attempt to take their contact and other valuable information by thieves. The legitimate companies were alerted, as were the regulatory agencies responsible for phishing schemes. Phishing is illegal and harmful to companies being targeted by such fraud operators.

Providing Consumers the Source Information to Stop Unwanted Mailings

DMA staff and the Committee reviewed instances of companies that were contacted by consumers seeking name removal from the company’s mailing list to prevent future unwanted mail. The consumer also wanted to obtain the contact information for third parties working with the company to prevent other companies and organizations from sharing the contact information. Providing such third party “source” information helps the consumer to prevent future mail from an unwanted source and from multiple similar sources. This is a DMA member requirement in Article #31. It is very important, especially to those who cannot handle reviewing the volume of mail that can be generated if the request is not honored. Over the past year, staff handled numerous complaints about too many mailings due to lack of source control.

DMA is contacted frequently by the elderly for help. One example is that of an 80 year old individual who continued to receive mail from over 200 companies. Honoring the request for the source of the consumer data will aid all mailers so that individuals have the tools to receive offers and solicitations from companies in which they are interested so that the burden of physically receiving and opening mail from over 200 companies (30-40 mail pieces per day) by one elderly individual is prevented. The mailbox should be seen positively rather than something that cannot be managed.

It is important that companies and organizations retain the data source information for consumers to fulfill this obligation and consumer expectations and that the source information be provided in a timely fashion before the address is proliferated leading to mail overflows. (See DMA Article #31.)

Consumer Choice for Unwanted Mail

Companies were generally cooperative with Committee requests that the company remove a consumer's name from its mailing lists and place the consumer name on a suppression file. The Committee found good compliance during this time period from both members and nonmembers.

However, the Committee did see some instances initially of "passing the buck," where a company employee informed the consumer erroneously that the DMA is the source of their own mailing. Companies that do not wish to honor a consumer's request, or do not have their own system set up to honor name removal will ask the consumer to contact the DMA.

Upon further communication from the Committee, the companies reviewed their internal policies to ensure they are using the correct name removal process for their own mailings. (See DMA Article #31.)

Online Behavioral Ads

The Committee reviewed newer complaint issues on behavioral advertising, focusing specifically on consumer complaints regarding online advertising promoting dating opportunities. The Committee continues to review this matter to determine how to address consumers who do not wish to receive dating ads. These may in fact be general ads rather than ads specifically targeted to an individual, but this is a main area of complaint thus far.

Consumers report that they either find the advertisements too provocative or that they believe the ads are sent to them specifically, and they do not wish to receive them since they are not interested in dating. They are concerned their own reputations may be jeopardized as well as their relationships with their spouses. (See DMA Article #38)

Conclusion

Other issues that surfaced during this compliance period include: (1) Caller ID spoofing where disreputable companies are displaying false numbers on the consumer IDs; (2) problems with orders where consumers paid for orders but never received the merchandise; (3) illegal sweepstakes; and, (4) a newer issue for social media marketers where third parties offered to sell "friends" for a fee. The Committee expects to report out companies that are not cooperating with its requests. To locate companies not in compliance see, www.dmaresponsibility.org/CompanyCompliance/

DMA Resources for Responsible Marketing:

-DMA Guidelines for Ethical Business Practices

www.dmaresponsibility.org/Guidelines/

-DMA's consumer preference site for consumer name removal and modification options for mail, email, deceased name removal & caretaker requests.

www.dmachoice.org

-For the online behavioral ad program, businesses should sign up for the icon at

www.aboutads.info & consumers should go to www.aboutads.info for their opt-out requests.

-To file a consumer complaint go to www.dmaresponsibility.org/ComplaintForm

-For DMA's International Safe Harbor program for data transfer from the EU & Switzerland, go to www.dmaresponsibility.org/SafeHarbor/

-For DMA's environmental resources for marketers, go to

www.dmaresponsibility.org/environment/

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