



Ford Motor Company
Office of the General Counsel
1 American Road
Dearborn, Michigan, 48126

August 16, 2004

Federal Trade Commission
Office of the Secretary,
Room 159-H (Annex Q),
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

via: <http://www.regulations.gov>

Re: FACT Act Affiliate Marketing Rules, Matter No. R411006

Dear Sir or Madam:

Ford Motor Company ("Ford"), a global manufacturer of motor vehicles, welcomes this opportunity to provide comments in response to the Federal Trade Commission's (the "Commission") notice and request for comment on the proposed Affiliate Marketing Rule (the "Proposed Rule") implementing section 214 of the Fair and Accurate Transactions Act of 2003 ("FACT") adding new section 624 to the Fair Credit Reporting Act ("FCRA").

Ford commends the Commission its efforts toward producing a workable framework for implementing the many requirements of FACT. Ford is also supportive of the Commission's efforts to provide meaningful notice and choice to consumers while also providing workable solutions for business. Ford offers these comments to help aid this process.

Affiliate

The Proposed Rule defines "affiliate" as any person related "by common ownership or common corporate control with another person". The Supplementary Information indicates the Commission's belief that it is "important to harmonize the various treatments of 'affiliates' as much as possible and construe them to mean the same thing."

Ford supports such a unifying approach. With the interaction among FCRA, FACT and the Gramm-Leach-Bliley Act ("GLBA") a common definition provides an opportunity for consistent application of an important term eliminating potential confusion. While the Proposed Rule's definition of affiliate would not appear to provide a meaningful difference among FCRA, FACT and GLBA, adopting the Commission's GLBA Privacy Rule definition of affiliate would eliminate the possibility of confusion through rule consistency.

Neither FCRA nor FACT distinguishes among types or categories of affiliates. The Proposed Rule appropriately maintains a uniform treatment of affiliates while focusing on information use and not information sharing by affiliates, an approach that should be retained in the final rule.

Pre-Existing Business Relationship

Section 624 provides an exception to affiliate marketing restrictions when the person or the person's licensed agent has a "pre-existing business relationship" with the consumer. Section 624 (d) provides:

(1) The term "pre-existing business relationship" means a relationship between a person, or the person's licensed agent, and a consumer, based on:

- (A) a financial contract between a person and a consumer which is in force;
- (B) the purchase, rental, or lease by the consumer of that person's goods or services, or a financial transaction (including holding an active account or a policy in force or having another continuing relationship) between the consumer and that person during the 18-month period immediately preceding the date on which the consumer is sent a solicitation covered by this section;
- (C) an inquiry or application by the consumer regarding a product or service offered by that person, during the 3-month period immediately preceding the date on which the consumer is sent a solicitation covered by this section; or
- (D) any other pre-existing customer relationship defined in the regulation implementing this section.

Ford believes it is essential for the Commission to include specific recognition of the business relationship created and maintained in connection with the sale and financing of new automobiles in the final rule defining a pre-existing business relationship. Ford requests specific recognition of the ongoing relationship among a product manufacturer, its affiliated finance company and the retailers who sell the manufacturer's products to the public and perform services for the manufacturer and the finance company as a pre-existing business relationship.

There is a well-established and accepted network of manufacturer-authorized dealers ("franchised" dealers).¹ These authorized dealers (often referred to as "franchisees") sell motor vehicles to the general public and provide warranty and other servicing of the vehicles sold pursuant to agreements with the manufacturer. Often, motor vehicle sales transactions are financed by the manufacturer's affiliated or "captive" finance company, either through a lease or retail installment sale transaction. Ford, as a manufacturer, has an ongoing relationship with consumers long after the initial moment a consumer obtains a vehicle from its franchised dealer. This relationship includes multiyear warranty obligations, recall responsibility, and other communications relevant to the possession or ownership, safety, and use of the vehicle whether carried out directly by Ford or through its franchisee.

During the consumer's possession of the vehicle, Ford often sends the consumer information, including product information and marketing materials, about its products and services, as well as information relating to product use and product safety such as recalls. To provide meaningful and relevant information to the consumer, marketing efforts often are supplemented by information obtained from Ford's captive finance company, Ford Motor Credit Company². This information may include basic contact information, such as name and address, as well as experience or transactional information, such as the amount of the customer's monthly payment and present status of the consumer's finance contract, allowing Ford to tailor marketing offers and other communications for the consumer that best meet the consumer's needs. Because the consumer sought out Ford's products, the consumer often welcomes the subsequent marketing campaigns that allow her to trade into a higher line vehicle or a newer model, all with discrete financial benefits for the consumer.

The requirements of the Proposed Rule would considerably complicate the ability of Ford to provide advantageous marketing offers directly to consumers who use and operate Ford products – consumers with whom Ford has an ongoing relationship. Ford requests the Commission to clarify that a relationship between a manufacturer such as Ford, as described herein meets the definition of "existing business relationship" or alternatively that the relationship be recognized as an "existing business relationship" pursuant to authority granted in 624 (d)(1)(D).

In the Supplementary Information regarding consumer inquiries about sales and leases of goods or services the Commission suggests that it would be "appropriate to consider the reasonable expectations of the consumer" in determining the appropriate scope of that exception. The analysis is equally useful in determining the existence of a "pre-existing business relationship" in connection with motor vehicle transactions. Ford experience shows that a consumer who acquires a new automobile from one of its franchised dealers and who finances that acquisition through its captive finance company fully expects, and in fact welcomes, information from Ford and its captive

¹ Most states have laws prohibiting a motor vehicle manufacturer from selling motor vehicles (cars and trucks) directly to consumers.

² Ford Motor Credit Company, a Ford Motor Company subsidiary, and one of the largest motor vehicle financing companies in the world

finance company about new products and financing arrangements to acquire new products, even if the consumer does not request information from or provide contact information directly to Ford.³

The final rule should clarify that Section 624(d)(1)(B) includes the purchase, rental or lease of the manufacturer's goods from its franchised dealer and constitutes a pre-existing business relationship for both. While the dealer relationship is different than the relationship associated with obtaining services from the "person's licensed agent", (specifically included in FCRA section 624 (d)(1)), both serve as the point of contact with consumers. In these relationships there is a similarity in concept and importantly they are both recognizable as creating a pre-existing business relationship. In both cases the consumer fully expects to be dealing with and receiving communications, including marketing and solicitations, directly from the manufacturer of the goods or provider of the services after the initial retail transaction, such as is the case with an automobile manufacturer.

If the Commission believes that the "purchase, rental or lease" definition in section 624(d)(1)(B) and reflected in Proposed Rule section 680.3 (i)(2) is not applicable in this context, we respectfully request the Commission to include in its final rule pursuant to authority granted under section 624(d)(1)(D) an additional provision in section 680.3 (i) recognizing a pre-existing business relationship for automobile sales and financing for the reasons stated.

Solicitation

Section 624(d)(2) defines "solicitation" in part "as the marketing of a product or service initiated by a person to a particular consumer" based on an exchange of specified information between affiliates. The definition excludes communications directed at the general public. The Proposed Rule, in excluding from the definition of "solicitations" marketing communications directed at the general public, states "[a] solicitation does not include communications that are directed at the general public and distributed without the use of eligibility information communicated by an affiliate". (emphasis added)

Communications are excluded from the operation of FCRA section 624 when there is no sharing of eligibility information, whether or not the communications are directed to a particular consumer. Communications not directed to a particular consumer are also excluded from the operation of section 624 whether or not eligibility information has been shared. Ford believes the definition's "and" should be replaced with "or" to clarify these possibilities.

Constructive Sharing

The Commission invites comments on what it terms "constructive sharing". FCRA section 624 (a)(1) provides "[a]ny person that receives from another person related to it by common ownership or affiliated by corporate control a communication of information that would be a consumer report, but for clause (i), (ii), and (iii) of section 603(d)(2)(A),

³ Ford provides an opt out opportunity for e-mail and telephone direct marketing communications affording a choice for customers who no longer desire to receive direct marketing communications.

may not use the information to make a solicitation for marketing purposes to a consumer about its products or services, unless" the consumer receives notice and a simple opt out opportunity. A prerequisite to statutory application is the sharing of "eligibly information" and the use of that information by an affiliate in making a "solicitation" to the particular consumer.

Ford does not believe constructive sharing is within the proper scope of section 624. There is no exchange of eligibility information among affiliates. The restrictions on solicitation do not cover solicitation to one's own existing customers for marketing purposes. It is the consumer by responding who provides the consumer's information to the affiliate.

Compliance Date

Ford recognizes FACT places certain limits on the timing of the Commission's issuance of a final rule and the rule's effective date. Changes necessary to implement the final regulation are not insignificant. The development of new processes, information systems changes and the ability to incorporate the newly required opt out choices into existing GLBA notices entails concentrated effort. Without adequate lead time there is serious question about the ability to incorporate the notice and opt out into the next cycle of annual GLBA notices and thereby avoid the need to issue separate affiliate sharing notices or issuing revised GLBA notices. Ford strongly encourages consideration of a delayed compliance date to help avoid unnecessary costs associated with issuing multiple GLBA notices and affording sufficient time to effectively meet the new requirements.

Ford Motor Company appreciates the opportunity to comment on this important matter.

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