

One US Bank Plaza  
St. Louis, Missouri 63101  
314-552-6000  
FAX 314-552-7000  
www.thompsoncoburn.com

April 11, 2008

Mark Sableman  
314-552-6103  
FAX 314-552-7103  
EMAIL msableman@  
thompsoncoburn.com

By E-Mail -- BehavioralMarketingPrinciples@ftc.gov

Mr. Donald S. Clark  
Secretary  
Federal Trade Commission  
Room H-135 (Annex N)  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580

Re: American Business Media ("ABM") Comments in Response to Federal Trade  
Commission Staff Statement, "Online Behavioral Advertising: Moving the Discussion  
Forward to Possible Self-Regulatory Principles" [Project No. P859900]

Dear Secretary Clark:

These comments are submitted on behalf of American Business Media, an association representing more than 200 business-to-business information providers such as publishers, producers of print and other publications and websites, and organizers of trade shows and similar events. ABM's members produce more than 2,000 high quality, business-to-business publications. From *Oil and Gas Journal* to *Advertising Age* to *Insect & Disease Control Guide*, ABM publications form an essential role in assembling and disseminating the industry-specific news and information needed by businesses in thousands of different fields.

Like other publishing entities, ABM members have increasingly turned to online methods of publishing and distribution. The online medium enables them to communicate quickly and effectively with their subscribers and constituents, and provides other benefits as well. These benefits include the ability to personalize information for customers, and target advertisements to customers based on their interests – *i.e.*, the practice labeled by the FTC Staff as "behavioral advertising."

ABM believes the FTC Staff's proposed self-regulatory guidelines for behavioral advertising are premature, overbroad, and unwise. The proposed self-regulatory guidelines are not based on any empirically demonstrated need, and indeed even the advocates for regulation of this field can offer only highly speculative hypotheticals in support of their desired regulations. The proposed guidelines would sweep broadly in imposing a plethora of new rules and regulations

on a nascent advertising methodology of great promise, and would therefore inevitably chill and inhibit this promising new methodology.

Targeted advertising holds many promises for the advertising industry and for consumers of advertising (including business to business advertising). The concept of targeted advertising is not new; it is a method of advertising distribution that works well for both advertisers and consumers. Advertisers always seek to direct advertisements to consumers who would be most interested in their message. That is why beer is advertised in ball parks and diamond rings in upscale magazines, and rarely the reverse. Indeed, the more specifically that advertisements are targeted, the less likely consumers are to be burdened with unwelcome or irrelevant advertising, often disparagingly referred to as "junk mail." For these reasons, our public policy should encourage the development of targeted advertising techniques, to better enable advertisers to reach their desired consumers and to better sift out for consumers ads that are irrelevant to their interests.

Targeted advertising may be particularly beneficial in the business-to-business field in which most ABM members operate. Business-to-business communications is a huge field, of great importance to the nation's economy. For business persons in a particular field, news, information and advertising about their particular trade or industry is all-important. It keeps them abreast of new developments, products and services. It keeps them informed about new marketing and productivity possibilities, as well as important legal, economic, and political developments in their state, the nation, and the world. Such important business-to-business information channels should not be burdened with overbroad and burdensome rules and regulations formulated with an entirely different channel – business-to-*consumer* communications – in mind. Overbroad or inappropriate targeted advertising regulations would inhibit business-to-business communications both by inhibiting targeted advertising that contains useful information and by depriving business-to-business communications of the advertising revenue that they need to maintain their informational publications. Regulation that inhibited effective business-to-business advertising would likely reduce the amount of such advertising, which could in turn diminish the quality and quantity of editorial content both in hard copy and on line that is supported by advertising dollars.

As the FTC's hearings on behavioral advertising last fall revealed, the advocacy groups that seek regulation of targeted internet advertising offer no credible empirical evidence as to any consumer harm or serious concern about the practice. Indeed, since targeted advertising does no more than present advertisements to consumers that seem to reflect the consumers' interests, the most natural conclusion would be that consumers would fully expect advertisements to be targeted in cyberspace, as indeed they are in other media. Subscribers to travel magazines are presented with travel advertisements in the magazine, and, often as well, in travel-related mailings or other communications. Thus, it is hardly surprising that internet users who browse and possibly register at travel-related websites are presented with travel-related internet advertisements and possibly emails.

At the very least, no regulatory requirements should be imposed, or self-regulatory principles "suggested" by the FTC, without serious and credible study and empirical research. Among

other things, future research should distinguish between business-to-consumer advertising and business-to-business advertising, because of the significant differences in those two advertising channels. Consumers of business-to-business advertising, for example, may have much greater tolerance for targeted advertising than consumers of ordinary business-to-consumer ads, for various reasons, including (1) the business consumer's need and desire for relevant business-related communications, including advertising in his or her specific field, (2) the business consumer's desire to have irrelevant "junk" materials weeded out, and (3) diminished privacy concerns. It may well be that targeted advertising concerns in business-to-business advertising are much different from those in business-to-consumer advertising, and hence the two methods should be regulated differently and informed by different voluntary principles. Without valid empirical research, any blindly imposed regulations or self-regulatory principles may well turn out to be inappropriate and counterproductive.

The FTC Staff's proposed self-regulatory guidelines as currently formulated are overly broad, and if adopted would lead to many problems. Among other things, the proposed guidelines present the following problems:

- The requirement of affirmative opt-in consent would significantly restrict useful targeted advertising and burden internet users. Such a drastic new requirement should certainly not be imposed, if at all, in the absence of empirical evidence regarding consumer desires and the impact of such requirements (including, for example, the likelihood that it would lead to internet users being confronted with increased numbers of non-targeted and unwanted "junk" advertisements).
- It is unclear under the proposed guidelines whether, when a consumer chooses an "opt-out," that opt-out would apply to solely collection of PII, or to clickstream data as well. If it applied to clickstream data, the regulation would essentially be prohibiting use of valuable information for which there is no legitimate privacy concern. Other questions with respect to the opt-out concern are whether it would be blanket/permanent or session specific, and whether it would apply to advertisers on the site where the consumer's browsing activity occurred.
- The guidelines' security rules contain many unclear and undefined terms, including "necessary," "reasonable security," "legitimate business needs," and "as long as is necessary to fulfill legitimate business needs."
- The proposed requirement that businesses contact consumers for affirmative consent with respect to modifications of privacy policies would seriously burden businesses and force them to burden consumers with inquiries that the vast majority of consumers do not want and will not pay attention to. Businesses should be free to formulate workable privacy policies acceptable to consumers without imposition of unneeded and unworkable rules. Most privacy policies provide that modifications can be made without specific notice to and assent from consumers, and consumers generally understand and accept such policies.

In short, no empirical need compels the proposed guidelines. Targeted advertising is a useful, generally consumer-friendly practice, and its promising applications to the internet should not be inhibited and burdened with broadly worded warning, disclosure, tracking, and opt-out

Mr. Donald S. Clark  
April 11, 2008  
Page 4

responsibilities, whether through self-regulation or government regulation. And in its further study of this issue, the Commission should carefully focus on distinctions between business-to-consumer and business-to-business advertising, so that any rules imposed because of concerns about the former are not inappropriately imposed on the latter as well.

Thank you for your consideration of these comments.

Very truly yours,  
THOMPSON COBURN LLP

By 

Mark Sableman

MSS/ss

cc: Mr. Gordon T. Hughes II  
Ms. Jean M. Maddalon