

Re: CAN-SPAM Act Rulemaking, Project No. R411008

Federal Trade Commission
CAN-SPAM Act
Post Office Box 1030
Merrifield, VA
22116-1030

We are very concerned that the FTC will promulgate rules that will hurt legitimate business. I work for a legitimate e-commerce retailer. We only do first party e-mail to customers that have made purchases from us. We do use affiliate marketing from legitimate 3rd party e-mailers. Our company employs over 50 people and will pay over a million dollars in taxes this year. If the FTC applies this law with too heavy a hand, our company and many other legitimate companies may cease to exist.

We are in favor of CAN-SPAM. The inundation of illegitimate e-mail has lessened the message for all of us legitimate marketers. There are two types of commercial e-mail, legitimate and illegitimate. The opt-out provisions of the CAN-SPAM only apply to the legitimate e-mailers. Spammers will continue to spam and any opt-out link in an e-mail may only serve to alert them that there is a live recipient at that address. We can only hope that the spammers are caught and the penal provisions of the act will come into play. But for legitimate e-mailers, the opt-out provisions must be tailored to give the consumer control while allowing this very legitimate form of commerce to continue.

Turning to the opt-out provisions, the ambiguity arises when affiliates are sending messages. The question, should opting out of an affiliates offerings Ban the Brand that is being offered. In other words XYZ is 3rd party e-mailer sending out advertisements to persons that have opted-in. XYZ company example:

- One of the companies XYZ advertises for is Coke;
- Meet Customer A. She is married and has two kids;
- Customer A opted-in to receive XYZ offers because it contains great coupons;
- Customer A is someone who loves Coke and Coke's newsletter;
- During one week Customer A receives 3 ads from XYZ before receiving a 3rd ad for Sprite (a Coke product);
- Being for whatever reason, she decides she doesn't want to receive XYZ ads anymore and unsubscribes, does this mean that Coke cannot send her their newsletters?
- It seems like yes, even though that would probably not be the customer's intention.

There is the more egregious scenario where:

- Customer A's husband or teenage kids open the XYZ add and hit unsubscribe.

From our perspective, we don't believe that opting out of a 3rd party offer should "Ban the Brand"

If however, the Commission does decide to adopt this position, we would like to offer the following suggestion that would make this more tolerable.

Please recognize the different types of e-mail offering made by “affiliates”.

One offer in mailing

Catalog of offers

Newsletter

There can be different rules for each type of mailing. For one affiliate making one offer, if the customer clicks unsubscribe, they should be from the list and the brand making the offering; if there is a Catalog of offers – the customer should only be removed from the catalog list; and if it is a Newsletter, the customer should only be removed from the newsletter, unless newsletter is all about the advertiser and there is only one advertisement, then both the newsletter and the brand.

Thank you for your consideration.



William Dunlap
VP Business Affairs
E-Babylon, Inc.