

September 13, 2004

Public Comment for Federal Trade Commission (FTC)
CAN-SPAM Act of 2003 Rulemaking, 16 CFR Part 316
Project No. R411008, RIN 3084-AA96

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Harte-Hanks filed comments on March 31, 2004, related to "primary purpose," and e-mails of a "transactional nature," part of which were addressed in the August 13 discussion of the Federal Trade Commission (FTC) in its call for public comments. However, we remain concerned that the definition of primary purpose, and the application of CAN-SPAM Act requirements in general, as they relate to single, unique business-to-business e-mail communication may not be recognized as an overly burdensome requirement to businesses, large and small alike.

While we support strict adherence to CAN-SPAM for *bulk* targeted business-to-business (and consumer) e-mail campaigns, we seek relief from such requirements when engaging in uniquely conceived, *single* one-on-one e-mail between a business individual in a marketing organization and a prospective or existing business customer.

Again, we respectfully request that the FTC exempt single or limited number e-mail(s) sent manually by single salespersons to a single prospect (or client) in a business-to-business (b-to-b) setting.

Brief Discussion in Support of this Exemption from Promulgation:

What matters most in marketing effectiveness is relevance. Thus, the ability for a businessperson to communicate honestly, clearly and freely with other businesspersons is vital to commerce, and, indeed, important for establishing relevance. Certainly, it serves a business's own interest to remove from future communication any individual who says "don't contact me again," no matter what the medium. But on a one-to-one level, CAN-SPAM requires a tremendous mobilization of resources to ensure that all future marketing e-mail from anyone in the entire organization gets "shut down" if a prospective client or customer opts out of a commercial e-mail sent by one business individual from within the marketing organization. That can be done with some effort for bulk e-mail campaigns. However, it simply does not make economic sense when one part of a marketing organization may have complete "relevance" to a customer, and may even have a thriving e-based relationship with a customer, while another part of a firm may or may not. It

takes the ability of our individual salespeople to "probe" here to determine relevance for any given product/service that we offer that may indeed deliver value to a client or prospect which is "discovered" during ongoing communication.

The demand for unique, single e-mail exception is important for several reasons. In the world of business-to-business marketing, it can take as many as five contacts (and oftentimes many more) to take an identified lead for new business and nurture it to a sale. This is a process that is unique to each prospect or client, and may involve many types/forms of individualized messages from a salesperson to a buyer, influencer, or potential user – using many different types of media, e-mail primary among them. Under close examination, the FTC may determine that (1) the primary purpose of such single, b-to-b e-mails is not commercial advertisement or promotion, per se, but an ongoing dialogue with an identified business lead. Or the FTC might determine that (2) such e-mails should be identified as an additional category of transactional or relationship message.

We again take note of the example offered in the United Kingdom e-mail law which treats corporate subscribers differently than consumer subscribers – and other nations in Europe (but not all) appear to be following Britain's lead. Telemarketing regulation in the United States, in part thanks to the Commission, also strives to distinguish and differentiate regulation in the b-to-b space.

Conclusion and Additional Information

The success of b-to-b commerce depends largely on 1:1 relationships between business individuals, not just relationships between two businesses. Two other widely used media -- field sales and telephone marketing – recognize this, and this is now already well established in e-mail marketing.

Thus, if the Federal Trade Commission would interpret single or limited number e-mail(s) sent manually by single salespersons to a single prospect (or client) in a business-to-business setting as a "transaction" related e-mail, or a commercial e-mail message that is not burdensome to corporate and Internet Service Provider e-mail systems, and therefore beyond Congressional intent here to prohibit or restrict, then that would go a long way in capping the significant burdens brought on by the CAN-SPAM Act, while preserving the generation of commerce.

We appreciate the Commission's openness here to public comment. If my company can be of further support to the Commission as it decides this matter, please feel free to contact me, Gary Skidmore, at (512) 434-1101 in Austin, TX, or via e-mail at gary_skidmore@harte-hanks.com.

Respectfully submitted,

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