



**HAND DELIVERED**

**June 27, 2005**

*Before the*  
**Federal Trade Commission**  
**CAN-SPAM Act Rulemaking-- Comment**  
**Project No. R411008**  
**Comments of**  
**Cendant Corporation**



Cendant Corporation ("Cendant") appreciates the opportunity to submit additional comments on the Federal Trade Commission's ("FTC" or "Commission") Notice of Proposed Rulemaking implementing the Controlling Assault of Non-Solicited Pornography and Marketing Act of 2003 ("CAN-SPAM Act" or "the Act") which became effective January 1, 2004 and imposes a series of new requirements on the manner in which commercial electronic mail messages may be sent.

Cendant supports the Commission's effort to investigate and eliminate unsolicited commercial email in the industry. We actively support the CAN-SPAM Act in our business practices today. However, we have concerns regarding certain revisions proposed by the Commission's Advance Notice of Proposed Rulemaking issued on March 11, 2004. Cendant emphasizes that the proposed changes will have a significant impact on the costs of businesses that rely upon email communications in order to provide consumers with the goods and services that they desire. Cendant offers the following general comments for consideration by the Commission in addition to our earlier comment letter submitted April 20, 2004.

**CENDANT OVERVIEW**

Cendant Corporation is a diversified global provider of business and consumer services within the hospitality, real estate, vehicle and travel sectors.

Cendant's hospitality division is the world's leading franchisor of hotels through ownership of brand names that include Ramada®, Days Inn®, Howard Johnson®, Travelodge®, Knights Inn®, Super 8 Motel®, Wingate Inn®, Villager Lodge/Premier® and AmeriHost®, a leading operator of branded time share resorts (Fairfield®) and the world's leading time share exchange service (RCI®).

In vehicle services, Cendant owns Budget® and AVIS®, the nation's second largest car rental system.

Cendant provides services to the travel industry through its Galileo®, Wizcom reservations and global travel ticket distribution services as well as its on-line (Orbitz.com, Trip.com, and Cheaptickets.com) and off-line (Cendant and Cheap Tickets) travel agencies.

Cendant is also the leader in franchised residential real estate brokerage operations through its CENTURY 21®, Coldwell Banker® and ERA® brands, and provider of employee relocation services (Cendant Mobility).

**I. Whether the definition of “transactional or relationship message” should be modified to include “business relationship messages” which are individualized messages that are sent from one employee of a company to an individual recipient.**

The definition of “transactional or relationship message” should be modified to include “business relationship messages” when messages are sent from an employee to an individual recipient. No distinction should be made as to the sender, whether it is the company or an employee of the company.

Many companies and employees or agents of the company frequently use email to advise their existing customers of information that is desired by the customer. In response to customer requests, Cheap Tickets has a practice of routinely emailing customers to alert them of new travel specials that Cheap Tickets knows would be of interest to the customer. In this example, both the business and the consumer benefit. It is the relationship between the parties that provides the knowledge for the business entity to identify its customers’ needs and buying practices. This relationship, coupled with the ability to directly contact the customer through email to inform her of opportunities, creates a valued service to the customer while helping the business retain a satisfied customer. Without the ability of the employee to contact the customer, the value of the relationship is lost. The proposed rule needs to provide an exemption to permit direct contact with existing customers to continue so long as they are permitted to opt out of continuing the email relationship.

The presence of an established business relationship was determined to be an acceptable criterion for granting exceptions from compliance with the National Do Not Call Registry. A similar exemption relative to a National Do Not Email Registry would be imperative to achieve the necessary balance between continued economic viability of senders and effective consumer protection. Accordingly, Cendant strongly supports the inclusion of an established business relationship exception from an employee of the company to an individual recipient, if the intended recipient has not elected to opt-out of receiving commercial email from the sender. The characteristics of an established business relationship should be consistent with the National Do Not Call Registry. Emails can be sent within 18 months after the end of a sale or transaction and within 3 months after a consumer inquiry. These emails can be sent even if the person’s email

address is on the registry list. However, if a person requests to be placed on a company specific list, the business must do so and refrain from emailing them again.

## **II. Whether the FTC should adopt a “safe harbor” with respect to opt-out and other obligations for companies whose products or services are by affiliates or other third parties.**

As indicated in our earlier comments, the Commission has been consistently cognizant of inadvertent violations resulting from errors by entities that make a good faith effort to comply with the laws and regulations under its charge. Cendant asks that the Commission equally recognize the chance for error in complying with the CAN-SPAM Act and its attendant regulations. This would be of particular importance under the auspices of a National Do Not Email Registry.

While the mechanism for such a registry is uncertain, it will surely be more involved than the National Do Not Call Registry. The latter handles telephone numbers for which there is a definable number of combinations available. With email addresses, on the other hand, there are an infinite number of combinations. Many people have multiple email addresses and change them frequently. The chance for error increases exponentially. A safe harbor for inadvertent violations would be reasonable and appropriate.

## **III. Under what circumstances should an email sent to effectuate or complete a negotiation be considered a “transactional or relationship message”.**

The CAN-SPAM Act makes a distinction between “transactional or relationship messages” and “commercial electronic mail messages”. A “commercial electronic message” is defined as any electronic mail message wherein the primary purpose is the commercial advertisement or promotion of a commercial product or service. Commercial electronic messages are subject to the rules and regulations of the Act. A “transactional or relationship message” is defined as an email message that has the primary purpose of facilitating, completing or confirming a transaction. Transactional or relationship messages are not subject to the rules and regulations of the CAN-SPAM Act.

At Cendant, we concentrate on growing our core businesses by providing highly focused services to franchisees, licensees, affinity partners, consumers and corporate clients. Our ability to continue growth is based on our efforts to deliver superior marketing. In cross- marketing Cendant provides over 60 million members and customers access to travel, auto, residential and commercial real estate functions and other services. Cross- marketing helps define and unify our businesses and it allows

Cendant to be custom marketers, designing each customer contact and offering in a way that serves the customer best.

For example, Avis car rentals are cross-marketed to customers who make hotel reservations. The communication is presented in the hotel confirmation email. At Resort Condominiums International (RCI), hotel rooms are cross-marketed whenever RCI members need them either before or after their timeshare stay. Budget car rentals are also cross-marketed through Cheap Ticket reservations/communications with customers. Much like a written receipt, an email completing a transaction or negotiation is an important step in the online e-commerce process as it notifies a customer that their transaction was complete or what further steps they need to take to complete the transaction.

One of Cendant's primary concerns with the law is that it will dramatically limit our cross-marketing philosophy and current business practices. Cendant urges the Commission to make clear that cross-marketing within a family of businesses through email (confirmation, broker rate sheets etc.) is considered transactional in nature and therefore, excluded from the Act's regulations.

**V. Whether messages from an association or membership entity to lapsed members should be considered transactional or relationship and whether such messages should be considered "commercial" when they advertise or promote the membership entity.**

Consumers who frequently shop and make a purchase on the Orbitz.com or CheapTickets.com website are encouraged to become a "member". To obtain a membership, the consumers must provide an email address and create a password. Once this information is provided and submitted, the consumer can elect to receive "care alerts" notifying them of travel delays and changes. Members can also elect to be promptly alerted via email about travel offers and promotions. Membership also affords the consumer the ability to bypass logging in their full contact and billing information each time they want to make a purchase. In addition, the consumer can access their travel history with the website. These messages should be considered relationship messages and the company should be allowed to send these messages within 18 months after the end of a sale. In the alternative, these email alerts should fall outside of this limited exception and be sent to the consumer until the consumer requests to be placed on a company specific do not email list.

**VI. Whether ten business days is a reasonable time period for effectuating opt-out requests.**

The ten- business day period is an appropriate time period for processing opt-out requests. The ten-day period would accommodate various ways companies effectuate opt-out requests. Cendant business units process opt-out requests in different ways.

Some synchronize multiple e-mail data-bases, while others forward opt out requests to third parties and some business units must manually process opt-out requests. The majority of opt-out requests are effectuated almost entirely electronically. A hyper link on the email that is sent to them affords the consumer an opportunity to be removed from future emails with virtually one “click”. There is a minority of consumers who call in and speak to a customer service representative and ask to be placed on the do-not email list. The request is documented and electronically stored during working hours. Every seven days batch feeds are sent to the data warehouse and processed. Once a batch job begins, it continues until it is done or until an error occurs. If an error occurs the job is stopped, corrected and run through again. Another example of batch processing is the way that credit card companies process billing. The customer does not receive a bill for each separate credit card purchase but one monthly bill for all of that month’s purchases. The bill is created through batch processing, where all of the data is collected and held until the bill is processed as a batch at the end of the billing cycle. Therefore, manual opt-out requests can be processed from seven-ten days depending on volume and accuracy of the email lists.

## **VII. Whether there should be compliance requirements for referring a friend campaigns.**

The FTC gave guidance on how the CAN-SPAM Act applies to refer-a-friend campaigns. The FTC explained that a person or entity that provides consideration to another to send a commercial email on his or her behalf that advertises or promotes a product is legally responsible for ensuring that the message includes an opt-out mechanism.

The FTC further explained that even where there is no consideration paid for forwarding of the email, and the statement at the bottom of the email says “tell a Friend spread the word by forwarding this message to friends” or “share this message with a friend or colleague click the Forward E-Mail button” both statements would require compliance with the CAN SPAM Act. Conversely, the statements “Email to a friend” or “click here to forward” do not trigger the requirements of the Act, because they are per se de minimis statements.

All of the above examples regardless of consideration are variations of online travel industry marketing campaigns. The words and phrases in each marketing campaign are carefully considered. To theoretically have a list of phrases and words marketing departments can use and cannot use but ultimately saying the same thing is unduly burdensome to corporate entities. Moreover, the nature of the travel industry encourages consumers to forward promotional e-mails to others. Price, currency and availability fluctuations necessitate quick action by consumers if they want to take advantage of specials and promotions. The FTC explained that before a recipient can forward an e-mail to a friend, the sender must scrub the friend’s e-mail address against the sender’s current opt-out list. However, the sender cannot simply scrub the e-mail address against current opt-out lists prior to the recipient forwarding the e-mail on to the “friend.” The sender will only learn the e-mail identity of the friend after the forward has

been made by the recipient. Thus, before a recipient could forward an email to a friend whether the e-mail relates to a sweepstakes or to sales on products and services, the recipient would have to contact the company and ask the company whether the friend is on the company's opt-out list. Then the company will have to respond to the recipient and only then if the friend is not on the company's opt-out list will the recipient be able to forward the e-mail to a friend. This convoluted approach will discourage any recipient from forwarding the e-mail even though they know their friend would be interested in the content of the e-mail. We are concerned that a broad rule would effectively restrict the efficiencies of e-commerce by limiting the ability of individuals to forward email to willing recipients.

Cendant appreciates the opportunity to comment on the FTC's proposal. Cendant remains committed to working cooperatively with the FTC in finding feasible solutions to the concerns set forth herein.

Respectfully submitted,

