

Clifton B. Knight, Jr.  
Executive Vice President  
Legal & Business Affairs

July 21, 2009

Federal Trade Commission  
Office of the Secretary  
Room H-135 (Annex Q)  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Re: Prenotification Negative Option Rule Review, Matter No. P064202

Dear Madam/Sir:

I am writing on behalf of Direct Brands, Inc. (Direct Brands) and Bookspan, collectively referred to as the Companies. The Companies appreciate the opportunity to comment on the Prenotification Negative Option Trade Regulation Rule in response to the Commission's invitation.

Direct Brands is the successor to BMG Direct Marketing, Inc., known as RCA Direct Marketing, Inc. until it was acquired by Bertelsmann in 1986. Subsequent to its acquisition of The Columbia House Company in 2005, it was known as BMG Columbia House, Inc. The company was acquired by JMCK Corp., a Najafi company, in 2008 and the name was changed to Direct Brands. Direct Brands operates Columbia House. Columbia House, with its long and well known history, is a prenotification negative option club which sells DVDs and Blu-ray discs to club member subscribers.

Bookspan (formerly a partnership between Bertelsmann and Time, Inc.) was acquired by JMCK Corp. from Bertelsmann at the same time it acquired Direct Brands. Bookspan operates prenotification negative option book clubs including the highly regarded Doubleday Book Club, Book of the Month Club, Literary Guild and eighteen other specialty book clubs.

The Companies fully support the Prenotification Negative Option Rule and recommend that it be retained in its present form based on its continuing benefits to consumers and business.

I am taking the liberty of attaching my letter to the Commission dated May 30, 1997, in connection with an earlier review of the Rule by the Commission. While the business of BMG Direct Marketing at that time was music products, and the product lines of Direct Brands and Bookspan presently are DVDs and books respectively, it is the view of the Companies that the merits of the Rule are precisely the same as set forth in the May 30, 1997 letter. In fact, we believe that in the decade-plus that has passed since the last review of the Rule the positive aspects cited in that letter with respect to the functionality of the Rule have been fully proved out.

Direct Brands, Inc.  
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In the event the Commission wishes to take initiatives with respect to any marketing paradigm outside the scope of pure prenotification negative option plans, e.g., auto renewal, free-to-pay conversion, etc., we strongly urge that the Commission undertake such efforts in separate proceedings.

Thank you again for the opportunity to comment in support of the Rule.

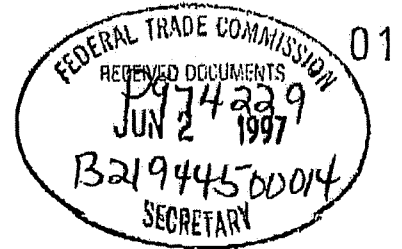
Very truly yours,

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Clifton B. Knight, Jr.  
Executive Vice President, Legal & Business Affairs  
Direct Brands, Inc.

Executive Vice President, Legal & Business Affairs  
Bookspan

CBK/te  
Attachment



Clifton B. Knight, Jr.  
Senior Vice President  
Business Affairs

May 30, 1997

Secretary  
Federal Trade Commission  
Sixth Street and Pennsylvania Ave., N.W. Room H-159  
Washington, D.C. 20580

Re: Negative Option Rule 16 CFR Part 425 -- Comment

Dear Madam/Sir:

BMG Direct Marketing, Inc. appreciates the opportunity to comment on the Negative Option Trade Regulation Rule in response to the Commission's invitation. BMG Direct, which is a Bertelsmann company, succeeded RCA Direct Marketing, Inc. in 1986, and currently operates mail order music clubs subject to the Rule. Over the past decade, BMG Direct has grown dramatically in membership and revenues. Today, our company features music targeted to many genres including: pop, rock, alternative, country, R&B, jazz, classical, gospel and Christian through four separate music clubs -- BMG Music Service, BMG Classical Music Service, the BMG Jazz Club and Sound and Spirit.

BMG Direct firmly supports the Negative Option Rule and urges its retention in its present form. In our opinion, the Rule is good and important in that it benefits both consumers and business. Substantial benefits to consumers are obvious: the disclosures required by the Rule ensure that, prior to enrollment, consumers are made aware of a club's membership terms and the customer's rights, and the other obligations required by the Rule ensure that prenotification negative option plans are operated in a way that is fair.

The benefits to the business are also significant. Experience has shown us that providing the kinds of disclosures the Rule requires is good business practice. Clear disclosures about how the club works help avoid customer service problems. Music clubs like ours depend for their success on establishing solid, long-term relationships that customers trust. We have found that the Rule's provisions foster the creation of such relationships. This is confirmed by the fact that a substantial portion of our members first learn of our music clubs through word-of-mouth from satisfied members and enroll under member-get-a-member programs. In addition, many of our members return to us after a hiatus. We attribute our positive reputation, customer loyalty, and long-lasting customer relationships not only to the quality goods and services we provide, but also to our open, up front approach to doing business -- an approach that is supported by the Rule.

By providing a structure that serves member needs and the interests of the industry, the Rule allows music clubs like ours to provide great value to consumers. Music clubs provide an easy and convenient means for customers interested in expanding their personal music collections. These benefits are often made available to consumers who would otherwise have limited access. We provide a wide range of titles and deep back catalog listings of often hard to find products. Our membership magazines provide consumers with expert advice and recommendations upon which they rely; we feature informative editorial pieces, interviews, and other music related news. Consumer reporters and commentators on the kinds of prenotification programs like BMG Direct's music clubs have been quite positive recognizing their value to consumers.

Our actual experience has shown that the Rule is working well, both from our point of view and that of our customers. Based on the positive feedback we have received regarding our customer service, we believe that our customers are satisfied with the disclosures and terms required by the Rule, that they understand very well how the prenotification negative option program works, and that the time periods and the other terms required by the Rule are adequate and effective for consumers.

It should be noted that while BMG Direct's costs of compliance with the Rule are substantial in staff time, energy and dollars, the investment is worthwhile. Importantly, no costs at all are imposed on our members.

We are aware, of course, that there has been criticism of certain marketing practices sometimes called "negative option billing" -- including, for example, companies that have unilaterally billed a customer for goods or services provided to the customer without the customer's prior request for those goods or services. These controversial marketing practices are not remotely akin to practices of traditional prenotification negative option plans operated by book clubs and record clubs. Negative option book and record clubs governed by the Rule, including those of BMG Direct, operate solely on the basis of a consumer's prior request to join the club and the customer's express consent to receive regular notice of automatic shipments with the option of accepting or rejecting those shipments.

In the event the Commission determines it appropriate to take any initiatives regarding the practices described above, BMG Direct urges that any such steps be taken in separate proceedings, and that it examine such issues in their appropriate context.

Importantly for the future, and given the Commission's interest in technology, it is worth noting that the existing Rule already works well in the on-line internet setting, as we at BMG Direct can attest based on our very positive experience with our website.

For all of the reasons enumerated above, BMG Direct urges the Commission to retain the Negative Option Rule in its present form. We appreciate having had the opportunity to comment.

Sincerely,

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