

November 13, 2014

Via electronic filing

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

RE: Telemarketing Sales Rule Regulatory Review, 16 CFR Part 310, Project No. R411001

Dear Secretary Clark:

On behalf of the MPA- The Association of Magazine Media we write today to thank you for the opportunity to discuss the Federal Trade Commission's review of the Telemarketing Sales Rule (TSR) which was printed in the Federal Register on August 11, 2014. MPA represents 175 domestic magazine media companies with more than 900 titles that span an enormous range of genres across print and digital media. Our industry plays a prominent role in culture, society and the economy by fulfilling readers' desires for timely information and entertainment that appeal to a broad spectrum of personal interests. The telemarketing practices our members currently utilize connect readers to the publications and resources they value and trust most. In its current form, the TSR has functioned well and continues to serve its purpose of protecting the customers we serve as well as the operations of legitimate businesses. As the Commission carries out its systematic review of the TSR, we hope the comments below inform your work in order to best achieve our shared goals.

MPA has concerns that certain changes the Commission is considering could negatively impair the legitimate use of telemarketing practices. In general, regulations that impose greater burdens or obligations on consumers do so at the detriment of both the consumer and industry. Consumers should have the opportunity to make purchases in as painless and straightforward a manner as possible. Regulations that complicate the consumer experience by requiring increased layers of consent can be both frustrating and overburdening for the consumer and can ultimately discourage their interest in completing a transaction they previously intended to make. Such an outcome would fail a workability test.

Data Retention

The Commission's consideration to enact additional consumer consent requirements in regards to automatic renewals, negative option transactions, free to pay conversions and free trials is concerning to our industry. As stated previously, over burdening the consumer and making the transaction process more complicated can be frustrating and discouraging to a consumer interested in completing a transaction. Magazine publishers as a general practice do not retain the account information of their customers except in the case of an automatic renewal transaction. In these cases, the retention of the account information is a service of convenience the seller is providing their customer, to process their payment automatically as opposed to the customer being billed and required to mail in their payment. This is a service the customer knowingly agrees to in the same sense as a gym membership or cell phone billing agreement. Requiring consumer consent to store billing information in this way is unnecessary and would only serve to add an additional layer of complexity to the transaction process that is redundant and annoying for the customer.

In today's world transactions are increasingly becoming easier and less burdensome for the consumer. When the global market is trending towards simplifying the consumer experience, we would suggest that the FTC not complicate a process that allows the consumer to interact directly with a company representative.

Data Pass Transfers

U.S. magazine publishers agree with the Commission's assessment that usage of the data pass process has declined steadily in light of the Restore Online Shoppers Confidence Act (ROSCA), as well as the policy changes Mastercard, American Express and Visa enacted several years ago that prohibit the transfer or use of preacquired credit card information between merchants and third parties. As you know, ROSCA only deals with online transactions, and was passed in response to an extensive record of concrete consumer complaints and actual harms regarding specific online transactions. This record does not exist regarding telemarketing, and extending ROSCA's requirements to telemarketing is not warranted. However, it does appear that, as a result of the credit card brands' self-regulation, that the use of data pass between different sellers is being eliminated for other mediums as well.

Given the continued evolution of companies away from data pass, as a result of ROSCA and the credit card regulations, we offer the Commission the suggestion that concerns regarding deceptive or unfair transfers of preacquired account information are no longer necessary. Additionally, the Commission's consideration to prohibit all transfers of account information goes even beyond the scope of ROSCA which specifically says a third party seller "is not— (i) the initial merchant; (ii) a subsidiary or corporate affiliate of the initial merchant; or (iii) a successor of an entity described in clause (i) or (ii)."¹ It is the position of MPA that the TSR should not use a different definition of data pass or be more restrictive than ROSCA.

If the Commission believes additional restrictions are needed for data pass, MPA recommends that the Commission limit any changes to external transfers of account information among different unaffiliated sellers, as was done in ROSCA. As opposed to an "external" transfer of account information to or from different sellers, where the potential for consumer confusion

¹ 15 U.S. Code § 8401 (3)

exists, an “internal“ use of preacquired account information does not entail any data transfer, and is ultimately not confusing or potentially harmful to consumers. In the case of an internal use of preacquired account information, the consumer has knowingly given their account information to the seller and is now merely being asked to authorize use of the same account for the purchase of another product or service by that same seller. As is recognized by the TSR rules currently in effect, the consumer’s provision of the last four digits of their credit card serves as confirmation of their intent to purchase, but is not an obvious annoyance. Consumers are familiar and very comfortable with this type of transaction, and it is particularly true on the phone, where a consumer has a direct interaction with a seller, is able to ask questions and can be offered additional information.

Negative Option Marketing

We believe further restrictions on negative option offers, particularly in internal transactions, will inevitably decrease their legitimate use, which would be a negative development. The growing use of automatic renewals in the publishing industry, and the continued use of free trials and introductory rates, is a good thing for both our readers and our companies. Free trials, which have been used by many types of media for decades, give consumers the ability to try a new magazine. Whether it is a new title or genre, or a monthly magazine subscription, free trials allow the consumer to test drive a product without having to pay for it. If a reader is satisfied, they can continue on with the agreed-upon subscription. If not, they can cancel it without having to pay anything. For publishers, free trials encourage new readers to try new products they otherwise might not be willing to pay to sample.

Automatic renewals have advantages for sellers and consumers as well, a fact supported by the increasing number of industries and services migrating to its use. For consumers, automatic renewal guarantees uninterrupted service for as long as the reader wishes to continue receiving the product. For publishers, automatic renewal provides opportunities for operating at a reduced cost, enabling product prices to stay low. As much as free trials and automatic renewals provide benefit and convenience to consumers, so too should the sales process be beneficial and convenient for the consumer.

As contemplated, mandating that consumers must provide their full 16 digit credit card numbers for each additional purchase within an internal upsell would be quite the opposite, significantly impacting sales and serving as a source of frustration for consumers.

Consider a sale in which a consumer calls to order a subscription to magazine A, and following the completion of that sale is offered an automatic renewal subscription to magazine B. Under the FTC’s proposed revision, before completing the sale the consumer would need to be reread the TSR disclosures and repeat the 16 digits of the credit card they just provided. It is entirely reasonable to assume that a magazine reader might be interested in receiving another title in the publisher’s stable of magazines. Since the consumer has already given their full account information to the seller, it is difficult to justify the need to require the provision of additional account information beyond the last four digits of the same credit card.

The same logic applies to the example of a publisher's products with natural affinities. Consider the case in which a consumer calls to order a cookbook from a publisher who subsequently offers a subscription to a cooking magazine that contains an automatic renewal feature. As mentioned above, it is difficult to understand why the mere inclusion of an automatic renewal provision would necessitate the collection of the full 16 digits of the credit card again, so soon after it has been provided for the purchase of the book. Absent the automatic renewal provision, the consumer would be making the same purchase, for the same dollar amount, but without the inconvenience of having to provide their full 16 credit card digits again.

General Media Advertising

Magazine publishers are additionally concerned with the Commission's consideration to eliminate the TSR's 'general media' advertising exemption. Take, as an example, a newspaper subscriber who receives the weekend edition of a newspaper. It is common for a newspaper publisher to place an advertisement in the weekend edition offering weekend subscribers a free trial or introductory rate for an everyday subscription to the newspaper. After being provided appropriate information related to the free trial, publishers are concerned about the additional time and expense required of both consumer and seller if full TSR disclosures must be provided simply because the everyday subscription offer contains a negative option feature. Publishers are also concerned about the customer frustration with subsequently being required to provide the full 16 digits of their credit card for a product they are already paying for. The net effect could be an annoying experience for the consumer and a significantly depressed conversion rate for the publisher – surely not the goal the Commission is pursuing.

An alternative that could provide adequate disclosure for consumers and conserve business resources might be to retain the exemption for print advertisements in which all of the disclosures required under the TSR are contained in the advertisement. This would be consistent with the current treatment given to direct mail, which enjoys an exemption if the disclosures are given on the mailed piece. Much like direct mail, the consumer would be capable of retaining the disclosures in a print ad if they so desired. It would also better provide small publishers, who may lack the resources for extensive telephone customer services operations, some flexibility in compliance.

We'd also ask that you consider reshaping the exemption in a way that allows for advertisements of publishers products in publisher's own media products to remain exempt. For example, an advertisement for a magazine during a television segment branded with the same title, or an advertisement for a publisher product in a publisher title. Publishers who only do this type of advertising would then not have to create extensive new telemarketing procedures. Again, this may particularly benefit smaller publishers.

Recordkeeping

We support the Commission's effort to ensure compliance with the National Do Not Call Registry, and believe a requirement of telemarketers to retain their own call records, is a reasonable and workable approach. Some magazine publishers are currently requiring third party telemarketing providers to maintain outbound call records for three years as part of their business agreement. This voluntary effort ensures regulatory compliance of the company as well as its

agents. In addition to regulatory compliance, recordkeeping requirements would be an added layer of transparency that further blocks opportunities for fraudulent behavior.

On behalf of the U.S. magazine publishing industry, we appreciate the Commission's willingness to engage with our industry on these important business issues. In regards to the TSR, we believe the Commission should proceed cautiously, particularly in the case of pre-acquired account information and negative option features. As they have for decades, free trials and automatic renewals provide consumers and publishers real benefits. Because we depend on customer satisfaction, we have in place significant consumer protections around our subscriptions, such as the ability to cancel a subscription and receive a refund for the remainder of the subscription period – no questions asked. Imposing excessive requirements around negative options will surely discourage their use – a position that is both unfair and to the overall detriment of the consumer.

We thank you for the opportunity to submit these comments, and look forward to continuing to work closely with the Commission on the concerns you have expressed in a manner compatible with our longstanding business practices.

Sincerely,

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MPA- The Association of Magazine Media

Mary Holland
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