

March 31, 2004

Public Comment for Federal Trade Commission (FTC)
CAN-SPAM Act of 2003 Rulemaking, Project No. R411008

Filed electronically at <http://www.regulations.gov>

Comments Submitted by:

Gary Skidmore
Senior Vice President
Harte-Hanks, Inc.
2800 Wells Branch Parkway
Austin, TX 78728-6762
gskidmore@harte-hanks.com

Specific Part of Act to which We Direct our Comments:

The Federal Trade Commission requests comments on two definitions that are of interest to Harte-Hanks: 1) "how to determine an electronic mail message's primary purpose, including comment on criteria that would facilitate this determination" and 2)"additional categories of messages that changes in technology or practices might warrant excluding from the definition of "commercial electronic messages" by designating them as "transactional or relationship messages."

Summary of Our Request for Consideration:

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. 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.

About Harte-Hanks, and our Interest in Combating "Spam"

Harte-Hanks is a full-service direct and interactive marketing service provider that delivers multichannel marketing solutions to both consumer and business-to-business marketing clients in a range of vertical industries. We are publicly listing company based in San Antonio, TX, and we have more than 7,000 employees worldwide, mostly in the United States. Our largest state as far as employees is California, and we have significant employee concentrations in Texas, Florida,

Pennsylvania and Massachusetts, among other states. We also are members of the Direct Marketing Association, Association for Interactive Marketing and the Internet Alliance.

In our view, The CAN-SPAM Act is a needed regulation in the face of unwanted, unsolicited e-mail, or "spam." Our company believes that targeting and relevancy are vital to the success of any marketing initiative – but no matter how targeted a message may be, it can be lost inadvertently among a sea of unwanted e-mail in people's inboxes. A considered, multifaceted, flexible approach – consumer and business education, legislation, litigation, and technologies – is necessary if we are to overcome this issue intelligently and effectively.

Certainly, we embrace the federal law in that we need to avoid a patchwork of inconsistent state regulation that had been emerging. To some extent, some day, we may need to grapple also with inconsistent international regulation, but we will focus comments on the promulgation of CAN-SPAM Act here.

Discussion: A Needed Distinction in the Regulation for Business-to-Business Marketing

With the forthcoming regulation we request that there be a distinction or differentiation offered for business-to-business (b-to-b) marketing. The demand for this distinction is important for several reasons, and a two-pronged approach for regulating e-mail, consumer and b-to-b, is necessary. For example, the new United Kingdom e-mail law 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.

Why is this important? First, the "culture" for privacy that exists in the consumer marketplace is frankly not suited for business marketing. Businesses depend on a free-flow of ideas to generate commerce, and to remain competitive. We believe it would be bad for a company to be cut off from the next big idea because of overly restrictive regulation, or, worse, because it chose to shut itself off by implementing a too aggressive e-mail filter, corporate mailroom policy, or secretary screening calls.

Second, smaller companies compete with larger companies because they have the ability to market freely, often by choosing less expensive media over a more expensive field sales force. For b-to-b marketers, e-mail is extremely important as businesses seek to target prospective customers. In many ways, e-mail is even more important than mail or telephone direct-response media, because of its attributes of immediacy, flexibility and ease in customizing messages by individual recipient. (Note, lower cost is NOT mentioned here in that costs for customer acquisition via e-mail actually can be significant.)

Relevancy Matters Most to Marketing Message Recipients

Finally, compliance with the strictest reading of the CAN-SPAM Act, where business e-mail must meet all the requirements of consumer e-mail is unwieldy and problematic. While our business complies with CAN-SPAM Act in its own efforts to target prospects and clients with limited bulk messages – all with physical addresses and opt-out programs in place already, we do have challenges with an individual salesperson in our sales force following up on a lead, or "hot" target, based on publicly available or other observed or acquired information. We often hear that *permission* is the differentiator in e-mail marketing. This is partly true. Actually, *relevancy* is the primary factor whether or not an e-mail message is welcomed. Thus, if a news item, or a Web posting, or networking call, or a business card from a tradeshow, or any number of other publicly

observed facts, or privately researched communications, reveal that a business professional in a particular company may have interest in a product or service that our company (or that of our clients) is offering, then it is vital in b-to-b marketing that a message exploring that interest be sent – and be sent promptly. E-mail is extremely useful here.

The Need to Explore, Develop Screening Technology for the Field

While we strive to adhere to each and every aspect of the CAN-SPAM Act, it is very difficult to police every outbound e-mail message (as described above) sent by every sales person in the field nationwide (and worldwide) when a single, unique communication (as opposed to a campaign communication) is used to reach a possible or identified lead. This is particularly true when some sales individuals work remotely. We are exploring technology to set up some kind of an outbound screen to block all e-mail to otherwise registered "do not e-mail" contacts – a screen that would have to somehow have a mechanism to override since all salesperson e-mail is not a solicitation as defined by the law.

Conclusion and Additional Information

The entire world of b-to-b commerce hinges on this most personal 1:1 communication – so prevalent in field sales and telephone marketing, and now already well established in e-mail marketing.

Thus, if the Federal Trade Commission would exempt single or limited number e-mail(s) sent manually by single salespersons to a single prospect (or client) in a business-to-business setting, then that would go a long way in capping the significant burdens brought on by the CAN-SPAM Act, while preserving competitiveness and free flow of ideas.

We appreciate the Commission's openness here to public comment, and the difficult job it faces in weighing all comments and concerns as it promulgates this important law. 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,

Gary Skidmore
Corporate Officer: Senior Vice President
Harte-Hanks, Inc.

Cc: Jerry Cerasale, Direct Marketing Association
Michael Faulkner, Association for Interactive Marketing
Emily Hackett, Internet Alliance