

Before the
Federal Trade Commission
Washington, DC 20580

COMMENTS ON CAN-SPAM RULEMAKING, PROJECT NO. R411008

I, Susan J. Bahr, for myself and on behalf of my corporation, Law Offices of Susan Bahr, PC, respectfully submit these comments on two issues raised in Section E: Issuing Regulations Implementing the Act, in the captioned advanced notice of proposed rulemaking (ANPR) proceeding.

ANPR SECTION E(4)

A POST OFFICE BOX IS SUFFICIENT FOR A POSTAL ADDRESS

A valid post office box should be sufficient for identifying senders of commercial email. A requirement to put a street name and house number on my commercial email would violate my right to privacy, as discussed below.

I am an attorney whose only office is in my house. I provide only a post office box as a business address. In other words, my business cards, stationery, checks and legal filings all list just a post office box. There is no need for me to routinely give out the street name and number for my house. I do not even have clients come to my house.

My situation surely is not unique. In fact, home-based businesses represent about half of all U.S. businesses.¹ If the FTC were to adopt a rule that prohibits the use of a post office box on commercial email, millions of people operating businesses out of their homes² would need to give the street names and numbers for their homes on commercial email. Surely, there is no governmental interest that compels such an intrusion to homeowners' privacy rights.

Even the U.S. Postal Service apparently does not have such intrusive rules about return addresses on mail. In fact, the companies that send the most junk mail to me via the U.S. Postal Service do not include a valid return address on their mail. But for the CAN-SPAM Act (the Act), there is no reason for email return address requirements to be more stringent than paper mail return address requirements.

Moreover, the Act does not require any more than a valid post office box. The Act requires a "valid physical postal address." The use of the word "physical" was meant only to mean a location where the U.S. Postal Service delivers paper and other tangible mail, in contrast to an "electronic" address where non-paper, electronic mail can be delivered. This differentiation is

¹Office of Advocacy, Small Business Administration, Home-Based Business and Government Regulation ES-1 (2004), available at <http://www.sba.gov/advo/research/rs235tot.pdf>.

² See id. at 18 (number of home-based businesses).

evident in the Committee Report where Congress used the phrase "valid physical postal address" only to distinguish between such an address and a "valid return electronic-mail address."³ While Congress was careful to distinguish between these two types of addresses, Congress readily could have further limited the type of physical postal address that would be accepted. But Congress did not. Congress required only a valid physical postal address - one where non-electronic mail can be delivered. If one were to read more into the Act, one would need to conclude that Congress wanted home-office-based senders of commercial email to provide the street name and number for their houses. There is nothing in the Act that would support such a conclusion.

In sum, neither the Act nor the governmental interest in curbing spam justifies a requirement for millions of home-based businesses to provide street names and house numbers, rather than post office boxes, on their commercial email. Any rule that would require the provision of a street name and house number, rather than a post office box, would violate the First Amendment.

ANPR SECTION E(5)
FALSIFYING THE REPLY-TO OR RETURN-PATH LINES SHOULD BE PROHIBITED

The FTC should clarify that falsifying information in the "reply-to" or "return-path" lines in the header portion of email

³ S. Rep. No. 108-102, at 11 (2003).

messages is a violation of the CAN-SPAM Act and/or the FTC's implementing regulations.

Several months ago, my business's domain name began to appear in the "reply-to" or "return-path" lines of spam sent by people who are unknown to me. As a result, my mailbox was deluged with bounced messages and other spam.

The Act states that it is unlawful to falsify header information. But the definition of "header information" does not explicitly state that the "reply-to" or "return-path" information is considered to be header information. And Section 5 of the Act is no more explicit. Section 5(a)(1) of the Act refers to the originating email address and the computer used to initiate a message. It does not explicitly refer to the return address in the header of an email message. Section 5(a)(3) requires the provision of a valid email address for requests not to receive future commercial email. The requirements of Section 5(a)(3) apparently could be satisfied by having a valid address "clearly and conspicuously displayed" in the text of the message. Thus, it is not clear that the use of my domain name as the return address in the header of an email message is a violation of the Act.

But Congress apparently wanted to prohibit the falsification of return email addresses. The Committee Report for the Act acknowledges that spammers often falsify the return e-mail

address.⁴ And the Report states that the Act would require the use of valid return email addresses as part of the header information.⁵

In sum, the FTC should remedy this situation by: (a) clarifying that the Act does prohibit the falsification of the "reply-to," "return-path," or other similar return routing information in the header of email messages; or (b) adopting appropriate regulations to prohibit such falsification.

Conclusion

For the foregoing reasons, I respectfully request the FTC to:

- Permit the use of a post office box to identify the address of the sender in commercial email.
- State that falsifying the "reply-to," "return-path" or other return routing information in the header of an email message is a violation of the CAN-SPAM Act, or adopt regulations prohibiting such falsification.

Respectfully submitted,

_____/s/_____

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⁴ Id. at 3.

⁵ Id. at 7 (referring to "a valid e-mail return address and other header information" (emphasis added)).