

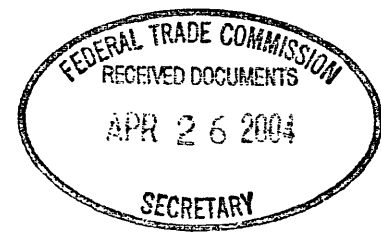
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North Carolina Automobile Dealers Association

ROBERT J. GLASER
President

April 16, 2004

Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580



Re: CAN-SPAM Act of 2003
Rulemaking, Project No. R411008 addressing the definition and implementation of the Act as set forth in sections 3(2)c and 3(17)(B).

Dear Commission:

In advance of the April 20th deadline for comments regarding the CAN-SPAM ACT of 2003, the following comments are submitted for your consideration:

NORTH CAROLINA AUTOMOBILE DEALERS ASSOCIATION. The North Carolina Automobile Dealers Association's ("NCADA") membership consists of individuals who own, manage or work for franchised car and truck dealers in North Carolina. As a tax-exempt nonprofit organization, NCADA exist to serve and provide value to its members who seek membership and/or involvement in NCADA.

NCADA membership provides an important resource to dealers and individuals to achieve a variety of personal, professional, business, social, and educational goals. To assist individuals in achieving their goals, NCADA and other tax exempt nonprofit organizations continuously strive to offer a variety of current communications, sophisticated educational courses and seminars, and related publications, such as books and periodicals. E-mail has become an important vehicle to deliver these messages.

INTRODUCTION. NCADA believes that the Federal Trade Commission needs to clarify the applicability of the commercial electronic mail message ("CEM") definition as it relates to tax exempt nonprofit organizations. In particular, NCADA requests that the Commission's rule-making expressly provide that e-mail transmitted by a tax exempt nonprofit organization primarily related to one or more of the organization's duly authorized tax exempt nonprofit purposes not be considered CEM under the Act and, therefore, be specifically exempt from regulation under the Act.

The language of the Act defines "commercial electronic mail messages" as "any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service . . ." This definition is clearly directed only at activity undertaken primarily for commercial for-profit businesses. Interpreting the CEM definition to include e-mail communications of organizations operating consistent with their tax-exempt nonprofit purposes would be inconsistent with the plain language of the statute, as well as the intention of the Act.

In addition, NCADA would like the Commission to specifically provide in the regulations that any e-mail transmitted by a tax exempt nonprofit organization to current members, regardless of its commercial content, is not subject to the Act because such member communications are "transactional or relationship" messages as defined in Section 3(17)(A) and (B) of the Act.

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The primary purpose of tax-exempt nonprofit e-mail communication is to provide information and resources to their members consistent with the tax exempt's nonprofit purposes. Often these resources are provided for a reasonable fee that covers the organization's costs of development, marketing, and distribution. As nonprofit organizations, however, all monies earned from activities undertaken consistent with an organization's tax exempt nonprofit purposes must be used to further the organization's tax-exempt nonprofit work. Therefore, such e-mail communications should not be considered "commercial" even if they involve the marketing, promotion or sale of goods and services as long as the underlying communication is consistent with the organization's tax-exempt nonprofit purposes.

CLARIFICATION OF THE TERM "COMMERCIAL ELECTRONIC MAIL MESSAGE". The regulations implementing the Act need to specifically address the special role and circumstances of tax-exempt nonprofit organizations. If the Commission were to apply the "commercial electronic mail message" definition to tax exempt nonprofit organizations in the same manner it applies to the term to taxable for-profit entities, it will profoundly confuse, damage, and obstruct the good work of tax-exempt nonprofit organizations.

NCADA has an established membership with whom it routinely communicates through e-mail. These members pay dues and have voluntarily associated themselves with NCADA and desire to receive communications from the association.

Members of NCADA are deeply concerned and confused about the applicability of the Act to them. This uncertainty and confusion could be easily eliminated if the Commission simply clarifies the applicability of the definition of "commercial electronic mail messages." Therefore, NCADA urges to the Commission to recognize that the regulations implementing the Act should distinguish between the activities of tax exempt nonprofit organizations and the work of for-profit, commercial entities.

REQUEST NCADA asks the Commission to clarify that the definition of "commercial electronic mail messages" be directed at regulating activity that primarily furthers the commercial endeavors of taxable for-profit businesses. In this regard, the regulations implementing the Act should specifically provide that the e-mail communications of tax exempt nonprofit organizations consistent with their tax exempt nonprofit purpose are by definition not primarily commercial and therefore do not fall within the definition of regulated CEM.

Additionally, the regulations should clarify that even where e-mail communications from tax exempt nonprofit organizations sent to current members and/or donors are primarily commercial and not related to the organization's tax exempt nonprofit purposes, they should be excluded from the CEM definition as transactional or relationship messages because such communications are primarily intended to provide information in connection with an organization or association membership and/or deliver goods and services under the terms of an existing member or donor relationship.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Glaser', with a long horizontal line extending to the right.

Robert Glaser
President

Cc: Bill Newman, National Auto Dealers Association
Dale Stearns, NCADA Chairman