

**BEFORE THE
FEDERAL TRADE COMMISSION
WASHINGTON, D.C.**

CAN-SPAM ACT RULEMAKING

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: **Project No. R411008**
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**COMMENTS
OF THE
AMERICAN SOCIETY OF TRAVEL AGENTS, INC.,
CRUISE LINES INTERNATIONAL ASSOCIATION
And
NATIONAL TOUR ASSOCIATION**

The American Society of Travel Agents, Inc. (“ASTA”), the Cruise Lines International Association (“CLIA”) and the National Tour Association (“NTA”) (collectively the “Travel Associations”) hereby respond to the captioned advance notice of proposed rulemaking with respect to management of commercial e-mail.

ASTA is the world’s largest association of travel professionals. Its more than 20,000 members include travel agents, both traditional offline and online, as well as the companies whose products the agents sell, such as airlines, tour operators, cruise lines, hoteliers, and car rental firms. Travel agencies in the United States account for more than \$120 billion in annual sales of travel services over all product lines. Air transactions alone number more than 170 million tickets in a typical year.

The National Tour Association is an association for travel professionals who have an interest in the packaged travel sector of the industry. The association, comprised of nearly 4,000

members, brings together those who package travel (group as well as individual trips) with suppliers and destinations that represent the various components of a trip. Although based in North America, NTA's membership spans the globe.

CLIA is a not-for-profit trade association for the North American cruise industry. Membership in 2003 included 24 member cruise lines (representing over 95% of the capacity marketed in North America). More than 16,000 travel agency locations are CLIA affiliates. CLIA plays an important role in speaking for the cruise industry. A key element of CLIA's mission is to help travel agencies understand and sell cruise travel through sales training, certification programs and marketing services and communications. The Association executes extensive direct mail, fax, e-mail and web site communications to its affiliated travel agencies on a daily basis to inform members of association initiatives, training and education opportunities, as well as news and developments within the cruise segment of the travel industry.

Each of the participating associations is also a signatory on a letter comment dated April 20, 2004 (the "Associations Letter") which addresses in broad policy terms the issues that concern the Travel Associations. In these limited additional comments we will attempt to put a little more "meat on the bone" with respect to matters that strongly, and in some cases peculiarly, affect the travel industry.

I. THE DEFINITION OF “SENDER” IS VERY IMPORTANT TO THE TRAVEL INDUSTRY.

The travel agency community and the trade associations related to them and their suppliers are most concerned about the notion that the statute may be interpreted to have multiple "senders" by virtue of the inclusion of "advertisements" in an e-mail, especially if merely including logos of sponsors, for example, would trigger a requirement to vet "opt-outs" with the e-mail lists of the sponsors. This is a huge problem for small businesses which, in our industry, frequently send promotions on a "co-op" basis with travel service suppliers.

If the agency is sending to its local customer e-mail list, there is no practical way to vet that list against lists of companies like Disney or Carnival Cruise Lines, whose advertisements may be included in the e-mail.. Not only would the costs be prohibitive, but technological limitations on computer-to-computer communications might make it literally impossible to do in an automated way. And while privacy policies could be modified to allow transfer of e-mail lists to third parties for cleansing of opt-outs, this practice would expose confidential lists to capture and exploitation that would be extremely difficult and probably impossible to stop, especially by small businesses.

As long as the travel agency is complying with the physical address and opt-out requirements of the statute, there is no need to fashion a regime in which participating advertisers are also “senders” with attendant vetting requirements.

As far as trade associations are concerned, the problem is similar. ASTA, CLIA and NTA all produce conferences and education meetings which include “sponsors” who rightly expect some exposure of their names, logos and perhaps even more product information in exchange for the consideration they provide that make these industry education experiences

possible. It is essential that such sponsorships, when revealed in promotional e-mails designed to attract attendees, do not trigger costly, time-consuming cross-checking of e-mail addresses. The “primary purpose” of such messages, as indicated in the Associations Letter, clearly is the promotion of the event, not the advertising of the sponsors’ products. But for the event, such e-mails would not have been sent at all.¹

Similarly, e-mails that are clearly transactional or relationship based, such as, for example, communications with existing members, should not have their character changed simply because they contain some commercial message. These communications may well have sponsorship or supportive advertising/promotion messages in them but that fact alone should not defeat the transactional or relationship character of the message that would exist independently of the sponsorship messages. We believe the statute gives the Commission the flexibility to give primacy to the transactional/relationship principles in this regard.

II. FLEXIBILITY IS IMPORTANT IN REGULATING THE “FROM” LINE.

Considerable latitude should be allowed in what can be included in the From line of an e-mail before a suggestion of deception is reached. Most email addresses in use today do not serve as meaningful identification of the sender. It would be completely unrealistic to expect all e-mail addresses to be changed to the true name of the ‘sender.’ And even if it were possible, what would the information “Joe Smith” or ABC Corporation on the From line really convey?

Some "fictitious" sender names should also be allowed so that the e-mail regulations do

¹ In some cases the sponsorship is indicated merely the inclusion of company logos and a line such as “Sponsors of the XYZ Conference Include [logo] [logo], etc. The Commission should make clear that mere inclusion of a third-party’s logo in an e-mail in this fashion does not, by itself, make that e-mail an “advertisement.”

not defeat legitimate marketing concepts. ASTA has, for example, created a special web site to promote the use of travel agencies with consumers. Its URL is TravelSense.org, which is how ASTA refers to it in normal usage. The e-mails it generates (using an opt-in list to which ASTA buys access -- consumers who have signed up to get information about travel opportunities) go out as "From" TravelSense.org. The recipients are referred to the actual website, where ASTA's logo appears along with "TravelSense is a service of ASTA, the American Society of Travel Agents." Equally or more important, the physical address of the "sender" of the TravelSense.org e-mails is the address of ASTA on King Street, Alexandria, Virginia, so that consumers have CAN-SPAM compliant opt-out and location information on who is behind the marketing name. We believe that as long as the consumer receives that information in the email, the From line should be available for marketing names.

III. THE "PHYSICAL ADDRESS" REQUIRED BY THE STATUTE WAS INTENDED TO BE A PLACE WHERE THE 'SENDER' CAN BE PHYSICALLY FOUND.

We believe that Congress intended the 'physical address' requirement to permit a consumer to locate the personnel of the sender, not a representative of the U.S. Postal Service or of a commercial mail drop who may have no real information about the sender's identity. The intent was to permit the recipient to locate the sender, not only for communication purposes but also to have a locus about which complaints could be filed if necessary (when, for example, opt-outs are being ignored). This identification mechanism is important to ASTA's members and all three association commenters not only in their capacity as 'senders' who must comply, but also because they are recipients of much unwanted commercial e-mail and should have the protection of a true physical location of the sender of incoming e-mails.

IV. COMPLIANCE BURDENS ON SMALL BUSINESS MAY BE VERY SIGNIFICANT.

ASTA's membership is composed overwhelmingly of businesses that qualify as 'small business' for purposes of the Small Business Administration and the laws it administers. Of our roughly 7,000 travel agency/travel professional members, we believe, based on general industry statistics, that more than 95 percent are 'small business.'

These businesses do not and cannot afford to employ lawyers and experts to consult with them on every aspect of their business, especially their marketing. The rules the Commission adopts must, of course, comply with the CAN-SPAM Act, but there should be a concerted effort to keep the e-mail rules simple and clear. Exposing small businesses to complex regulations containing subjective standards for activities that are as central to their efficiency as e-mail is a formula for financial disaster and must be avoided. We will address this issue in more detail when we have seen the actual proposed rules.

Respectfully submitted,

AMERICAN SOCIETY OF TRAVEL AGENTS, INC.
CRUISE LINES INTERNATIONAL ASSOCIATION
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