



CONFIDENTIAL

February 26, 2004

Federal Trade Commission/Office of the Secretary
Room 159-H (Annex D)
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Monthly Registry Access, Project No. R411001

To the Federal Trade Commission/Office of the Secretary,

This comment is filed by Sterling Jewelers Inc. in response to the Monthly Registry Access, Project No. R411001.

Sterling Jewelers Inc. is the second largest U.S. specialty retail jeweler operating 1105 stores in 50 states. Telemarketing plays an integral role in Sterling's marketing program (though telephonic sales are not permitted), whereby consumers are contacted and advised of upcoming promotional events conducted by Sterling stores. When do not call regulation initiatives began at the state level, Sterling undertook to develop internal procedures to comply with state do not call regulation. Most state legislation affords telemarketers a "safe harbor", some up to 90 days, within which to obtain and conform calling lists to state registries. Indeed, the original rule promulgated by the Commission contained a similar 90-day "safe harbor". Sterling has implemented a system of calling compliance based on provisions of the FTC's original TSR and the FCC's TCPA that is designed to comply with these rules within applicable state "safe harbor" periods. Creation of Sterling's do not call procedures was a high priority item, and were developed and refined over a period of approximately 14 months at the expense of other planned projects that were deferred until the present fiscal year in order to free up the resources (man-hours and capital) needed to properly develop them.

Under the present call compliance system, Sterling's store personnel are provided with call logs prepared by Sterling that have been scrubbed using current DNC updates from the following sources:

- The National DNC registry provided by the FTC
- State DNC registries from all states with established DNC lists
- The Direct Marketing Association's DNC registry (note: Sterling is a charter member of the DMA)
- Sterling's internal DNC list

DNC program administration has been centralized at Sterling's corporate headquarters located at 375 Ghent Road in Akron, Ohio. The call logs for all Sterling's stores are created from a central system that is operated from the Sterling corporate headquarters. Call logs are distributed to all stores either electronically or by mail. Sterling store personnel use these scrubbed logs to call customers who are eligible to be called to invite them to various in-store events.

Under this established procedure, Sterling downloads an update of the National Do Not Call Registry approximately every 45 days. Sterling's procedures are designed to satisfy the requirements of the TSR's 90-day update provision, while meeting Sterling's timing requirements for advance preparation of call logs for all stores, as well as similar requirements of applicable state laws. Each year, call log production volume peaks around the three major two-week calling periods for Sterling's in-store preferred customer

events for Valentine's Day, Thanksgiving and Christmas. During these peak periods, 4-5 million customer records are processed for call log production using a complex series of programs and procedures that cannot be modified easily or quickly. To maintain cost efficiency, the call logs for these periods are produced and printed at Sterling's corporate headquarters and mailed to Sterling stores. Compliance with the 30-day DNC update requirement will require Sterling to completely reconfigure its do not call procedures, at great cost and dedication of resources.

The issues that must be addressed to bring Sterling's systems and procedures into compliance with the 30-day DNC update provision of the Telemarketing Sales Rule will involve, among other things:

- Upgrading the existing network to accommodate the increased traffic that will be generated by more frequent federal DNC downloads, which we anticipate will be required every 15 days, and upgrading the existing computer hardware to reduce processing time and effectively handle additional data and potential database modifications. To maintain confidentiality, estimated cost will be provided upon request from the Commission.
- Identifying, implementing and testing program and/or process efficiencies that will shorten Sterling's present cycle time from the current 42-day cycle to a 30-day cycle for call log preparation, mailing and customer calling. This represents about a 30% reduction in cycle time. To maintain confidentiality, estimated cost will be provided upon request from the Commission.
- Adding staff equivalent to 1/2 FTE (full time employee) to manually download, monitor and manage this process until automated download capability is provided by the FTC, as well as developing and testing a program to download and apply DNC updates directly from the FTC's website when this capability becomes available. To maintain confidentiality, estimated cost will be provided upon request from the Commission.

In determining the effective date to apply to the new 30-day DNC update requirement, we suggest that the FTC bear in mind that:

- 1) A precedent for an extended compliance period may have been established by the FTC in allowing individual states up to 36 months (Indiana) from the implementation of the National DNC list to harmonize their DNC lists and synchronize their systems with the National DNC list and system (see Federal Register, Vol.68, No.19, Wednesday, January 29, 2003, Rules and Regulations, §310.4(b)(1)(iii) - "Do-Not-Call", p.4641, *Harmonization of various do-not-call registries*). We propose that businesses should be afforded an extended implementation period for modification of their existing systems to comply with the federal law, similar to the extension provided to the states for that purpose.
- 2) The National DNC list does not preempt state DNC lists, so compliance with the FTC and FCC rules must be measured, managed and monitored independently from state DNC compliance. At the same time that Sterling develops systems to comply with federal regulation, Sterling must also ensure that these systems comply with state laws. To create efficiency faster (and lower costs of compliance), the FTC should urge adoption by the states of the federal DNC list. This will simplify DNC compliance for businesses, and may offset some of the additional costs businesses will incur to comply with the 30-day federal DNC update requirement.
- 3) To assist compliance with the 30 day DNC update requirement, the FTC must provide capability for automated download of DNC updates from the FTC website, enabling businesses to eliminate the cumbersome and error-prone manual processes they must currently use. In November 2003, Sterling filed case #12215 with the FTC's DNC Help Desk, requesting information as to the availability of automated downloads. The response from the FTC's DNC Help Desk to case #12215 is as follows: "Because of the court case being argued about Do Not Call, the Web services offering has been postponed indefinitely. When it is available, information will be posted on the Telemarketing Web site." To date, Sterling has not found any information on the FTC's website to indicate that automated download capability has been or will be implemented.

Sterling's project schedule, personnel and capital budgets for the FY05 fiscal year were finalized in December 2003 for the period of February 1, 2004 - January 31, 2005. At that time, the system changes that are now required for compliance with the amended TSR were not known, and therefore were not

considered or budgeted in the current year. In addition, important revenue-generating projects that had been deferred to make way for development of the existing call compliance system have been rescheduled and budgeted for the current fiscal year. Further delay could render these projects unfeasible.

In consideration of this and the facts provided above, Sterling Jewelers Inc. requests a minimum period of 18 months to accommodate the 30-day update requirement within their FY06 budget and fiscal year, or an effective date of September 1, 2005.

Thank you for your consideration of this request.

Sincerely,

George Murray
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Cc: B. Montalto