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M E M O R A N D U M

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To Our Clients and Friends

Re: FTC Amendments to CAN-SPAM Regulations

In 2005, the Federal Trade Commission (“FTC”) adopted rules (“Rules”)¹ to implement the CAN-SPAM Act,² which imposes certain restrictions on companies that send commercial e-mail messages. The FTC also proposed certain provisions to clarify various aspects of the Act and the Rules. The FTC has now adopted clarifying amendments to the Rules. The changes are effective July 7, 2008.

BACKGROUND

The Rules implement the provisions of the CAN-SPAM Act, which mandates that commercial e-mail messages comply with certain requirements, such as the display of a return e-mail address or a website that enables recipients to opt out from receiving commercial e-mails from the sender. The Act and the Rules also require a person that sends commercial e-mails to delete a recipient’s name from the e-mail list within 10 business days after the recipient has opted out. In addition, commercial e-mails must contain certain disclosures, including an indication that the e-mail message is an advertisement or solicitation.

At the time the FTC adopted the Rules, it requested public comment on certain requirements. The FTC has now adopted the following amendments that clarify the Rules.

Definition of “Person”

The term person will be defined to include all types of business entities as well as nonprofit organizations.

¹ 16 C.F.R. Part 316.

² Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (“CAN-SPAM”).

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Definition of “Sender”

A “sender” of a commercial e-mail is responsible for taking certain actions, such as honoring opt-out requests and ensuring that the message clearly and conspicuously indicates that it is an advertisement or a solicitation. The FTC has provided some relief from these obligations for multiple senders of a commercial e-mail. Multiple senders may designate one entity as the sender who will be responsible for carrying out the obligations of the sender. The designated sender must be identified in the “from” line and must place its physical address in the e-mail. The designated sender also must honor opt-out requests from recipients and assume certain other responsibilities. The FTC’s action is beneficial in that it alleviates redundant obligations of the other participants in a single commercial e-mail.

Physical Address

The CAN-SPAM Act requires a sender to include its physical postal address in a commercial e-mail. The question arose as to whether a U.S. mail postal box was an acceptable address, or whether the sender’s physical street address was necessary. The FTC clarified the requirement by providing that a sender may use as its address in a commercial e-mail a U.S. mail P.O. box number or a private mailbox at a commercial mail receiving agency that is established in accordance with U.S. Postal Service regulations.

Opt-Out Information

The FTC considered a number of issues relating to the opt-out process. The amendment adopted by the FTC prohibits senders from charging a fee for honoring a person’s opt-out request. In addition, a sender cannot require a person to provide more than an e-mail address in order to exercise the opt-out provision. Finally, the amendment prohibits a sender from requiring a person to visit more than one web page in order to submit a request to opt out from receiving future commercial e-mails from the sender.

The FTC’s notice also discusses a number of changes that it considered but determined not to adopt.

A copy of the FTC’s amendments to the Rules can be found on our website at http://www.schwartzandballen.com/whats_new.html.

If you have any questions, please call Gilbert Schwartz, Robert Ballen, Tom Fox or Heidi Wicker at (202) 776-0700.