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Pitfalls of Email Marketing

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This article touches on several subjects related to the use of commercial email in today's business environment. First, it addresses the current state of advertising and marketing via email. Second, it describes two aggressive and notorious self-described anti-spam litigants and how, hopefully, both have been eliminated from our court systems and as antagonists to responsible, law-abiding businesses. Finally, it offers suggestions, both practical and legal, on how legitimate email marketers can avoid liability and costly litigation.

Everyone operating in today's business environment has some experience involving the receipt of commercial electronic mail. Email, in many cases, has replaced direct mail advertising as the preferred direct advertising tool for many companies. The two most often cited reasons are cost and the often stunning effectiveness of email marketing.

Ken Magill, the editor-at-large for Direct and Multichannel Merchant Magazines and formerly an internet reporter for DM News has reported on email marketing for over ten years. In a recently published article for *Direct Magazine*, he wrote that the typical return on investment for email marketing is astronomical.[1] Citing data provided by the Direct Marketing Association (DMA), Magill reported that for every dollar spent on email marketing, the advertiser realizes a return of $48.66; whereas non-email internet marketing returns $20.67 and catalogs return $7.22 for every dollar spent. Magill observes that "The main factor supporting the use of email marketing is the cost." Industry leaders tell him that email marketing is much more effective than direct mail. "The response is greater, the customers expect to receive correspondence, and email is a greater attention grabber," Magill says. "Tell me a company that does not ask for your email address in conjunction with a purchase? Every company I can think of wants your email address," says Magill. Indeed, most of us would have to reach back quite a while to a time when a seller of a durable product did not ask the purchaser to provide an email address. Seller's of TV's, computers, software, automobiles, furniture and appliances routinely request or require an email address, purportedly to register the purchase, sign up for warranty coverage, and, quite often, specifically for the purpose of sending marketing information in the future.

Anthony Hamawy, Executive Vice President for Cruise.com, Inc. the largest seller of cruises on the internet and one of the companies featured in this article, swears by the effectiveness of email marketing. Hamawy explains that they have a data base of over one million people who have either signed up to receive weekly email specials at the Cruise.com web site or have given permission at the time of a cruise purchase to receive special promotions and advertisements via email. According to Hamawy, Cruise.com's marketing analysis shows that over 10% of total cruise sales in 2006

[1] "E-mail ROI Still a Stunner, But Diminishing DMA", October 23, 2007, Direct Magazine.

came from people who were on the email list. Over half of those were repeat customers. “That is a far greater return than direct mail advertising,” says Hamawy. “It is much cheaper, more effective and keeps our name in the mind of the cruise buying public. I would guess email marketing is more effective than conventional radio, TV, or newspaper advertising. It is certainly much cheaper than other forms of advertising when you consider the revenue generated versus the dollar spent,” said Hamawy.

Many people don’t seem to mind receiving the promotional emails, but some particularly dislike the practice. Regardless of one’s preference, in most cases, it is fairly simple to reduce or eliminate the receipt of most of the unwanted emails. Under federal and many state laws, recipients of email have the right to “opt-out” of receiving email from particular senders by following the legally required opt-out mechanism provided in the email. This might seem to be kind of a hassle, but the truth is that effective, inexpensive advertising benefits all consumers by keeping marketing costs, and therefore, product and service costs lower than if more traditional and costly marketing methods are used. So the common complaints about email advertising may be considered short-sighted and even uninformed. Clearly many unwanted, unsolicited emails promoting everything from mortgage loans to replica watches do not have a clear opt-out function as required by law. These are the emails that are commonly referred to as “Spam.” For the purposes of this article, “Spam” will be defined as unauthorized or unsolicited bulk commercial electronic mail.[2] The proliferation of Spam is clearly a problem and has led to a variety of laws and regulations to help curb the problem. Many have argued that Spam has made it more difficult for legitimate companies to use email as a marketing tool. Further, the proliferation of Spam has resulted in legitimate companies being not only referred to as spammers, but actually being sued for the transmission of legitimate emails. Which leads us to the primary subject of this article – how to avoid becoming the next target of the anti-spammers, or “spam litigators”, as they like to describe themselves.

Today the risk of becoming a target of the spam litigators is probably much less than it was just a few short years ago, but claims are still being brought even in the most unusual circumstances.

When the effectiveness of email marketing is considered as explained above, with its relatively low cost, it is not surprising that the transmission and receipt of unwanted emails has reached epidemic proportions. Ken Magill of *Direct Magazine* explains that the effectiveness of email marketing was not really known until the last five years or so, and since that time, the “spam” problem has really grown. One result of this growth has been the creation of “Anti-Spam” groups and self-anointed anti-spam advocates. Another result of the spam growth has been the anti-spam legislation enacted in many of the states. Currently, all but eleven states and the District of Columbia have some electronic mail marketing legislation on the books. The various state laws aimed at regulating spam lead to a variety of problems. The first and most obvious is that most email marketers do not limit their advertising to one state. A legitimate company engaging in interstate commerce and utilizing email marketing will find it practically impossible to comply with the dozens of state laws and the various requirements. A simple review of the laws in just a few states illustrates this point.

[2] Spamhaus.org

All of the state Spam laws prohibit deception in the transmission of an electronic mail transmission including, misrepresenting or falsifying the origin of or the routing information on messages; using an Internet address of a third party without permission, or including misleading information in the subject line of a message. Some states also prohibit the sale or distribution of software that is designed solely to falsify or forge the point of origin of or the routing information on e-mail messages. It is not particularly difficult for senders to understand that deceptive or misleading behavior may subject them to liability. The difficulty arises when different states have different laws regarding technical requirements such as "opt-out" or removal provisions and labeling requirements.

A few examples are the removal or "opt-out" requirements in Kansas, Texas and Oklahoma.[3] Without considering modern email marketing technology, these states enacted laws requiring the sender of an unsolicited email to provide a functioning return email address in the email itself, so the recipient can "reply" back to the sender to remove his/her address from the sender's mailing list. Tom MacDonald, Chief Technical Office, for Travtech, Inc. a Fairfax, Virginia based technology firm that manages email marketing programs believes that it is a completely unworkable requirement. "First of all requiring the provision of a functioning email box will probably require some manual processes to manage requiring considerable company resources. Additionally, the sender's mailbox would become inundated with unwanted emails making it difficult to discern legitimate removal messages from spam. There is also the possibility that a removal request would not be delivered at all, exposing the sender to liability," MacDonald explained. "There are much easier and more effective solutions for opt-out requests. These solutions are automated, practically error free and require less company resources. The reply back to a functioning email address is clearly the least efficient option." Kansas goes even further in their opt-out requirements by considering an undeliverable reply (removal) message as prima facia evidence that the sender is in violation of the statute.[4] Making compliance even more difficult as it relates to opt-outs is that neither Oklahoma nor Kansas specifies how long the sender has to remove the recipient from their list once the opt-out is made.[5] Texas gives the sender three days to remove the recipient from their email list.[6]

Labeling is another issue that can lead to liability for the legitimate email marketer under state Spam laws. Labeling is the requirement that some indicator be placed in the header, usually the subject line, to identify the email as an advertisement. Some states, such as Virginia and Washington require no labeling at all,[7] while other states require "ADV" be included in the subject line of the header.[8] A failure to follow this technical requirement may subject the sender to liability without any intent to deceive or mislead the recipient.

A review of spam laws in all thirty eight states indicates that most states restrict "solicited" commercial emails only to the extent that the sender does not engage in deceptive practices in the content and transmission of those emails. Of course

[3] Tex. Bus. & Com. Code § 46.003(a)(2), K.S.A. § 50–6,107(c) (1)(D), 15 okl. St. ann. 776.6(E)

[4] K.S.A. § 50–6,107(c) (1)(D)(ii)

[5] 15 okl. St.ann. 776.6(E), K.S.A. §50–6,107(c)(1)(D)

[6] Tex. Bus. & Com. Code § 46.003(b)

[7] Virginia Code § 18.2–152.3:1 et. seq. Wash. Rev. Code § 19.190.010, et. seq.

[8] 15 okl. St. ann. 776.6(C) , Tex. Bus. & Com. Code § 46.003(1), K.S.A. § 50–6,107(c)(1)(C), Wash. Rev. Code § 19.190.010, et. seq

deceptive acts and practices is restricted by state consumer protection statutes in most commercial settings not just the transmission of email. The emphasis, therefore, on commercial email restrictions at the state level is clearly on those transmissions that are unsolicited.[9] This emphasis on unsolicited commercial email transmissions would seem to necessitate a clear and unambiguous definition of the term in any statute that restricts the transmission of unsolicited email. That is not always the case, the state of Washington, for example, seemingly, prohibits only unsolicited email because the word "unsolicited" appears in the heading of the statute, and it is the only type of email mentioned in the statute, but that term is never defined.[10] Analyzing just the few states mentioned illustrates the differences in the laws from state to state and thus, the difficulty in compliance for companies that use email marketing.

The many state spam laws also created a problem of a different sort. State spam laws like the laws in Oklahoma and Texas with their huge damage provisions invited, if not actually encouraged, recipients of unwanted emails to sue the sender. The inconsistency in state laws not only made it difficult for companies to comply, but also spurred a cottage industry of professional litigants known in some circles as spam litigators or anti-spam crusaders. As discussed later in this article, these individuals and the companies they created actually based their entire business suing legitimate companies for alleged violations of email statutes.

Due to several concerns, including the inconsistency of state laws, the on-going and growing concern for the proliferation of unwanted email and fraudulent email unwanted pornographic solicitations, and the lobbying efforts by the marketing lobby and various anti-spam groups,[11] the United States Congress passed the "Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003," or the "The Can-Spam Act."[12] The many of the reasons for the necessity of the act are set out in the body of the statute.[13] Despite their efforts most anti-spam groups were not happy with the Can-Spam Act.[14] ,

The Can-Spam Act is a comprehensive piece of legislation that not only has a regulatory affect, but has a remedial affect as well. Can-Spam established a national and uniform standard intended to be the sole regulatory authority over the transmission of commercial electronic mail.[15] The Act contains a single carve-out or saving provision allowing for state action in cases involving fraud or material misrepresentation, but for all other purposes the Act preempts all state legislative authority to regulate the transmission of commercial email, solicited or otherwise.

The intended affect of unifying the regulation of commercial email through the enactment of the Can-Spam act was not immediate. Many spam litigators and anti-spam crusaders continued to target legitimate businesses for email violations under state law and many considered the Can-Spam Act as another invitation to sue legitimate businesses for spam violations. The turning point may have been a decision by the 4th Circuit Court of Appeals in *Omega World Travel, Inc. v. Mummagraphics, Inc*.[16]

[9] For a review of all state spam laws see http://www.spamlaws.com/state/
[10] Wash. Rev. Code § 19.190.010, et. seq.
[11] Direct Marketers want anti-spam laws, by Declan McCullagh, October 21, 2002, CNet News
[12] 15 U.S.C. § 7701 et. seq.
[13] § 7701(a)(1) – (12)
[14] Critics Say New Law Won't Can Spam, By David McGuire, December 17, 2003; The Washington Post
[15] Omega World Travel v. Mummagraphics, Inc., 469 F.3d 348 (4th Cir. 2006). The author of this article participated in that action as counsel to Omega World Travel, Inc.
[16] Omega World Travel v. Mummagraphics, Inc., 469 F.3d 348 at 357

This case began with a simple phone call to Omega headquarters and ended with a landmark decision. The phone call was placed by Mark Mumma, the principal for Mummagraphics, Inc., a web design and internet services Company. During the call he alleged that he was receiving unsolicited email from an Omega subsidiary Cruise.com, Inc. Cruise.com, in the normal course of its business relied heavily on an email marketing program which provided cruise specials to customers who had specifically requested receipt of these promotions via email. In short, Cruise.com only sent commercial email that it was asked to send to the recipients, i.e., that were "solicited" by the recipients. To ensure compliance, Cruise.com had established a clear policy that complied with The Can-Spam Act, including data base management and email software to document and record compliance requests, email addresses, removals and other vital information. During the call, which was ultimately answered by the author of this article, Mr. Mumma asserted that Cruise.com was in violation of both state and federal spam laws and Omega, as the parent company of Cruise.com, Inc., for these alleged violations. He also advised that he was going to sue Omega for damages. He followed up his phone call with a letter to the president of Omega World Travel, alleging that he was entitled to a minimum of $150,000 in statutory damages under Oklahoma law and advised that a record of Cruise.com's spamming activities would be featured on his website, Sueaspammer.com, and that that information would be permanently cached at Google for the entire world to see. He also alleged that Omega and Cruise.com were guilty of criminal acts. Mumma offered to settle the alleged claim if Omega was willing to pay him the sum of $6,250, which he considered to be a generous discount on the $150,000 in statutory damages that he would seek if Omega refused to bow to his demand. Omega and Cruise.com management viewed Mr. Mumma's antics as nothing more than a shakedown and felt eventually he would just go away. Unfortunately that is not what happened.

Shortly after receipt of the letter from Mumma, Cruise.com and Omega management reviewed Sueaspammer.com and were shocked at what they found. The site included a "history" of the on-going dispute between Omega and Mr. Mumma and also contained statements that Omega management deemed offensive and defamatory including a record of Omega's alleged spamming activities, a picture of the principals of Omega, Daniel and Gloria Bohan, with a the caption underneath their picture ("Cruise.com Spammers"), unauthorized use of Omega and Cruise.com logos to illustrate the alleged activities, a recording and transcript of the phone call placed to Omega by Mr. Mumma, and most importantly, repeated references to the fact that Omega and Cruise.com broke the law and, actually were criminals subject to punishment for "aggravated" violations of the law. Because of the audacity of Mr. Mumma's behavior and his threat to create a permanent history on the internet of Omega and Cruise.com as spammers, Omega and Cruise.com management felt they had no choice but to protect their good name and reputation built over the course of thirty five (35) years of business. At that time neither Omega management nor their attorney's were even aware that there were a number of spam litigants, like Mr. Mumma, throughout the country and that they were targeting legitimate businesses for law suits. Relying on the facts at hand Omega's principals understood that Mr. Mumma's aggressive tactics would hurt the company if they took no action. In considering Mumma's "settlement" offer, Omega management reached the conclusion that Mumma was so unpredictable that a payoff would not have guaranteed that he would not continue to accuse the company of spamming. Cruise.com, the main

target of Mumma's spamming accusations, was and is an internet based company and Mumma was defaming them on the internet. This activity, they realized, was bound to have an affect on Cruise.com's revenues.

To protect themselves Omega filed suit against Mummagraphics, Inc. and Mr. Mumma personally for defamation, copyright infringement and unauthorized use of a likeness. Mr. Mumma counter-sued for violations of Can-Spam and Oklahoma spamming laws. That counterclaim was based on Mr. Mumma's allegation that the eleven emails he received over a period of nine weeks were "unsolicited" and, therefore, were technically violations of state and federal law. He also claimed that some of the information was "misleading" (even though he repeatedly admitted that he was not mislead by any information in the emails).As the case progressed, and for months after it became clear that Mr. Mumma would be held liable for defamation, Omega's position was that for a simple apology and promise not to ever mention Omega or Cruise.com again, Mumma and his company could *walk away* without any liability or payment of damages for their defamatory acts and reprehensible behavior. Before the discovery phase of the case had even begun Mumma's attorney was advised that an electronic record of an email request to receive Cruise.com specials was received in the Cruise.com database and the record showed the request came from Mumma's email address. To Omega management and their counsel this was obvious proof that they were in compliance with both state and federal law. Despite this fact, Mumma refused any settlement offers throughout the course of litigation and his own settlement demand was never less than $275,000.00 to compensate for his receipt of eleven purportedly "unwanted" emails. Eventually both parties filed motions for summary judgment and just before oral arguments when it was obvious that Omega was going to prevail over Mumma's legal arguments, Mumma still declined an offer to walk away.

Over the course of litigation Mumma's vicious attacks and defamatory comments continued and were even amplified. Mr. Mumma went on a press junket that included TV stories, press releases, a guest appearance on a radio show and magazine articles, all of which were one-sided in favor of Mumma and consistently portrayed Omega and Cruise.com as unlawful "spammers" and Mumma as the victim of Omega's illegal actions.

Ultimately Omega prevailed on its motion for summary judgment which resulted in a dismissal of Mumma's claims for violations of the Can-Spam Act and Oklahoma email statutes and only Omega's claim for defamation remained. Mumma appealed the case to the 4th Circuit Court of Appeals. In a published decision of first impression the Court upheld the lower court's ruling and persuasively set the national standard for review of alleged violations of state email statutes in light of the Can-Spam Act's preemptive effect on such state laws. In summary, the Court found that Omega had not violated the Can-Spam Act and that Can-Spam superseded state law as it related to the transmission of electronic commercial email except to the extent that the email transmissions are found to be fraudulent or materially deceptive. Mumma, the Defendant, had alleged that the "From" line in the emails were deceptive and the email header information was also deceptive. The Court found, among other things, that neither the header information or the "From" line in the email were materially misleading or deceptive. The Court also said that the information contained in the body of the email, including an opt-out mechanism contained in the email that allowed the recipient to have its email address removed from future mailings, along with Crisue.com's address, a toll free phone number, and a link to Crusie.com's

website were all sufficient to show that there was no deception or fraud involved in the sending of the emails.[17]

As mentioned above, Mr. Mumma was quite prolific at promoting his cause. Even after Omega clearly prevailed at the Appellate Court, *Time Magazine* joined Mr. Mumma in his attacks on Omega and Cruise.com when it published an article entitled, "*A Spammer's Revenge",* by Reynolds Holding, January 5, 2007. The article portrayed Omega as "spammers," i.e., bad guys and Mumma as the victim. The article accused Omega and Cruise.com of misleading Mr. Mumma and implied that Omega won their case on bad law or technicalities.

Despite the fact that some failed to understand the meaning of the 4th Circuit's decision, the legal affect of the *Omega* case did not take long to be understood by the courts. In Gordon *v. Virtumundo,*[18] the U.S. District Court found in favor of the alleged spammer, Virtumundo, citing *Omega v. Mummagraphics* in its decision. A little history on the Plaintiff in that case, James Gordon, is appropriate. Mr. Gordon makes Mark Mumma look like an amateur when it comes to spam litigation. In *Gordon*, the Court revealed that Gordon's sole source of income for the last five years was from suing or threatening to sue senders of commercial email and that he had started his own company, Omni Innovations, primarily for this purpose. Omni provided email service for customers, but he used those customers to further promote his lawsuit business and the customers were all relatives who received their email service for free. In an agreement with these customers, Omni would supply them email service and they would supply him unwanted emails received on their accounts. Gordon would use those unwanted emails as evidence to bring suit and split the proceeds with his customers. Moreover, the court in *Gordon* found that Gordon had actually requested the emails from Virtumundo and then alleged some technical flaw in the transmission to hold them liable.

The Court ruled against Gordon, first because it found he did not meet the definition of "ISP" under Can-Spam and therefore, he did not have the right to sue under that law. Can-Spam provides a private right of action for ISP's only.[19] All other actions must be brought by various government agencies[20] and or states.[21]The Court found that by only providing email service to family members for the sole purpose of filing lawsuits, Gordon did not qualify as an "ISP" under the act. More importantly, in reviewing the legislative history, the Court found that the private right of action for ISP's was granted because ISP's would presumably be adversely affected by a violation, whereas Gordon could show no adverse affect from the Defendant's acts.

Gordon also made the argument that his state law claims for fraud or misrepresentation should prevail because Virtumudo used a "From" line in the transmission of their emails that did not clearly indicate the origin of the email and that this was deceptive and misleading under the state law which, therefore, triggered a right to sue under state law. Gordon also argued that the alleged deception invalidated the pre-emption clause found in Can-Spam as it relates to fraud or deception, thereby preserving his claims under state law.[22] The Court disagreed. Citing *Omega*, the Court held that Can-Spam almost entirely pre-empts any state law claim unless it

[17] Gordon v. Virtumundo, Inc., 2007 WL 1459395, *11+ (W.D.Wash. May 15, 2007) (NO. 06-0204-JCC)
[18] 15 U.S.C. §7706(g)
[19] 15 U.S.C. §7706(a)
[20] 15 U.S.C. §7706(f)
[21] 15 U.S.C. §7707(b)
[22] S. Rep. No. 108–102, (2003), reprinted in 2004 U.S.C.C.A.N. 2348.

relates to fraud or material deception and that only materially false or misleading header information was actionable under state law. Gordon had claimed Virtumundo's "From" line was deceptive because the extension did not identify Virtumundo. The Court found that the domain extension to that "From" line was a domain, owned and registered by Virtumundo, and was easily discernable by a search using the "Who Is" database. The important point, for our purposes is that the Courts in *Gordon* and *Omega*, consistent with the legislative intent[23], found that except in very narrow circumstances, The Can-Spam Act is the ultimate authority on the transmission of commercial electronic mail, providing email marketers' one source to guide them in their email marketing programs.

The Omega v. Mummagraphics case eventually went to trial on Omega's defamation claim and in a complete vindication of its position, a jury found in favor of Omega and returned a verdict of $2.5 Million against Mumma personally and his company, Mummagraphics, Inc., which included an award of $2 million for punitive damages. Ultimately, on remittitur, the Court reduced the verdict to a final judgment of $330,000, largely based on the fact that Virginia has a cap on punitive damages of $350,000. To date the judgment has not been satisfied. The education was somewhat disappointing to Omega and Cruise.com management, but the findings by the jury clearly illustrated what Omega had argued all along: Mumma was nothing more than a shakedown artist and Omega and Cruise.com were legitimate companies lawfully utilizing email marketing to grow their companies.

To this day, Mumma continues to promote himself as the guy who "lost the war on spam." He still maintains that he was spammed by Cruise.com. His web sites, Sueaspammer.com, Optoutbydomain.com and Slappsuit.com are still up and running and apparently, he intends to make a documentary about Omega v. Mummagraphics entitled *Slapp Suit*.

The aftermath of *Gordon* is also interesting. After the Court found in favor of Virtumundo on their motion for summary judgment, thereby dismissing the federal and state spam claims brought by Gordon, they moved for attorney fees available under the Can-Spam Act.[24] The Court, citing Gordon's history and other relevant factors including the fact that he had ten separate spam related cases pending in the Federal Circuit for the Western District of Washington, Gordon's practice of requesting email from law-abiding companies just for the purpose of filing suit against them for technical violations and immaterial violations of the law, Gordon's lack of standing to even bring a Can-Spam claim, the lack of any actual damages or claim of damages, and the fact that Gordon's only business was spam litigation, lead the Court to conclude that Gordon's claims were ill-motivated and frivolous and awarded Virtumundo its attorney fees. That award became a final judgment and Virtumundo and co-defendant, Adknowledge, Inc., actually initiated collection proceedings and eventually auctioned off some of Gordon's personal property to pay the judgment. Even after this, Michael Geroe, the GC for Adknowledge, Inc., reported that Gordon had filed another claim against their company in Franklin County, Washington Superior Court for the same alleged spamming violations. "Interestingly, an earlier case filed by Gordon in this same court was thrown out, and attorneys fees were also awarded to us and the Judge's opinion stated that the case was brought in bad faith. That has not stopped him from filing yet again," said Geroe.

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[23] 15 U.S.C..§7706(g)(4)
[24] 15 U.S.C. §7706(g)(4)

The lesson to be learned from these cases is simple. Most companies will continue to utilize email as a marketing tool. Unfortunately, people like Mumma and Gordon are not going away and companies need to protect themselves. To avoid the high cost of litigation or at least to reduce your risk of exposure responsible companies that rely on email marketing to promote their business need to follow the rules set forth in the both federal and state law but, primarily, the Can-Spam Act. In order to comply with the Act, the sender should ensure that every commercial email contains the following:

- A clear and conspicuous identification that the message is an advertisement or solicitation,
- A clear and conspicuous notice of an e-mail address or other internet-based mechanism that the recipient may use to request that no future email messages be sent by the sender. Most senders have a link that when clicked automatically removes the recipient from the mailing list.
- The sender's valid physical postal address.

Further it is advisable that the sender employ a well-managed program that electronically and automatically adds and removes recipients from the sender's mailing list. A failure to honor a request for removal within 10 days will subject the sender to liability under the Act. As is always the case under common standards of business practices, senders should refrain from including, false, misleading or fraudulent information in the body of the email. Finally, a sender should never try to conceal its identity. A primary purpose of the act is to give the recipient the opportunity to opt-out if they choose. Concealment of identity clearly defeats that purpose.

For non-legal but more practical recommendations, Ken Magill of Direct Magazine offered other suggestions. First, he advises that the ISP's are particularly sensitive to commercial email and they will "blacklist" senders for a variety of reasons. There are several effects of being put on a blacklist. Foremost among them is that if you are blacklisted, then any emails sent from the blacklisted account will be blocked. Larger email and internet service providers are notorious for blacklisting senders. The other affect of blacklisting is that the sender will be listed at a number of different sources as being on a blacklist and the anti-spam crowd takes that opportunity to spread the word that your company has been blacklisted, thereby creating the impression that you are a spammer. To avoid being blacklisted companies may consider utilizing a confirmation mechanism. The confirmation process is simply an email response from the requested recipient to the sender acknowledging their desire to received commercial emails. Mr. Magill advises that implementation of this process bolsters a marketer's reputation with the ISP's and marketing associations, thereby decreasing the risk of becoming a target for spam litigator's.

Mr. Magill's advice, while practical, is not required under the law. But, if an email marketer determines that it can be done efficiently and without significant cost, that recommendation should be considered, if not always implemented. The most important consideration for email marketers is to comply with The Can-Spam Act. The Act should be used as a guide in implementing any email marketing program. Following the Act and utilizing modern email marketing tools will reduce the risk of liability and may reduce costs if a marketer faces litigation.

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Omega World Travel

Gloria Bohan founded Omega World Travel in Fredericksburg, Virginia in 1972. Since then she has transformed a one-person office into a travel agency with sales revenues in excess of $1 billion a year, approximately 200 company-owned offices and more than 1,000 employees. Omega is the largest diversity-owned business in the U.S. and one of the top Travel Management companies in the nation. It is considered in the travel industry to be an innovative, trend-setting company.

Omega's presence is worldwide, with company-owned offices in the U.K., including our European headquarters in London, offices in Japan, Guam, and Germany and support offices in Romania and India. Over the past few years we have extended our presence to the Middle East with offices in Bahrain and Kuwait. Omega has six customer service reservation centers worldwide and a wholly-owned and operated 24-hour emergency service center in Milwaukee, WI. . Our customer service centers are designed to work with a local Omega branch office or a dedicated on-site location to provide the highest service levels at the lowest cost.

Omega offers complete travel management services to include air, hotel and car reservations and ticketing; online (self booking) tools; program/account management; full reporting; open book accounting; T&E solutions; meetings management; VIP services; international ticketing and rate desk; hotel programs; contract negotiation services; travel policy consultation; credit card programs and the like to ensure the overall quality of every program.