



Report on Actions of the DMA's Ethics Committees

August - December 2006

The Committee on Ethical Business Practice announced that three companies did not resolve its concerns about allegedly misleading promotional mail. *Nations Lending Corporation of Parma Heights, OH* and *Allied Home Mortgage Capital Corporation of Houston, TX* did not respond to Committee concerns that the promotions appeared to be from recipients' current mortgage lenders and/or from government agencies when they actually were not. (Update: Nations Lending Corporation responded to the Committee in June 2007.) *National Litigation Bureau of Durham, NC* did not resolve the Committee's concern that its promotion for a business newsletter subscription appeared in the guise of an invoice; the matter was referred to the US Postal Inspection Service for its review.

During this period, the Teleservices Ethics Committee also referred two cases to law enforcement agencies for their review of possible legal infractions. Specifically, because complaints regarding the receipt of unsolicited text messages from an unidentified travel center were not resolved, the case was referred to the Federal Communications Commission. The matter regarding *Accounting Services*, which involved automated telephone calls, was referred to the Federal Trade Commission and the Attorneys General of Florida (where the company is believed to be located) and California. *None of those five companies is a DMA member.*

23 cases heard by the Ethics Committees:

- 9 – general advertising (both off and online promotions and practices)
- 8 – telemarketing practices
- 6 – collection, use and maintenance of marketing data

The Committee on Ethical Business Practice reported three main issues:

1) As first reported in the previous *Ethics Case Report*, the Committee has been handling an unprecedented number of mortgage loan offers. Most of the reviewed promotions used design elements that made the offers appear as though they were from recipients' actual mortgage holders or from government agencies when this was not the case.

For example, the mailings used the following techniques:

- window envelopes with the consumer's current mortgage holder visible through the window
- statements that the consumer's mortgage rate is increasing, when that may or may not be true
- prominent (but false) account numbers and other such indicia
- improper usage of government logos
- warning notices that the recipient must respond immediately or risk loss of a low rate

Two of the mortgage-related cases were closed without resolution (as reported above); others were resolved by the discontinuation of the questioned mailings, while one is pending resolution. The Committee strongly discourages the use of promotions appearing in the guise of government mailings or appearing to be from recipients' mortgage holders. Once opened, the true nature of the mailings is usually clear to recipients; however, the Committee believes that consumer trust is harmed by the creation of false impressions. Further, consumers often believe their privacy is violated when they receive mailings containing current lenders and loan balances. Mailers should take care to use publicly available information sensitively.

2) Several cases were handled concerning failure to properly inform consumers, upon their request, of the source of mailings received, and failure to honor consumer requests not to have their names transferred to other marketers.

Although responding to "how did you get my name?" questions is a DMA requirement, many companies do not adequately train their telephone representatives to properly answer questions about list source. Additionally, making sure that consumers' requests not to receive further promotional mail are honored is essential to building consumer trust and is an essential part of DMA's *Privacy Promise*.

3) The Committee reviewed cases concerning companies' failure to properly authenticate their outgoing e-mails.

DMA's requirement concerning e-mail authentication states: "Marketers that use e-mail for communication and transaction purposes should adopt and use identification and authentication protocols." Authentication creates a public record against which to validate e-mail messages so that the legitimacy of senders can be verified. It protects the integrity of senders' brands, and improves the likelihood that legitimate e-mail gets through to its intended recipient. DMA has found that many marketers authenticate only some of their outgoing e-mail to consumers. The requirement, however, is that all e-mails should be authenticated, including marketing and promotional messages, customer service e-mails, receipts or shipping confirmation e-mails, monthly statements, newsletters, e-mails sent from mobile devices, and others.

Teleservices Ethics Committee cases during this period were in regard to the following concerns:

- Sending text messages or making cell phone calls without consumer consent

- Unclear and/or deliberately falsified identification of companies sending text messages or placing calls

Sending text messages and calling cell phones without consumer consent is illegal. In an effort to educate members about the rules of the road in this developing arena, the Committee released an industry educational flowchart *“Know the Rules for Contacting Wireless Devices by Telephone, Text Message, or E-Mail.”* It simplifies the steps marketers should take before contacting a wireless device: Step 1: Determine if You Are About to Contact a Wireless Device and Step 2: Obtain the Recipient’s Prior Express Permission, and points out additional resources for industry members. The Committee also developed an Industry Alert: *Marketing Mistakes: Reaching Wireless Devices by Telephone, Text Message, or E-Mail* (both available at www.the-dma.org/guidelines/quickreference.shtml).

DMA handles ethics complaints about member and non-member marketers, comparing marketers’ practices to the DMA’s ethics guidelines and asking them to come into compliance. Members who don’t comply with the requests of the Committees face DMA Board public censure, suspension, or expulsion. Non-members that don’t cooperate are referred to law enforcement agencies, if applicable, and their cases are publicized.

In addition to the 23 in-depth case reviews, DMA ethics and consumer affairs staff handled 1776 complaints and inquiries from consumers who needed assistance with: reducing their overall volume of unwanted mail, telephone calls, faxes, and e-mail; having their names removed from lists of specific marketers; or with marketing transactions. Fifty member companies, randomly selected, were asked to certify their continued compliance with DMA’s Privacy Promise.

Resources for direct marketers include the following:

- DMA’s *Guidelines for Ethical Business Practice*: www.the-dma.org/guidelines/ethicalguidelines.shtml
- The *Privacy Promise Member Compliance Guide*: www.the-dma.org/privacy/privacypromise.shtml
- Ethics Case Reports are archived at: www.the-dma.org/guidelines/ethicscase.shtml, and further information about DMA’s Ethics Committees is at: www.the-dma.org/guidelines/ethicalbusinesscommittee.shtml.
- To file a complaint with the Ethics Committees, write to: ethics@the-dma.org, or use the online form at: www.the-dma.org/guidelines/EthicsComplaintForm.pdf.