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## **CAN-SPAM Rule Issued by FTC**

On May 12, 2008, the Federal Trade Commission, under the authority provided by the CAN-SPAM Act, issued a final Rule regarding several items of importance to email marketers.

This note is intended to provide a synopsis of the issues that MDR believes are most relevant to our clients. As always, you should not consider this legal advice and should rely for legal advice with your own counsel. Also, please note that any interpretations provided in this note are those of MDR's and should not be used in lieu of your own reading of the actual Rule. The FTC announcement with summary information can be found at <http://www.ftc.gov/opa/2008/05/canspam.shtm>. The full text of the Rule is located at <http://www.ftc.gov/os/2008/05/R411008frn.pdf>.

Here are some things to note about the four new rules:

- The definition of "person" has been clarified to apply to legal entities, such as businesses, partnerships, etc. This is consistent with prior assumptions and should have no bearing on your CAN-SPAM compliance.
- The definition of "sender" has been modified to allow the designation of a single "sender" in situations where more than one advertiser is participating in a commercial email. This will simplify the process of determining who the sender is. *This is not relevant to MDR Email products and services unless you are advertising someone else's products within a campaign you are conducting. In this case, you will be defined as the single sender.*
- Clarification that a Post Office Box registered with the United States Postal Service may be used as the "physical address" that is required.
- Clarification that a valid opt-out mechanism cannot require the respondent to pay a fee or provide any other information as part of the opt-out process.

In addition to these rules, there are a number of points that are made in the commentary provided with the Rule that may be noteworthy to our clients:

- The identification of the designated "sender" in the "from address" is mandatory in situations where there is more than one possible advertiser or sender identified in the message. *This doesn't apply to MDR Email products, as the advertiser (who purchases the Email campaign from MDR) is the designated sender in all situations.*
- Confirms that a List Owner is not considered a "sender" unless the List Owner is also an advertiser in the message. This means that the "from address" should not identify the List Owner in situations where the List Owner is only supplying the list of email addresses. *This clarifies MDR's role as the List Owner and the advertiser's role as the "sender."*



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- Companies who use affiliate marketing programs are not exempt from emails sent by affiliates on their behalf. This means that the companies whose products are being promoted or advertised by the affiliates using email marketing are responsible for the provisions of the CAN-SPAM law and the adherence to those provisions by the affiliates.
- Emails containing “true opinions and research surveys may fall outside of the Act, but to the extent that any such message seeks to advertise or promote a brand, a company, or a product or service to the recipient, it also may be primarily commercial in purpose and, therefore, subject to the Act’s requirements and prohibitions.” *While this provision was made in the Act, MDR will insert the commercial message tagline in all MDR email campaigns, regardless of whether or not they are a research survey message, in order to provide the highest level of legal coverage regarding this subjective provision. This designation of commercial message has been proven to show no signs of negatively affecting the results of the research survey campaigns.*
- Clarifies that Forward-to-a-Friend mechanisms are not required to comply with the Act as long as there is no inducement provided in exchange for the forwarding.
- Declined to consider “business relationship messages” as transactional or outside of the Act. These messages, which may be one-to-one business messages, may be covered by the Act if they meet the criteria as defined by the Act (for example, are commercial in nature).
- The time frame permitted for honoring opt-out requests was not changed and continues to be ten days from the receipt of the request.
- Declined to provide an expiration date for opt-out requests. *Therefore, any email opt-outs must be honored indefinitely.*

These notes are provided as a service to our clients. They are not exhaustive as the full Rule is over 100 pages in length. If you are interested in understanding the details regarding these or any other aspects of the Rule, we urge you to refer to the full Rule.

Of course, feel free to let us know if you have questions about how these new rules may apply to your mailings.

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