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## ARTICLE

### Best Practices in E-mail Provide the Best Defense

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Recently, an e-mail marketer and its owners paid over \$621,000.00 to settle a Federal Trade Commission Complaint that charged the Defendants and their affiliates with practices that violated federal laws. The settlement included an injunction preventing the company and its affiliates from future violations of the CAN-SPAM Act and requires the marketers to monitor their affiliates to assure they are complying with federal laws as well. Federal Trade Commission v. Global Net Solutions, Inc. et.al., United States District Court, District of Nevada, DVS050002PMP (LRL). This well published case answered the long over due question of whether a marketer is responsible for the acts of its affiliates, with a resounding yes.

The best practice to assure affiliates will not run a marketer out of business is to closely monitor the affiliates for compliance. Affiliate monitor requirements should be initiated at the beginning of the relationship. A marketer should require the full identification information from the affiliate including a physical address as well as the names of the principals of the company, and keep this information on file. The reputation of the affiliate should be checked and double checked within the industry. All contractual agreements between the marketer and affiliate should require a certificate of compliance with the CAN-SPAM Act. The affiliate should be prepared to reveal all opt-in information upon request including and the manner and method by which the e-mail address was obtained.

Further, the e-mail campaign should be reviewed before it is released to ensure compliance with the federal law. This review includes, among other things, truthful header information and subject lines, working opt-out mechanisms, and the physical address of the sender. If the campaign involves sexually explicit materials, it should comply with the Adult Labeling Rule.

In addition, a marketer should establish, implement and maintain a procedure to ascertain the number and nature of consumer complaints received each month for each affiliate. The campaign should then be seeded so the affiliate manager can periodically review the campaigns for compliance. Failure to comply should result in an immediate suspension of the affiliate until and unless compliance is regained. Most importantly, all requests to opt-out should be acted upon immediately and suppression lists should be continuously updated.

Finally, a marketer need not be fearful of its affiliates. Instead, it can minimize and manage it's exposure to the point where the reward of commercial e-mail as a powerful and highly profitable marketing technique outweighs the risk of potential liability. A prudent marketer will use a well-drafted contract, develop and conduct extensive due diligence prior to accepting an affiliate, design and implement a serious compliance program to ensure spamming is identified and immediately and pro actively addressed in a formal process, educate its affiliate managers and executives regarding federal and state mailing requirements and most importantly document all of these steps.

#### Best Practices:

1. Well Drafted Agreements;
2. Due Diligence;
3. Certified Compliance;
4. Continuous Compliance Monitoring;
5. Suspend for Non-Compliance

Linda L. Goodman is the founder of the Goodman Law Firm, concentrating its practice in internet business and law. Her firm's clients include Advertisers, Affiliates, Affiliate Networks and ISP's. Ms Goodman is a featured speaker at Affiliate Summit.

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