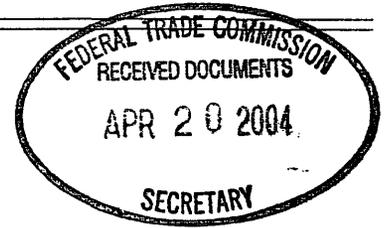




001035

Robert E. Whitley, CTC  
President



April 15, 2004

VIA FEDERAL EXPRESS

Federal Trade Commission  
Office of the Secretary  
Room 159-H  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Attn: CAN-SPAM Act Rulemaking, Project No. R411008

Ladies and Gentlemen:

We are pleased to submit these comments in response to the Federal Trade Commission's Advance Notice of Proposed Rulemaking with respect to regulations to be enacted under the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (the "CAN-SPAM Act").

These comments relate specifically to the definition of "Sender" under the CAN-SPAM Act as it applies to tour operators. Tour operators are travel professionals who plan, arrange and sell package vacation tours. Many of the products packaged by tour operators are marketed and sold through travel agents whose services are critical to the distribution of these products. These travel agents are customer focused and are responsible for maintaining customer relationships. They often maintain a list of customers who have expressly requested that the travel agent send them information by email. Our concern is that when a bona fide independent travel agent transmits a commercial email promoting its services as a seller of products packaged by tour operators and the travel agent is the call to action in the email, the CAN-SPAM Act might be interpreted to treat the tour operator as the Sender. If the CAN-SPAM was interpreted to treat the tour operator as the Sender of such emails, the tour operator's opt-out link and "Do Not Email" list would need to be supplied to and used by each travel agent who transmitted commercial emails promoting its services as a seller of such products packaged by the tour operator. This would be impractical, overly burdensome and extremely confusing, not only for the tour operator and travel agent, but also for the consumer. Moreover, it imposes a responsibility on tour operators that they cannot effectively police or reasonably manage.

Accordingly, it is respectfully requested that the Commission make clear in the regulations that, when a bona fide travel agent transmits a commercial email offering products packaged by a tour operator and the travel agent is the call to action in the email, the travel agent is the sole Sender.



This clarification is consistent with the expectations of consumers, because when a consumer clicks the opt-out link on one of these emails, the consumer expects not to receive any further emails from the travel agent. If the tour operator were to be treated as the Sender, the opt-out would go to the tour operator and a consumer who clicked the opt-out link would continue to receive emails from the travel agent regarding other products. Similarly, if the tour operator were to be treated as the Sender, the travel agent would have to collect, maintain and use the "Do Not Email" list for each tour operator to screen the email. In addition to being unworkable, any requirement that tour operators disclose their "Do Not Email" lists to numerous travel agents raises serious privacy issues and likely violates many tour operators' privacy policies.

To clarify that the travel agent is the Sender when it sends emails with itself as the call to action, the Commission should define travel agents (as well as insurance agents and real estate agents) as "Sales Agents" and adopt the following regulation:

Sales Agent means an agent or broker who (i) is in the business of advertising, promoting or selling products owned by others, (ii) is compensated by the product owners for sales made, (iii) is not controlled through ownership or management by the product owner, and (iv) other than any reimbursement of out of pocket expense, is not compensated by the product owners for services in connection with the creation or transmission of email.

When a Sales Agent advertises a product owned by another and the advertising refers the recipient to the Sales Agent to purchase the product, then for purposes of the definition of "Sender" the product or service "advertised or promoted" is the product or service of the Sales Agent.

We applaud the FTC for its efforts to eliminate abusive email practices and to fairly and equitably regulate commercial emails. Tour operators willingly accept the responsibilities necessary to achieve the goals of the CAN-SPAM Act to foster the development and growth of convenient and efficient email communication. We believe that the clarification we propose will advance these goals. This clarification should be adopted pursuant to the Commission's authority to issue regulations to implement the provisions of the CAN-SPAM Act and in furtherance of the purposes and intent of the Act.

Thank you for the opportunity to submit these comments. We would be pleased to provide additional information or details to discuss these comments further with you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert E. Whitley", with a long, sweeping underline.

Robert E. Whitley,  
President