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U.S. GOVERNMENT
INFORMATION
GPO

DECEPTIVE SWEEPSTAKES MAILINGS

HEARING

BEFORE THE

SUBCOMMITTEE ON THE POSTAL SERVICE

OF THE

COMMITTEE ON
GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

AUGUST 4, 1999

Serial No. 106–69

Printed for the use of the Committee on Government Reform

Available via the World Wide Web: http://www.house.gov/reform

U.S. GOVERNMENT PRINTING OFFICE
61–695 CC WASHINGTON : 2000

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-060050-2

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DECEPTIVE SWEEPSTAKES MAILINGS

WEDNESDAY, AUGUST 4, 1999

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE POSTAL SERVICE,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 1:20 p.m., in room 2154, Rayburn House Office Building, John M. McHugh (chairman of the subcommittee) presiding.

Present: Representatives Davis, Fattah, LaTourette, and Burton.

Staff present: Robert Taub, staff director; Jack Callender and Heea Vazirani-Fales, counsels; Jane Hatcherson, office systems administrator/legislative assistant; Abigail Hurowitz, clerk; Denise Wilson, minority professional staff member; and Earley Green and Jean Gosa, minority staff assistants.

Mr. MCHUGH. Let me thank everyone for being here today. Congratulations to all of the people who have attended this afternoon. For your presence, you are guaranteed to win a prize because "You Were Declared One of Our Latest Sweepstakes Winners And You Are About To Be Paid $833,337.00 In Cash."

Of course, I also need to tell you that you have not really won unless you have in return the grand prize winning numbers, if you want to check. Those are actual statements from recent sweepstakes mailings. However, you would have to find and read very carefully the last words I spoke in the mailing as opposed, of course, to hearing them from me.

That is why we are here today; to question whether we need additional Federal legislation to combat mail sweepstakes that use deceptive advertising to confuse and mislead recipients into purchasing unneeded items.

Today, we are going to hear from a number of Federal Government witnesses who will outline the scope of the problem: the Federal Trade Commission; the Postal Inspection Service; the General Accounting Office; as well as consumer and nonprofit groups who will share their members' perspectives: the National Consumer League; the American Association of Retired Persons; the National Federation of Non-Profits; and from representatives of the affected industry itself: the Direct Marketing Association; the Magazine Publishers of America; and the Promotion Marketing Association.

Before proceeding, I want to note that several subcommittee members and full committee members requested specific witnesses for this hearing. At the beginning, I indicated that I thought we could accommodate those requests. It was certainly my intention to do so.

As I found myself having to state in a memo to the Members just 2 weeks ago, the limitations that have been imposed on us in attempting to keep within a manageable timeframe resulted in our inability to invite all desired witnesses to provide oral testimony.

They were not just desired, they were individuals across this Nation who have put in a great deal of time and effort, and accrued a great deal of expertise in pursuit of this very, very serious question. I regret that we have not been able to accommodate all of them.

In that regard, we have asked those particular folks to submit written testimony for the hearing record. In addition, we are going to hold open the hearing record for, what I will call, a healthy period of time in order to ensure a full and complete record.

The title of the General Accounting Office's testimony submitted for today's hearing sums it up well, I think. "When it comes to deceptive mail, which includes sweepstakes and other kinds of mailed material, consumer problems appear substantial." I am not here today to condemn all legitimate sweepstakes.

Sweepstakes mailings are often completely lawful, nondeceptive marketing programs. Indeed, they do seek to solicit a response to purchase a magazine subscription, for example. In that process, they satisfy the enjoyment that many, many people seemingly derive from entering these kinds of sweepstakes.

Unfortunately, there are also fraudulent and deceptive sweepstakes. Even sweepstakes that are not out-right fraudulent have often been promoted through mailings that tend to mislead recipients, particularly senior citizens. These and other forms of deceptive mailings are the concern of our hearing today.

We are not alone in that concern. In addition to the comprehensive measure that has made its way through the Senate, our first two witnesses today, Congressman LoBiondo and Congressman Rogan, are the sponsors of relevant bills pending before this subcommittee. I know we all look forward to their testimonies.

These gentleman have really, through their efforts early on, helped this subcommittee and now the House begin to focus our attention on this problem. I personally want to thank both of them for their efforts.

I would like to take a moment, briefly, to turn your attention to some of the exhibits we have put up today. As they say, a picture is worth a thousand words. We have two envelopes that were enclosed in a sweepstakes mailing; one for ordering and the other for entering the contest with no order. Understand that a purchase is not required for entering the contest.

[Exhibit.]

Mr. McHUGH. Ordering does not increase one's chances. However, you would not really know that by looking at the envelopes. If you order, your envelope says, "Yes: Reward Entitlement, Granted and Guaranteed."

[Exhibit.]

Mr. McHUGH. If not ordering, however, the envelope says, "No: Reward Entitlement, Denied and Unwarranted." Of course, you are expected to know, somehow, that ordering is not necessary.

[Exhibit.]

Mr. MCHUGH. Another one of the exhibits that we will leave up, and I hope folks have a chance to look over them at their leisure, highlights the Urgent Notice that "You Were Declared One of Our Latest Sweepstakes Winners And You Are About To Be Paid $833,337.00 In Cash."

You are going to have trouble seeing, even with our large chart, the words that say, of course, that this is contingent upon your actually having the grand prize winning number and, oh yes, having submitted it as well.

[Exhibit.]

Mr. MCHUGH. Yet, another one of our exhibits shows a congratulations card with the statement inside saying, "Congratulations From Both of Us. You are guaranteed to win a prize."

[Exhibit.]

Mr. MCHUGH. This is accompanied by the "Official Prize Award Guarantee" certificate asking you, as a guaranteed prize winner, to sign the form, write down your orders, and keep a receipt for your records. Of course again, in the smaller type it is noted that "no purchase is necessary," and you must read the official rules to enter without ordering.

[Exhibit.]

Mr. MCHUGH. We then have the "Official Rules" displayed, which you may take some time even with this large exhibit to figure it all out. It is extensive.

So, our objective today is to hear from those who are closest to this issue, to begin in the House the process which the other body, the Senate, has already so ably advanced. Sweepstakes, in themselves, are not evil. They are an effective marketing tool that are accessed by willing and satisfied millions each and every month.

Experience teaches us where the laws fall short, the dishonest will flock and honest people will suffer. We are here to examine and, hopefully ultimately, to correct those shortfalls. So, I thank you all again for your presence here today.

With that, I would call on the distinguished ranking member from Pennsylvania, Mr. Fattah, for his opening statement.

[The prepared statement of Hon. John M. McHugh follows:]

STATEMENT OF CHAIRMAN JOHN M. McHUGH
SUBCOMMITTEE ON THE POSTAL SERVICE

AUGUST 4, 1999

Congratulations to all of the people in our hearing room today! *"You're guaranteed to win a prize. You were declared one of our latest sweepstakes winners and you're about to be paid $833,337.00 in cash." Of course, I also need to tell you that you have NOT won, unless "you have and return the grand prize winning number."*

These are actual statements from recent sweepstakes mailings. However, you would have had to find and read the latter words in the mailing as opposed to hearing them from me. And that is why we are here today: do we need additional federal legislation to combat mailed sweepstakes that use deceptive advertising to confuse and mislead recipients into purchasing unneeded items?

We will hear from a number of federal government witnesses who will outline the scope of the problem (the Federal Trade Commission, the Postal Inspection Service, and the General Accounting Office), as well as consumer and nonprofit groups who will share their members' perspectives (the National Consumers League, the American Association of Retired Persons, the National Federation of Nonprofits), and from representatives of the affected industry itself (the Direct Marketing Association, the Magazine Publishers of America, and the Promotion Marketing Association).

Before proceeding, I must note that several Subcommittee Members requested specific witnesses for our hearing. As I stated in my Memo to the Members two weeks ago, while we had hoped to accommodate these requests, the limitations imposed on us in attempting to keep within a manageable timeframe resulted in our inability to invite all desired witnesses to provide oral testimony. In that regard, we have asked those particular entities to submit written testimony for the hearing record, and in addition, we will hold open the hearing record for a healthy period of time in order to ensure a full and complete record.

The title of the General Accounting Office testimony sums it up well: when it comes to deceptive mail, which includes sweepstakes and other kinds of mailed material, "Consumers' Problems Appear Substantial." We are not here today to condemn legitimate sweepstakes. Sweepstakes mailings often are completely lawful, non-deceptive marketing programs. Indeed, they seek to solicit a response - to purchase a magazine subscription for example - by satisfying the enjoyment many people derive from entering sweepstakes.

Unfortunately, there are also fraudulent or deceptive sweepstakes. Even sweepstakes that are not outright fraudulent have often been promoted through mailings that mislead recipients, particularly our senior citizens. These and other forms of deceptive mailings are the concern of our hearing today. And we are not alone in that concern. In addition to a comprehensive measure that has made its way through the Senate, our first two witnesses today - Congressmen

LoBiondo and Rogan - are the sponsors of the relevant bills pending before the Subcommittee. I look forward to their input, with that of all of our witnesses, as we prepare to address the sweepstakes issue in the coming weeks.

Before we begin hearing testimony from our witnesses, I would like to take a moment to turn your attention to some of the exhibits we have put up today. As they say, a picture is worth a thousand words.

We have two envelopes that were enclosed in a sweepstakes mailing, one for ordering, and the other for entering the contest with no order. Understand that a purchase is NOT required for entering the contest and ordering does NOT increase one's chances. However, you wouldn't know that by looking at the envelopes. If you order, your envelope says "*Yes: Reward Entitlement, Granted and Guaranteed.*" If not ordering, the envelope says: "*No: Reward Entitlement, Denied and Unwarranted.*" Of course, one should somehow know that ordering is not necessary?

Another exhibit highlights the "Urgent Notice" that "*You Were Declared One of Our Latest Sweepstakes Winners and You're About to Paid $833,337.00 In Cash.*" You too may have trouble seeing, even with our large chart, the words that say this is contingent upon you actually having the grand prize winning number.

And yet another of our exhibits shows a congratulations card with the statement inside saying "Congratulations from both of us... You're guaranteed to win a prize..." This is accompanied by the "Official Prize Award Guarantee" certificate asking you as a "Guaranteed Cash Prize Winner" to sign the form, write down your orders, and keep a receipt for your records. Of course, in smaller type it is noted that no purchase is necessary, and that you must read the official rules to enter without ordering. We then have the "Official Rules" displayed, which may take you some time, even with this large exhibit, to figure it all out.

So, our objective today is to hear from those who are closest to this issue. To begin in the House the process which the other body has already so ably advanced.

Sweepstakes, themselves, are not evil. They are an effective marketing tool that are accessed by willing and satisfied millions. But experience teaches us, where the laws fall short, the dishonest will flock and honest people will suffer. We are here to correct those shortfalls.

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ONE HUNDRED SIXTH CONGRESS

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House of Representatives

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INDEPENDENT

DECEPTIVE SWEEPSTAKES MAILINGS

EXHIBIT LIST

1. *"You Were Declared One of Our Latest Sweepstakes Winners And You're About To Be Paid $833,337.00 In Cash"* Mailing from Time, Inc.

2. *"Congratulations from both of us... You're guaranteed to win a prize..."* Card from Publishers Clearing House dated October 14, 1998

3. *"Yes: Reward Entitlement, Granted and Guaranteed" and "No: Reward Entitlement, Denied and Unwarranted"* Envelopes from Readers Digest

4. *"Don't Say No"* Back of Envelope from Michigan Bulbs

YES

REWARD ENTITLEMENT

GRANTED & GUARANTEED

PLEASE PLACE POSTAGE STAMP HERE

COMPLETED INQUIRY RESULTS ENCLOSED DO NOT DELAY PROCESSING

READER'S DIGEST
PO BOX 6156
MARION OH 43307-6156

Att: Sweepstakes Prize Selection
DEPT-R7970-YP

7

NO

REWARD ENTITLEMENT

DENIED & UNWARRANTED

PLEASE PLACE POSTAGE STAMP HERE

COMPLETED INQUIRY
RESULTS ENCLOSED
DO NOT DELAY PROCESSING

READER'S DIGEST
PO BOX 2004
MARION OH 43307-2004

Att: Sweepstakes Prize Selection
DEPT-R7970-NP

8

DECLARATION DATE: FEBRUARY 18, 1998

OFFICIAL CASH PRIZE NOTIFICATION

CORRESPONDENCE CODE: 050 805 1927

If you have and return the grand prize winning number in time, we'll issue this:

URGENT NOTICE FOR [redacted]: YOU WERE DECLARED ONE OF OUR LATEST SWEEPSTAKES WINNERS AND YOU'RE ABOUT TO BE PAID $833,337.00 IN CASH!

And, if you return the winning entry, the status of recent cash prize winners in sweepstakes we've presented would then read as follows:

A	[redacted] $833,337.00 WINNER	PRIZE MONIES HAVE BEEN AUTHORIZED FOR TRANSFER TO WINNER IN A SINGLE PAYMENT
B	JUANITA BARNES $100,000.00 WINNER	FULL PAYMENT OF THE STATED PRIZE MONIES TO WINNER HAS NOW BEEN VERIFIED
C	WANDA FROST $50,000.00 WINNER	FULL PAYMENT OF THE STATED PRIZE MONIES TO WINNER HAS ALSO BEEN VERIFIED

ATTENTION [redacted]: YOU MUST TELL US WITHIN THE NEXT 10 DAYS HOW YOU WOULD PREFER TO BE PAID THE $833,337.00!

WIRE TRANSFER TO BANK ACCOUNT

We have secured funds to pay the amount of $833,337.00 IN FULL, and we are waiting for your response. You are hereby directed to indicate whether you'd prefer a direct WIRE TRANSFER or CERTIFIED CHECK by mailing the entry enclosed with one of these seals attached WITHIN 10 DAYS!

ADDRESS OF RECORD:

[redacted] AJD

THIS NOTICE REFLECTS PAYMENTS MADE AS OF: 2/18/98

CONTENTS CERTIFIED BY:

Elizabeth Matthews, Sweepstakes Dir.

ENTERTAINMENT WEEKLY PRESENTS THE GUARANTEED & BONDED

If you have and return the grand prize winning entry in time, we'll officially announce that ...

Congratulations
from both of us

Oct. 14, 1998

Dear Barbara,

You're guaranteed to win a prize –
what a really great surprise.
It's so nice when someone nice wins.
Hooray for you. What wonderful news.
We're ear-to-ear with grins!

Best wishes
Dorothy

Congrats!
Dave

FOR YOUR RECORDS

Tear off and retain.

Guaranteed Cash Prize Winner

Entry returned

DATE

for November 19 deadline.

Items Ordered

Guaranteed Cash Prize **Winner**

Official Prize Award Guarantee

PLACE
CERTIFIED WINNER
LABEL HERE
AND ORDER STAMPS BELOW

(IF NOT ORDERING – SEE OFFICIAL RULES FOR ENTRY DETAILS.)

Publishers Clearing House is pleased to guarantee an all-cash prize to you because we are confident that you will meet the following conditions for winning. Please check all that apply:

___I reside at the address above;

___I am not directly related to any Publishers Clearing House employee;

___I have not won a major Publishers Clearing House prize prior to this Giveaway.

For the timely awarding of your prize, please return this form so it is received by Dorothy Addeo at Publishers Clearing House by November 19, 1998.

Dorothy Addeo — Contest Director
Daniel P. Doyle — Treasurer
Eleonora McCormick — Secretary

You will be granted Free Inspection Privilege on any order you may place. An order will maintain your customer status at the highest level.

PLACE 1ST ORDER STAMP HERE	PLACE 2ND ORDER STAMP HERE
PLACE 3RD ORDER STAMP HERE	PLACE LIFE ORDER STAMP HERE

If not ordering, **DO NOT USE THIS FORM.** See Official Rules for entry details. **NO PURCHASE NECESSARY.**

04

9990 F2111

PUBLISHERS CLEARING HOUSE

OFFICIAL RULES

Why we run our Sweepstakes. We run a Sweepstakes because it's fun and exciting and calls attention to our unbeatable magazine and merchandise offers. We give away millions of dollars in prizes every year. In total, we've awarded 125 MILLION DOLLARS since our Sweepstakes began in 1967, and the number keeps growing larger every year!

All entries received by November 19, 1998 are guaranteed to win one of the cash prizes promoted in Giveaway No. 599 and are eligible to win all other Giveaways listed below. This is the Final Round for Giveaway No. 581 which will end in a few short weeks and is separate from all previous entry opportunities. In Giveaway No. 599, most people will receive a check for $1.00, you could win up to $100 Thousand. You could even win $10 Million. You may receive multiple entry opportunities in our ongoing Giveaways.

Why you were selected to receive this Bulletin. Since we can't mail to everybody, we set up certain qualifications as to what groups we will send Bulletins to and when. (All customers and friends with at least one merchandise order per year and/or one magazine order in the last 3 months gain annual membership in our President's Gold Club. All customers and friends with a magazine purchase within the past year gain annual membership in the President's Club. Those who write to us requesting admission will also be granted membership privileges.) Within each category we then select specific people based on the interest they've shown in receiving our mail. Thousands are eliminated when we go through this process because they do not meet the standards. But you did! That's why you're receiving the enclosed documents that could make you a millionaire!

How you could be selected a winner. You could win our $10 Million or $5 Million SuperPrize® (Giveaway Nos. 555 and 525) if you have the matching winning number and return it by the deadline. We'll take a special early look for the winning number for the $5 Million SuperPrize® (Giveaway No. 525) and announce the winner on December 18, 1998 should the number come in from this Bulletin. If the winning number for any matching number Giveaway is not returned by the applicable deadline, we will award the base $1 Million prize to an alternate winner in a second chance random drawing among all eligible entrants at Giveaway end. In the unlikely event a winning number is duplicated, there will be a random drawing among such duplicated numbers to determine the winner. You will win a Hawaiian Vacation valued at $10,000.00 or the cash equivalent from Giveaway No. 581 if your entry is selected in a random drawing from among all eligible entries at Giveaway end. For Giveaway No. 599, all timely entrants from this Bulletin will win a prize by random drawing sometime during the next 12 months. Only one prize per entrant. Delivery of prize may be subject to subsequent prize choice. This presentation of Giveaway No. 599 is void in CT, WA, NV, VT and NC. Odds of winning depend on the number of entries received.

GIVEAWAYS PROMOTED IN THIS BULLETIN

PRIZES	GIVEAWAY NUMBER	ENDING DATE	WINNER SELECTED BY
$10 Million	555	*1/31/99	Winning Number
$ 5 Million	525	*7/31/99	Winning Number
$10 Thousand	581	*12/31/98	Random Drawing
Additional Cash**	599	*3/31/99	Random Drawing

(** 1 @ $100,000.00; 1 @ $25,000.00; 3 @ $10,000.00; 10 @ $2,000.00; 1 @ $1,000.00; 1 @ $500.00; 1 @ $100.00; 3,400,000+ cash prizes valued at $1.00 each)

* Prize may be awarded earlier at our option.

How our prizes pay out. Win $10,000,000.00 and you will receive $500,000.00 the first year, $250,000.00 a year thereafter, and $2,500,000.00 in the 30th year. Win $5,000,000.00 and you will receive $250,000.00 the first year, $125,000.00 a year thereafter, and $1,250,000.00 in the 30th year. Present value of Giveaway Nos. 555 and 525 will vary depending on interest rates and market conditions at the time of the award. All other prizes will be paid in full by check at time of award.

How to enter our Giveaways. If your entry has an order, you get EXPRESS ENTRY; you don't have to do another thing – except return your Official Prize Award Guarantee with your Certified Winner label affixed by the deadline. If you're not ordering and would like to enter the Giveaways, you must follow these steps to enter. Use the enclosed Non-Order Entry Postcard. Remove the Identification Number Label from the Dorothy Addeo note and paste it in the space provided. Be sure to write in your full name and return address. To enter "Hawaiian Vacation" Giveaway No. 581, write your Final Round Entry Number on the same card. Then mail the Non-Order Entry Postcard to the following address: PUBLISHERS CLEARING HOUSE, ENTRY ONLY PROCESSING, P.O. BOX 5000, SYOSSET, NEW YORK 11791-5000. Your card must arrive by 11/19/98 to be eligible for all Giveaways promoted in this Bulletin and to claim your prize from Giveaway No. 599.

Our Prize Patrol will notify winners of prizes of $10,000.00 or more in person. We'll contact winners of prizes under $10,000.00 by mail. The entrant named on the winning entry form will be considered the winner. We must locate any winner and have him or her execute an Affidavit of Eligibility within 30 days or we will select an alternate winner. Acceptance of prize, unless otherwise noted, constitutes permission to use winner's name and photograph in television commercials and for other promotional purposes.

No strings attached to our prizes. When you win in a Publishers Clearing House Sweepstakes, the prize is yours absolutely free. We never require you to buy anything either before or after you win. If anyone asks you for money to claim a prize, don't be taken in by it. The *real* Publishers Clearing House Prize Patrol comes with flowers, balloons, champagne, and they give YOU the money – no strings attached.

Giveaway Supervisors' decisions are final. Taxes are the winner's responsibility. Sweepstakes is open to residents of the U.S., the U.K. and Canada. You may write in as often as you like to enter our current, ongoing Sweepstakes. Just mail each request separately. We do not accept entries from a third party nor entries sent in bulk. We are not responsible for lost, delayed or misdirected mail. Principals and employees of Publishers Clearing House, its affiliates, contest processors, their immediate families and Giveaway Supervisors are not eligible. All federal, state and local laws apply.

To receive future Sweepstakes opportunities, or to obtain our most recent list of winners, just write to us at the address below and let us know.

ALL PRIZES GUARANTEED TO BE AWARDED
NO PURCHASE NECESSARY TO WIN

A SHIPPING & HANDLING CHARGE
WILL BE ADDED TO ALL NON-MAGAZINE ORDERS AS FOLLOWS:

AMOUNT OF PURCHASE	SHIPPING & HANDLING
Up to $10.00	$3.69
$10.01 to $17.00	$4.99
$17.01 to $25.00	$5.99
$25.01 to $45.00	$6.99
$45.01 and above	$7.99

Applicable sales tax will be added in CT, MN, NY and WI.
Delivery insurance provided at no extra charge.
Merchandise will be shipped within 4-6 weeks or you will be notified.
Overdue payments may be subject to a late fee of $1.50.

At Publishers Clearing House, we process orders the day they arrive and notify publishers and suppliers to start service immediately. Weekly magazines are in the mail to you in just 3 or 4 weeks – 5 at the most. Monthly magazines (and those published less frequently) take a few weeks more.

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CASH PRIZE GUARANTEE

Publishers Clearing House hereby guarantees that upon the timely receipt of your entry from this Bulletin, a cash prize will be delivered to you sometime during the next twelve months. Although most folks will win $1.00, your prize could be $100.00 ... $500.00 ... $1,000.00 ... $2,000.00 ... $10,000.00 ... $25,000.00 ... even $100,000.00 CASH! You could even win the $5,000,000.00 SuperPrize® on December 18th. If you win $10,000.00 or more, your prize will be delivered to you by the Publishers Clearing House Prize Patrol. If your prize is under $10,000.00, you will be contacted by mail.

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DON'T SAY NO – **Because in addition to your extra entry, you have an opportunity to receive FREE BONUS BULBS! (See order form for details.)**

C

- ☐ **YES! PLEASE RUSH!** My order and sweepstakes entry are enclosed.
- ☐ **No order enclosed.** Sweepstakes entry only.

FOR OFFICE USE ONLY

- ☐ Preferred Status
- ☐ Order Enclosed
- ☐ Less than 30 Days
- ☐ $10,000.00 Bonus
- ☐ $1,000.00 Instant Ticket Enclosed

- ☐ Regular
- ☐ No Order
- ☐ Over 30 Days
- ☐ No Cash Bonus
- ☐ No Instant Ticket Enclosed

PRINTED IN U.S.A.

R-OA-F97

Mr. FATTAH. Thank you, Mr. Chairman.

Let me echo what you have said and indicate that I will have my formal opening statement entered into the record. I think the two Members that we have before us and also Congressman Condit, here in the House, represent just a small part of what a significant vanguard of the consensus that exist in the legislative bodies here, that something has to be done about the fraud that is being perpetrated on so many people in this country through the scams operated through these sweepstakes.

We have to work as quickly as we can, here in the House, to join our Senate colleagues with a legislative product that we can conference on and put into law that would allow the U.S. Postal Service and other law enforcement entities, the tools that would be necessary to address this problem before we have additional victims.

So, I want to thank you for convening us. I look forward to hearing from my colleagues who are going to provide testimony to our committee and guide us as we go forward. Thank you.

[The prepared statement of Hon. Chaka Fattah follows:]

Remarks of the Honorable Chaka Fattah

Ranking Minority Member

Subcommittee on the Postal Service

Business Meeting and Mark Up

August 4, 1999

Mr.Chairman:

I am pleased to join you in the "en bloc" consideration of six bills, of which five are postal naming bills. In addition to meeting the Committee cosponsorship requirement, the postal naming measures continue the tradition of honoring distinguished individuals who have made a difference in their communities and for this country.

Along that line, I must point out two measures in particular, H.R. 642, which designates the Compton Main Post Office, in Compton, California as the "Mervyn Malcolm Dymally Post Office" and H.R. 643, which designates the Watts Finance Office in Los Angeles, California as the "Augustus F. Hawkins Post Office Building" which honor former Members of Congress. A third bill, H.R. 2357, would designate the U.S. Post Office located at 3675 Warrensville Center Road in Shaker Heights, Ohio, after Mrs. Louise Cinthy Stone Stokes, the late, sainted mother of our former colleague and friend, Congressman Louis Stokes.

Congressman Dymally represented the 31st District in California and devoted particular attention to U.S. policies toward nations in Africa and the Caribbean. Congressman Hawkins, represented the 29th District in California, served as the Chairman of the Committee on Education and Labor, sponsoring legislation designed to create jobs and insure civil rights.

Mrs. Louise Stokes, the mother of former Congressman Louis Stokes and the late Ambassador Carl B. Stokes worked hard as a domestic for 40 years in order to give her sons' an education and a better chance in life. And boy, did her hard work pay off. Carl Stokes, who passed in 1996 from cancer, served as an Ohio state legislator, a well-known NBC television news anchor, a Cleveland municipal judge and Ambassador to the Seychelles, and island nation in the Indian Ocean. Louis Stokes, served in the Army, became a lawyer, served 15 terms in the U.S. Congress representing the 11th Congressional district before retiring last year and now serves as senior counsel to the Cleveland, Ohio megafirm, Squire, Sanders & Dempsey. This is a wonderful way to honor the mother of two distinguished sons.

H.R. 1666, which names a post office in Madison, Florida, after Captain P. Kelly, Jr., America's first hero and casualty of World War II, provides for an appropriate introduction for the consideration of H.R. 2319. This legislation, sponsored by Chairman McHugh would make the American Battle Monuments Commission and the World War II Memorial Advisory Board eligible to use nonprofit standard mail rates of postage.

Mr. Chairman:

Yesterday, the Senate voted 93-0 to pass S. 335, the Deceptive Mail Prevention and Enforcement Act. That measure couldn't be more

timely and more needed. I applaud the senate, especially the sponsors of this Act, Senators Collins and Levin, for their initiative, due diligence and swift action.

After receiving phone calls and mail from people in my district complaining about the problems associated with deceptive sweepstakes mailings, I found myself thinking about how the movie title, "**the Good, the Bad, the Ugly**", captures the issue.

Good, because some people do win. **Bad**, because prize and sweepstakes schemes appear to be criminals' weapon of choice. And, **Ugly**, because a one billion dollar sweepstakes industry manages to swindle hundreds of thousands of consumers, many of them elderly, out of tens of millions of dollars a year. This must stop!

The legislation passed unanimously by the Senate, and on its way to the House will require clear disclosure by sweepstakes and promotional mailers that a purchase is **not** necessary to win the contest and that a purchase **will not** increase your chance of winning. The bill provides additional investigative and enforcement authority on the United States Postal Service and authorizes civil fines of up to $2 million for companies that violate the consumer protection standards.

The provisions contained in the Senate bill serve to combat the enormous level of fraud and abuse perpetrated by many operators of

sweepstakes and prize promotions. It sends the message, loud and clear, that we are committed to protecting consumers and will severely punish deceptive, misleading and fraudulent practices by marketing mailers.

Mr. Chairman, consumers are tired of being taken and ripped off. They should not be tricked into thinking a promotional mailing has some legitimate connection to the federal government, just because the mailer uses a seal or insignia, implies a federal endorsement or uses a brown envelope that looks like a government document. Consumers should not be tricked into thinking the "check" enclosed with the sweepstakes mailing, is negotiable – just because it looks real and they cannot read or see the tiny, small print saying, "this is not a check". ***(SEE POSTER)*** Elderly consumers should not be preyed upon by repeated and deceptive mailings just so that they squander their Social Security checks and life's savings to buy unneeded items in order to get closer to that "winning ticket". Consumers should not be deceived by cute little stickers, rub off labels and mailings which are easier to read, fill out and send in **if** you order more bulbs or magazines. ***(SEE POSTER)***

In short, consumers should no longer be bilked by unscrupulous marketers and sweepstakes con artists.

S. 335 provides consumers with a tough weapon and sweepstakes companies, large and small need to take notice. Your free ride is over.

As are your days of raking in Social Security checks and life's savings. You are going to be held responsible for what you mail and how you mail it. And, finally, if you do not treat your mailing constituency better, we will have the option of calling you - toll free to be excluded from any further mailings. Companies, beware!

In conclusion, I join Chairman McHugh in welcoming today's distinguished panelists. We appreciate your time, interest and testimony. I also extend a special thanks to the Federal Trade Commission, the National Consumers League, AARP, the DMA, and the postal service IG and Inspection Service, for your hard work in helping Congress combat sweepstakes abuse.

You should know that the only item I believe we need to add to sweepstakes legislation is a private right of action, allowing consumers to file suit in state court if a prize promoter or sweepstakes marketer continues to send mailings after you have called the toll-free number and requested to be excluded from future mailings. This private right of action is a provision in the Telephone Consumer Protection Act of 1991, which establishes consumer protections against unwanted telemarketing calls. Thank you.

Panel One - Members of Congress

On January 6, 1999, Rep. Frank A. LoBiondo (R-NJ) introduced H.R. 170, the Honesty in Sweepstakes Act of 1999, which:

requires specific "Honesty Disclosures" notices in a specified font (16) on the envelope and first page of mailings using games of chance; prohibits mailings containing matter resembling a negotiable instrument unless it contains the notice "This is not a check (or negotiable instrument) This has no cash value," or a notice to the same effect as prescribed by the postal service.

Rep. Danny K. Davis is a cosponsor of this bill.

On January 6, 1999, Rep. James E. Rogan (R-CA) introduced H.R. 237, the Sweepstakes Protection Act, which requires that:

any mailings using games of chance (including sweepstakes) contain clearly displayed disclaimers, printed on the envelope; and enclosed material, and requires companies to identify their principal place of business.

Both of these bills were referred to the House Committee on Government Reform, and subsequently to the Subcommittee on Postal Service.

Mr. MCHUGH. I thank the gentleman for his effort and for his leadership, not just on this issue, but throughout the entire subcommittee deliberations. I would be happy to yield to the chairman if he wanted to make any additional comments.

[Pause.]

Mr. MCHUGH. We will go back to the chairman any time he says. With that, I did not know if you want, Mr. Chairman with all due respect, I did not mean to interrupt.

Mr. BURTON. I apologize. We are talking about something else. I will leave the floor while I talk to her. I should not be out here. I have already made my comments. I appreciate you recognizing me again. Thank you, Mr. Chairman.

[The prepared statement of Hon. Dan Burton follows:]

Statement of Dan Burton
Before the Subcommittee on the Postal Service
of the Committee on Government Reform
Deceptive Sweepstakes Mailings
August 4, 1999

I want to thank you, Mr. Chairman, for calling this hearing on deceptive sweepstakes mailings. Many Americans have expressed concerns that some sweepstakes mailings deceive consumers into thinking that:

1) They have won a prize when they have not;
2) They need to buy something just to be eligible to win or claim their prize, when they do not; or
3) Their chances of winning a prize will increase if they buy more, when they will not.

Some of my colleagues have introduced legislation to try and protect consumers from deceptive sweepstakes mailings. I am pleased that Congressman Frank LoBiondo and Congressman James Rogan are here today to testify on behalf of their bills.

I am also glad to see Chief Postal Inspector Ken Hunter here today. I look forward to hearing his perspective on this issue.

I also know a number of State Attorneys General, including Indiana Attorney General Jeff Modisett, have been working very hard on behalf of victims of fraudulent mailings.

Obviously, in order to protect consumers from fraudulent sweepstakes mailings, Congress needs to determine the extent of the problem.

We also need to distinguish, as best we can, between legitimate sweepstakes that offer the possibility of winning, and fraudulent sweepstakes that mislead normal people into thinking they have won, or can increase their chances of winning by making more purchases, when this is not the case.

There are other issues related to sweepstakes legislation that I hope we will examine today. One important issue is preemption of state laws. As a former state legislator, I am a strong defender of states' rights. But I also understand the benefits of a nationwide standard for sweepstakes mailings if the problem proves as extensive and harmful as some say it is.

I think it's also important that consumers who specifically indicate that they do not want to receive any more sweepstakes mailings have this request honored in a timely manner.

I look forward to today's testimony and discussion. I hope that it will help the subcommittee identify a solution that protects consumers from fraudulent and misleading sweepstakes mailings while at the same time allowing the free flow of legitimate commerce through the mail.

Mr. McHUGH. I thank the chairman.

I will next yield to the gentleman from Ohio.

I should say to all in the room, one of the individuals that I, in my opinion, sadly had to disappoint, came to me very early on in this process and had made me aware of the efforts of his State's Attorney General, who has been leading the fight in the Great State of Ohio, again, on this issue.

I have become aware of his personal efforts in working with a variety of senior citizen organizations in helping to develop a case history of the abuses that have occurred in his district and in his State. We are looking forward to the Attorney General's written submissions. We will go over them. I appreciate his understanding.

With that, I would certainly be happy to yield to the gentleman for any comments he may wish to make.

[The information referred to follows:]

Statement by Ohio Attorney General Betty D. Montgomery

Hearing on Deceptive Sweepstakes Mailings

Committee on Government Reform

Subcommittee on the Postal Service

August 4, 1999

1

Congressman LaTourette has requested this information so that it can be made a part of the permanent record during the sweepstakes hearing of the Postal Service Subcommittee of the House Committee on Government Reform.

Most of us are familiar with the various sweepstakes awards that offer $10 million prizes. We have all received them in the mail, the slick sweepstakes with the eye-grabbing headlines that state: "Congratulations, John Doe, You Are Our Newest $10 Million Winner!" It is only when you read the fine print that you discover they are really offering games of chance with astronomical odds of winning. This multi-billion dollar industry consists of sweepstakes competitions that are often linked to direct-mail vendors who want you to purchase products such as magazine subscriptions, household items, videos, books, or compact discs. Often, many of the one billion sweepstakes offers mailed annually are carefully worded to lead recipients to believe they have already won this big prize, but that almost always is not the case. While most consumers disregard these solicitations, many fall victim to these potentially deceptive business practices. Unfortunately, vulnerable consumers, many of whom are elderly, are deceived by these slick marketing practices. They include personalized messages and purported legal documents that lead consumers to believe that they are among a select group of winners.

State attorneys general continue to take significant steps to curb sweepstakes abuse. Last year, they collectively brought 192 actions against illegal direct mail promotions, including many illegal sweepstakes promotions. Ohio joined 30 other states and the District of Columbia in an assurance of voluntary compliance with American Family Publishers. The company settled the matter without admitting any wrongdoing, but it did agree to no longer tell consumers they are finalists or winners unless they actually are, and it agreed to disclose the odds of winning its sweepstakes. We continue to monitor and enforce this agreement. It should also be noted that the following companies are currently (involved) in litigation initiated by several state attorneys general: Publishers Clearing House – Connecticut, Indiana, Washington, Wisconsin; Guaranteed and Bonded/Time Inc. – Connecticut and Washington; and American Family Publishers – Washington.

In an effort to work out these issues, the National Association of Attorneys General convened a multi-state working group to identify initiatives and safeguards to further protect consumers from possible abusive and deceptive sweepstakes practices. The working group is currently examining the industry. Due to confidentiality concerns we cannot comment on our specific ongoing investigations; however, please note that more than 40 states are actively participating in these investigations.

Last February, our association sponsored a public hearing in Indianapolis on sweepstakes promotions to collectively determine the best approaches to prevent sweepstakes fraud. Industry representatives and victims had the opportunity to testify about these sweepstakes practices before 11 attorneys general, including myself. Consumers described the financial and emotional toll that deceptive mailings had exacted, particularly on vulnerable citizens. We heard heartbreaking stories of financial ruin, family friction, and emotional turmoil. The witnesses testified that clever sweepstakes mailings have convinced people to purchase products they do not need or want because they believe doing so will give them an

advantage in winning the contest. We learned that individuals who do make purchases are targeted with repeated mailings, causing many of them to purchase additional unwanted merchandise. Again and again, we heard that the central issue is whether consumers are being informed clearly that no purchase is necessary to enter the sweepstakes and that buying something does not increase their chances of winning. For example, an Ohio consumer testified that the marketing practices of these companies were so aggressive that his deceased wife continued to receive sweepstakes mailings 10 years after her death. Another individual testified that her father spent more than $100,000 on sweepstakes. A number of consumers have spent thousands of dollars on products, resulting in garages, closets, and rooms filled with magazines and other products.

The industry feels that self-regulation through its own standards and ethical guidelines will help consumers to easily read and understand the terms and conditions of the sweepstakes offers. But none of the three trade associations present at the Indianapolis hearing was able to give even one example where self regulation had succeeded in forcing a member to end deceptive practices.

I would also like to address our recent partnership with Congressman Steven LaTourette's office in Operation Senior Sweep. Seniors located in his district in the Cleveland area were asked to save their junk mail for four weeks. We helped sort the mail and reviewed the information for possible fraudulent solicitations. Our office collected thousands of pieces of mail from more than 500 Ohio seniors. Thus far, we have analyzed a total 3,580 pieces of mail, of which 45 percent, or 1,624, represent sweepstakes oriented mailings. Of those mailings received, 324 were from the mainstream sweepstakes organizations (Publishers Clearing House, Reader's Digest, American Family Publishers, Lindenwald Fine Jewlery, and U.S. Purchasing Exchange). We found that one particular individual received 150 sweepstakes notifications over a four week period. If this senior was the winner of the prizes suggested in these sweepstakes offers, he would have won more than $120 million, three cars, two houses, and a cruise. These seniors also received more than 300 charitable sweepstakes solicitations from different companies.

While the office is still in the process of analyzing the information, we have determined that a number of direct-mail operators or solicitors should be investigated. As mentioned before, we are currently conducting a number of ongoing investigations: we are unable to discuss these cases specifically at this time. However, once the information is completely analyzed, we plan to submit to Congressman LaTourette an executive summary of our findings.

Further, I want to commend Representative LoBiondo for the introduction of H.R. 170. The requirements for conspicuous and explicit notices on the envelope, first page of the solicitation, and any included simulated check will help to prevent individuals from being misled. However, we would encourage the committee to consider amending the legislation to include additional safeguards such as:

- Prohibiting representations or implications that a person is a winner or stands in a better position than others in a mailing to receive a sweepstakes prize.
- Require qualifying language, such as "if you have the winning number," to be equal in size and prominence to the accompanying representation.

- Prohibit representations and inferences that ordering a product increases one's chances of winning.
- Require a standard, simple, alternative means to enter the sweepstakes without placing an order.
- Require disclosure of odds, "No purchase necessary" message, and other relevant information, styled similarly to the Food and Drug Administration's standard food label.
- Require a simple, easy-to-use process for striking one's name from a solicitation list, including the availability of a toll-free telephone number for such purpose.
- Prohibit the use of facsimile checks and language designed to imply government endorsement or affiliation.

Reform of the sweepstakes marketing industry is urgently needed. Promoters should be prohibited from burying key disclosures in fine print, thereby deceiving or misleading consumers. They should also be prohibited from implying that purchasing a product will enhance consumers' chances of winning and claiming that they are already winners unless they are. We are working on legislative reform efforts in our respective states to address this issue, and it is essential that Congress address this issue at the national level.

Finally and most importantly, given the extensive efforts by the states both legislatively and through enforcement actions, all the states hope that any federal law on the sweepstakes issue will contain strong non-preemption language.

We appreciate Congressman LaTourette's efforts and the committee's willingness to hold hearings on this issue. As always, please let us know if you have questions regarding this or any other issue concerning our office.

Mr. LATOURETTE. I thank you very much, Mr. Chairman.

I want to thank you for holding this hearing. This hearing on this legislation is probably one of the most important things this subcommittee has done since I entered service on this subcommittee in 1997. I also want to thank very much Mr. LoBiondo and our colleague, Mr. Rogan, for their legislation giving us the opportunity and the vehicle to talk about something that is a big concern.

The need for Federal legislation in this matter became apparent to me, as the chairman indicated, when we put together something known as operation senior sweep in our district.

We went around to the senior centers and we asked 500 senior citizens to save their mail for just 30 days. We all got together on a Saturday in May and sorted it. We had 10,000 pieces of mail. We have turned it over to our Attorney General, Betty Montgomery. She is in the process of sorting it.

She has already discovered questionable practices and potential areas for prosecution. The operation senior sweep opened up a flood gate of tragic stories from our district as well; stories where you could not believe what was happening to senior citizens who were being preyed upon by some of the direct mailers.

There was a woman from Solen, OH, who drained her savings, squandered her pension, and maxed out a $15,000 pre-approved credit card. We are not going to talk about pre-approved credit cards today, but she went out and she charged $15,000 on this pre-approved credit card. She has liens on her home. She stands to lose her home.

She gets mad at her adult children when they try to tell her to stop entering sweepstakes because she believes that will somehow prejudice her chance from winning the sweepstakes. There is another woman from our district that contacted us who discovered that her 81-year-old grandfather had drained his savings twice. He has over 50 subscriptions to magazines.

Those subscriptions go to the year 2010 for magazines that he has no interest in. She contacted the local Post Master and asked if she could rent a post office box to hold the mail that her father was receiving. The Post Master said that the biggest post office box would not be sufficient to hold a day's mail, yet alone a week's mail when she could make the 120-mile round trip.

We also had a woman share with us a month's worth of mail that she discovered that her 85-year-old mother-in-law had when she moved her into a retirement village and she was horrified. There was one mailing from a group, and this is apparently becoming attractive, that not only can you give while you are alive, but they have also written instructions on the back on how to reconstruct your will to keep on giving after you are dead.

So, the words "until death do us part" apparently do not apply when it comes to sweepstakes. We have put together, and I appreciate, again, the chairman's willingness to let us include in the membership materials the results of what it was we did. I just wanted to share a couple of the observations that our Attorney General had that is already addressed in Mr. LoBiondo and Mr. Rogan's legislation.

One is, according to our Attorney General, that the odds of winning should be prominently displayed and not buried in the fine

print. Here is a sweepstakes that says that this individual has a chance to win $2 million. But when you get down to the fine print and you determine what the odds are, the odds are 191 million.

Now, you may not think that is substantial, but you need to consider this. That the odds of a person falling out of bed and dying are 1 in 2 million. The odds of someone giving birth to quintuplets in this country is 1 in 85 million. So, the senior citizen who enters and makes a purchase under this sweepstakes has a better chance of having quintuplets than they do of winning this particular sweepstakes entry.

I suppose the good news is, on the bright side, senior citizens in this country have much better odds of not being hit by a meteorite. Those odds are 1 in 10 trillion, as opposed to 1 in 191 million. Mr. LoBiondo also talks in his legislation about look-alike checks. I know we have all seen the look-alike checks. These look like money orders that you purchase at the convenient store. It is hard for me to figure out that they are designed to do anything but trick the seniors.

Last, as the chairman points out in his large blow-ups, we really need to make sure this person did not win $833,337, when you have in the smallest of pica print that you have to have the winning number and you have to have it sent in, in a timely basis. So, I very much appreciate gentlemen your legislation.

I look forward to hearing from you. Just by way of thank you, Mr. Chairman, I would very much like to thank you and your staff for accommodating us. Thanks to Sarah Resnick of the National Association of Attorney Generals here in Washington for their organization's fine assistance as we got ready for this hearing.

I yield back my time.

[The prepared statement of Hon. Steven C. LaTourette follows:]

Opening Statement of Congressman Steven C. LaTourette (R-OH)
Hearing on Deceptive Sweepstakes Mailings
Committee on Government Reform
Subcommittee on the Postal Service
August 4, 1999

I'd like to thank Chairman McHugh for holding this important hearing, and also recognize Mr. LoBiondo, author of the Honesty in Sweepstakes Act of 1999. This common-sense legislation will protect the public, and especially our senior citizens, who are often misled by sweepstakes.

The need for federal legislation was made abundantly clear to me this year after my office completed a districtwide mail-collection project called "Operation Senior Sweep."

We launched a public education campaign about the pitfalls of sweepstakes and other mailings, and recruited hundreds of seniors from local senior centers. We told our seniors exactly what to be on the lookout for -- from sweepstakes to foreign lotteries to bogus home repair schemes. We asked seniors to save all their sweepstakes and other direct-mail solicitations for one full month, and asked Ohio Attorney General Betty D. Montgomery to review some of the mail. This is the first project of its type ever launched by a congressional office in conjunction with an Attorney General's office.

Nearly 500 seniors from the Cleveland area saved their mail in April at my request. In May, we all got together one Saturday morning at a local senior center and sorted through a mountain of mail. We then turned over many boxes of mail like this to Attorney General Montgomery for review. Her office is still analyzing nearly 3,600 pieces of mail, but has already determined that a number of direct mail operators should be investigated.

Operation Senior Sweep opened a floodgate of tragic stories from families and seniors who have been devastated by these misleading sweepstakes.

- A woman from Solon drained her savings, squandered her pension and maxed out a pre-approved $15,000 credit card on sweepstakes. She has liens on her home and stands to lose it, yet she is infuriated that her adult children are trying to help her. She fears they'll jeopardize her chances of winning.

- Another woman from my district discovered that her 81-year-old father, a Goodyear retiree in poor health, has drained in his savings twice, wasting $12,000 on products he doesn't use and magazines he doesn't read. He receives more than 50 magazines a month; some subscriptions are through the year 2010. His adult daughter wanted to have his mail forwarded to a post office box so she could monitor the sweepstakes entries; she was willing to make a 120-mile round-trip drive once a week. The local postmaster told her he didn't have a post office box large enough to hold a day's worth of her father's mail, let alone a week's.

- **We also had a woman share with us a month's worth of mail she discovered when moving her 85-year-old mother-in-law to a retirement village.** In one sweepstakes mailing, a small charitable organization provided instructions on how to change her will, and the exact language to use. The Better Business Bureau tells us this practice of "planned giving" is becoming quite popular. "Until death us do part" apparently doesn't apply when it comes to sweepstakes.

Operation Senior Sweep has proven to me that seniors are mercilessly targeted by these companies, and the more a senior responds, the more mail he or she receives. I am also convinced that seniors genuinely believe they increase their chances of winning by buying products or making a donation. These mailings are highly personalized, sometimes invoking the recipient's name a dozen times or more. Some appear to be personally highlighted; others contain Post It notes that look like they're handwritten.

I encourage folks to take a look at the blue folders like this one that I've left on the back table in the hearing room. Inside, you will find press clippings on Operation Senior Sweep, a summary of the project, and some mail samples from among the 10,000 pieces we amassed. In addition, you'll find written testimony from Ohio Attorney General Betty Montgomery, who has been an active participant in the national effort to curb direct mail abuse. She believes that any legislation we pass should certainly address these issues:

- The odds of winning should be prominently displayed, not buried in the fine print. This *Reader's Digest* sweepstakes carries a $2 million prize. The odds of winning, found here in tiny type, are 1 in 191 million. If you don't think those odds sound too bad, consider this: The odds of a person falling out of bed and dying are 1 in 2 million; the odds of having quintuplets are 1 in 85 million. So, a senior has a better chance of falling out of bed and dying or having quintuplets than winning this *Reader's Digest* sweepstakes. On the bright side, seniors have a much better shot at winning this sweepstakes than getting hit by a meteorite. Those odds are 1 in 10 trillion.

- Look-alike cashier's checks and money orders should have a disclaimer. As Mr. LoBiondo suggests, they should clearly state: "This is not a check. This has no cash value." These are *Reader's Digest* "money orders." They all look pretty real to me, and even have what appears to be a carbon copy.

- The "If you have the winning entry" language should be as prominent as claims that a person has won something. This is a *Time* sweepstake entry that claims in huge, bold type that a the recipient has won $833,337, and the check is on the way. Look how small the "if" disclaimer is.

With more than 400 million sweepstakes offers mailed to Americans each year, it is clear that the sweepstakes offers continue to mislead many, despite a crackdown from Attorneys General like Ohio's Betty Montgomery, and despite pleas from the industry that it can police

itself.

I'd like to thank the nearly 500 senior citizens from my district who so diligently helped with Operation Senior Sweep, as well as my 19th District Senior Task Force. I'd also like to extend my sincere thanks to Jennifer Worner-Carlson and Helen MacMurray of the Consumer Protection Division of the Ohio Attorney General's office, and Sarah Reznek of the National Association of Attorneys General here in Washington, DC, for their invaluable counsel and assistance with Operation Senior Sweep.

NOTICE OF PRIZE DELIVERY REQUIREMENTS

NOTICE DATE: March 20, 1999

FROM: American Breast Cancer Foundation
6920 Donachie Rd. • Suite 102
Baltimore, MD 21239

TO:
[redacted]
3959 Brainard Rd.
Cleveland, OH 44122-4517

EASY CLAIM #:
AA162670
PRIZE LEVEL:
$500 per month
PRIZE TERM:
12 Months

Dear Bettie,

This Prize Delivery Requirements Notice is being sent out specifically to you as notice that you have been deemed eligible and have been selected for this prize opportunity.

A series of 12 certified checks in the amount of $500 each will be prepared and mailed to you on a monthly basis upon meeting two simple prize delivery requirements. The requirements are as follows.

- Complete and sign the enclosed Affidavit for Prize Delivery so that our counsel can record your entry number and verify your qualification. The Affidavit will be used to determine if you are the bearer of the preselected winning entry number (see official rules for details).
- You must return your completed Affidavit to the American Breast Cancer Foundation postmarked no later than May 31, 1999. Use the enclosed reply envelope for this purpose.

I would be remiss if I did not congratulate you on your selection and ask a small favor of you in return.

This is a charity sweepstakes, which has as its sole purpose the raising of funds to support the work of the American Breast Cancer Foundation. And, as you know, all women are at risk of breast cancer...a new case is diagnosed every 3 minutes. Much more research and prevention are needed.

So, please mail in your Affidavit today and if all possible enclose a check for $5 or $7 along with it. Your gift, although not required to enter or win, could save a life.

Thank you for caring,

Phyllis Wolf
President

P.S. If an opportunity to win $500 a month isn't enough reason to enclose a small gift - do it for your mother, daughter or for yourself. There's so much to lose if we don't all join in the fight against breast cancer.

RETURN THIS ENTIRE SECTION

AFFIDAVIT FOR PRIZE DELIVERY

I, Bettie Burton

Do hereby warrant that I am an eligible participant in the "Easy Claim Cash Sweepstakes". Upon return of this Affidavit and the preselected winning Easy Claim # to Prize Headquarters, I understand that **$6,000 ($500 per month for one full year) will be mailed to me at 3959 Brainard Rd. Cleveland, OH 44122-4517.**

- ☐ Yes, I am not employed by or related to any person employed by American Breast Cancer Foundation.
- ☐ Yes, I am 18 years of age (or older) and know of no reason why I should not be eligible.
- ☐ Yes, American Breast Cancer Foundation may send my prize winnings to the address below.
- ☐ Yes, please release my first of twelve $500 monthly checks if I am the winner. Enclosed is my gift to support American Breast Cancer Foundation:

$7_____ $5_____ $10_____ $25_____ $50_____ $100_____

Please make your check payable to: American Breast Cancer Foundation

CLAIMANT: [redacted]
3959 Brainard Rd.
Cleveland, OH 44122-4517

[redacted]

Signature_____

☐ I will not contribute, but enter me in the sweepstake.

[redacted]

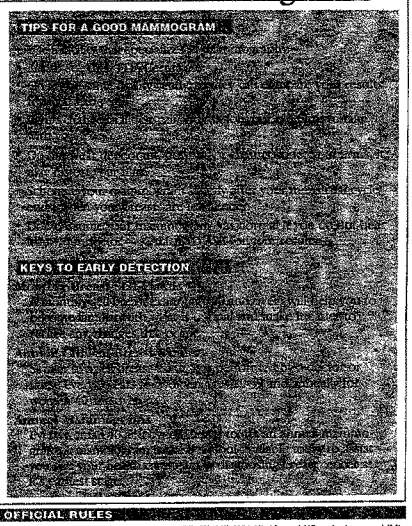
The Importance of Annual Mammograms

A mammogram is the best tool available today for detecting breast cancer. Monthly self breast exams are not a replacement for a mammogram. A mammogram can detect breast cancer up to two years before you or your doctor can feel a lump.

Why do many women fail to have their mammogram: FEAR!

We fear that when we have our mammogram they will find breast cancer. Finding out you have breast cancer is a very frightening experience, but it will be more frightening if you find it when it's too late.

If you don't find it, you can't fight it, and if you don't fight it... you can't beat it!



OFFICIAL RULES

1. How to claim your prize if you were the pre-selected winner — Return the Affidavit for Prize Delivery with a contribution or no contribution. Either way you are eligible to win.

2. Drawing — An independent agency pre-selected the winner. Each name had an equal chance to win the prize. The winner was drawn at random before the promotion letters were mailed. You did not have to be present to win. The winner's prize will be mailed by regular mail within 45 days of the entry deadline date provided the pre-selected winner returns his or her sweepstakes entry.

3. Prize — The total value of the sweepstakes is $6,000. Winner may request prize be awarded in one lump sum.

4. Who is Eligible? — The sweepstakes is open to residents (18 years and older) of the United States and its possessions. Sponsors of the sweepstakes, their families, agents, vendors, and staff are not eligible to win. The Affidavit for Prize Delivery will not be honored if mutilated, altered, reproduced, duplicated, stolen or not received through legitimate channels.

5. General — Offer void in PR, RI, ME, WV, HI, IA, and NC and where prohibited by law. All federal, state, and local regulations apply. Taxes on all prizes are the responsibility of the winner.

6. Sweepstakes Ends — The deadline for claiming the prize is May 31, 1999. Postmark determines deadline. Not responsible for lost, late or misdirected mail.

7. Winners — For the name of the pre-selected winner, send a stamped, self-addressed envelope to Sweepstakes Winner, Promotion #3, 5920 Donachie Road #102, Baltimore, MD 21239 on or after the entry deadline date. Prizes are nontransferable and there are no substitutes.

8. Odds of Winning — The odds of winning the prize are determined by the number of official entry forms mailed. Circulation will not exceed 115,463 letters. Your odds of winning the prize are no worse than 1 in 115,463.

The information enclosed describes one or more of American Breast Cancer Foundation, Inc.'s activities. Your gift is very much appreciated and fully deductible as a charitable contribution. A copy of our latest financial report may be obtained by writing to American Breast Cancer Foundation, Inc., at 798 Kenilworth Dr. #210, Towson, MD 21204. If you are a resident of the following states, you may obtain information directly by contacting:

In FLORIDA: A COPY OF THE OFFICIAL REGISTRATION AND FINANCIAL INFORMATION MAY BE OBTAINED FROM THE DIVISION OF CONSUMER SERVICES BY CALLING 1-800-435-7352, TOLL-FREE WITHIN THE STATE. **Maryland:** Copies of documents and information submitted by American Breast Cancer Foundation are available for the cost of copies and postage from the Secretary of State, Statehouse, Annapolis, MD 21401, 1-800-825-4510. **Mississippi:** The official registration and financial information of American Breast Cancer Foundation may be obtained from the Mississippi Secretary of State's office by calling 1-800-230-6167. **New Jersey:** Information filed with the Attorney General Concerning this charitable solicitation may be obtained from the Attorney General of the State of New Jersey by calling (973) 504-6215. **New York:** New York residents may obtain a Copy of the American Breast Cancer Foundation's annual report by writing to the Office of the Attorney General, Department of Law, Charities Bureau, 120 Broadway, New York, NY 10271. **North Carolina:** Financial information about American Breast Cancer Foundation and a copy of its license are available from the State Solicitation Licensing Branch at (919) 733-4510. **Pennsylvania:** The official registration and financial information of American Breast Cancer Foundation may be obtained from the Pennsylvania Department of State by calling toll-free, within Pennsylvania, 1-800-732-0999. **Virginia:** A financial statement for the most recent fiscal year is available upon request from the State Division of Consumer Affairs, P.O. Box 1163, Richmond, VA 23209, 1-804-786-1343. **Washington:** You may obtain additional financial disclosure information by contacting the Secretary of State at 1-800-332-GIVE. **West Virginia:** West Virginia residents may obtain a summary of the registration and financial documents from the Secretary of State, State Capitol, Charleston, WV 25305.

REGISTRATION WITH A STATE AGENCY DOES NOT CONSTITUTE OR IMPLY ENDORSEMENT, APPROVAL OR RECOMMENDATION BY THAT STATE.

You Can Help Fight Breast Cancer Through A Bequest In Your Will

Simply add this language to your will:

"I bequeath to American Breast Cancer Foundation, Inc., a not-for-profit organization incorporated in Towson, Maryland the sum of $_____ to be used for research into more effective treatment of breast cancer or for public or professional educational programs regarding detection and treatment of breast cancer."

If you already have a Will, it generally is possible to add a bequest to fight breast cancer without preparing a new Will. Through a short separate document (known as a "codicil"), you can include American Breast Cancer Foundation as your beneficiary. Be sure and check with your attorney to make sure that any change in your Will or codicil complies with the law of the state where you live. For more information about the form of a bequest or other estate gift to fight breast cancer just call the Estate Planning Department at (410) 825-9388.

Please remember American Breast Cancer Foundation in your will.

TREASURER'S MONEY ORDER ENTRY

TREASURER'S OFFICE AUTHORIZATION

058600 01 1 $$$2,000,000*00

SERIAL NUMBER — PAYOR'S CURRENCY — U.S. DOLLARS AND CENTS

PLAN: AUTO ********** 3-DIGIT 440

DELIVER TO: 098601-1 01427

[redacted]

CUSTOMER ADDRESS: 200 W. Jackson Apt. 211
Painesville, OH 44077-3156

VALUE IMPRINT AREA: TWO MILLION DOLLAR GRAND PRIZE(900)

☒ RECIPIENT ADDRESS FOR DELIVERY
Check here only if address is incorrect.
Make any corrections at left.

PERSONAL IDENTIFICATION CODE: 18851 39715 25650 670 0

NEGOTIABLE ENTRY ONLY FOR POTENTIAL WINNINGS
ORIGINAL DOCUMENT ISSUED ONLY BY RDA
Void if copied. Return by May 20
for Winners' Selection Drawing.

TREASURER'S MONEY ORDER ENTRY

TREASURER'S OFFICE AUTHORIZATION

058600 01 2 $$$750,000*00

SERIAL NUMBER — PAYOR'S CURRENCY — U.S. DOLLARS AND CENTS

PLAN: AUTO ********** 3-DIGIT 440

DELIVER TO: 098601-1 01427

[redacted]

CUSTOMER ADDRESS: 200 W. Jackson Apt. 211
Painesville, OH 44077-3156

VALUE IMPRINT AREA: SEVEN HUNDRED FIFTY THOUS
*CUSTOMER APPREC. PRIZE/BN

☒ RECIPIENT ADDRESS FOR DELIVERY
Check here only if address is incorrect.
Make any corrections at left.

PERSONAL IDENTIFICATION CODE: 18851 39715 25650 670

NEGOTIABLE ENTRY ONLY FOR POTENTIAL WINNINGS
ORIGINAL DOCUMENT ISSUED ONLY BY RDA
Void if copied. Return by May 20
for Winners' Selection Drawing.

TREASURER'S MONEY ORDER ENTRY

TREASURER'S OFFICE AUTHORIZATION

058600 01 3 $$$45,000*00

SERIAL NUMBER — PAYOR'S CURRENCY — U.S. DOLLARS AND CENTS

PLAN: AUTO ********** 3-DIGIT 440

DELIVER TO: 098601-1 01427

[redacted]

CUSTOMER ADDRESS: 200 W. Jackson Apt. 211
Painesville, OH 44077-3156

VALUE IMPRINT AREA: FORTY FIVE THOUSAND WINNER'S CHOICE PRIZE(350)

☒ RECIPIENT ADDRESS FOR DELIVERY
Check here only if address is incorrect.
Make any corrections at left.

PERSONAL IDENTIFICATION CODE: 18851 39715 25650 671

NEGOTIABLE ENTRY ONLY FOR POTENTIAL WINNINGS
ORIGINAL DOCUMENT ISSUED ONLY BY RDA
Void if copied. Return by May 20
for Winners' Selection Drawing.

▲ DETACH HERE AND RETURN BY MAY 20, 1999 ▲

OFFICIAL PRIZE LIST

Grand Prize Sweepstakes (900)	$45,000.00 Winner's Choice Prize (950)	Customer Appreciation Prize Sweepstakes (980)
$2,000,000.00 paid in 20 annual installments of $100,000.00 each. ($200,000.00 Demand Bonus would be paid immediately with 1st installment when winner replies ~~as directed~~).	$45,000.00 paid in one lump sum OR winner's choice of comparable merchandise offered in Sweepstakes presentations. $4,500.00 Demand Bonus would be paid immediately with winner's choice of cash or merchandise. Winner must reply as directed.	$750,000.00 paid in one lump sum includes $500,000.00 prize, plus $250,000.00 sustaining customer bonus. ($75,000.00 Demand Bonus would be paid immediately with lump sum when winner replies as directed.)

~~ALL PRIZE WINNERS' PAYMENTS MADE VIA MONEY ORDERS~~

SWEEPSTAKES RULES

NO PURCHASE OR PAYMENT NECESSARY TO ENTER OR WIN.

No mechanically reproduced entries will be accepted. Each entry received has an equal chance to win. Sweepstakes will be presented in conjunction with different product offers sponsored by The Reader's Digest Association, Inc. (RD), its subsidiaries and affiliated companies, and may be presented in conjunction with product offers co-sponsored by RD and other organizations. Sweepstakes may be presented in different creative presentations. Entrants may be offered the opportunity to receive bonus amounts in addition to stated prize amounts. If winner meets qualifying conditions set forth in the offering, You are eligible only for the Sweepstakes, and bonuses, if any, presented in the accompanying offering.

To enter, follow instructions and respond by the deadline date(s) stated, or if no deadline date is stated, by the final closing date. The final closing dates are 6/10/99 for Prize Group V: Grand Prize Sweepstakes, Customer Appreciation Prize, $250,000 Customer Compensation Prize and $45,000 Winner's Choice Prize and 3/3/00 for Prize Group VI: Million Dollar Prize Sweepstakes, $450,000 Cash Sweepstakes, $3,750,000 Sweepstakes, Reader's Digest Customer of the Year Prize and President's Prize Sweepstakes. Postmark determines date for mail entries. Not responsible for late, lost, damaged, incomplete, illegible, misdirected or postage due mail. If you have previously entered any Sweepstakes, each entry returned will have a separate chance to win. Participants in the Million Dollar Prize Sweepstakes will be automatically entered by RD.

Sweepstakes is sponsored by RD and open to legal residents of the United States, its territories and possessions. Employees and members of their immediate families of RD, its affiliated or subsidiary companies, First Data Solutions, KPMG Peat Marwick LLP and judging agents are not eligible. Entries are not transferable except to a surviving spouse residing in the same household.

Winners (with the exception of the Reader's Digest Customer of the Year Prize, the $250,000 Customer Compensation Prize and President's Prize Sweepstakes) are selected by a series of random drawings from eligible entries received. Winners will be determined on or about 6/20/99 for Prize Group V and 3/13/00 for Prize Group VI. Prize drawings are conducted by First Data Solutions, an independent judging organization whose decisions are final on all matters relating to the Sweepstakes. KPMG Peat Marwick LLP, Independent auditors, will monitor compliance with the rules governing the Grand Prize Sweepstakes issued by RD and the General Sweepstakes Procedures for RD 1999/00 Sweepstakes issued by First Data Solutions. Winning numbers for the Reader's Digest Customer of the Year Prize, the $250,000 Customer Compensation Prize and the President's Prize Sweepstakes have been preselected and winners of these Sweepstakes are determined by comparing individual numbers assigned to eligible entries received by RD with the preselected prize winning numbers. Numbers are assigned by a computer process but may not appear on entries. If winning number for a prize is not returned, the prize will be awarded to an alternate winner in a random drawing to be conducted by First Data Solutions from eligible entries received. If due to a printing, production, typographical, mechanical or other error, more than one winning number is issued, the prizes will be awarded in a random drawing from all such notices issued.

Consumer Disclosures/Award Rules: Odds of winning a prize depend on the number of eligible entries received. Approximate numerical odds and prize values are: Prize Group V: Grand Prize Sweepstakes (900): 1 Prize of $2,000,000 awarded as various annual payout options up to 20 years (or when offered one lump sum payment of $1,000,000, in lieu of the $2,000,000 prize payout); 1 in 181,000,000. Winner will receive only the payout option(s) contained in the presentation to which his winner responded. Customer Appreciation Prize (980): 1 Prize of $500,000 cash; 1 in 181,000,000. $45,000 Winner's Choice Prize (950): 1 Prize of $45,000 cash or merchandise - 1 in 92,519,000; $250,000 Customer Compensation Prize (980): 1 Prize of $250,000 cash or merchandise - 1 in 100,000,000. Prize Group VI: Million Dollar Prize Sweepstakes (910): 1 Prize of $1,000,000 awarded as 20 annual installments of $50,394 per year - 1 in 116,582,000; $450,000 Cash Sweepstakes (920): 25 Fifth Prizes of $1,000 - 1 in 3,600,000; 8 Fourth Prizes of $10,000 - 1 in 16,125,000; 3 Third Prizes of $15,000; 1 in 48,383,333; 2 Second Prizes of $25,000 - 1 in 72,500,000; 1 First Prize of $250,000 - 1 in 145,000,000; $3,750,000 Sweepstakes (930): 25,000 Prizes of Sweepstakes Watches (Approx. retail value $150.00) - 1 in 5,800; President's Prize Sweepstakes (940): 1 Prize of $1,000,000 awarded as 20 annual installments of $39,534 per year, 1 in 500,000,000; Reader's Digest Customer of the Year Prize (940): 1 Prize of $1,000 a month for life, with a minimum of $100,000, or when altered lump sum payout of $100,000, 1 in 290,000,000. Winner will have the choice of the cash or any merchandise offered in any creative presentation of the Sweepstakes won. RD reserves the right to substitute similar merchandise of equal or greater value in the event a particular merchandise prize is no longer available to RD. Sweepstakes 910, 940, 980 and 990 open only to existing RD customers as of the date selected for entry opportunity.

Winners may be requested to grant permission for the use of their names, signatures, photographs and likenesses in advertising and promotional materials. All taxes are the responsibility of the winners. Winners will be notified by mail within 30 days of the drawing and may be required to execute a Statement of Eligibility and Release within 30 days of prize notification attempt or prize may be assigned to an alternate winner. Prize won by a person under the age of 18 will be awarded to the winner's parent or legal guardian. No transfer or assignment of prize permitted. All federal, state and local laws and regulations apply. Void where prohibited by law. Any prize/prize notification returned as undeliverable may result in disqualification and selection of an alternate winner.

Names, cities and states of residence of prize winners will appear in printed lists which will be available on or about 9/30/99 for Prize Group V and 6/1/00 for Prize Group VI. To receive the lists, specify Prize Group V or VI and send a postcard with your name and address to: The Reader's Digest Sweepstakes - Dept. 2000, P.O. Box 252, Pleasantville, NY 10570. If you have any questions about the Sweepstakes, please write to the address above.

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Ohio's 19th Congressional District Senior Task Force

OPERATION SENIOR SWEEP:

Sweepstakes, scams and junk mail

Examples of Potentially Fraudulent Solicitations

1. Financial Aid

- **Investment Offers:** You receive an opportunity to invest money in a "safe" investment that is sure to make you a lot of money.
- **Work-at-home schemes:** You are offered the chance to do some kind of work at home, such as stuffing envelopes or assembling parts, for which you will get paid. You are asked to send in money up front for mailing lists and/or other items or services.
- **Chain letters and pyramid schemes:** You receive a letter telling you that you can make a lot of money by recruiting people either to send you or others a smaller amount of money.
- **Credit repair services:** You receive an offer stating that for a fee -- which you must pay up-front -- the company will "fix" any bad credit you have. It may claim it will write to your creditors or will create a new identity for you.
- **Financing Offers:** You receive an offer for a credit card, credit account, or loan which misrepresents its terms or is otherwise fraudulent. For example, you are offered a "gold" credit card, but it can only be used to buy over-priced jewelry from a specific retailer.

2. Automotive Fraud

- **Automotive repairs:** You receive offers for certain automotive repairs or services, but when you go in to have them done, you must pay additional shop fees for other charges not previously disclosed, or you are told that there are other problems with your car that require repair.
- **New auto sales practices:** You are offered a coupon for a discount on a car, but the dealership has marked up the price of the car or is unwilling to honor the coupon as offered. For example, it offers options you don't need.

3. Real Estate Fraud

- **Home repair (like repairs for foundation, roof, interior, siding, windows):** You receive an offer for repairs from a company not licensed in Ohio, or the offer is deceptive regarding what you get for your money.
- **Resort property timeshare sales and promotions:** You receive an offer for a prize of some kind, like a camera or discount travel package. In order to accept it, however, you must sit through a promotion for membership in a timeshare at a "resort," or you have to pay a "redemption" fee.
- **Pest control services:** You receive an offer for extermination services which is deceptive about its effectiveness, safety, or cost, or you receive an offer for an estimate on extermination services and are told you need the services when you do not.

4. Health Fraud

- **Health Products and Services (such as vitamins or diets):** You receive an offer which misrepresents the effectiveness, quantity, or cost of a health-related product or service. For example, a "year's supply" of vitamins lasts only three months.

- **Health spas/gymnasiums:** You receive an offer of membership in a health club, but the club is not registered or the offer misrepresents the costs of the membership or the services provided by the club.
- **Pre-need burial plans and other funeral services:** You receive an offer to put money in escrow for the future purchase of a casket or other services, but the offer is misleading or fraudulent because, for example, the casket is not set aside, the services are not available, or you are improperly charged interest.

5. Insurance Fraud

- **Sale of life, property or auto insurance:** You receive offers of insurance that violate the insurance laws, such as offers to sell you insurance products which are not licensed in Ohio.

6. Prize Offers

- **Lotteries:** You receive an offer to buy a ticket which makes you eligible to win a certain amount of money. Only the State of Ohio can operate a lottery in Ohio.
- **Sweepstakes:** You receive the opportunity to participate in a sweepstakes *if* you buy certain merchandise (like magazines), *if* you call a 900 number that charges you for the call, or *if* you make a contribution to an organization. For the most part, in Ohio you cannot be required to buy something or pay money for the chance to participate in a sweepstakes.

7. Charitable Solicitations

- **Solicitations from charitable organizations or professional fund-raisers:** You receive a request for a donation which violates the laws governing solicitations in Ohio. For example, the charity or organization may be nonexistent, or the organization may use a confusing name.

8. Miscellaneous

- **Travel-related offers:** You receive offers for vacation clubs or discount vacations that are deceptive about what you actually get for the money.
- **Home furnishings and appliances:** You receive offers for discounted items that misrepresent warranties, quality, function, costs and other aspects of the product.
- **Sale of magazines and other publications:** You receive offers that misrepresent the duration and cost of subscriptions.
- **Non-charitable fund-raising (like political and public issue solicitations):** You receive misleading or deceptive requests for contributions to organizations promising to "fight" for you in Washington or perform other advocacy functions.
- **Telephone service offers:** You receive a check, a promise of "free minutes," or some other deceptive offer to switch your long-distance service carrier to another carrier. If you agree, the service may not be of the quality or price offered. If you do not agree, you may get slammed — that is, your long-distance service may be switched without your approval.
- **Home Food Service Plans:** You receive a phone call offering a free meat sample if you agree to have a salesperson make a presentation in your home about a home food service plan. The salesperson says you will save money by buying bulk quantities of food, like enough for six months or a year, and that the plan will provide you with all your food needs. The actual cost of the food plan, however, far exceeds what comparable food items would cost in the grocery store. You also end up having to buy food from the store to supplement your food plan, and the food runs out before the end of the promised time period.

Ohio's 19th Congressional District Senior Task Force

OPERATION SENIOR SWEEP:

Sweepstakes, scams and junk mail

Information Sheet

What is the problem?

We've all received them in the mail, the slick sweepstakes with the eye-grabbing headlines such as: "Congratulations! You have won a cash prize of $25,000,000!" Of course, the promise that you've already won the money typically comes with a tiny disclaimer, such as "If you have the winning entry."

Sweepstakes competitions are often linked to direct-mail vendors who want you to purchase a certain product, such as magazine subscriptions, jewelry or household items. Often, many of the 400 million sweepstakes offers mailed annually are carefully worded to lead recipients to believe they've already won something, but that generally is not the case. While many of us pitch these entries in the trash as soon as we see them, many others -- particularly the elderly -- succumb to the sales pitch and wind up purchasing goods or services they don't need or cannot afford.

In the last year or so, there have been a number of news stories about seniors falling victim to unscrupulous direct-mail vendors. For instance, last year an elderly Baltimore woman flew to Florida to claim her supposed $11 million prize. According to the woman, the number she scratched off of her "security seal" was an exact match with her 11-digit "personal prize claim number." She was one of about a half dozen people who traveled to Florida at their own expense, fully and erroneously convinced that they had won huge cash prizes.

In fact, last year Ohio and 34 other states joined in a lawsuit against *American Family Publishers*. The company settled the case without admitting any wrongdoing, but it did agree to no longer tell consumers they're finalists or winners unless they actually are, and it agreed to disclose the odds of winning its sweepstakes' offers.

What is Operation Senior Sweep?

Operation Senior Sweep is being organized by Congressman LaTourette's office in conjunction with the 19th District Senior Task Force, a group of local volunteers who have been assisting LaTourette (R-19, Madison) with senior and consumer issues since 1995. Operation Senior Sweep will serve two purposes: to expose and combat the exploitation of seniors; and to educate consumers about bogus contests and offers. The hope is that through educational efforts no senior will be victimized again.

How will Operation Senior Sweep work?

From Monday, April 5, 1999, to Friday, April 30, 1999, Operation Senior Sweep volunteers will save their mail solicitations. At the end of the four-week collection period, volunteers will send or deliver their collected mail to a central location. Volunteers who are interested in helping the project further will meet to sort the mail before it is sent to law enforcement officials. Congressman LaTourette will assist with the sorting, and law enforcement officials will be on hand to assist the senior volunteers.

What happens to the mail after it's sorted?

The sorted mail will be delivered to Ohio Attorney General Betty Montgomery's office, where officials will review it to determine if any fraudulent or criminal activity has occurred. The results of Operation Senior Sweep will be announced and all volunteers will be recognized.

Why is Congressman LaTourette spearheading this project?

There are several reasons. First, Congressman LaTourette's 19th District Senior Task Force has been actively involved in many issues involving seniors, from Medicare reform to consumer issues. In addition, the 19th District is an ideal choice for such a project because it has more senior citizens than any other congressional district in the state of Ohio. Finally, LaTourette is the only Ohioan on the Postal Service Subcommittee of the House Committee on Government Reform, the committee which will be addressing sweepstakes reform legislation in the 106th Congress. Congressman LaTourette is a co-sponsor of the "Honesty in Sweepstakes Act of 1999," H.R. 170. This measure addresses the growing concerns about misleading sweepstakes and cashier's check look-alikes by requiring certain key disclosures. This measure is one of the key initiatives before the Postal Service Subcommittee in the 106th Congress.

What can the Congress do?

Operation Senior Sweep will be featured in an upcoming hearing before Congressman John M. McHugh (R-NY), chairman of the Postal Service Subcommittee in the House of Representatives. LaTourette said when the results of Operation Senior Sweep are available, he will share them with the subcommittee. LaTourette hopes to recruit about 500 volunteers, and it is expected that upwards of 10,000 pieces of mail will be collected and sorted.

For More Information:

If you have any questions about Operation Senior Sweep, please call Congressman LaTourette's district office at 1-800-447-0529 or contact Deborah Winston in his Washington office at 202-225-5731.

A CLEAN SWEEP

Seniors respond to call for potentially illegal sweepstakes mailings

5-11-99 NH

By Dino DiSanto
News-Herald Staff Writer

Every so often, Ralph Patchin and his wife would drop a $5 or $10 check into the mail to Martha McStein.

McStein had sent the Madison Township couple a mail solicitation promising their money would go to a national committee to help preserve Social Security.

"We probably get three of these types of things a day," Ralph Patchin said. "I think there are so many of these dubs out there. They promise you the world but never follow through."

To help stop questionable mail solicitations that attempt to exploit senior citizens, U.S. Rep. Steven C. LaTourette started Operation Senior Sweep.

The sweep involved more than 300 seniors collecting sweepstakes and other junk mail for a month in the 19th Congressional District, which consists of all Lake and Ashtabula counties and most of southeastern Cuyahoga County.

On Saturday, LaTourette's staff and a group of seniors gathered at the Browning Senior Center in Willoughby to sift through more than 8,000 pieces of mail collected by seniors.

Potentially fraudulent mailings were turned over to Ohio Attorney General Betty Montgomery's office.

"I'm actually stunned by the volume of mail these seniors have collected," said LaTourette, R-Madison Village. "Operation Senior Sweep is proving what we already suspected — that seniors are mercilessly targeted by these sweepstakes companies."

What angered LaTourette the most was the kind of solicitations received by residents like the Patchins.

Michael Bielo/News-Herald

You've got mail: U.S. Rep. Steven C. LaTourette, R-Madison Village, right, works with seniors, from left, Dick Yeager of Willowick and Eileen Hughes and her husband, Wayne, of Eastlake to sort through junk mail at the Browning Senior Center in Willoughby. The work was part of Operation Senior Sweep, an effort to promote consumer awareness of potentially fraudulent solicitations.

> *"Operation Senior Sweep is proving what we already suspected — that seniors are mercilessly targeted by these sweepstakes companies."*
>
> U.S. REP. STEVEN C. LATOURETTE
> CONGRESSMAN FROM MADISON VILLAGE

"All seniors, and anybody for that fact, need to know is that it just takes one stamp and a letter to solicit your congressman or Congress for that matter," he said.

LaTourette became involved with Operation Senior Sweep after the Sweepstakes and Honesty Act was introduced in both the House and Senate this year.

Hearings were held in the Senate, where the bill was sponsored by Sen. Ben Nighthorse, R-Colo. June hearings are expected in the House, where the bill was introduced by U.S. Rep. Frank LoBiondo, R-N.J.

In the meantime, the House bill was assigned to the House Subcommittee on Postal Service, on which LaTourette sits.

The bill would require sweepstakes mailers to clearly state certain information in their promotional materials, including any contest entry documents.

That is, the mailer must state

See SWEEP, Page A5

SWEEP

• From Page A1

that it is an offer to participate in a sweepstakes or game of chance and that "no purchase is required either to win a prize or enhance your chances of winning a prize."

Federal law prohibits companies from requiring a purchase or charging fees to people who enter sweepstakes.

As a result, people who choose not to buy magazine subscriptions or other promotional merchandise must be given the same chance of winning a prize as those who decide to make a purchase.

SUN PHOTO BY THOMAS SPUNCH

U.S. Rep. Steven LaTourette, R-19, appeared at the Solon Senior Center March 30 to recruit volunteers for Operation Senior Sweep. Close to 100 Solon senior citizens agreed to participate.

Seniors take sweep at swindles

By BOB SANDRICK
Staff Writer

Close to 100 Solon senior citizens have volunteered for Operation Senior Sweep, an effort to end misleading statements in sweepstakes and other types of mail solicitations.

The project is an initiative of U.S. Rep. Steven LaTourette, R-19, who on March 30 stopped by the Solon Senior Center to recruit and instruct volunteers.

In Operation Senior Sweep, hundreds of seniors in Solon and other 19th Congressional District municipalities will save their junk mail throughout April. The collections began Monday and will end April 30.

The material will be sent to Ohio Attorney General Betty Montgomery, who will determine if any of the mailings can be classified as fraudulent and subject to criminal indictment.

Also, Montgomery will use the material when she testifies at a congressional hearing about federal sweepstakes legislation. The hearing, scheduled for mid-May or early June, will be held by the House of Representative's Postal Service Subcommittee, of which LaTourette is a member.

The U.S. Senate has already held hearings on this issue and has introduced its own bill.

LaTourette and Montgomery, through Operation Senior Sweep, are going after work-at-home schemes, shady investment offers, credit-repair services, home-repair rip-offs and other mail scams.

But their main targets are sweepstakes that seem to guarantee winnings, or that state recipients may already have won millions of dollars. According to LaTourette spokesperson Debbie Winston, about 400 million of these carefully worded sweepstakes entries are mailed annually.

In many cases the mailings ask recipients to buy something, like magazines, and mislead people into believing that a purchase will increase their chances of winning the sweepstakes.

"It's very true there is no obligation to purchase anything," Winston said. "But a lot of people don't know that.

"The fear is that the entry forms are quite misleading," Winston said. "And senior citizens really are the most targeted group for those kind of mailings.

"One woman from Medina sent us something she got from Publishers Clearing House, where it sounds like she won $11.7 million," Winston said. "She knows she's not the winner, but a lot of people read these things and think they are the winner."

Eileen Regan, Solon senior coordinator, said she knows a number of city seniors who have lost large sums of money through misleading sweepstakes mailings.

Regan said late last year she learned of a Solon woman who is more than $100,000 in debt after purchasing magazines and other products through such sweepstakes.

To make matters worse, Regan said the woman used pre-approved credit cards, also received through the mail, to pay for the products, resulting in additional debt. She said the woman began entering various sweepstakes about eight years ago.

"When you approach a senior about this they get very defensive because they don't want to seem like fools," Regan said. "And they don't tell their adult children. So by the time we started looking into it, we realized she was in deep trouble.

"I got a hold of the family," Regan said. "I'm not sure how we're going to handle it, but I'm for declaring bankruptcy.

"She's not the worst case," Regan said. "People in other cities have lost their homes."

According to Montgomery's office, complaints by Ohioans of sweepstakes rose from 302 in 1996 to more than 730 in 1998.

"It's a large problem here and across the country," said Jennifer Detwiler, a Montgomery spokesperson. "And we have been making a lot of effort against scams that affect seniors. It's something that has been bothering the attorney general for some time."

Last year, Ohio and 34 other states sued America Family Publishers over its sweepstakes. The lawsuit was settled out of court. Although the company admitted no guilt, it promised it would no longer tell consumers they are winners unless they really are, and to state clearly the odds of winning.

Also, in February, Montgomery and 10 other state attorneys general attended a hearing in Indianapolis to discuss the problem. The hearing was attended by industry representatives, consumer fraud experts and victims.

Operation Senior Sweep is modeled after a similar campaign conducted a few years ago in Maryland, where 500 volunteers collected 10,000 pieces of mail in one month.

Winston said LaTourette, in addition to visiting Solon's senior center, has gone to senior centers in Willoughby and Ashtabula. He has also mailed project kits to about 30 other senior centers.

Helping out is LaTourette's 19th District Senior Task Force, a group of volunteer seniors he organized when he first came to office. The group tackles senior issues like Medicare reform.

Detwiler said it has not been determined what additional action will be taken as a result of Operation Senior Sweep. She said the information gathered may result in additional lawsuits or, possibly, criminal indictments.

However, Detwiler said, the most effective solution would be federal legislation.

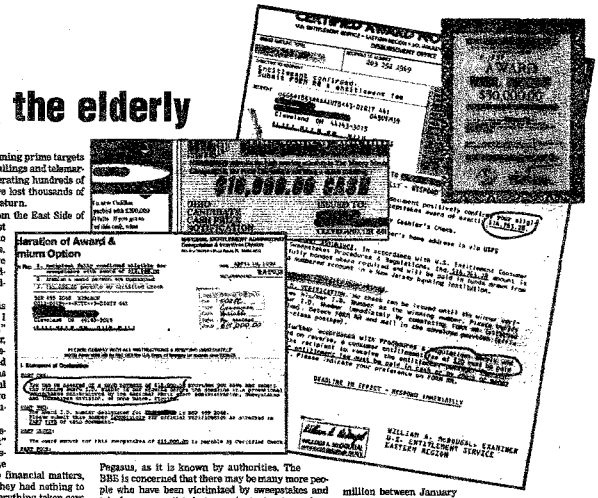
According to Winston, U.S. Rep. Frank LoBiondo, of New Jersey, has introduced the Honesty in Sweepstakes Act. LaTourette is a co-sponsor of the bill.

Under the act, a sweepstakes would have to state the odds of winning and make it clear that no purchase is necessary to enter.

INSIGHT

Fleecing the elderly

STUART GLICK Freelance Writer



Cleveland residents are becoming prime targets of deceptive sweepstakes mailings and telemarketing scams that are generating hundreds of complaints from people who have lost thousands of dollars and received nothing in return.

One Jewish senior citizen from the East Side of Cleveland is believed to have lost as much as $75,000 responding to fraudulent sweepstakes claims. Dismayed family members have agreed to talk to the CJN providing their identities remain confidential.

"If somebody had told me this would happen to my father, I would never have believed it," says the victim's eldest daughter, who lives out-of-state. Another sister who lives with her 77-year-old widowed father, says he has always been frugal and thoughtful with his money, but now seems to be showing some signs of age coupled with other health problems.

Family members say they suspected "something was not right" during their most recent Thanksgiving holiday together. When the topic of conversation turned to financial matters, their father assured them that they had nothing to worry about because he had "everything taken care of."

They soon discovered their father was sending money to a prize-promotion firm known as HRH Originals based in Montreal, Canada. The Cleveland Better Business Bureau has identified the company as one of several hundred firms preying on the elderly from across the border.

The daughters were astounded to learn how much money their father had sent over a period of two years and that somebody was debiting his checking account. Upon examining his check register, they found checks written to at least 25 different sweepstakes companies.

The children tried to convince their father to close his bank account, but he resisted their appeals. "He was adamant. He didn't want to do it," says one daughter.

"The bank's taking care of it," he would tell her. Ultimately he backed down and closed his account.

"He doesn't grasp that somebody's trying to swindle him," the daughter says.

"Older people are frequently targeted by scam artists," says Armond Budish, an attorney who deals with issues relating to aging. The range of scams is "very broad." They include telephone, direct mail and people appearing on doorsteps. "The elderly and their families have to be on guard," he warns. "Elderly people are too polite for their own good. Often homebound, they want to be in communication with people" and, as such, are prime targets for scam artists and swindlers. "If something sounds too good to be true," he adds, "it probably is."

The Better Business Bureau reports it has received more than 300 inquiries on HRH Originals, or Pegasus, as it is known by authorities. The BBB is concerned that there may be many more people who have been victimized by sweepstakes and telephone con artists but are reluctant or too embarrassed to come forward.

Beb Manista, a spokesman for the local BBB, says the "prize pitch" is particularly evil because it targets the elderly, who are more likely to be alone and vulnerable. "There are literally thousands of companies in our database that are doing business in this manner," he says.

Telemarketers will often tempt their victims by telling them they have won large sums of money, or valuable prizes. But in order to get their prize, they must remit money to the firm in advance.

"Bait letters" are often used to target certain groups perceived to be vulnerable.

"Bait letters" are often used to target certain groups perceived to be vulnerable, Manista says. "These include people whose names are placed on "sucker lists" because they have entered phony contests in the past and it is believed they can be duped again.

According to the Jewish victim's family, many of the letters their father received were written on what appeared to be official stationery and seemed legitimate. "Each one had a more personalized version to seem authentic," says the older daughter.

One recent letter went so far as to claim that "previous efforts to win have now paid off for you, and I am looking at a cashier's check made out for $11,000." The letter signed a "prize consultant," concludes with a P.S. stating that "This is in no way a joke. You have won, guaranteed!!"

Cross-border telemarketing fraud has become one of the most prevalent forms of white-collar crime, according to officials at Project Phone Busters, a Canadian national task force combating telemarketing fraud. The task force reports over 3,300 known victims with a total dollar loss of more than $17.5 million between January 1996 and March of this year.

"They keep sending money and hope it will all work out," says Sgt. Barry Elliot of Project Phone Busters. A daughter of the local victim concurs, saying her father may be driven by the notion that he has invested so much money that he has no other choice but to try and recoup his losses.

The rash of telemarketing and sweepstakes complaints prompted U.S. Representative Steven LaTourette of the 19th District to call on elderly constituents to collect a month's worth of "junk mail" in an effort to find potentially fraudulent sweepstakes offers.

LaTourette, who serves as the only Ohioan on the House Subcommittee on the Postal Service, says, "Operation Senior Sweep" is the first mail collection process of its type held in Ohio.

"I basically asked our seniors to let me be their garbage can for a month because I want to illustrate to my colleagues in Congress that we must do something to stop these predatory companies," LaTourette said.

LaTourette has asked Ohio Attorney General Betty Montgomery to testify before Congress about the sweepstakes industry when the subcommittee considers sweepstakes legislation. Pending legislation would force companies to state the odds of winning and provide clear instructions that you don't need to buy something to enter contests.

Anyone wishing to forward materials to the congressman can do so by sending it to his attention at 1224 Longworth House Office Building, Washington, D.C., 20515. The state attorney general's office can be reached at 800-282-0515.

Project Phone Busters, which is the central source for telemarketing complaints throughout Canada, can be reached toll free at 888-495-8501.

Congress looking into mail schemes aimed at the elderly

By THOMAS OTT
PLAIN DEALER REPORTER

WILLOUGHBY — Letters that pile up this morning at the Browning Senior Center will dangle riches while concealing the power to bankrupt.

The material is part of "Operation Senior Sweep," an effort by U.S. Rep. Steven C. LaTourette to find misleading and potentially fraudulent sweepstakes offers, solicitations and other correspondence aimed at senior citizens. The Madison Republican, who asked elderly constituents to collect a month's worth of junk mail, will accept samples from seven senior centers.

LaTourette, a former prosecutor, is helping to build a case for New Jersey Republican Rep. Frank A. LaBiondo, who has introduced a bill requiring straightforward disclosures from direct-mail marketers. The paper trail will add to reports collected by LaTourette of people who have lost large sums while chasing wealth.

Sara Wolfe Schlayer of Concord Township has urged LaTourette to crack down on the "scum" she said preyed on her 82-year-old father for as much as $12,000, twice depleting his bank account.

Schlayer said her father, a stroke victim, had subscribed to a host of magazines as far into the future as 2014, in hopes of enhancing sweepstakes odds, and donated to conservative groups battling "the forces of darkness." She spends a lot of time writing and calling solicitors and publishers to have him removed from mailing lists.

"I don't know how they live with themselves knowing they are deliberately trying to fool our older people," she said.

Eileen M. Regan, director of the Solon Senior Center, told LaTourette of a 77-year-old woman who ran a new credit line to $112,000 while making purchases that accompanied sweepstakes entries. The woman ended up with a lien on her house.

"I've had some who were into it for a couple thousand before I sat them down and said, 'You've got to stop this, or I'll call your kids,'" Regan said.

"Everybody thinks Solon is so wealthy," she said. "We have many seniors who live hand to mouth. Some of them are spending their money on this stupid sweepstakes stuff."

Elderly people frequently pay for special delivery to beat contest deadlines, said Charliene Arrington, postmaster in Beachwood.

LaTourette already had hundreds of exhibits submitted to his Painesville office.

There was a "gifting program" chain letter that promised returns for sending a $50 money order to the last person listed. An "astrological detective" offered a Strongsville woman "84 days of happiness" and a "free" butterfly-shaped charm for $19.95 and $3 postage. Groups with diseases in their names held out possible winnings while soliciting optional donations.

Richard C. Thompson, 75, of North Perry, brought in four shopping bags full of mail he had accumulated since October 1997. He collected the letters as a retirement hobby but did not find them tempting.

"I don't believe in them. It's like gambling," Thompson said. "I just didn't get involved because you can get into such a habit."

Ohio law already mandates clarity in solicitation. Deborah Winston, a spokeswoman for LaTourette, said particularly blatant violations that turn up today will be turned over to the state attorney general for cease-and-desist action.

Cleveland Plain Dealer, March 30, 1999

Seniors sought to nail mail scams

By LOU MIO
PLAIN DEALER REPORTER

WILLOUGHBY — Rep. Steven LaTourette is recruiting senior volunteers to save their junk mail for four weeks.

Then he plans to hold a mail-sorting party in May and invite representatives from the Postal Service and the Ohio attorney general's office.

The idea is to learn whether junk mail marketers are collecting money from people through possible fraudulent solicitations, especially sweepstakes campaigns. And learn what can be done about it in Washington.

The Madison Republican will visit senior centers in Lake, Cuyahoga and Ashtabula counties today and tomorrow looking for 500 volunteers to collect mail for four weeks, starting next Monday.

He said there was a pending bill by Rep. Frank A. LoBiondo, a New Jersey Republican, to require upfront, clear, and easy-to-read disclosures when direct-mail marketers use sweepstakes and cashier's check look-alikes to sell their products.

"There are some bad apples in the direct-mail industry, and this bill will end the too-common practice of deeply burying key disclosures in fine print," LoBiondo said in a news release. "There is nothing wrong with trying to sell magazines through the mail, but consumers should not be deceived or misled into chasing a dream that is never going to materialize."

Ohio consumer law requires clear and conspicuous disclosures in solicitation, including mail, said Jennifer Detwiler, a spokeswoman for Ohio Attorney General Betty Montgomery, who joined with 10 other state attorneys general last month in Indianapolis to discuss their growing concern with sweepstakes fraud.

In Ohio, the number of complaints against sweepstakes companies grew from 362 in 1996 to more than 730 last year, Montgomery said. Violation of Ohio Consumer Law can carry a penalty of up to $25,000 per violation.

LaTourette's volunteer program is called "Operation Senior Sweep," and he will meet at noon today with some of the 600 seniors living at Breckenridge Village in Willoughby, followed by a meeting at 1:30 p.m. with older people at the Solon Senior Center. Tomorrow, he will visit the Ashtabula Senior Center.

Lois Calderwood, director of community services at Breckenridge Village, said older people were often targeted for fraudulent mail schemes, especially health-care scams.

"I laud the congressman's efforts," Calderwood said. "We're in a position to constantly alert our community and keep them more informed. But it's the isolated seniors out there who are not connected."

LaTourette, a member of the House postal service subcommittee, has arranged for Montgomery to testify at an upcoming congressional hearing on federal sweepstakes legislation.

Rich in mail only

Seniors keep track of sweepstakes offers received

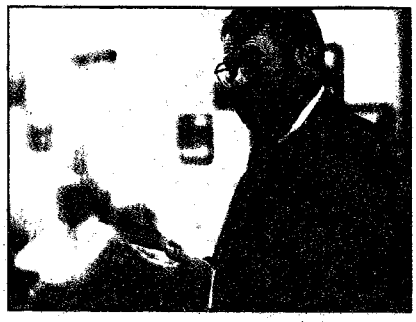
By MARK TODD
Staff Writer

ASHTABULA — Judging by her mailbox, Millie Roth is one of the luckiest people in Ashtabula.

Roth said she regularly receives notices proclaiming her the winner of this contest or that sweepstakes.

"If I had all the money I supposedly won in sweepstakes, I'd be rich," she said, laughing.

In years past, Roth would simply toss the mailings into the trash. Now she's being asked to keep the solicit tions as possible evidence in a congressional investigation.



BILL WEST / Star Beacon

U.S. REP. Steven LaTourette talks about sweepstakes fraud Wednesday to an appreciative crowd of senior citizens at the Senior Center on Main Avenue in Ashtabula.

U.S. Rep. Steven LaTourette, R-Madison, was at the Ashtabula Senior Center Wednesday morning, asking the help of patrons for a special survey his office is spearheading. "Operation Senior Sweep" will enlist the aid of 500 people in his district, who will spend April collecting mailings they consider illegal or misleading.

See RICH, Page A7

Rich

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"Consider us to be your garbage can for 25 days," LaTourette told the group.

Later, all the mailings will be sorted by volunteers, including postal inspectors and Ohio Attorney General Betty Montgomery, LaTourette said. Montgomery will also testify about the mailings before a postal service subcommittee, of which LaTourette is a member.

Volunteers will be asked to look for a variety of misleading mail, including suspicious charity requests, credit card solicitations and unsolicited gifts — such as return address labels — from organizations that request a donation.

Data obtained from the survey will provide evidence of abuse to federal and state agencies, LaTourette said.

"We want to give Betty Montgomery some ammunition to go after the cheats," LaTourette said.

Seniors are being asked to help because that age group "is more heavily targeted by junk mailers," he said.

Ploys can be clever, LaTourette said. One woman was informed she had won the Canadian lottery, and could claim a multi-million-dollar prize if she merely paid taxes on the winnings, he said.

"It's these kind of folks we want to stop, prosecute and expose to the light of day," LaTourette said.

To a lesser degree, LaTourette's grandmother has been stung, admitting to buying magazines in hopes of obtaining a prize, he said.

Response to the program, patterned after a survey in Maryland, has enjoyed "overwhelming" support, LaTourette said. Some 3[illegible]0 people have already agreed to volunteer, he said.

After the meeting, many in the audience said they will monitor their mail.

"I signed up for it," said Hugh N. VanWinkle of Dorset. "I get sweepstakes, and all of them say I'll win. . . 'if'. I think they are rather misleading."

Emilino Mendez of Ashtabula said he is swamped with mailings.

"I get lot[illegible] of mailings every day, and I think (the survey) will help," he said. "It's a very nice idea."

Another city resident, Ann Kivela, bemoaned the money companies spend on such mailings.

"Money used to send this garbage could help organizations," she said. "The money could help children. It's a shame."

Seniors eye contest mailings

By Heather Fletcher
News-Herald Staff Writer

Grasping a couple of sweepstakes letters he received, Willoughby resident Bruce Johnston listened to a lecture by U.S. Rep. Steven C. LaTourette.

"You are the winner" graced the top of a cellophane window on one of the envelopes, revealing the numbers "$100,000." Inside, fliers detailed the Carol Wright gifts Johnston could buy.

"I think that that's not right," LaTourette, R-Madison Village, told a gathering at Breckenridge Village, a senior living center in Willoughby, on Tuesday.

As a result, people buy products they don't want or need to try to get those prizes. LaTourette wants to stop that kind of solicitation. One way to do that is by backing a bill that would force sweepstakes companies to show Johnston, for instance, that he didn't win $100,000.

So the congressman came to tell people what they can do about mail like Johnston's — save the mail and give it to him, LaTourette said.

Residents in the 19th Congressional District, which consists of all of Lake and Ashtabula counties and most of southeastern Cuyahoga County, are being asked to collect sweepstakes and potentially fraudulent mail during Operation Senior Sweep.

Ohio Attorney General Betty D. Montgomery will review the fraudulent mail for possible prosecution. The sweepstakes mail also will head to Washington for hearings in May before the House Postal Service Subcommittee.

"I think that I'm going to be overwhelmed by the amount of mail that we get," LaTourette said.

Johnston, for one, said he's glad LaTourette is taking this initiative.

"I think his presentation of this project sweep was clear and persuasive," he said. "And it gives any who are interested or concerned an opportunity to do something about the problem."

Johnston said he'll collect mail for the effort, because he agrees with his congressman that promised prizes are a problem.

"I think that there are a lot of people with a limited education and limited information who are gullible and are being victimized," he said.

Breckenridge resident Dorothy Thomas, sitting behind Johnston during LaTourette's speech, said that although she and her husband, A.J., toss out misleading mail, there may come a time when they are a little more likely to respond to it.

"You read in the paper everyday another case of that sort of thing," Dorothy said.

So they'll try to help LaTourette.

"Because we're older people," A.J. said. "We're the victims."

STAR BEACON

Ed Looman
Publisher

Neil Frieder
Editor

The founding fathers of this republic insisted that a vigilant, courageous press is essential to a free society. To honor this historic contract, we need to know what you think about the issues that shape our lives.

Operation Senior Sweep

WE SUGGEST:

Help put fraudulent sweepstakes outof business

Normally the best defense against shoddy sweepstakes mailings is to pitch them in the round file even before the envelopes are opened.

But maybe for the time there is a better idea that may lead to a solution with these sweepstakes.

Mail sweepstakes, such as Publisher's Clearinghouse and American Family Publishers, are coming under more scrutiny these days. Congress has held hearings and horror stories have emerged on how people have paid out thousands of dollars to win against nearly impossible odds. Last year 35 states, including Ohio, joined together and sued American Family Publishers. The case has been settled.

So the pressure is on.

Privately the best way to combat these sweepstakes is to consider the mail junk and toss it where it belongs — the garbage.

However, there is a better answer for the time being. Rep. Steven C. LaTourette, R-Madison, has organized Operation Senior Sweep in an effort to build a case against "fraudulent sweepstakes and solicitations."

According to a statement from LaTourette's office, the program has two purposes: "to expose and combat the exploitation of seniors and to educate consumers about bogus contests and offers."

LaTourette is seeking volunteers to collect mail that tries to sell something, offers a prize, promises to save you money, make you money or asks for money. He wants to collect the mail for the period of April 5 thought April 30.

According to LaTourette, the information collected will be presented at a subcommittee hearing.

LaTourette also is co-sponsoring Honesty in Sweepstakes Act of 1999.

The key to wanting a law that stops sweepstakes scams is "honesty."

One of the big problems with tackling the sweepstakes issue and other "junk mail" issues is the action comes perilously close to conflicting with First Amendment rights.

The First Amendment does not cover issues of fraud and scam though. Any law adopted must segregate these two issues from the legitimate right to disseminate truthful information.

ON A CLOSING NOTE: We suspect the sweepstakes issue would not be much of an issue if magazines did not advertise their subscriptions in these mailings. Magazines also would not advertise if people would not take out their subscriptions to these magazines via the sweepstakes route.

You may already be a loser

LaTourette wants residents to monitor sales pitches

By MARK TODD
Staff Writer

Sweepstakes that set the heart racing with promises of lavish gifts — but only deliver disappointment — have caught the attention of local lawmakers.

The elderly, in particular, are targeted for authentic-looking mail that arrive as congratulations, but instead can mask a sales pitch. Unwary residents can be drained financially in pursuit of a prize that never will arrive.

To determine the extent of the sweepstakes problem, U.S. Rep. Steven LaTourette, R-Madison, is seeking Ashtabula County residents to monitor their mail. The program, dubbed Operation Senior Sweep, will enlist volunteers who tally the amount of contest-related correspondence they receive in a month.

"We want to gauge the extent of any problem," said Deborah Winston, LaTourette's press secretary. "We want to see if anybody's committing a crime."

Beginning April 5, volunteers will keep track of contest-related mail and similar promotions sent to their homes they believe are misleading. The count ends April 30, and in early May a tally will be made.

Later, mail will be sorted by volunteers and delivered to Ohio Attorney General Betty Montgomery for her review. Later, Montgomery is expected to testify before a congressional committee.

Participants will be asked to open their mail with a knife or opener to prevent jagged edges. They are also invited to fill out an evaluation form for pieces they suspect are deceptive, although that step will be optional.

All correspondence should be placed in big envelopes sent to area community centers.

Eligible mail can range from contest promotions to come-ons from automotive, telephone, insurance, health and real estate companies and charitable agencies.

Results of Operation Senior Sweep could give a boost to legislation being studied by Congress' Postal Service subcommittee. LaTourette is a subcommittee member and co-sponsor of the Honesty in Sweepstakes Act of 1999.

The proposed law would oblige companies to clearly state

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Loser

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the odds of winning, plus emphasize that no purchase is necessary to participate.

Last week kits containing Operation Senior Sweep information were sent to community centers across Ashtabula County. A survey of local centers indicates the problem has surfaced, but isn't wide-spread.

"In the past, I've helped several people (with questions about sweepstakes)," said Ian Westcott, Ashtabula Senior Citizens Center director. "It's definitely a problem."

The situation is less acute in other areas. Telephone solicitors have been a concern of patrons of the Jefferson Community Center, but no one has commented about sweepstakes offers, said Marc Glotzbecker, director.

Deanna Clifford, Area Agency on Aging District XI director of community relations, said she hasn't fielded any calls about

Snappy seniors fighting fraud

■ Legislator launches campaign against misleading mailers

By Larry Hannan
News-Herald Staff Writer

Richmond Heights City Councilman Lee Gase said junk mail is a fact of life for seniors like himself.

"We get a lot of stuff, but that's because my wife sends some of the stuff back," Gase said. "The minute you start responding they send you more."

Gase is hopeful that a program being spearheaded by a local legislator will help stem the tide of junk mail that flows into the homes of seniors, who sometimes end up losing money through the schemes.

U.S. Rep. Steven C. LaTourette, R-Madison Village, has launched "Operation Senior Sweep," an initiative designed to find out how many solicitations mailed to the area are dishonest and take advantage of elderly people.

LaTourette has enlisted the help of the Ashtabula Senior Center to make Operation Senior Sweep a success.

Marjorie Harkabus, and fellow seniors Elaine Pearson and Betty Suttles, are all saving sweepstakes offers that arrive in the mail during April as "senior sweep volun-

See FRAUD, Page A6

FRAUD

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teers." All three said they began getting a lot of mail solicitations when they turned 65.

The project will involve having seniors save their mail solicitations for a four-week period from April 5 to April 30. At the end of the period, volunteers will send or deliver their collected mail to a central location.

"We're going to save everything that says 'you're a winner' or tries to get you to send money for something," Suttles said.

Some mail solicitations are for worthy causes, but she's seen others that appear to be attempts to con senior citizens, she said.

Most seniors know when something is a con, Pearson said.

"You should see the wastebaskets around the mailbox" at her apartment complex, Pearson said. "I live in a senior building and most of us just throw that stuff out as soon as it comes."

But she's heard stories of people thinking they won something and then spending thousands of dollars before finding out they were conned.

"I knew someone who got taken in and it was just devastating to her," Pearson said.

Mr. McHUGH. I thank the gentleman.

His statement really indicates he has been working hard on this issue in compiling exactly the kinds of problems and abuses that we need to address. So, with that gentlemen, our two colleagues, the gentleman from New Jersey, Mr. LoBoindo, and the gentleman from California, Mr. Rogan, are here.

As the audience has heard today, these two individuals have indeed been working hard in their respective endeavors to both address the problem in real terms and, perhaps equally important, address the attention of this subcommittee and the attention of the entire House and Congress on something that needs to be fixed.

We commend you both for that and also appreciate your patience here today as we go into the agenda. So, I do not want to hold you here any longer than is necessary. I would be happy to yield to you at this time. We had to make some sort of determination as to who would speak first. We did not want to have a sweepstakes, giving the tenor of this hearing.

So, we have decided that by numerical order of the bills, Mr. LoBiondo's bill is H.R. 170 and Mr. Rogan's bill is H.R. 237. So, as the lower number, we are using golf rules here, the gentleman from New Jersey would be the first to speak. So, we will be happy to hear from you at this time, sir.

STATEMENTS OF HON. FRANK A. LOBIONDO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY; AND HON. JAMES E. ROGAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. LoBIONDO. Well, thank you, Chairman McHugh and to Chairman Burton, and my colleagues, Congressman Fattah, and Congressman LaTourette. Mr. Chairman, I really appreciate the opportunity to testify before your subcommittee today regarding H.R. 170, the Honesty In Sweepstakes Act that I have introduced and worked on now for a couple of years.

In your opening statements, you really hit on some of the key points that were motivating factors in putting this legislation together. With your indulgence, I will go over a little bit more information that I think is pertinent to why we need to move this legislation.

Thousands, if not millions, of Americans will receive a sweepstakes mailing today. While most will disregard the mailing as a marketing ploy that it is, a small percentage of consumers will open the envelope with excitement and carefully return the enclosures, usually with a payment, in the hopes of becoming the next lucky winner of the $5 million, $10 million, or $20 million prize.

Most impacted by these fraudulent mailings are senior citizens; some of the most vulnerable in our society. Sadly, these vulnerable consumers are not being duped into merely entering a hopeless contest. They are in fact encouraged to purchase goods from these sweepstakes companies. These purchases are fueled by the insinuation that the more you buy, the better off your chances are of winning.

For seniors, most of whom are on a fixed income, this frivolous spending in the hope of winning untold riches is having an especially detrimental effect. Recent television news programs have

highlighted the need for sweepstakes reform. In one program, two elderly mid-Western women were profiled; each having spent more than $15,000 apiece over the last year alone on sweepstakes entries.

Another unfortunate case is one of an elderly couple in Arizona. The husband came across many canceled checks in the trash. It was then that he realized that his 80-year-old wife had been writing checks to these sweepstakes companies that were offering, what she thought, were freebies. Now, most of the old check books and bank statements were destroyed.

He was able to determine that his wife spends approximately one-third of the total amount of her Social Security checks on sweepstakes during the preceding 14 months alone. These are just a few of the many sad examples of consumers spending their hard-earned money on deceptive and fraudulent sweepstakes. How the companies carry out this fraud is common knowledge.

You pointed out some of it in what your displays are exhibiting. That is pretty commonplace. Sweepstakes companies prey on the vulnerable by including misleading language in their mailing. For example, a Publisher's Clearing House mailing from March 1998 stated that the "Prize Patrol would feel a lot better giving the prize to a customer."

Various other mailings use deceptive ploys, such as stating how often a winner was also a customer; by the way, 100 percent of the time, and rating their customer index. Well, I am proud my home State of New Jersey has taken steps to enact sweepstakes reform legislation and many other States across the Nation have followed suit.

I believe that meaningful regulation can only come from our action here at the Federal level. That is the main reason why I introduced H.R. 170, the Honesty In Sweepstakes Act. H.R. 170 takes significant steps to prevent vulnerable members of our society from being harmed by predatory sweepstakes companies.

First, H.R. 170, the legislation mandates that the envelope face should state, "This is a game of chance. You have not already won." Additionally, the first page of the enclosed material must contain the same disclaimer, along with the chances of winning. The first page must also include a notice that no purchase is required, either to win a prize or to enhance your chance of winning a prize. These honesty disclosures would be required to be printed in large easy-to-read 16-point font, ending the days of burying such information in the fine print; a practice especially detrimental to senior citizens, Mr. Chairman, which you so ably pointed out.

H.R. 170 also cracks down on the use of cashier check look-alikes, which Congressman LaTourette just mentioned. Too often, these authentic looking documents confuse and entice customers. My proposal requires sweepstakes promotions to explain, "This document is not a check." That this has "no cash value."

Enforcement of H.R. 170 would be by the U.S. Postal Service. The bill gives the Postal Service the authority to refuse to deliver and to dispose of mail not meeting the honesty in sweepstakes standards. My hope is to force these deceptive companies into losing money and changing their ways.

I recognize that further revisions of this bill may be necessary. I welcome input from your committee today. I pledge to work with you to make this even a better bill. I would like to thank some of my colleagues for helping to bring this problem to the attention of the House.

I would also like to thank my good friend, Representative Gary Condit, who has been indispensable in coordinating this successful bipartisan effort with this bill which has over 140 co-sponsors, in every respect; also my colleague who is with me today, Congressman Jim Rogan, who was motivated to this by similar circumstances, and who has spent a tremendous amount of time with us.

I also would like to thank Senator Ben Nighthorse Campbell who lead this way with this issue in the last Congress, and is responsible for a lot of what we are doing today. Also, Senator Susan Collins who has taken the reigns and provided invaluable information through her hearings.

In closing, let me stress the necessity for moving this legislation quickly. While many sweepstakes companies have made considerable strides in reforming their actions internally, there continues to be a substantial amount who have not. It is because of these dishonorable companies that this legislation is so vital.

Federal mandates will ensure that our customers and consumers, especially those who are the most vulnerable, are properly protected. We simply cannot allow consumers, especially senior citizens, to continue to be exploited by predatory sweepstakes companies.

Again, Mr. Chairman, thank you. I look forward to answering any questions you may have at the appropriate time.

[The prepared statement of Hon. Frank A. LoBiondo follows:]

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EMPOWERMENT

Statement of U.S. Rep Frank A. LoBiondo
Government Reform Subcommittee on Postal Services
August 4, 1999

Thank you, Mr. Chairman. I appreciate the opportunity to testify before the subcommittee regarding my bill, the Honesty in Sweepstakes Act of 1999.

Thousands, if not millions, of Americans will receive a sweepstakes mailing today. While most people will disregard the mailing as the marketing ploy it is, a small percentage of consumers will open the envelope with excitement and carefully return the enclosures, usually with a payment, in the hopes of becoming the next lucky winner of the five, ten, or twenty million dollar prize. Most impacted by these fraudulent mailings are senior citizens.

Sadly, these vulnerable consumers are not being duped into merely entering a hopeless contest. They are, in fact, encouraged to purchase goods from these sweepstakes companies. These purchases are fueled by the insinuation that the more you buy the better your chances of winning are. For seniors, most of whom are on a fixed income, this frivolous spending in the hope of winning untold riches is

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having an especially detrimental effect.

Recent television news programs have highlighted the need for sweepstakes reform. In one program, two elderly Midwestern women were profiled, each having spent more than fifteen thousand dollars apiece over the past year on sweepstakes orders.

Another unfortunate case is one of an elderly couple in Arizona. The husband came across many canceled checks in the trash. It was then he realized that his 80 year old wife had been sending money regularly to any sweepstakes company offering what she thought were "freebies." Though most of the old checkbooks and bank statements were destroyed, he was able to determine his wife spent approximately one-third of the total amount of her social security checks on sweepstakes during the preceding 14 months.

These are just a few of the many sad examples of consumers spending their hard-earned money on deceptive and fraudulent sweepstakes. How the companies carry out this fraud it is common knowledge.

Sweepstakes companies prey on the vulnerable by including misleading language in their mailings. For example, a Publishers Clearing House mailing from March of 1998 stated that the Prize Patrol "would feel a lot better giving the prize to a customer." Various other mailings used deceptive ploys such as stating how often

the winner was also a customer (100 percent of the time) and rating their "customer index."

While I am proud my home state of New Jersey has taken steps to enact sweepstakes reform legislation and many other states across the nation have followed suit, I believe that meaningful regulation can only come from the federal level. For this reason I introduced H.R. 170, the Honesty in Sweepstakes Act of 1999.

My bill takes significant steps to prevent vulnerable members of our society from being harmed by predatory sweepstakes companies. First, my legislation mandates that the envelope face should state "This is a game of chance. You have not already won." Additionally, the first page of the enclosed material must contain the same disclaimer along with the chances of winning. The first page must also include a notice that no purchase is required either to win a prize or to enhance your chance of winning a prize. These "Honesty Disclosures" would be required to be printed in a large, easy-to-read 16 point font, ending the days of burying such information in the fine print, a practice especially detrimental to senior citizens.

My bill also cracks down on the use of cashier's check look-alikes. Too often, these authentic-looking documents confuse and entice consumers. My proposal requires sweepstakes promotions to explain that "This [document] is NOT

a check. This has NO cash value."

Enforcement of H.R. 170 would be by the U.S. Postal Service. My bill gives the Postal Service the authority to refuse to deliver and dispose of mail not meeting the Honesty in Sweepstakes standards. My hope is to force these deceptive companies to loose money and change their ways.

I recognize further revisions of this bill may be necessary, and I welcome input from everyone here today.

I'd like to thank some of my colleagues for helping to bring this problem to the House. My good friend Representative Gary Condit has been indispensable in coordinating a successful bipartisan effort behind this bill. Representative Jim Rogan, whom you will be hearing from next, recognized this issue and acted quickly: for this I thank him. Senator Ben Nighthorse Campbell led the way on this issue last Congress, and it is because of his determination we are having this proceeding today. Senator Susan Collins has since taken the reins and has provided invaluable information through her hearings.

In closing, let me stress the necessity of moving this legislation quickly. While many sweepstakes companies have made considerable strides in reforming their actions internally, there continue to be a substantial amount who have not. It is because of these dishonorable companies that this legislation is so vital. Federal

mandates will ensure that our consumers, especially those who are the most vulnerable, are properly protected. We simply cannot allow our consumers, most especially senior citizens, to continue to be exploited by predatory sweepstakes companies. Thank you again, Mr. Chairman, and I am available for any questions you or members of the subcommittee may have.

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Mr. MCHUGH. I thank the gentleman, both for his presence here today and his longstanding work which first came to my attention more than a year ago. He has been laboring hard in that interim.

Speaking of hard labors, it is also an honor and a pleasure to have my good friend from California, Jim Rogan, with us today. I compliment him as well for the effort very clearly reflected in his legislation. We look forward to your comments at this time.

Mr. ROGAN. Mr. Chairman, thank you.

I want to echo the comments of my friend, Mr. LoBiondo, in thanking you, the ranking member, Chairman Burton, and the members of the subcommittee for your interest and your leadership. I especially want to thank Representative LoBiondo who, over the last couple of years, has provided exemplary leadership on this subject, long before it hit the national press and became a matter of interest.

As we worked to craft legislation affecting both consumers and businesses alike, I am looking forward to working with this committee, with our friends in the other body, and the legitimate publishing concerns to draft legislation that provides for the needs of reputable businesses, as well as for consumer protection.

Not long ago, the other body held in-depth hearings on the same matter. These hearings helped to shed some light on the subject from the perspective of both the marketer and the consumer. The stories of financial loss and personal tragedy aired in these hearings were manifest. To-date, our work in the House has proven a good first step in pursuit of a solution.

I am pleased to join my friend and colleague from New Jersey to discuss legislation that we have introduced that will protect consumers, particularly seniors. We bring to the table slightly different experiences and varied approaches to the problem; however, I can assure this committee we are united in our goal to protect vulnerable consumers who are victimized by deceptive and sometimes dishonest practices.

My bill, H.R. 237, the Sweepstakes Protection Act, will arm consumers with the information and the power to choose, while giving businesses protection under the law. This reform will be an anathema to the few bad apples who sour the reputation of a respectable and job-creating industry.

The Sweepstakes Protection Act requires marketing mail pieces, letters, and solicitations to include a disclaimer which reads as follows: "This is a game of chance. You may not have already won." This line would be required on both the envelope and the first page of any correspondence. It does not mandate font size, location, and so forth. My bill requires only that the disclaimer be clearly displayed.

Currently, we find too often the small print is more lengthy and deceptive than the bold print. Just by way of an example, Mr. Chairman, I have noted with interest the large charts that surround us here in the committee room. This was something that was sent to my press secretary just the other day, Jeff Solsby.

[Exhibit.]

Mr. ROGAN. I am not sure you can see from that distance, but the bold black letters say, "We now have proof, Jeffrey L Solsby, is one of our $1,666,675.00 winners." Then if you look at the very

fine print, you find out that of course you do have to return the grand prize winning number to be eligible to participate in the sweepstakes.

Then highlighted in yellow, Mr. Chairman, if you can see it from up there, in the almost microscopic print down here at the bottom are the words, "no purchase necessary to enter." I first became involved in this, Mr. Chairman, when a lady who lived on my street in Glendale, CA, Ms. Nita Stephenson, showed up on my doorstep one morning carrying a bag.

[Exhibit.]

Mr. ROGAN. The contents in the bag are here on the desk before you. I think she said this was something like a month's worth of solicitations. These things were coming at such a rapid rate to her and her elderly husband that she finally threw them in a bag, visited her Congressman, who lived up the street, dropped them off on my doorstep, and said, is there not something you can do about this?

She explained to me the plight of what was going on with many of her friends in senior centers and in the senior community locally, that people were experiencing the same tragedies that you and other members of the subcommittee related to in your opening statement.

[Exhibit.]

Mr. ROGAN. For the record, Mr. Chairman, I am holding up what appears to be about a 7-inch stack of various sweepstakes mailings that were sent to Ms. Stevenson, who then brought them to my home. When I raised this issue last year in a local seniors' publication and continued to raise it during innumerable town hall meetings at senior centers back home, the response I find, Mr. Chairman, is the same.

Mr. Chairman, legislators have a responsibility to protect the most vulnerable among us. We have laws protecting consumers from irresponsible businesses and product buyers from those who sell faulty products that do harm.

We have a responsibility to implement practical legislation that respects the needs of the business community without sacrificing the rights of consumers and their financial security.

Mr. Chairman, I want to assure every member of the subcommittee that there are a few things I am not interested in doing. First of all, I am not interested in outlawing sweepstakes mailings. I think that, as the chairman indicated, those are a legitimate marketing tool.

I also have no interest, Mr. Chairman, in limiting commercial speech, and nor do I have an interest in extending some form of "nanny-government" to protect people from themselves, if they choose to enter into sweepstakes competitions and try to make money from these sort of mailings.

I am interested, Mr. Chairman, in establishing responsibility to protect those who are more likely to fall prey to misleading sweepstakes. That is what this hearing really is all about. The bills that both Mr. LoBiondo and I have introduced are clear in scope. They are clear in intent.

Mr. Chairman, I am confident that by working together we can balance the needs of both sides, while providing protection for those Americans who are targeted by companies whose intent is to mislead for profit. Mr. Chairman, thank you and I thank the members of the subcommittee for your attention and interest.

[The prepared statement of Hon. James E. Rogan follows:]

Congressman James E. Rogan

— California's 27th Congressional District —

FOR IMMEDIATE RELEASE
August 3, 1999

Contact: Jeffrey Solsby
202-226-8352

Statement of Congressman James E. Rogan
Before the Subcommittee on Postal Service

Hearing on Sweepstakes Fraud Legislation
August 4, 1999

Mr. Chairman and members of the committee: I am pleased to join you today on the matter of fraudulent sweepstakes offers. It is a matter of great importance.

As we work to craft legislation affecting both consumers and businesses alike, I look forward to working with you, and with our colleagues in the other body, to draft legislation that provides for the needs of legitimate businesses and the safety of consumers.

Not long ago, the other body held in-depth hearings on this same matter. These hearings helped to shed light on a subject from the perspective of both the marketer and the consumer. The stories of financial loss and personal tragedy aired in these hearings were manifest.

A subcommittee found that "in addition to financial losses, deceptive mail promotions exact an emotional toll on those misled by apparent promises" of substantial cash prizes and bonus awards. In addition, the subcommittee found that seniors "spent their Social Security checks, squandered their life savings, and even borrowed money to buy unwanted magazines, trinkets and other merchandise."

To date, our work in the House has proven a good first step. In our pursuit of a solution, I am pleased to join my friend and colleague from New Jersey, to discuss legislation that we have introduced that will protect consumers — particularly seniors. We bring to the table different experiences and varied approaches to this problem. However, we are resolute and united in our goal to protect vulnerable consumers who are victimized by deceptive and dishonest business practices.

My bill, HR 237, the Sweepstakes Protection Act, will arm consumers with the information and power to choose, while giving businesses protection under law. This reform will be anathema to the "few bad apples" who sour the reputation of a respectable industry.

The Sweepstakes Protection Act requires marketing mail pieces, letters, and solicitations to include a disclaimer which reads, "This is a game of chance. You may not have already won." This line would be required on both the envelope and the first page of any correspondence. It does not mandate font size, location, etc... My bill requires only that the disclaimer be "clearly" displayed. As the literature beside me shows, often the "small print" is more lengthy and deceptive than the bold print!

Second, HR 237 requires companies to identify their principal place of business — removing the cloak of anonymity provided by the use of deceptive and false addresses.

To see the scope of the problem, one need not take our word for it. The news accounts and stories of loss abound in the press.

I first learned of this problem from my neighbor, Mrs. Nita Stevenson in Glendale, California — whose stack of sweepstakes mail sits here next to me today. She delivered this stack to my front door one morning to show me how she and other seniors are preyed-upon with the often false expectation of having won a sweepstakes award. When I raised the issue last year in a local senior's publication, and during town hall meetings at senior centers, the response was overwhelming.

Mr. Chairman, legislators have a responsibility to protect the most vulnerable. We have laws protecting consumers from irresponsible businesses, and product buyers from those who sell faulty products that do harm. We have a responsibility to implement practical legislation that respects the needs of the business community without sacrificing the rights of consumers and their financial security.

We have a responsibility to protect those who are more likely to fall prey to misleading sweepstakes. This bill is clear in scope and clear in intent.

I am confident, Mr. Chairman, that by working together we can balance the needs of both sides, while providing protection for those Americans who are targeted by companies whose intent is to mislead for profit.

I thank the Chairman and my colleagues for the opportunity to work with you on this important issue.

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Mr. MCHUGH. I thank the gentleman again, and compliments on his interest and his hard work. Our being honest and open in disclosing, I should disclose that I dropped out of law school after 10 days. So, I want to ask a question as a lay person.

Mr. FATTAH. That is why you are chairman, Mr. Chairman.

Mr. MCHUGH. Punishment for dropping out of law school.

Mr. FATTAH. I thought it was reward.

Mr. MCHUGH. You are an attorney; right?

Mr. ROGAN. Yes, sir.

Mr. MCHUGH. I had the opportunity to read all of the testimony that the following panel will present. Repeated concerns in some of that testimony with respect to your two bills are alleged problems of first amendment rights.

The language that apparently is used in both of your bills is more precisely prescriptive in how you have to print these disclaimers, where they appear, the exact language, that in the eyes of these good folks would be problematic with respect to the first amendment issues and probably challengeable in court.

If you have not had the opportunity, I would ask you to ponder that possibility because it is something we are going to want to address. I was wondering if you would like to comment on that because it is something that does appear in a number of those statements.

Mr. LOBIONDO. Let me start off by saying that I believe that we are not infringing on free speech or first amendment rights. If in fact there are small technical ways to correct either a word here, or a word there, or a placement, or font size, then I think I speak for Congressman Rogan that we are prepared to try to accommodate. We do not want to punish. We want to keep the vulnerable from being preyed upon.

That having been said, Mr. Chairman, I am not an attorney either. I cannot speak to the technical legal terms of it, but I believe that acting in good faith that many of these companies would want to show that they are not preying on senior citizens and would find that this is the right way to go.

Mr. MCHUGH. Mr. Rogan.

Mr. ROGAN. Mr. Chairman, I would echo those sentiments. In fact, in drafting the bill, we purposefully attempted to demonstrate the least restrictive means possible. We are not trying to preclude anyone from engaging in commercial speech. As I indicated in my opening remarks, I am not trying to tell a business what size it has to be, what color it has to be, where it has to be.

I am only requiring, under the bill's language, that it somehow be clearly displayed advising consumers that this is a game of chance and you may not have already won. How that violates the first amendment, I will have to leave to those who practice in that area of law. Plain reading of the bill just does not seem to strike against the first amendment or the intent behind the first amendment.

Mr. MCHUGH. I thank you. Kind of a quick followup. I know you have busy schedules. I want to yield to my colleagues. If you have not yet had an opportunity to review the Senate bill, I would ask you to do that as well.

The question I would be most interested in is there anything in that Senate bill, either generally or specifically, that would be of concern to you or that you would feel would not be consistent with the direction that you think a legislative response should take?

Mr. LOBIONDO. Mr. Chairman, the bills are identical in many ways. One of the major differences in the Senate bill is the method of punishment. Senator Collins has nondelivery and disposal, but fines of up to $1 million and could be doubled for the second offense. That clearly sends a very strong message about the punishment form of this.

I did not think that was necessary, but depending on how this committee feels, I am certainly willing to listen to how to make adjustments. I think ultimately what Mr. Rogan and I would like to see is some legislation that will protect those who are most vulnerable; if that means that you feel that some of those punishment items would be necessary and would be appropriate.

We are, and I think I speak for my colleague, willing to work with you and listen to what you suggest.

Mr. MCHUGH. I appreciate it. Mr. Rogan, any thoughts?

Mr. ROGAN. Mr. Chairman, the Senate bill is much broader than the one that I have offered. It has all of the provisions of my bill, plus a number of them. I will just read to you a few of them. The Senate bill also cannot require entry forms be accompanied by an order form.

It imposes requirements on the skill context themselves; for instance, puzzles, games, competitions, and so forth. It has provisions concerning what a facsimile check may or may not say. It goes much further than the bill that I have offered.

At the end of the day, I think both bodies are going to have to get together, take a hard look at the first amendment issues, consider them and make a best guess as to which is the least restrictive measure that we can adopt jointly and pass, that will withstand constitutional scrutiny.

I think, on that score, we are all united also. I do not think that there is any particular pride of authorship in any of these measures. We are all trying to get to the same place; make sure that we have a bill to protect seniors, protect consumers, and does it in a constitutional way that does not impinge on the rights of legitimate businesses.

Mr. MCHUGH. I thank the gentleman. I can say to you both that, that offer of cooperation is consistent with everything you have done at this point. We are looking forward to working with you both to try to produce something that is effective and that we can pass. I am looking forward to that effort.

With that, I would yield to Mr. Fattah.

Mr. FATTAH. Thank you.

I think this has been very helpful. I think Senators Collins, Cochran, Edwards, and Levin did an excellent job in building a consensus in the Senate. Obviously, they passed the bill 93:0. This addresses all of the issues that are being raised in these House bills.

I do want to recognize the presence of Congressman Danny Davis from Illinois, who is a sponsor of H.R. 170. He has joined with Congressman LoBiondo in this effort to try to address a critical issue.

I am involved in and continue to be concerned about telemarketing fraud.

One of the things that we did in the telemarketing bill that we passed was we provided a private right of action. We are saying that people are being harmed and defrauded via mail in a particular practice, but neither in the Senate bill nor in the House bills that we are discussing now is there a right for the injured party to take an action against the perpetrator for redress. We seem to be relying only on law enforcement and other mechanisms.

I would be interested in what you think about my interest in adding to whatever the final legislative product is a private right of action? So that your neighbor, someone who has lost money, or been defrauded, or harassed in some way can take action on their own without the necessity of depending on a law enforcement entity or the U.S. Postal Service, in and of itself, to take a legal action.

Mr. LOBIONDO. I thank my colleague from the neighboring district just across the river, Mr. Fattah. I would say that I do not believe it is in Senator Collins' bill. I know it is not in my bill. I do not believe, Congressman Rogan, it is in your bill.

In my putting this together, my thought did not come to that point. Although once again, speaking for myself, I will defer to this committee on what you think is best to be able to put a product together that can in fact gain the support of our House, be joined with the Senate, and be agreed to by the President so that we can move on.

I would think that this would complicate it as we move forward. I do not know how many red flags that would raise for colleagues, but once again I will defer to working with the committee.

Mr. FATTAH. Thank you. I agree. I am admitting that it is in none of the bills, but it is in the legislation that we passed dealing with telemarketing fraud, in which we are dealing with really identical types of practices that lead to almost the same result. We have provided for individuals a right to act, in terms of protecting themselves.

I was just wondering since it is not present in any of these bills, what your views were. I thank you for your comments. I would be interested in Congressman Rogan's comments.

Mr. ROGAN. Thank you, Mr. Fattah.

It is not in my bill. One remedy that is in the bill that I have, and I think it is in Mr. LoBiondo's bill also, simply gives the Postal authority the right not to deliver the mail and dispose of the mail if it does not have the requisite warning on it.

I hate to shoot from the hip on a legal opinion to your question, but my guess is that if somebody has been injured or harmed, under State law right now they probably can, and I believe have, brought private actions. I did not get into that area in my bill either.

I am not sure if the appropriate remedy would be a State or a Federal action. As Mr. LoBiondo said, I am more than happy to work with the committee and consider either alternative.

Mr. FATTAH. I thank you for that response. You agree that there is some correlation between telemarketing fraud; someone defraud-

ing a senior citizen over the phone and someone doing it through the mail.

Mr. ROGAN. I think the key word in the question is fraud.

Mr. FATTAH. Right.

Mr. ROGAN. Whether it is telemarketing through the mail.

Mr. FATTAH. That is why I thought of it because the Congress acted on telemarketing fraud quite aggressively. As a part of that action, we provided a remedy to individuals. We have heard a lot about individual cases today where people have been defrauded of dollars that otherwise would have gone to other more productive uses.

It is at least something that I would be interested in us looking at as we go forward; obviously, not to raise a red flag. I just think that it may be useful in us, first of all, in terms of being consistent. Also, most importantly, in providing an array of defenses to the public against these types of actions. I want to thank the chairman for the time.

Mr. MCHUGH. I thank the gentleman for his comments and for his suggestion. We will take, with your help of course, a look at that approach. Chairman Burton.

Mr. BURTON. I want to congratulate both of you on the legislation. I am sure the chairman will review this very thoroughly at the subcommittee. Should it pass through the subcommittee, we will take a very hard look at both bills, whichever bill comes out of the subcommittee to the full committee.

One of the things that I was curious about, I was just reading that the subscription industry, the magazine subscription industry, is about a $7 billion industry, along with others that are included in that category. About one-third of that comes from subscriptions through these kinds of solicitations.

Have you looked at a wide variety? I mean we have a wide variety on these charts here on these stands. Have you looked at a wide variety to see if any of these mailings meet the criterion that you folks have already talked about in your legislation?

Mr. LOBIONDO. Mr. Chairman, thank you for your comments. For myself, I will say while I do not want to claim to have reviewed this for everything possible that is out there, but I have found none that I have come across that meet the requirements.

Mr. BURTON. Let me just ask you a couple of questions real quickly. I have here two that I was just reviewing. One is from American Express. It is pretty clear here that this needs some legislative attention. They have Daniel R. Moll, who is one of our staff people here, entering prize amount.

It has got his name and under his name it has got $1,666,675.00. There is a box next to it that says it is under review. Then there is another box that says awaiting payment. Then underneath that there is another man's name with the same amount. It says, "Confirmed And Money Awarded." Then there is another fellow whose name is on there. It says, "Confirmed And Money Awarded."

That obviously is misleading as the dickens. Then here is one from the Reader's Digest which says on the front, "See Inside For Confirmation Of Sweepstakes Entry. You Could Win $1 Million Without Lifting A Finger. Plus Confirmation Of Your 2000 Reader's Digest Gift List."

This does not seem near as onerous as the first one. In fact, it says "You Could Win," which is in red, "You Could Win" and that you have not won. There does not seem to be any requirement on that. I guess what I am trying to find out is in your legislation, does it delineate between those kinds of approaches? Have you looked at any of these to see if they meet the criterion that you are talking about in your legislation?

Mr. LOBIONDO. Mr. Chairman, first of all, you are correct. This is very big business. That is why many of these companies have been so aggressive. Because of the scrutiny that this issue has received, there are many companies that are already starting to come into what I would call some type of compliance. It may be the Reader's Digest is one of them. I cannot say that it is because of this. Not everybody out there is a bad actor. Not everybody out there has decided to go after a senior who is not going to read the fine print. So, we have started the momentum.

With many States focusing attention on this as well, as we have heard from Congressman LaTourette, I think that the companies are being much more watchful. To be able to give you a statement as to how many are and how many are not complying, I am not able to do that at this time.

Mr. BURTON. I guess the only point I would make is that I think your legislation is important. I think it should probably, in one form or another, be passed into law. This is a pretty large industry.

While we are trying to correct this problem and make sure that people are not taken advantage of, and they are given all the facts so that they know that they have not won already, we also have to be a little concerned about the impact on the entire industry with the legislation we are passing. So, we will have to take a very, very close look at this to make sure that while we are solving the problem, we do not throw the baby out with the bath water.

Did you have any comments, Mr. Rogan?

Mr. ROGAN. Mr. Chairman, I just wanted to assure you I am not trying to duck your question. I actually feel there is a conflict of interest in my answering your question because after hearing it, it is apparent that your staff member, Daniel Moll, is competing with my press secretary for that $1,600,000.

Mr. BURTON. And neither one of them is going to win it.

Thank you.

Mr. MCHUGH. I thank the gentleman. I would be happy to yield to the gentleman from Illinois who, as the ranking member indicated, is a co-sponsor of Mr. LoBiondo's legislation and obviously has been working to address this issue. We appreciate his efforts and his being here.

Mr. DAVIS. Thank you very much, Mr. Chairman.

Let me thank both the gentleman for their testimonies and for being here this afternoon. I also want to compliment both of you on your legislation. As a matter of fact, I think that this is indeed an idea whose time has come. I mean I have often wondered for years, and years, and years how it was that some of these promoters have been able to get away with the pipe dreams and hopes that they were selling.

I think you have seized upon the moment and the opportunity. I certainly agree with your efforts. As indicated, I am a company-

sponsor of Mr. LoBiondo's legislation. I think it gets at the issue. My question is have either one of you done research to the extent where you discerned any specific targeting, or any specific groups of individuals who are more likely to be impacted, or who are more impacted by dishonest advertising as we are looking at?

Mr. LOBIONDO. Mr. Davis, thank you for your comments and for being co-sponsor. My research is unscientific, but it is clear to me that those who seem to be most impacted by this are senior citizens. They are the ones who I have heard from the most. They seem to be the most egregious examples. Then, again, that is unscientific.

Mr. ROGAN. Mr. Davis, I also thank you for your leadership in this area. I think most of the evidence tends to be empirical. I have also had conversations with people in the publishing industry who have confirmed that this type of mailing tends to focus heavily among senior groups because it is the most effective among senior groups. I have yet to hear anybody contradict that assumption that I think we all operate under.

Mr. DAVIS. If that is the case, then it would seem to me that it makes it even worse. I am saying that here is a group, individuals living in many instances on a fixed income, individuals who barely get enough money to take care of all of their necessities; then to have them be duped into giving part of that away. I think that really goes beyond the pale.

The other question that I have and would ask is do you think there should be some way for individuals to recoup their losses or money that they have actually spent pursuing the impossible dream? If there ought to be some way that the publishing houses, the promoters, should be forced to give the individuals their money back?

Mr. LOBIONDO. Mr. Davis, I think your question runs along similar lines that Congressman Fattah raised with a right of redress by those who feel they have been wronged. I did not give that thought initially in my legislation, but certainly if this committee felt that, that was an appropriate addition to the legislation, I would be happy to work with you.

Mr. ROGAN. Mr. Davis, I feel I should lay my cards on the table with you and the members of the subcommittee. I come to Washington as a former State county prosecutor with a personal bias against federalizing every crime. I have a preference for crime being looked at on the local or State level when practical and where possible.

If there is a case of fraud being perpetrated, then I do believe that redress on both the civil and the criminal realm can and is available. As a part of that fraud, certainly if a jury finds that to be the case, the concept of restitution along side a punitive fine is available. There is a difference between people who are being duped into sending money versus people who willingly know that this is a game of chance.

They purchase these subscriptions even though they do not have to and are just unsuccessful. In that case, I do not believe that it is the appropriate role of Government to step in and try to correct any mistake they made with respect to calculating the odds.

The question for me is whether or not they simply are advised that it is a game of chance versus sending money to an organization, thinking that they have won a trip or won some grand prize.

Mr. DAVIS. I thank the gentlemen very much. I certainly agree with you. I would hope that if we were able to move to some adjudication process, that it could be something simple because many individuals obviously would not go through the process of a court case, all of the legal remedy.

If there were some administrative adjudication process, then there might be more likelihood that people would in fact try and make use of it. So, let me just thank the gentlemen again. I appreciate your being here and I certainly support your efforts.

[The prepared statement Danny K. Davis follows:]

Statement of Danny K. Davis
"Hearing of Postal Subcommittee"
August 4, 1999

Thank you Mr. Chairman for convening this mark-up and hearing concerning fraudulent and deceptive practices in Sweepstakes Mailings. I would first like to echo the sentiments of our Ranking Member concerning the postal naming bills, and I am especially pleased that we honor three of our former colleagues, Augustus F. Hawkins, Malcolm Dymally, and Louis Stokes.

Now turning to today's hearing. This hearing is especially important because of the increasingly deceptive tactics used by those in the sweepstakes industry that seem to target the most vulnerable in our society! For years, sweepstakes promotions have served as a cornerstone of the American marketplace, which thus makes it

unfortunate that Congressional involvement, and this hearing has become necessary. It is unfortunate that the language and packaging of sweepstakes have gotten more and more deceptive. The come-ons are more blatant, and the disclosures have become smaller. For too long this industry has made it a custom of selling pipe dreams, and false hope to those who respond by purchasing magazines hoping they can somehow be in a better position to win. I hear them saying: "I am still waiting on the van," you know the Publishers Clearinghouse Van. The envelope has been pushed too far, the situation has become too egregious, and as a result it has now become all too familiar to hear the sweepstakes horror stories.

On television and in the newspapers we hear and read the heartbreaking stories of people who have spent thousands of dollars

entering sweepstakes, expecting that through their investment they somehow increase their chance of becoming a winner. It is upsetting and disturbing to hear these stories, particularly when we know that they can be avoided if these sweepstakes would simply disclose their material terms in an up-front manner. And though many of these sweepstakes will argue that they do properly disclose their terms, as we know when we open our mail, and see a sweepstakes form that the material terms or the chances of winning are never easy to find. Instead we see big print that calls us "Winners", and urges us to order magazines to better our chances of winning. For many of us, we recognize that we are not truly "Winners" and we discard the mailing, but for others it is not so easy.

These sweepstakes mailings are

confusing to thousands, if not millions of people. The amount of money that people spend each year on deceptive sweepstakes, expecting to win, is alarming, and these aren't even the horror stories. We've heard the horror stories from consumers who have been increasingly targeted because they respond to the mailings, or place product orders. We know about the gentleman who spent $15,000 on sweepstakes hoping to win and pay his daughter's tuition, and the gentleman who twice flew to Florida expecting to collect his sweepstakes winnings. We know the stories of the lady who spent half of her monthly social security check on sweepstakes, and the story of the lady who baked a cake and made a banner to welcome the sweepstakes company that she expected would be bringing her a check that afternoon, unfortunately the van never showed up. For these people, the elderly,

and the poor, the official looking sweepstakes envelope that declares them a "Winner" is their ticket out, their ship has come in. It is for them a realization that they have finally realized the American Dream, and that all they need to do to collect their prize is order a few magazines. Well, unfortunately its not that simple, as our presence here today would dictate. But fortunately, today, we can do something about this. The consumers expect that we will do something about this. Therefore, I look forward to hearing from our distinguished witness' today!

Mr. McHUGH. I thank the gentleman for his comments.

The gentleman from Ohio, Mr. LaTourette.

Mr. LATOURETTE. Thank you, Mr. Chairman.

I want to add my voice to thank both of you for two pieces of legislation that are both excellent. I appreciate your testimony today and sharing with us your district experiences and your national concerns. I was a prosecutor, too, Mr. Rogan. I think where we might differ on this one is since it moves through the U.S. Postal Service, we have a big national problem that only we can take care of.

I am going to look forward to the next panel on these free speech arguments because I, unlike the chairman, do not know if it did me any good or not, but I finished law school. We use to have, as prosecutor, a con called the pigeon drop where you would be walking down the street and someone would say I found this big envelope full of money and sort of hush, hush. Maybe if we keep it for 30 days we can both keep it.

They would let you keep it, but to show you some good faith, why do you not go to your bank and give me $500 that I will hold and then we will meet at a designated place. The time expired and you found out that at the end of 30 days you had an envelope full of paper rather than anything else. I do not think free speech guarantees cover fraud, but over the telephone like Mr. Fattah was talking about.

I do not think it covers a pigeon drop. I do not think that deceptive speech is protected by the first amendment through the mail either. So, I very much look forward to those who are going to claim that somehow sending that greeting card that says congratulations from both of us to a generation, you know, my grandmother, when you are talking about targeting seniors, my grandmother always yells at me that I do not write letters.

We are talking about the generation that gets notes and letters in the mail. Now, they do not quite understand why in these computer printouts their name is highlighted and inserted 12 to 15 times. We know it in the form letters we send back to our constituents. But they do not know how their name got in there 12 to 15 times.

They do not understand how there is a handwritten post-it note attached to the note saying, "Dorothy, you are a big winner." Mr. Davis, I think your unscientific analysis that seniors are being targeted is right on the money.

Do either of you, from your experiences, have any view that the senior citizens that are being targeted by these direct mail operations have any belief other than their chances of winning will be increased if they participate by making a purchase?

Do you have any question as to that there is some confusion in the mind of the seniors that they do not think that if they buy those 10 magazines they are going to do better than the senior that does not buy a magazine?

Mr. LoBIONDO. I thank my colleague for his comments.

Congressman LaTourette, to answer your question, at the senior centers that I have been to where I have dealt with this issue and asked those questions, I was almost shocked to the degree that the seniors were believing that in fact that was about the only way

that they could win. That if they sent back without sending any money, without buying a subscription that it almost guaranteed they would not win.

It was very sad is what it was because it was a constant theme with the seniors who were there. As you pointed out with your grandmother, these folks are vulnerable. They do not understand how this is all coming about, but they do, in my view, clearly believe that if in fact they respond, and respond with a check, this is going to certainly enhance their possibility of winning. That is what they are looking for.

What was interesting when I started asking some additional questions about well, everybody wants to win money and have more money. What would you do? They all shared that they wanted to give it to their grandchildren. They all shared that it was not for them; that it was for somebody else. Yes, it would make their life a little bit easier. That even made it sadder.

Mr. LATOURETTE. Jim, do you have anything you wanted to add?

Mr. ROGAN. Yes. Mr. LaTourette, first I thank you for your preliminary comment. I want to make sure the committee understands that I intended my commentary respecting Federal versus State jurisdiction to be taken generically and not specifically to this bill. That is a general bias that I tend to have.

I certainly recognize the potential for Federal jurisdiction in these areas. I am pleased to yield to the committee and to the joint wisdom of both Houses of Congress to make that determination. I think that the evidence which the chairman presents up on the board over there is just one lone example.

With respect to the two blown up postcards to my right, the person that sends in the subscription order, gets to mail it in the envelope that says, "Yes: Reward Entitlement, Granted And Guaranteed." The person who only wants to ask that their numbers be looked at without a subscription form has the envelope next to it with the big "No" written on it.

Mr. LoBiondo, in his presentation, quoted from one that not so subtly reminded the potential subscriber that, oh by the way, 100 percent of our awards have gone to people who have taken out the subscriptions. I was shown by one senior at a senior center the return form that gave a separate color coded card. The "Yes" card had a green circle on it. The "No" card had a red circle on it.

When they put the card in the return envelope, it was obvious from looking at the outside of the envelope whether it contained a check for a subscription, because there was a window that showed the green circle or no check, just a request to enter the sweepstakes which was a red circle. The senior who showed that to me said, my assumption is of course if there is a red circle and no check, they just throw those away.

That may have something to do with the 100 percent subscription rate success in getting the awards. So, I think that those types of things, some subtle, some not so subtle, are obviously directed to make the person believe they were only going to be successful in a sweepstakes if they sent in a check for a subscription.

Mr. LATOURETTE. I thank you both again. I went to visit my grandmother. She had a Field and Stream subscription and my grandmother is 87-years-old. I do not think she has been camping

in the last little bit, but I am sure that she hopes to win something.

Since you two are such wonderful champions on this issue, if I could just plant a seed in your minds and then let you go. I thank you again. I would like you to take a shot. You know the credit card companies were here a couple of months ago in Congress asking for bankruptcy legislation because they are saying people are taking our credit cards and then going belly up on them.

My 16-year-old just got a $5,000 pre-approved credit card. She does not even get an allowance. So, I am hoping maybe you can do something about that in the next Congress. I thank you both and I thank the Chair.

Mr. MCHUGH. I thank the gentleman.

Gentlemen, as has been stated here many times, we are deeply appreciative of your efforts. We look forward to working with you in solving what obviously we all agree is a very, very serious problem. Thank you for that concern and for that endeavor. I appreciate it.

We now have our second panel that is comprised of Commissioner Orson Swindle of the Federal Trade Commission; Mr. Ken Hunter who is the Chief Postal Inspector of the U.S. Postal Inspection Service; Mr. Bernard Ungar, Director of the Government Business Operations Issues of the General Accounting Office; Ms. Sara Cooper who is executive vice president of the National Consumer League; Ms. Virginia Tierney, member of the board of the American Association of Retired Persons; Mr. Lee Cassidy who is executive director of the National Federaton of Nonprofits; Mr. Jerry Cerasale who is the senior vice president of government affairs with the Direct Marketing Association; Mr. Michael Pashby who is executive vice president of Consumer Marketing Magazine Publishers of America; and Ms. Linda Goldstein who is chair emeritus and head of government and legal affairs committee for the Promotion Marketing Association.

Before you are seated, those of you who are not, the committee practice, as many of you know because you have appeared before, is to have all of those who are about to present testimony, with the exception of Members of the Congress, for some reason, testify an oath of authenticity. If you will raise your right hands and repeat after me.

[Witnesses sworn.]

Mr. MCHUGH. Thank you all very much.

The record will show that they all responded in the affirmative. I would say at the outset, well, first of all thank you for being here. Thank you for your patience. We are all looking forward to your comments. We do have one scheduling situation with respect to Mr. Ken Hunter who does have some time constraints.

So, with all of your indulgence, as I have talked to Commissioner Swindle, we will start with the Commissioner's testimony, given his senior position in the administration and then move to Mr. Hunter, at which time we will break the rest of the testimony and direct whatever questions the subcommittee may have for Mr. Hunter so that he can make his schedule.

So, with that let me, as I have just stated, go to Commissioner Swindle. We are honored by your presence here today. We appre-

ciate your efforts and, of course, that of the FTC in a whole range of issues, but particularly in this one. We look forward to your comments.

Our attention is yours.

[The information referred to follows:]

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ENTERPRISE

September 14, 1999

Honorable John McHugh
Chairman
Subcommittee on the Postal Service
B-349C Rayburn House Office Building
Washington, DC 20515

Dear Chairman McHugh:

Thank you for contacting me regarding my statements made during the hearing held by the Subcommittee on the Postal Service on August 4, 1999. I would be happy to respond to your inquiry.

I believe it is necessary to specifically mandate the print size to close potential loopholes in sweepstakes reform legislation. It is not enough, in my view, to simply allow direct-mail companies to determine which disclosures constitute "clear and conspicuous" disclosures. These types of companies have demonstrated their dishonesty in the past and, unchecked, give me reason to believe that they will continue to test the boundaries of legality regarding these disclosures in the future.

Cracking down on cashier's check look-alikes is an important section of the bill. Too often, sweepstakes companies prey on vulnerable consumers by confusing them with official-looking documents. By requiring large, easy-to-read disclosures on these documents, my legislation will ensure that consumers, and especially senior citizens, are no longer victims of this misleading fraud.

The provision of H.R. 170 to require the disclosures to be printed in 16-pont font is a direct benefit to senior citizens. Often, seniors have visual impairments which would render disclosures unreadable at their current size. My 16-point disclosure requirement assures that seniors become aware of vital information they might otherwise miss, such as odds of winning or the fact that no purchase is necessary to win the sweepstakes.

Again, thank you for the opportunity to testify before the Subcommittee on Postal Service. Please feel free to contact me in the future regarding H.R. 170.

Sincerely,

Frank A. LoBiondo
Member of Congress

PRINTED ON RECYCLED PAPER

STATEMENTS OF ORSON SWINDLE, COMMISSIONER, FEDERAL TRADE COMMISSION; KEN HUNTER, CHIEF POSTAL INSPECTOR, U.S. POSTAL SERVICE INSPECTION SERVICE; BERNARD L. UNGAR, GENERAL ACCOUNTING OFFICE; SARA COOPER, EXECUTIVE VICE PRESIDENT, NATIONAL CONSUMERS LEAGUE; LEE M. CASSIDY, EXECUTIVE DIRECTOR, NATIONAL FEDERATON OF NONPROFITS; VIRGINIA TIERNEY, MEMBER OF THE BOARD, AMERICAN ASSOCIATION OF RETIRED PERSONS; JERRY CERASALE, SENIOR VICE PRESIDENT, GOVERNMENT AFFAIRS, DIRECT MARKETING ASSOCIATION; MICHAEL PASHBY, EXECUTIVE VICE PRESIDENT OF CONSUMER MARKETING, MAGAZINE PUBLISHERS OF AMERICA; AND LINDA GOLDSTEIN, CHAIR EMERITUS AND HEAD OF GOVERNMENT AND LEGAL AFFAIRS COMMITTEE, PROMOTION MARKETING ASSOCIATION

Mr. SWINDLE. Thank you, Mr. Chairman, Chairman Burton, and members of the subcommittee. The Commission is pleased to provide testimony today to assist the committee in reviewing the necessity of amending chapter 30 of title 39 of the U.S. Code to address the mailing of deceptive materials relating to games of chance.

The Commission's statutory mandate is to encourage the efficient functioning of the marketplace by taking action against unfair and deceptive practices or acts, and increasing consumer choice by promoting vigorous competition. A cornerstone of the Commission's mandate is section 5 of the FTC Act.

We have a long history of challenging deceptive mail promotions. Most recently, Project Mailbox, a joint Federal-State initiative that included 47 States and the U.S. Postal Service, resulted in more than 200 actions. It focused on the deceptive use of sweepstakes, prize promotions, premium awards, and other misleading marketing techniques and mail solicitations, unsolicited facsimiles, and unsolicited commercial e-mail. Project Mailbox materials have been provided to the committee.

To support law enforcement like Project Mailbox, we systematically collect and analyze consumer complaint data. Our Consumer Response Center, or the CRC, currently receives nearly 7,000 consumer calls, letters, and e-mails per week. Our data base currently contains more than 423,000 consumer complaints and inquiries.

The data base is used to spot trends, identify targets for enforcement action, and locate relevant witnesses. The Commission's sponsors and operates Consumer Sentinel, a secure Internet website through which law enforcement agencies throughout the United States and Canada may inquire as to details and complaints.

The data base includes not only consumer complaints received directly by the CRC, but also submitted by a large number of United States and Canadian law enforcement agencies, as well as complaints from private data contributors, such as the National Fraud Information Center, the BBB, and the AARP.

Consumer Sentinel is a joint project of the Federal Trade Commission and the National Association of Attorneys General, in cooperation with Canadian partners, Canshare and PhoneBusters. The FTC makes Consumer Sentinel available, at no charge, to over

200 United States and Canadian law enforcement agencies to use in developing their enforcement actions.

Consumer and business education is another important component of the Commission's consumer protection efforts, and many of our consumer alerts and brochures aim to raise public awareness of the dangers of deceptive games of chance promotion. The Commission distributes publications designed to help legitimate businesses that use prize promotions to comply with the law.

These consumer and business publications are available in hard copy and from the Commission's website, www.ftc.gov. Several examples of these publications, including consumer advisory brochures issued in connection with Project Mailbox, have been provided to the committee also.

The Commission is aware of two bills currently pending before the committee, H.R. 170 and H.R. 237, that address concerns about mail promotions of games of chance focusing on the authority of the U.S. Postal Service. The Commission's continuing activity under its existing authority against deceptive and unfair practices is not affected by this legislation.

The Commission believes that, if enacted, either of these bills could have a positive impact. The practices addressed by each of these bills are similar to those the Commission has targeted in scores of enforcement actions brought against telemarketer and other direct marketers over the last decade in Federal District Courts under section 5 and 13(b) of the FTC Act.

Moreover, they are similar to those addressed by the Commission's Telemarketing Sales Rule. The TSR covers telemarketing defined as a planned program or campaign which is conducted to induce the purchase of goods and services by use of one or more telephones which involves more than one interstate telephone call.

Many of these activities rely on mail solicitation to induce consumers to call a telephone number to learn more about the product or service offered. Many of them also include a sweepstakes or a prize promotion. It is a violation of the TSR for telemarketers to fail to disclose all material information, including total cost, and any material restrictions or limitations on the use of the product or service being sold via telephone.

The Commission's approach, both in its case-by-case enforcement and in its regulatory activities as embodied by the TSR, attempts to ensure that consumers receive material information necessary to prevent them from making purchasing decisions on the basis of material information that is false or misleading. The bills now pending are consistent with that approach.

The Commission will continue to use the full range of investigative techniques targeting law enforcement actions, and consumer and business education to attack this problem. We applaud this subcommittee's interest in strengthening the tools available to the U.S. Postal Inspectors to combat these practices.

I would be most appreciative of an opportunity to answer your questions. Thank you, sir.

[The prepared statement of Mr. Swindle follows:]

PREPARED STATEMENT OF

THE FEDERAL TRADE COMMISSION ON

"THE MAILING OF DECEPTIVE MATERIALS

RELATING TO GAMES OF CHANCE"

Before the

SUBCOMMITTEE ON THE POSTAL SERVICE

OF THE COMMITTEE ON GOVERNMENT REFORM

UNITED STATES HOUSE OF REPRESENTATIVES

Washington, D.C.

August 4, 1999

Mr. Chairman, I am Commissioner Orson Swindle of the Federal Trade Commission. The Commission is pleased to provide testimony today to assist the Committee in reviewing the necessity of amending Chapter 30 of Title 39 of the United States Code to address the mailing of deceptive materials relating to games of chance.[1]

The Commission's statutory mandate is to encourage the efficient functioning of the marketplace by taking action against unfair or deceptive acts or practices and increasing consumer choice by promoting vigorous competition. A cornerstone of the Commission's mandate is Section 5 of the Federal Trade Commission Act, which prohibits unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.[2] The Commission has a long history of using its authority under Section 5 to challenge deceptive mail promotions. Our most recent efforts in this regard culminated in "Project Mailbox," a joint federal-state initiative focusing on the deceptive use of sweepstakes, prize promotions, premium awards, and other misleading marketing techniques in mail solicitations, unsolicited facsimiles, and unsolicited commercial e-mail. Through Project Mailbox, the

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[1] The views expressed in this statement represent the views of the Commission. My responses to any questions you may have are my own.

[2] 15 U.S.C. § 45(a). The Commission also has responsibilities under approximately 40 additional statutes, *e.g.*, the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 *et seq.*, which establishes important privacy protections for consumers' sensitive financial information; the Truth in Lending Act, 15 U.S.C. §§ 1601 *et seq.*, which mandates disclosure of credit terms; and the Fair Credit Billing Act, 15 U.S.C. §§ 1666 *et seq.*, which provides for the correction of billing errors on credit accounts. The Commission also enforces approximately 30 rules governing specific industries and practices, *e.g.*, the Used Car Rule, 16 C.F.R. Part 455, which requires used car dealers to disclose warranty terms via a window sticker; the Franchise Rule, 16 C.F.R. Part 436, which requires the provision of information to prospective franchisees; and the Telemarketing Sales Rule, 16 C.F.R. Part 310, which defines and prohibits deceptive and abusive telemarketing practices.

Commission coordinated law enforcement efforts with 47 states as well as other federal and some local law enforcement agencies to bring more than 200 actions challenging such practices. The United States Postal Service contributed significantly to the Project Mailbox efforts. A copy of the Project Mailbox report and the press release are enclosed.

Law Enforcement

In order to support law enforcement efforts such as Project Mailbox, the Commission systematically collects and analyzes consumer complaint data. The Commission's Consumer Response Center ("CRC") currently receives nearly 7,000 consumer calls, letters, and e-mails per week -- up substantially since activation of the Commission's new toll-free consumer hotline (1-877-FTC-HELP), in June of this year. CRC staff adds this information to the FTC's database, which currently contains more than 423,000 consumer complaints and inquiries.

Commission staff use the database to spot trends, identify companies that should be targeted for enforcement action, and locate relevant witnesses. To maximize the effectiveness of this database, the Commission sponsors and operates Consumer Sentinel, a secure Internet website through which law enforcement agencies throughout the United States and Canada can access the database. The database includes not only consumer complaints received directly by the CRC, but also those submitted by a large number of United States and Canadian law enforcement agencies, as well as complaints from private data contributors such as the National Fraud Information Center, Better Business Bureaus, and

the American Association of Retired Persons ("AARP").[3] Consumer Sentinel is a joint project of the FTC and the National Association of Attorneys General, in cooperation with Canadian partners Canshare and PhoneBusters. The FTC makes Consumer Sentinel available, at no charge, to over 200 U.S. and Canadian law enforcement agencies to use in developing their enforcement actions.

Consumer Education

Consumer and business education is another important component of the Commission's consumer protection efforts, and many of our consumer alerts and brochures aim to raise public awareness of the dangers of deceptive sweepstakes promotions. The Commission also distributes a number of publications designed to help legitimate businesses that use prize promotions comply with the law. These consumer and business publications are available in hard copy and from the Commission's website, www.FTC.gov. Several examples of these publications, including consumer advisory brochures issued in connection with Project Mailbox, have been provided to the Committee.

The Committee is reviewing the necessity of amending Chapter 30 of Title 39 of the United States Code, which addresses the ability of the U.S. Postal Service to curtail the mailing of certain materials. The Commission is aware of two bills currently pending before the Committee, H.R. 170 and H.R. 237, that address these issues. The goals of these bills appear consistent with those

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[3] Consumer Sentinel is an invaluable tool in projects like Project Mailbox. Indeed, in connection with that effort, the American Association of Retired Persons ("AARP"), using criteria developed by the FTC to identify the earmarks of certain types of deception, reviewed thousands of direct mailings received by its members. Mailings that contained one or more of those indicators of deception were then entered into the Consumer Sentinel database.

underlying Project Mailbox and the Commission's other enforcement work in this area. These bills, however, focus primarily upon the authority of the U.S. Postal Service and would not directly affect the Commission's continuing activity, under its existing authority, against the deceptive use of sweepstakes, prize promotions, premium awards, and other marketing techniques in direct mail and other media. The Commission believes that if enacted either of these bills could have a positive impact.

Both bills require that any sweepstakes-related solicitation (1) bear a notice on its envelope that clearly stat that this is a game of chance or sweepstakes and that the recipient has not automatically won, and (2) have a similar notice on the first page of the solicitation itself, which includes a statement of the odds of winning and a statement that no purchase is required to win a prize or enhance one's chance of winning. Both bills specify the size of the required notices. In addition, H.R. 170 would require any sales promotion resembling a check to bear a conspicuous notice that it is *not* a check and has no cash value. Finally, H.R. 170 expressly would not preempt state law, but H.R. 237 does not address the issue of preemption.

The practices addressed by each of these bills are similar to those the Commission has targeted in scores of enforcement actions brought against telemarketers and other direct marketers over the last decade in federal district courts under Sections 5 and 13(b) of the FTC Act. Moreover, they are similar to those addressed by the Commission's Telemarketing Sales Rule, 16 C.F.R. Part 310 ("TSR"), promulgated pursuant to the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108. The TSR covers telemarketing, defined as "a plan, program, or campaign

which is conducted to induce the purchase of goods or services by use of one or more telephones and which involves more than one interstate telephone call." Many of the covered sales plans, programs, or campaigns rely on mail solicitations to induce consumers to call a telephone number to learn more about the product or service offered. Many of them also include a sweepstakes or prize promotion. It is a violation of the TSR for telemarketers to fail to disclose all material information, including total cost, and any material restrictions or limitations on the use of the product or service being sold via telephone. Significantly, in any prize promotion, including sweepstakes, the TSR requires the telemarketer to disclose: 1) the odds of being able to receive the prize; 2) that no purchase or payment is required to win a prize or to participate in the prize promotion; 3) instructions on how to participate in the prize promotion without purchasing the product or making a payment; and 4) all material costs or conditions to receive or redeem a prize that is the subject of the prize promotion. 16 C.F.R. § 310.3(a)(1)(iv) and (v). Each of the bills being considered includes a requirement for some of these disclosures.

The Commission's approach, both in its case-by-case enforcement and in its regulatory activities as embodied by the TSR, ensures that consumers receive material information necessary to prevent them from making purchasing decisions on the basis of material information that is false or misleading. The bills now pending are consistent with that approach since they would require business to provide consumers with material information about the nature of sweepstakes-related promotions. Such legislation should lead to fewer deceptive sweepstakes mailings and a better informed public.

In conclusion, the Commission recognizes that the practice of mailing deceptive materials relating to games of chance is detrimental to American consumers. The Commission will continue to use the full range of investigative techniques, targeted law enforcement actions, and consumer and business education to attack this problem. We applaud the Subcommittee's interest in strengthening the tools available to the U.S. Postal Inspectors to combat these practices. I appreciate the opportunity to provide testimony today on the Commission's views, and would be pleased to answer any questions.

Mr. MCHUGH. Thank you very much, Commissioner Swindle.

Let me first of all say, again, I have read all of your testimonies in their entirety over the weekend. I appreciate the great time and effort that went into all of it. All of your testimonies will be entered in their entirety for the record. We have already begun the process of reviewing and extracting the salient points, of which there are many, for our purposes.

We have a sizable panel, as you know better than anyone. So, if we could summarize those statements and hit the high points of your submissions, it would be appreciated. We will now turn our attention to the Chief Inspector. Before I yield to him for comments, and I hope I am not speaking out of order or in anyway disrupting a process, but if I am it will not be the first time.

There is some exciting news, some breaking news today that, after 35 years as an employee of the U.S. Postal Service, including most notably the last 7 as Chief Inspector, Mr. Hunter is deciding to take on a new challenge in his very, very distinguished career where he will become president and CEO of the National Better Business Bureau.

I want to personally congratulate you, sir, for that new opportunity. Certainly the Better Business Bureau's interests are well-served. The Postal Service and those millions and millions of Americans who either do business with it or who utilize its many services will be sorry for your leaving.

We have had, between the two of us, some instances where we disagreed on approach, but I will have to say that when the discussions were done, you always, always discharged your duties as capably as possible with honor and with dignity. That is just not my experience. I know it holds true for your 3½ decades of remarkable contributions.

I want to wish you every best and extend you every deepest appreciation for that sacrifice, because it is a sacrifice to labor as you have. We appreciate that. I hope I did not speak out of turn. I hope, certainly, that I did not disrupt your time schedule or your testimony.

I think it is important that the people in this room, who cared enough to be here today and therefore care very deeply about that thing called the U.S. Postal Service, should be aware of. So, congratulations and best wishes.

Mr. HUNTER. Thank you very much.

After those nice remarks, I would prefer not to give my testimony and thereby detract from it. Because the topic is so important to me and what I have dedicated my life to, I would like to summarize our more lengthy written testimony. I appreciate very much your interest and that of your colleagues here in trying to do something to further protect American consumers and businesses from some of these deceptive mailings.

You are well-aware of our long history of working to protect Postal employees, the Postal Service, and its customers. So, I will not dwell on that. It is important to recall that when Congress initially created the Nation's mail service, it was to maintain an efficient, reliable, affordable, and secure means of communication. That, of course, was over 200 years ago.

Even as recently as last year when Harris conducted a poll, they found that the American public feels significantly more confident about the security of the mail than the security of telephone, fax, or the Internet. Of course, it is that trust that people place in the mail that can be leveraged in some of the deceptive practices that we are addressing today.

Now, as was recognized by the Senate Permanent Subcommittee on Investigations, deceptive mailings are not limited just to sweepstakes, which have received the primary discussion thus far today. They also include things like advanced fee schemes, credit repair schemes, games of skill, lotteries, work at home schemes, Government look-alike mailings, medical fraud schemes, and other scams.

Unfortunately, some of the statutes that address fraudulent and deceptive promotions are not adequate and do not provide enough incentive for operators to quit their fraudulent promotions. Prosecuting fraudulent promoters under criminal statutes usually occurs only after the damage has been done to numerous victims.

Additionally, many of the promotions we address skirt the element of criminal intent that is necessary to prove violations under Federal and many State criminal statutes. As a result, often we use civil statutes concerning deceptive promotions in an effort to quickly stop the schemes and thereby limit the number of victims. However, today it is too easy for the promoter to setup new addresses and continue the scheme or to start a new one.

What is missing are the sanctions that make promoters who have been shutdown think twice before resuming business as usual at a new location. We remain committed to protecting consumers and businesses through any means available, civil or criminal. However, there is overwhelming evidence that people are misled by language allowed by the existing statutes.

We need clear and unambiguous legislation to protect both consumers and businesses from deceptive solicitations. Included in our written testimony are a number of recommendations in this regard. What I would like to do today is call attention to just three of those.

First is the civil penalty provisions which apply to deceptive mailings that are actionable under section 3005. We would hope they would serve as a strong deterrent to anyone considering running a deceptive promotion.

Second is a proposed change in the authority of U.S. District Court Judges allowing them to issue temporary restraining orders effective in multiple judicial districts. Currently, with the assistance of the Department of Justice, we have to seek a separate TRO in each district in which the promoter receives mail. The recommended change would allow a much more efficient and effective use of the resources of the Department of Justice, the courts and ourselves.

The third proposal is administrative subpoena authority for the Postal Service to use in conjunction with investigations of violations of chapter 30 of title 39. The subpoenas would be very useful in all deceptive mail cases that are pursued under sections 3005 and 3007.

Should pending legislation be enacted, administrative subpoena authority will be critical in developing sufficient information to ef-

fectively implement provisions relating to TROs, civil penalties, and a notification system to prevent further mailings of sweepstakes and games of skill.

We believe these three provisions are key to enhancing our ability to protect consumers and businesses from deceptive mailings. They will function effectively with any new mailing guidelines for solicitations involving sweepstakes, games of skill, facsimile checks, Government look-alike material, or other potentially deceptive material.

While I am proud of our success in conventional law enforcement efforts, I am also convinced that arrests, convictions, and civil judgments are only part of the way to effectively deal with consumer fraud. The results of these efforts unfortunately usually only come after there are victims and losses.

For this reason, we are working closely with consumer groups, and the industry, and other law enforcement agencies to develop fraud prevention strategies and to share best practices. As you are probably aware, these have had dramatic results in the areas we have targeted.

We are now preparing to launch the most ambitious effort ever. As I announced last September, we are going to launch kNOw Fraud. On October 25th of this year, we will mail to every home in the Nation a card containing valuable fraud prevention tips, and a toll-free number to call to seek additional information.

There will also be a website which links to participating agencies and organizations, an address to write for information, and an informational video which will be available in all 16,000 public libraries in the United States. The card is designed to be placed by the phone as a reference and a prevention tool to help citizens make informed decisions regarding offers they receive through the mail or by telephone.

I assure you the Inspection Service will continue to combine aggressive investigations and widespread public awareness campaigns in an effort to rid the mails of fraudulent schemes. The American public's confidence in the mail is not only important to the Postal Service, but also to the millions of businesses that rely on the mail as an important communication and marketing tool.

I sincerely applaud you and your peers for your help in supporting the necessary legislative change. Thank you very much.

[The prepared statement of Mr. Hunter follows:]

UNITED STATES POSTAL INSPECTION SERVICE

STATEMENT OF

KENNETH J. HUNTER

CHIEF POSTAL INSPECTOR

BEFORE THE

POSTAL SERVICE SUBCOMMITTEE

HOUSE COMMITTEE ON GOVERNMENT REFORM

August 4, 1999

INTRODUCTION

Chairman McHugh, the U.S. Postal Inspection Service appreciates this opportunity to appear before your subcommittee to discuss deceptive mailings. We want to thank you, other members of the subcommittee, Representative LoBiondo and Representative Rogan for the interest you have taken in deceptive mailings and your desire to develop legislation to provide additional protections to consumers. We too are concerned about the adverse impact deceptive promotions can have upon consumers.

The Postal Inspection Service is responsible for protecting postal employees, the mails, and postal facilities from criminal attack, and for protecting consumers from being victimized by fraudulent schemes or other crimes involving the mails. We also work to rid the mails of drug trafficking and money laundering; mail bombs; and one of the most despicable crimes - child pornography. In addition, we along with the Office of Inspector General, conduct internal audits of postal operations. The Postal Inspection Service, which employees about 2,100 postal inspectors, 1,400 postal police officers and 900 professional, technical and support employees, has performed many of these duties for over 200 years and is one of the oldest federal law enforcement agencies.

A number of statutes enable us to take action against fraudulent practices involving the use of the mails. The public policy, which underlies these statutes, remains valid today: the postal system created by Congress to serve the American public should not be used to conduct schemes to defraud.

The nation's mail service was designed to assure that there is always a reliable, efficient, affordable and secure means of communication for its citizens. Last year a Harris Poll affirmed that the American public feels significantly more confident about the security of mail than they do in telephone, fax or Internet communications. Our mission is to prevent damage to that confidence.

FRAUD AND DECEPTIVE MAIL STATUTES

One of our best known remedies is the criminal mail fraud statute, 18 U.S.C. § 1341. Last fiscal year we obtained 1278 convictions regarding mail fraud violations that resulted in prison sentences, fines in excess of $11.9 million, and court-ordered and voluntary restitution of over $311.5 million.

Our criminal enforcement efforts are not limited to federal investigations. We also utilize our expertise in consumer fraud to provide assistance to state and local authorities in cases being pursued in state courts.

The False Representation and Lottery Statute, 39 U.S.C. § 3005, allows the Postal Service to take administrative action to return to consumers all mail sent in response to a lottery or a scheme that seeks to obtain money or property by mail through false

representations. These proceedings may be very time-consuming and the penalties are limited to stopping further mail from being received by the promoter, often after the promoter has received most of the proceeds of the scheme, and issuing cease and desist orders prohibiting future operation of the lottery or false advertising scheme. Violation of these orders can result in penalties of up to $11,000 per violation. The Postal Service Law Department initiates administrative proceedings under this statute before the Postal Service Judicial Officer. The Judicial Officer considers whether we have proven by a preponderance of the evidence that material facts about a particular product or service have been misrepresented. Last fiscal year, complaints filed with the Judicial Officer alleging violations of Section 3005 resulted in 70 consent agreements, 78 cease and desist orders and 137 False Representation Orders.

Because the administrative proceedings may be time-consuming and mail scams often are of short duration, two federal statutes (18 U.S.C. § 1345 and 39 U.S.C. § 3007) authorize the U.S. district courts to issue injunctions to prevent consumer losses while the administrative proceedings are pending. Section 1345 permits injunctive orders ranging from stopping the delivery of mail in response to the fraudulent solicitation to the appointment of a receiver to manage a fraudulent company and provide restitution to victims. Section 3007 allows the U.S. district courts to issue temporary restraining orders and preliminary injunctions permitting the Postal Service to withhold from delivery mail in response to schemes that are the subjects of pending actions under the false representation and lottery statute. In cases where a promoter receives mail at addresses in multiple judicial districts, the use of Section 3007 creates an inefficient use of resources within the Postal Service, the Department of Justice, and the U.S. district courts, because a separate case must be pursued in each district. This also places an unreasonable burden upon the promoter who has to litigate the matter in multiple jurisdictions. Additionally, in some cases, less litigation would leave more money for victim restitution.

We also enforce 18 U.S.C. § 1302, which makes it a crime to mail lottery tickets and related matter. With limited exceptions for certain mailings conducted by state-operated lotteries or nonprofit organizations, this statute applies to any mailing that involves the three legal elements of a "lottery": prize, chance and consideration. Any scheme in which a prize is awarded based upon chance and in which consideration must be given in order to be eligible to win constitutes an unlawful lottery under Section 1302. However, if any one of these required elements is missing, the promotion does not violate the statute. Accordingly, while the statute could apply not only to classic lottery ticket promotions but to sweepstakes promotions as well; it would only apply where the sweepstakes requires the remittance of a fee or the purchase of goods or services in order to be eligible to win a prize through a drawing. Often, sweepstakes promotions offer a free entry option and thus no legal "consideration" under the statute.

Under other statutes, the Postal Service can withhold from delivery mail sent to false or fictitious names or addresses. Title 39 U.S. Code, Sections 3003 and 3004, provide that if a promoter uses a false or fictitious name or address to conduct a scheme in

violation of the mail fraud statute (18 U.S.C. § 1341) or to escape identification, the Postal Service can withhold mail sent in response to the scheme pending adequate identification and proof of entitlement to the mail. These statutes were used in 191 cases during the past fiscal year, preventing the promoters' receipt of their intended victims' money.

SWEEPSTAKES AND LOTTERY MAILINGS

Sweepstakes mailings often are completely lawful, non-deceptive marketing programs. They seek to solicit a response by satisfying the enjoyment many people derive from entering sweepstakes. Unfortunately, there also are sweepstakes that constitute fraudulent or deceptive advertising practices or constitute illegal lotteries.

As previously mentioned, a promotion is an unlawful lottery if, in order to win a prize based upon chance, the participant must pay some consideration. A "prize" can consist of anything of value. "Chance" is present if winning any prize, or one prize as opposed to another, depends predominately upon events beyond the participant's control--for example, random selection of a winning number. "Consideration" normally consists of requiring participants to make a purchase from, or otherwise pay money to, the sponsor of the promotion, in order to be eligible to obtain a prize. So-called "sweepstakes" promotions often avoid the postal lottery statutes by allowing optional participation with "no purchase required," thereby removing the required legal element of "consideration."

We have continued to pursue the operators of deceptive promotions using the False Representation and Lottery Statute. During the first nine months of Fiscal Year 1999 prize promotion cases have resulted in six consent agreements, eight cease and desist orders, three False Representation Orders and one voluntary discontinuance. The lottery cases have resulted in 3 consent agreements, 4 cease and desist orders, 88 False Representation Orders and 8 voluntary discontinuances.

To further combat illegal lotteries and prevent the victimization of American citizens, U.S. Customs Service officials work with the Inspection Service to stop such offerings from entering the country. U.S. Customs agents now contact postal inspectors when they find such mail during border searches. The mail is detained and samples are forwarded to the Postal Service Law Department to determine their legality. If mail is considered illegal, the mailer is notified that the material is subject to destruction and may appeal the notice. If the mailer fails to appeal or loses the appeal, the detained mail is destroyed. Over 3.4 million pieces of illegal foreign lottery mail were destroyed during Fiscal Year 1998.

At this time, we have 34 open sweepstakes investigations and 70 open lottery investigations.

CASE EXAMPLES

As you can see from the following examples, although we utilize the civil statutes to try to protect consumers from deceptive promotions, the operators have identified and exploited weaknesses in the statutes.

Mailworks International During the latter part of 1998 we pursued civil action against a number of promotions using six post office boxes (22037, 22041, 22043, 22046, 22047, and 22048) under the control of Mailworks International in Tempe, Arizona. The promotions used direct mail solicitations advising or implying that a check was being held for the addressee in amounts that ranged from $10,000 to $11,200.47, depending upon the promotion. They also stated that the promoter was holding "an entitlement" (also referred to as a redeemable bankpak, redeemable documentation package, quick reply elective, early bird elective, etc.) valued from $2,200 to $3,500 depending upon the promotion. The entitlement involved a "mandatory processing fee" that ranged from $10 to $16. The promotions advised the winnings were available "without mandatory purchase," "with non-requisite purchase," or "monetary options are elective and non-requisite." During a 10-day period of time it was determined that the six post office boxes generated an average total of 8,000 pieces of mail per day.

The Postal Service filed a civil complaint against Mailworks International and its principal, Bruce White, on September 14, 1998. On the same day, with the assistance of the U.S. Attorney's office, a temporary restraining order (TRO) stopping delivery of mail to the six post office boxes was obtained in U.S. district court. A consent agreement was reached with the promoters on December 23, 1998, and the Postal Service Judicial Officer issued a false representation order and a cease and desist order on December 31, 1998. On January 15, 1999, the Postal Service returned to the senders approximately 30,000 pieces of mail that had been stopped by the TRO.

On April 20, 1999, the Postal Inspection Service discontinued delivery of mail to a post office box in Papillion, Nebraska, which was being used for a promotion in the name of Wilson Perrie Corporation (WPC). The promotion involved direct mail solicitations appearing to be from accounting or monetary fulfillment firms. The solicitations, mailed from Tempe, Arizona, gave the impression the recipient had already won $10,000. For fees ranging from $13 to $19, the addressees received a coupon booklet for various products and services. In some instances, the complainants received three different variations of the award notification, each asking for another fee. It was determined that 400 to 1,000 pieces of mail were received per day. Some of the WPC solicitations were mailed in envelopes bearing the return address of P.O. Box 22048, Tempe, AZ 85285. Postage for all of the WPC solicitations we reviewed was paid using two of the same postage meters that had been used for postage on some of the Mailworks International mailings.

Several solicitations were sent with portions of the text blacked out. At the bottom of the page of one solicitation, the overprinting did not obscure an address used for

responses to one of the Mailworks International promotions. Additionally, some return envelopes had WPC address labels pasted over the original preprinted addresses for Mailworks International promotions.

J.R. Publishing, Inc. Beginning in January 1997 J. R. Publishing, Inc., Missoula, Montana, used direct mail solicitations to promote games of skill involving three-stage contests. Ronald James Ellis of Las Vegas, Nevada ran the promotions. The first two stages were very simple word games. The third stage was a complex word puzzle. Entry fees varied from $5 to $20. Once a consumer submitted a single stage-one entry, they would receive prize upgrade solicitations, stage-two solicitations and additional stage-one solicitations. Many of the solicitations were prepared in a manner that would lead individuals to believe they were winners. Some solicitations included the statement, "You are guaranteed $10,000 cash as our sole grand prize winner."

An administrative complaint was filed on June 23, 1998, and a hearing was held in Las Vegas, Ellis' actual business and residential location, on October 22, 1998. A TRO to stop the delivery of mail to the Montana addresses was obtained in U.S. district court on October 28, 1998. The Postal Service Judicial Officer issued a false representation order and a cease and desist order on March 26, 1999.

However, Mr. Ellis was not deterred by the actions we took. Beginning four days after the hearing, he opened boxes in commercial mail receiving agencies in five states in order to continue his promotions. We have referred this matter to the U.S. Attorney for the District of Montana.

Eagle Promotions, Inc. On May 25, 1999, the U. S. Attorney for the District of New Jersey obtained a TRO against Eagle Promotions, Inc., and its principal, James Bierman.

Eagle Promotions operated out of P.O. Box 3177 in South Hackensack, New Jersey. The corporation utilized 13 different business names, soliciting members of the public for a "sweepstakes" promotion. All 13 sweepstakes solicitations were similar in form and contained similar representations. The solicitations were personalized to represent that consumers are eligible for a large cash award. However, the large cash award (e.g. $15,000) cannot be released until the "claim form" attached to the solicitation is completed "in full" and returned promptly to Eagle Promotions. The claim form is attached to the solicitation. It is a forced choice checklist requiring payment in the form of "cash, check or money order" and does not contain a "no purchase" option or statement. The fees required for entry are variously described as a "transferal fee, acquisition fee, release fee, redemption fee," etc. The claim forms have clever titles such as "Award/Entitlement Verification Form," "Award Transfer Claim," "Award Denouement," "Award/Entitlement Security Form," and "Award Transfer Claim." The claims are intentionally confusing to consumers, leading them to believe that they must

pay a fee to receive the large cash award.

The rules to Eagle Promotions sweepstakes are contained on the opposite side of the solicitation. Although there is a "no purchase" option included in the rules, to utilize the no purchase option, consumers are instructed to mail a 3X5 card with their name, I.D. number and the claim form (in 11 of 13 solicitations) in a No. 10 business envelope to P.O. Box 3177, Hackensack, NJ. However, consumers are warned that if they use the "courtesy reply envelope" included in the solicitation to return their 3X5 card, they will be automatically disqualified from the sweepstakes.

It has been our experience that consumers who remit fees to "sweepstakes" and other similar promotions become "hot commodities" and are targeted with additional solicitations from promoters. Such was the case with the Eagle Promotions solicitations. One consumer who responded to a solicitation received an additional 22 solicitations from 8 different related Eagle Promotions business names.

Two of the Eagle Promotions businesses: National Judging Services and Consumer Fulfillment Center were to issue cash awards on or about April 1, 1999, pursuant to the rules in the solicitations. As of June 1, 1999, no cash award was awarded to any consumer.

Eagle Promotions also solicited the public with two separate alleged "government look-alike solicitations." The solicitations were mailed in official looking envelopes with governmental-type seals bearing the names "US Entitlement Service, Eastern Region, South Hackensack NJ 07606-1177"; and "Internal Monitoring Service, Dept. of Sweepstakes, Eastern Region, P.O. Box 3177 S. Hackensack, NJ 07606-1177/Official Business, Penalty for Unauthorized Use."

Eagle Promotions' fulfillment for all 13 different business names and their respective solicitations is a coupon book entitled "Step into Savings." The "Step into Savings" coupon book contains various coupons, many of which can be found in local newspapers, allegedly valued somewhere between $2500 and $3500. In fact, the coupon book requires the consumer to spend thousands of dollars to realize the so-called discounts. Consumers have complained they were not interested in the coupon book, but wanted the large cash award. Moreover, consumers are remitting the required fees because they believe they must in order to receive the large cash award.

Eagle Promotions' principal, James Bierman, is also a principal in a New York corporation entitled Lexington Promotional Systems, Inc., utilizing P.O. Box 1381, Church Street Station, New York, NY. Utilizing three different business names, Lexington Promotional Systems solicits the public with "sweepstakes" promotions that are similar in form and in substance to the Eagle Promotions sweepstakes promotions. Interestingly, Eagle Promotions, located in New Jersey, did not solicit consumers from the State of New Jersey; however, Lexington Promotional Systems, located in New York, did solicit consumers living in New Jersey.

Borden Barrows Another example of the types of difficulties postal inspectors face attempting to protect consumers utilizing current law is that of direct mail promoter Borden Barrows. Barrows has been operating a variety of direct mail promotions and sweepstakes since at least 1992. In 1993, when Barrows and his associates were approached by postal inspectors concerning a sweepstakes offer, he closed up shop in one location, moved to another location, and set up again under a different name. In fact, in his most recent promotions, "Cash Claim Service, National Cash Distribution Bureau and Distribution Center," Barrows has used several locations for consumer responses including New York, NY; Washington, DC; Issaquah, WA; Mesa, AZ; Atlanta, GA; San Francisco, CA; White Plains, NY; Northampton, MA; and Chicopee, MA.

Barrows used numerous addresses at commercial mail receiving agencies nationwide, which collected the consumer responses and then forwarded them to him. Barrows has been known to operate several sweepstakes promotions for which no prize has been awarded. He closes up shop after collecting consumer monies and leaves for new locations to start soliciting the public again using different names. Barrows and associates were the subject of consent agreements and cease and desist orders in which he agreed to discontinue his promotions; however, because the statutes lack significant penalties there is no real deterrent to continuing the deceptive promotions.

WEAKNESSES OF CURRENT STATUTES

The case examples are a small sample of "successful" investigations that have resulted in civil/administrative agreements and orders to protect consumers. However, in these and many more cases, the unscrupulous promoters have exploited weaknesses in the civil/administrative statutes in Chapter 30 of Title 39 to circumvent the actions taken and to continue their lucrative deception of the public.

Mailability standards are prescribed in Section 3001 for solicitations that appear to be invoices and solicitations that are from private companies but appear to have a government connection. However, the statute does not have any provisions relating to solicitations that use sweepstakes, prize promotions, games of skill, or facsimile checks. Without such standards it is difficult to establish the point where solicitations are deceptive and actionable under Chapter 30.

Section 3005 states, "Upon evidence satisfactory to the Postal Service that any person is engaged in conducting a scheme or device for obtaining money or property through the mail by means of false representations, including the mailing of matter which is nonmailable under 3001(d), (h), or (i) of this title, or is engaged in conducting a lottery, gift enterprise, or scheme for the distribution of money or of real or personal property, by lottery, chance, or drawing of any kind, the Postal Service may issue an order..." To get an order, the Postal Inspection Service must conduct an investigation and the

General Counsel must file an administrative complaint with the Postal Service Judicial Officer. The promoter is then notified of the complaint and given a chance to respond. A hearing date is scheduled and if the case is not resolved through an agreement, a hearing will be conducted and a decision issued by the Judicial Officer. This process normally takes from two to twelve months to complete. Before this process can be completed, many schemes will have received most of their responses. At the conclusion of the process, the only penalty is the return of mail to the sender. The addressee is permitted to review the mail to ensure that only mail addressed to the specific scheme(s) named in the action is returned to the sender. The Judicial Officer can also issue a cease and desist order barring the promoter from making the same or a substantially similar offer involving the use of the mail.

In order to reduce the number of victims the Postal Service, with the assistance of the Department of Justice, can request the issuance of a TRO from the U.S. district court in each judicial district in which the promoter receives mail. An order may be obtained, and will remain in effect, while an action under Section 3005 is pending. This becomes a very cumbersome process in each case that the promoter uses addresses in multiple districts or continues to establish new addresses after the issuance of a TRO. It places a heavy resource burden on the Postal Service, the Department of Justice, and the U.S. district courts. Additionally, it creates a burden for the private parties who would have to litigate the actions in each judicial district.

The statutes offer very little in the way of penalties to deter the use of the mail to promote deceptive schemes. As previously discussed, mail stop orders can be obtained, but often after schemes have received most of their responses. The only monetary penalties available are for use only when there is a breach of a cease and desist order. This requires the General Counsel, with the assistance of the Department of Justice, to seek an order from U.S. district court. There are no penalties that may be assessed for the initial violation of the mailability statutes in Chapter 30.

The initial stage of investigating a scheme is prolonged based on the length of time it takes to develop information from public records and other sources that are developed during the investigation. We are hampered by the lack of any subpoena authority for use in these investigations. While we may be able to develop information for parallel criminal investigations through the use of grand jury subpoenas, we are barred from using such information in a civil/administrative case.

In testimony during a hearing on July 20, 1999, the Senate Permanent Subcommittee on Investigations disclosed the prevalent use of "straw" owners to set up corporate entities that do not disclose the names of the true promoters. In one example, the true promoter was a "consultant" who used relatives and other individuals as corporate officers when the various promotional companies were registered. In the case of two entities, the person listed as an officer had done nothing more than lend their name to the "consultant." The consultant and his office manager completed and filed corporate papers and ran the businesses. Based on the available public records, we could not

have drawn the direct link to the real promoter. Any action we could have taken would have been against the officer of the corporation and the real promoter would have been clear to continue his operation by recruiting others to act as corporate officers.

PROPOSED SOLUTIONS

We have worked with members of each Congress since the 101st Congress to develop proposals that, if enacted, would strengthen federal statutes relating to fraudulent and deceptive mailings and allow us to more effectively protect the public from these types of solicitations. The Deceptive Mailings Prevention Act of 1990, which targets government look-alike mailings, resulted from these efforts. In the 105th Congress, laws were enacted to address two serious areas of consumer fraud that we aggressively investigate - telemarketing fraud and identity fraud. I would like briefly to suggest several possible additional improvements in Chapter 30 of Title 39, which would further enhance our ability to protect the public from fraudulent and deceptive mailings.

Because promoters often use multiple fictitious names and addresses for their solicitations, victims of false representation schemes are sometimes victimized again and again by the same promoter. This could be addressed through an amendment to the False Representations and Lottery Statute that would require the clear and conspicuous disclosure of the solicitor's name and principal place of business on any solicitation for funds or for the sale of goods or services, which is mailed or seeks responses by mail. This disclosure would assist the Postal Inspection Service, the Federal Trade Commission and other investigative agencies in tracking the activity of promoters of deceptive schemes and developing a history of violations that can support the "intent to defraud" showing that is required for criminal mail fraud convictions.

A promoter charged with a violation of the False Representations and Lottery Statute can prolong the proceedings through dilatory litigation tactics and judicial review, thereby forestalling the issuance of an order that prevents further consumer injury. To neutralize these tactics, it is helpful to be allowed to detain mail for temporary periods. Section 3007 allows the U.S. district court where the defendant receives mail to issue appropriate orders to detain the mail. However, because some promoters receive mail in more than one judicial district, in order to detain all incoming mail in response to a false representation scheme, the Postal Service and the Department of Justice must apply to the district court in each district where the defendant receives mail. Ongoing schemes and continuing losses could be stopped by amending Section 3007 to allow the court in any district where the promoter receives mail to order the Postal Service to detain mail received at any address in response to the scheme. This would not only result in more effective consumer protection, but also more efficient use of government resources by the Postal Service, Department of Justice and the U.S. district courts.

Our experience teaches that after a Postal Service cease and desist order is issued in a false representations case, the promoter often continues the same scam using

telephone promotions and private carriers instead of the mail. This could be addressed by amending 39 U.S.C. § 3012, the civil penalties statute, to prohibit the use of any electronic communication, telephone, or other communication medium, in addition to the mail, to evade the effect of a false representation order. This statute also could be improved by expanding the district courts' venue from the district where the defendant receives mail, as the statute currently provides, to any district where the defendant conducts business or from which it sends mail.

We also recommend the enactment of new civil penalty provisions that would authorize the Postal Service to assess civil penalties against persons who mail matter declared nonmailable by 39 U.S.C. § 3001. Prior to the assessment of any penalty, the Postal Service would have to provide notice and an opportunity for a hearing. The penalty determination would be based on specific factors provided in the statute, and the mailer could appeal the decision to the U.S. district court. The Postal Service would have to obtain an order from a U.S. district court to enforce the assessment. Fraudulent matter and lottery matter would be covered by the proposed amendment, as would mailings of dangerous matter, which could injure persons or vehicles and aircraft carrying the mail.

Our investigative ability and efficiency would be enhanced by having the authority to issue administrative subpoenas in mailability investigations conducted under Chapter 30 of Title 39. Such authority would be modeled on existing administrative subpoena authorities of other federal agencies, and only records, documents, and other non-testimonial material relevant to the investigation could be compelled by the administrative subpoena. If the promoter failed to comply with the subpoena, the Postal Service could seek enforcement of the subpoena by the Attorney General. As the Senate Permanent Subcommittee on Investigations demonstrated, some of the largest promoters of allegedly deceptive schemes have developed ways to hide behind corporate entities set up in the names of people they have recruited. Without a means to peel away the layers of corporate documents to identify the true principals, we will never be successful in putting them out of business.

Although Section 3001 sets standards for the mailing of other types of matter, it does not address sweepstakes, prize promotions, games of skill, or facsimile checks. By setting basic guidelines for such matter, there would be common standards against which consumers could evaluate solicitations and a defined point at which legal action could be taken against deceptive promotions. This concept was included in legislation introduced during the 105th Congress (S. 2141, S. 2460, and H.R. 4340).

BENEFITS OF PROPOSED LEGISLATION

To date, six bills addressing deceptive mailings have been introduced in the 106th Congress, two in the House of Representatives and four in the Senate. Following is a brief outline of the major provisions of each bill:

H.R. 170, Honesty in Sweepstakes Act of 1999, by Congressman LoBiondo (R-NJ).

- Amends 3001 to require specific notices on mailings containing games of chance.
- Amends 3001 to require specific notices on facsimile checks.
- No preemption of state laws.

H.R. 237, by Congressman Rogan (R-CA).

- Amends 3001 to require specific notices on mailings containing games of chance.
- Amends 3005 for enforcement.

S. 301, Honesty in Sweepstakes Act of 1999, by Senator Campbell (R-CO).

- Amends 3001 to require specific warning statements for promotions for products or services that include the chance or opportunity to win anything of value.
- Amends 3001 to require specific notices on facsimile checks.
- Amends 3005 to provide for enforcement of new sections of 3001.
- Includes civil penalties for deceptive mailings with penalties doubled for breaches of cease and desist orders.
- Calls for proceeds of civil penalties to be used for consumer education.
- No preemption of state laws.

S. 335, Deceptive Mail Prevention and Enforcement Act, by Senator Collins (R-ME).

- Amends 3001 provisions regarding government look-alike mailings.
- Amends 3001 to create guidelines and require specific disclosure statements for skill contests, sweepstakes, and facsimile checks.
- Amends 3005 to provide for enforcement of new sections of 3001.
- Amends 3007 to provide for multi-district temporary restraining orders and to raise the government's burden of proof.
- Includes civil penalties for deceptive mailings with penalties doubled for breaches of cease and desist orders.
- Includes administrative subpoena.
- Establishes an industry-run notification system that allows consumers to elect not to receive mailings related to sweepstakes or skill contests, with civil penalty provisions.
- No preemption of state laws.

S. 336, Deceptive Games of Chance Mailings Elimination Act of 1999, by Senator Levin (D-MI).

- Amends 3001 to require specific warnings and notices in conjunction with sweepstakes and games of skill.
- Amends 3005 to provide for enforcement of new sections of 3001.
- Includes civil penalties for deceptive mailings.
- Includes administrative subpoena.

S. 975, Sweepstakes Toll-Free Option Protection Act of 1999, by Senator Edwards (D-NC).

- Would create an industry-run notification system allowing consumers to elect not to receive mailings related to sweepstakes or skill contests.
- Includes civil penalty provisions.
- No preemption of state laws.

Because the Senate has reported an amended version of S. 335 that has 34 cosponsors, including the sponsors of all of the pending Senate deceptive mail legislation, our comments regarding Senate legislation will be limited to S. 335.

Both House bills and the Senate legislation address basic standards for the mailability of games of chance. One House bill and the Senate legislation address standards for facsimile checks and the Senate legislation also addresses games of skill. The establishment of such standards will provide guidance for both the mailers and enforcement authorities in determining what is considered deceptive practices. In the four cases referenced in this testimony such standards would have made most of the solicitations actionable under the False Representations and Lottery Statute (39 U.S.C. § 3005).

As illustrated in the four cases, the provisions of S. 335 would play a major role in consumer protection. It has been our experience that some questionable direct mail promoters, when approached by the government, simply close their operation in one location and "hopscotch" across the country to other locations and resume business as usual. There is little in the current law to deter unscrupulous promoters from repeatedly violating Postal Service cease and desist orders. The proposed change in the penalties for violation of this statute would put "teeth" in the statute and – in our opinion – deter promoters from resurfacing in new locations and continuing business as usual. The civil penalties will also be a deterrent to some individuals who contemplate running deceptive mail promotions.

The multi-district TRO authority would have been very useful in several of the cases, allowing us to go back to the judge who issued the initial TRO, rather than having to go into additional judicial districts to get individual TROs. This authority will result in a much more efficient use of Postal Service, Department of Justice and federal court resources, by reducing the number of court filings and hearings necessary to consider applications for TROs. Additionally, as previously stated, the promoters will not be forced to defend their actions in multiple judicial districts. This will not only reduce the financial burden on private citizens, but will also preserve more funds for cases where victim restitution can be obtained.

In each case the use of administrative subpoenas could have expedited the process, resulting in quicker actions that would reduce the number of victims. Currently the Postal Service has no subpoena authority available for this type of civil case. The

result is that it takes longer to develop sufficient information to pursue civil action against a deceptive promotion. The subpoenas will also be a critical tool in developing sufficient information to obtain TROs due to the increased burden of proof placed on the government by this legislation. The subpoenas will also play an important role in obtaining sufficient information to identify victims, locate proceeds of the scheme, and determine the number and size of mailings for the purposes of establishing the appropriate assessment of civil penalties. The legislation contains provisions for judicial review of subpoenas issued, civil penalties assessed, and applications for temporary restraining orders.

The subjective standard for government look-alike mailings set by the current law (39 U.S.C. § 3001) is addressed by the Senate legislation. The legislation would improve the statute by establishing an objective standard and most importantly includes the civil penalty provisions that we feel will help deter violators.

Finally, one of the House bills and the Senate legislation clearly state the legislation is not intended to preempt the authority of the states. We appreciate this concern because we often work in cooperation with state attorneys' general offices and with various consumer affairs offices in a cooperative and coordinated effort to combat deceptive mailings. We share information and consumer complaints, assist each other in identifying witnesses, and coordinate the filing of our respective cases. This cooperative effort has produced significant results in limiting a variety of frauds. Our combined efforts enable state attorneys general to reach questionable promoters beyond their state borders. The provisions in pending legislation, especially S. 335, would not only enhance the Postal Inspection Service's ability to investigate and stop deceptive mailings, but it would also help us assist the state attorneys general work more effectively as well.

PREVENTION THROUGH CONSUMER AWARENESS

While we are pleased with our success in our law enforcement efforts, we are convinced that reducing fraud losses resulting from improper uses of the mail requires more than historic law enforcement responses. Too often, the results of law enforcement - arrests and civil orders - occur after victims have lost money that cannot be recovered. Increased arrests do not necessarily demonstrate success, but rather they reveal a continuing problem requiring a more lasting solution. In recent years we have had significant success working in close partnership with the credit card industry, the rebate industry, and the mail order industry to reduce fraud losses they have experienced. For many years, we have worked with the Better Business Bureaus, state consumer protection groups and others to share our knowledge of prevailing mail order scams and to arm the public with the information that can help them avoid becoming victims.

The Postal Inspection Service aggressively participates in a wide range of consumer protection and public education efforts such as reverse boiler rooms with AARP, public service announcements, video news releases, press releases, brochures and posters warning consumers about the signs of fraud. During the last year we have participated in two U.S. Senate hearings; one hearing sponsored by the National Association of Attorneys General; a seminar sponsored by Arizona State University, the Arizona Attorney General and AARP; and a legislative presentation at the National Postal Forum regarding sweepstakes and deceptive promotions. Admittedly, each of these efforts only reaches a targeted segment of the population. Fraud is one crime that can be dealt with most effectively through education because every potential fraud victim must first make a choice. Our goal is to help the consumer make the right choice.

In the Senate hearing last September, we announced that we had joined with the National Council of Better Business Bureaus to make a vision we share a reality. Assisted by other consumer and government agencies including AARP, the Federal Trade Commission, the Department of Justice, the Federal Bureau of Investigation, the Securities and Exchange Commissions and the National Association of Attorneys General, we plan to launch what may be one of the most ambitious fraud prevention initiatives ever. In October we will mail to every home in America- approximately 114 million - a card containing valuable fraud prevention tips, which provides an 800-phone number to call and an address to write for additional information. There will also be a dedicated web site with links to the participating agencies and organizations. Additionally, an informative video is being produced that will be available at 16,000 public libraries and on the web site. The card is being designed for display by the telephone as a reference and prevention tool, in hopes of helping citizens make informed decisions regarding mail and telemarketing solicitations when they occur, so they avoid becoming victims of fraud. This very exciting and promising initiative has been named "kNOw Fraud."

Over the many years we have enforced the postal fraud, lottery and false representation statutes, we have observed that the tactics of con artists are similar, and if profitable, will be repeated. I want to assure you that the Postal Inspection Service will continue to combine aggressive investigations and widespread public awareness campaigns to rid the mail of fraudulent schemes. As in the past, this effort will include schemes that include the use of the mail, which are initiated through any advertising medium - mail, telemarketing, television, newspaper or more recently the Internet. The American public's confidence in the mail is not only important to the Postal Service, but also to the millions of businesses that rely on the mail as an important marketing tool.

We appreciate the level of concern Members of Congress have demonstrated regarding consumer protection. We would like to commend you for holding this hearing and generating publicity that will result in increased public awareness and a reduction in consumer vulnerability.

Mr. MCHUGH. Thank you. I know your time is short. Let me say I am glad I do not have to lick the stamps for that mailing. As I was reading your testimony on Sunday I believe, one of the things that interested me is that you, a Federal officer, argued, at least my impression was, very strongly not to have a Federal response preempt State laws.

As I recall, you said to the effect that your office had worked cooperatively with a variety of local law enforcement agencies, and you felt that partnership would be best served by the opportunity that preemption may in fact prevent. Others who will speak later do not share that opinion.

Talk about, understandably, the confusion, the complexity of having to meet Federal standards and the possibility of also having to meet 50 different State standards. Would you care to expand a little bit more about how you think Federal preemption would not be a wise move in the end?

Mr. HUNTER. Sure. Throughout our history, we have worked very closely with law enforcement at all levels: Federal, State, and local. I think there are certain types of crimes or certain aspects of a crime which require a Federal solution because of their breadth. They may exceed the reach of law enforcement authorities that have a geographical limitation as a State attorney would.

On the other hand, as you have correctly deduced, it is not my desire to preempt the States either.

My ultimate goal is that the representations would be very clear and well-understood by the vast majority of the recipients and those which are fraudulent it is all right with me that they be pursued by a number of authorities.

Now, I am making the clear distinction though between those that are prohibited by law and some of the things that have been discussed today which, under the existing law, are not prohibited. That, of course, is an important challenge that you face is how do you make that clear and fair; the first amendment rights that were discussed?

It is very difficult to legislate that kind of clarity. For things that clearly violate the law, I welcome working in partnership with States' attorneys and others. I was one of the witnesses in the hearing in Indiana that was held by 12 of the States. I commend them for their initiative.

Mr. MCHUGH. Thank you. Just a point of clarification, as it will play off one of the later presentations. You mentioned in your testimony that currently you have 34 open sweepstakes mailings and 70 open lottery investigations. Are you aware, or could you submit, if you are not at this moment for the record, how many if any of those involve nonprofit organizations?

This obviously becomes of interest to this subcommittee. What is the need, if any, to distinguish how we approach commercial sweepstakes mailers versus nonprofits that obviously, as far as we know, have a very different motive?

Mr. HUNTER. I am not aware. We will need to submit that for the record. We will try and make a differentiation. As you know, there is a great issue that surrounds the legitimate and the not legitimate use of those privileges. So, we will get that data for you and provide it to you.

[NOTE.—The information referred to appears on p. 316.]

Mr. MCHUGH. I do appreciate that. Mr. Davis.

Mr. DAVIS. Thank you, Mr. Chairman.

Mr. Hunter, let me also congratulate you and wish you well. In your testimony you described the weakness of current statutes in fighting deceptive sweepstakes and deceptive practices in mailings. Will either one of these bills assist or help make it easier to catch fraudulent sweepstakes companies?

Mr. HUNTER. They will. We will need to work with everyone else working on them with regards to the language to resolve some of the issues that were already identified. I would also encourage the House to go further in terms of some of the penalties and some of the authorities necessary for those who clearly violate the law to make that a serious consequence, if you will.

Mr. DAVIS. So, you think if we do some further analysis and work out, as specific as we can, the approaches that are to be used and how it would work, that they both will in fact get at the problem.

Commissioner Swindle, in your testimony you talked about the success of Project Mailbox. That is the joint Federal-State initiative. Will either one of these two bills assist or make that project more effective?

Mr. SWINDLE. I think the Postal Service, sir, would better address what it needs in the way of expanded authority. My instinct is that they probably do. Certainly, Mr. Hunter has indicated so by asking essentially for more civil penalties; the authority of District Judges to issue TROs over multiple districts, and also an expansion, as I recall, of administrative subpoena authority. Those things seem to be useful tools to him. I would certainly defer to him in that judgment.

Our operation or participation in Project Mailbox was to assist some 47 States in their individual activities. This gets back to the question that was raised earlier about whether it should be a Federal law, or should we defer to the individual States. I guess that argument has been going on since the Nation was founded as to whether we should have centralized Government and laws as opposed to decentralized with States.

I would tend to favor the manner that we operate now where we work as a facilitating body and a reinforcer. Being a national or a Federal agency, we have the capacity to bring attention to such an effort as Project Mailbox on a nationwide scale.

I think we would all generally agree that the ultimate solution to most of these problems is more consumer awareness that there are people out there that would certainly do harm to them. The more consumers know, the less they will fall victim.

Mr. DAVIS. You mentioned consumer education or awareness. Is there any way then that we could assist or help with that?

Mr. SWINDLE. From a standpoint of legislation, I personally do not think that is appropriate. However, I think that any time a Member of the Congress can speak to these issues with constituents, helping to make them more aware of the kinds of problems that other people are having, in the district, and certainly around the country, your working with us as you might wish to do in your district would be helpful.

We have enormous resources for consumer education and would gladly play a role with the Members of Congress to get to their constituents and talk about these issues. I think awareness is the ultimate answer.

Mr. DAVIS. I thank the gentlemen very much.

Thank you, Mr. Chairman. I yield back.

Mr. MCHUGH. I thank the gentleman.

As I indicated, I know Mr. Hunter has another appointment. I am sorry. You want to respond to that.

Mr. HUNTER. I would like to respond to two things.

Mr. MCHUGH. Please.

Mr. HUNTER. One is we are going to be asking all of you in Congress to participate in the rollout of this mailing to every home, 130 million homes, asking your constituents to watch for it because obviously you have a lot of credibility with them. They elected you. So, you definitely will be a part of this. We see this as the first of many. The second we anticipate would be on identity takeover; the fastest growing crime.

In conclusion, let me say that I appreciate very much working with you. You are right that we have not always agreed, but I have respected the thoughtful manner in which you have always listened to what I have said, and the manner in which you have treated me. I have felt that it has been very honorable, very straightforward.

I appreciate that and I look forward to working with you in the future as you face this challenge, and I am not dead. Although, you recognize that I am very senior with all of that service. I look forward to simply working with you in a different capacity. What I would urge you to do on this is to swiftly consider and try and put in place tools to deal with the criminal violations.

I would encourage you to do what you do very well. That is to solicit broad input from the industry on their side of the issue, about the need to clearly represent in a manner that does not kill a very effective way of communication what it is that the offer contains. You are excellent at that. I know that you will do that. I am optimistic that positive results will occur, thanks to your attention and the legislation. Thank you.

Mr. MCHUGH. I thank you, sir, for your comments, and for 35 years of devoted, dedicated, and extraordinarily effective service. I look forward to working with you also. I am pleased that neither of us are dead, not yet.

Mr. HUNTER. Neither of us are attorneys either.

Mr. MCHUGH. That is right. So, thank you.

Mr. HUNTER. Excuse me.

Mr. MCHUGH. Go to your next appointment.

For purposes not other than it looks symmetric, we are going to proceed from my left to my right with respect to the presenters. So, that would mean that Mr. Bernard Ungar who is the Director of the Government Business Operations Issues of the GAO would be next. Sir, we are at your disposal.

Wait. Do you need 5 minutes?

Mr. STENOGRAPHER. Yes, sir.

Mr. MCHUGH. The stenographer has suggested a need of 5 minutes. So, we will recess and adjourn for 5 minutes.

[Recess.]

Mr. MCHUGH. If we could have everyone return to their seats, we could proceed. Well, as I was saying, Mr. Ungar, before we had to break away there, we appreciate your being here. As I mentioned, I have read the GAO's full testimony. So, we are looking forward to your comments.

Mr. UNGAR. Thank you, Mr. Chairman.

I am pleased to be here to assist the subcommittee today. I am accompanied by a number of our staff members, who worked on this project, whom I would like to thank for their help. Our work on this issue was not only requested by your subcommittee, but by two Senate subcommittees, as well—the Senate Subcommittee on International Security, Proliferation and Federal Services and, the Permanent Subcommittee on Investigations.

All three of you asked us to look at the nature of this issue and problem, the extent to which consumers are affected by it, and Federal, State, local, and nongovernmental efforts to address it, which our testimony describes. I certainly will not go into that detail.

What I would like to do is first summarize very briefly limited information on the nature of the problem which you have covered pretty well; some information on extent, which we have focused on, and a very brief discussion on the Postal Service's process for receiving complaints from consumers.

Like some of the examples you described, I would like to point out a couple that I received at home or my family did; a slightly different twist. This one is an example. I thought the envelope was interesting. People talk about Government look-alike mail. This envelope has the eagle up here and says monitored U.S. mail. I do not know who is monitoring it, and it has a symbol or a UCP code to be scanned.

This envelope contains one of the sweepstakes like that one you have displayed for $800,000, if I am lucky enough to get it. I thought the envelope was interesting. Another one that my 17-year-old daughter had received, who did not have any credit cards at the time she received the letter, was from a credit card company. It is called "Credit Card Protection Agency, Inc." It sounds like a Government corporation.

The letter included a check for $3.25. It is a real check, but if she had cashed it, then she would have been enrolled in a credit card protection program that she would have had to pay for—for the credit cards that she did not have.

Finally, the last example is an offer from an organization that I guess is affiliated with the GM Credit Card. It says on the envelope, "Get two complimentary airline tickets." Of course, when you read all of the material here, they are not complimentary. You have to subscribe to a program that you pay for, as well as buy hotel rooms in the location where you go. So, again, that is somewhat misleading; somewhat similar to the nature of the process that you had identified as well as others.

In terms of how extensive this problem is, that is really where we focused our effort. Unfortunately, as we said in our testimony, comprehensive data are not available on how many people are affected by the problem of deceptive or misleading mail. There are a couple of reasons for that. One, we are told by many of the experts in this area that not all people report when they believe they

have been misled. Primarily, a lot of elderly people, or older folks, do not report because, in some cases, they are ashamed of what has happened, or they are embarrassed, or they do not know who to report the problem to.

Second, even for those people who do report, there are a variety of places where they can report their concerns, but there is no central data base that would contain this information. Nonetheless, we did embark on an effort to put together information that was available from various sources. We also did our own limited effort to collect some information on the extent of the problem.

As you indicated initially, from the title of our testimony, many consumers appear to be affected by this problem. What I would like to do is turn your attention to the board that we have over here, on my right, in which we summarized some of the various pieces of information that we collected.

[Chart.]

Mr. UNGAR. The first one is a National opinion survey. It is a national survey of the U.S. adult population that we contracted for in November 1998 with a private firm. The question that we asked them to ask the adult U.S. population, or at least a sample thereof, was within the last 6 months, have you received any mail delivered by the U.S. Postal Service involving sweepstakes or documents resembling cashier's checks that you believe were in any way misleading or deceptive?

As we indicated, about half the U.S. adult population said yes. That translates into about 100 million people. So, that is certainly a lot of people who have received mail that they perceive to be misleading.

Second, we have talked this afternoon about Project Mailbox. We went to the participants in Project Mailbox, which included FTC, the Postal Inspection Service, and a number of State Attorneys General and asked them to provide us with information with respect to some of the actions that were mentioned earlier.

Now, as you have heard, there are about 200 law enforcement actions in total that were initiated in fiscal year 1998 under this project. We asked the participants to provide us information on those actions. They provide information to us on about 100. So, we do not have information on all 200. Those 100 actions that they provided information on stemmed from about 10,400 complaints.

The organizations involved made an estimated $400 million in sales to about 841,000 consumers. Now, we do not know how much of these sales may have been fraudulent, but those were the total estimated sales and the total amount of money that was involved in those sales. We also went to the Federal Trade Commission and to the Postal Inspection Service to analyze the data that they had in their data bases, which were fairly large. For the Federal Trade Commission's data base, we found there that there were about 48,000 consumer complaints for which the initial contact method was identified.

The Commission had more, but we did not know how the complainant was contacted. The largest single number was 18,000 by mail. As the chart indicates, the 18,000 contained 2,700 complaints in which the complainant had paid money that totaled about $4.9 million. Half of those payments were under $100.

Again, the other half, were over $100 in terms of how much money was remitted. About 2,800 of those 18,000 complaints involved sweepstakes and prizes. Other complaint categories would have included telephone, pay for call services, and other types of issues.

The last line, the Postal Inspection Service's Fraud Complaint System; as we indicate on the chart, represents a number of different categories. We looked at the categories that were labeled fraud and chain letter complaints; 16,700 complaints were in the data base for the time period that we specified. About 3,000 of those identified losses.

Those losses amounted to $5.2 million. Again, most of those were under $100. Again, a large number of losses were above that amount. The Postal Inspection Service also had another general category called consumer complaint program that had about 48,000 complaints.

About 4,000 of those complaints that were associated with fraud investigations. There was not any more specific information available on those particular complaints. We really could not say much more about those.

Finally, another limited test that we did involved local post offices, as well as calling 1–800–ASK–USPS. Here we determined what did happen, compared to what was supposed to happen, when a consumer complained to the Postal Service.

In other words, the Postal Service officials told us that if a consumer has a complaint about the mail, he or she can either go to the local Post Office or call the 800 number. What is supposed to happen is the person is supposed to be, in one way or another, referred to the Postal Inspection Service.

We found that such referral did not always happen, either in the visits that we made or in the calls we made to the 800 number during our review. Now, that was a limited number. It was not projectable. It did indicate that perhaps the Postal Service could reinforce the instructions that it has, in terms of what its employees are supposed to do. That would conclude my summary.

I would be happy to answer questions, if you would like.

[The prepared statement of Mr. Ungar follows:]

United States General Accounting Office

GAO

Testimony

Before the Subcommittee on the Postal Service
Committee on Government Reform
House of Representatives

For Release on Delivery
Expected at
1:00 p.m. EDT
Wednesday
August 4, 1999

DECEPTIVE MAIL

Consumers' Problems Appear Substantial

Statement of Bernard L. Ungar, Director
Government Business Operations Issues
General Government Division

GAO/T-GGD-99-150

Summary

Deceptive Mail: Consumers' Problems Appear Substantial

In response to requests from three congressional subcommittees, GAO obtained information on the extent and nature of consumers' problems with deceptive mail and identified initiatives various federal agencies and other organizations have made to address deceptive mail problems and educate consumers. Examples of deceptive mail include sweepstakes, chain letters, cashier's check look-alikes, work-at-home schemes, and fraudulent charity solicitations.

Officials in various agencies and organizations said that comprehensive data on the full extent of consumers' deceptive mail problems were not available mainly because consumers often did not report their problems and no centralized database existed from which such data could be obtained. However, data GAO collected from various sources suggested that consumers were having substantial problems with deceptive mail.

- Based on a GAO sponsored November 1998 statistically generalizable sample of the U.S. adult population, GAO estimates that about half of the adult population believed that within the preceding 6 months, they had received deceptive mailed sweepstakes material or cashier's check look-alikes.

- Officials from the Federal Trade Commission (FTC), Postal Inspection Service, and state Attorneys General offices estimated that in fiscal year 1998, about 10,400 deceptive mail complaints led to or initiated about 100 law enforcement actions.

- For the period October 1, 1997, through March 31, 1999, FTC received over 18,000 deceptive mail complaints, of which about 2,700 (15 percent) reported consumer payments of about $4.9 million. Also, the Postal Inspection Service received over 16,700 complaints on fraud and chain letters, of which about 3,000 (18 percent) reported consumer fraud losses of about $5.2 million. The Inspection Service also had over 1,800 open investigative cases on deceptive mail during fiscal year 1998.

Various federal agencies and other organizations have undertaken efforts to address consumers' deceptive mail problems and educate them about such problems. For example, FTC established a national toll-free hotline for receiving deceptive mail and other complaints. One joint effort was Project Mailbox, which involved such organizations as FTC, Postal Inspection Service, and various state Attorneys General. These organizations initiated over 200 law enforcement actions against companies and individuals that used the mail to allegedly defraud consumers.

Mr. Chairman and Members of the Subcommittee:

We are pleased to have this opportunity to discuss matters related to deceptive mail marketing practices, which have been used by various organizations and individuals to induce consumers to purchase goods and services or send money for misrepresented purposes. My statement will include a brief summary of our previous testimony on the extent and nature of problems that consumers experienced primarily with mailed sweepstakes material.[1] Also, I will discuss our most recent efforts to obtain updated information that could indicate the extent and nature of problems that consumers may have experienced with various types of mailed material that have been used to deceive, mislead, or fraudulently induce them into purchasing goods or services. This type of mail, known as deceptive mail, includes sweepstakes and other types of mailed material, such as lotteries and chain letters. Finally, I will provide information on initiatives in which various federal agencies and other organizations have participated to address consumers' problems with deceptive mail marketing practices and help educate consumers about potential problems that could occur with such practices.

Our most recent work on deceptive mail was done in response to your November 1998, request as well as an October 1998, request from the Permanent Subcommittee on Investigations and the Subcommittee on International Security, Proliferation and Federal Services, Senate Committee on Governmental Affairs. We are also providing copies of our statement to the chairs of the two Senate subcommittees.

Mr. Chairman, as we agreed, the primary objective for our most recent work was to obtain updated available information on the extent and nature of consumers' problems with various types of deceptive mail. Also, we obtained updated available information on efforts by various federal, state, local, and nongovernmental organizations to address consumers' deceptive mail problems and educate them about possible problems that could occur with deceptive mail marketing practices. In addition, through an outside contractor, we conducted a survey to obtain opinions from the U.S. adult population about specific types of deceptive mail.

We did our work from November 1998 through July 1999 in accordance with generally accepted government auditing standards. We obtained comments on a draft of this testimony from the Federal Trade Commission

[1] Proposed Legislation: Issues Related to Honesty in Sweepstakes Act of 1998 (S. 2141) (GAO/T-GGD-98-198, Sept. 1, 1998).

(FTC) and the U.S. Postal Service, including the Postal Inspection Service and the Consumer Advocate. We included their comments where appropriate. We also arranged for the various state, local, and nongovernmental organizations that provided us information to review relevant sections of this testimony. We incorporated their technical comments where appropriate. Additional information about our approach is included in attachment I to this statement.

Background

As you are aware, Mr. Chairman, since the summer of 1998, much attention has been focused on consumers' problems with deceptive mail. Various activities, including specific legislative proposals and hearings, have raised congressional and public awareness about problems that some consumers have experienced as a result of deceptive mail marketing practices.

A recent example of such an activity was the May 1999 approval by the Senate Governmental Affairs Committee of proposed legislation entitled "Deceptive Mail Prevention and Enforcement Act" (S. 335), which was introduced in February 1999, by Senator Susan Collins. In her introductory remarks, Senator Collins indicated that the proposed legislation was generally designed to help ensure that organizations that used various types of promotional mailed material, such as sweepstakes, were as honest and accurate as possible in their dealings with consumers. Provisions in the proposed legislation (1) authorized financial penalties against organizations that did not comply with proposed requirements, (2) authorized specific law enforcement actions, including the issuance of subpoenas, that the Postal Inspection Service could use in combating deceptive mail marketing practices; and (3) provided assurance that the proposed legislation would not preempt state and local laws that were designed to protect consumers against deceptive mail marketing practices.

For a congressional hearing held in September 1998, we provided testimony in which we discussed information about consumers' problems with specific types of deceptive mail and some initiatives that were intended to help educate consumers about potential deceptive mail problems. We found that comprehensive data indicating the full extent of consumers' problems with mailed sweepstakes material and cashier's check look-alikes were not available. However, FTC and the Postal Inspection Service had some data on complaints that could indicate the nature of consumers' problems with deceptive mail. A sample of complaints from FTC showed that in many instances, consumers were required to remit money or purchase products or services before being allowed to participate in sweepstakes. Information about specific Postal Inspection Service cases that had been investigated largely involved

sweepstakes and cash prize promotions for which up-front taxes, fees, or insurance were required before consumers could participate in sweepstakes promotions.

In our previous testimony, we discussed two initiatives that were intended to address consumers' problems with deceptive mail. The initiatives included (1) Project Mailbox, which was established to help educate consumers and appropriately deal with organizations and individuals that attempted to defraud consumers through the use of mass mailings; and (2) a multi-state sweepstakes subcommittee that was designed to facilitate cooperation among states in dealing with companies that attempted to defraud consumers through the use of mailed sweepstakes material. With your permission, I would like to provide the Subcommittee a full copy of our previous testimony for inclusion into the record of today's hearing.

Extent and Nature of Consumers' Problems With Deceptive Mail

Comprehensive data that could indicate the full extent of consumers' problems with deceptive mail were not available. Various officials from the agencies and organizations we contacted told us that such data were unavailable mainly because consumers oftentimes did not report their problems and no centralized database existed from which comprehensive data could be obtained.

Due to the overall lack of comprehensive data, we contracted for a survey to obtain perspective on the extent to which consumers believed that they had received specific types of mailed material that appeared to them to be misleading or deceptive. Also, we identified two federal agencies—FTC and the Postal Inspection Service—that maintained some data that could provide insight into the nature of consumers' problems with deceptive mail. However, these data may include some duplicative complaints because some consumers who filed complaints may have done so with both agencies.

Opinion Survey on Specific Types of Deceptive Mail

To obtain perspective on American consumers' opinions about specific types of deceptive mail, we contracted with International Communications Research (ICR), a national market research firm, to perform a statistically generalizable sample of adults 18 years of age or older in the continental United States. The results of the survey, which was conducted in November 1998, indicated that 51 percent of the survey respondents believed that within the preceding 6 months, they had received mail involving sweepstakes or documents resembling cashier's checks, known as cashier's check look-alikes, that appeared to be misleading or deceptive. However, 45 percent of the respondents said they had not received such

mail and the remaining 4 percent were not sure, did not remember, or did not know.

Additional analysis of survey results indicated that the higher the educational levels of respondents, the more likely they were to believe that they had received these types of deceptive mail. The percentages of respondents who believed that they had received such mail were about:

- 43 percent for respondents with a high school education or less;
- 56 percent for those with some college education; and
- 62 percent for those with a completed college education or higher.

A similar trend was identified for respondents and their income levels in that at higher income levels, respondents were more likely to believe that they had received such mail. The percentages by income level included about:

- 32 percent for respondents whose annual income was less than $15,000;
- 52 percent for respondents whose annual income ranged between $15,000 and $49,999; and
- 62 percent for respondents whose annual income was $50,000 or more.

FTC's Consumer Information System Included Data That Could Indicate the Nature of Problems

For our updated work efforts, various officials and representatives of the agencies and organizations from which we obtained information again believed that the most appropriate source of consumer complaint data would be FTC's Consumer Information System (CIS). According to FTC officials, the purpose of CIS, which was first established around February 1997 and became fully operational in September 1997, was to collect and maintain various data related to consumers' complaints. FTC officials told us that CIS data are used primarily by law enforcement organizations and officials to assist them in fulfilling their law enforcement duties.

The CIS database contained a total of about 200 categories within which consumers' complaints were included. The categories covered a wide range of topics such as (1) creditor debt collection, (2) home repair, (3) investments, (4) health care, and (5) leases for various products and services, such as automobiles and furniture.

For the period October 1, 1997, through March 31,1999, our analysis indicated that CIS included a total of 48,122 consumer complaints for

which the methods of initial contact with consumers were identified.[2] Such methods included mail; telephone; fax; printed material, such as newspapers and magazines; and the Internet. Of the 48,122 complaints, the largest number, 18,143, or about 38 percent, indicated that consumers were initially contacted through the mail. Of the 18,143 complaints, we found that in 10,145, or about 56 percent, of these complaints, companies had requested individual consumers to remit money. The total amount of money requested by the companies was reported to be about $88.2 million.

Also, our review of the 18,143 consumer complaints showed that 2,715, or about 15 percent, of the consumers reported that they had remitted money to the companies. The total amount of money these consumers said they had paid was about $4.9 million. The amounts of money individual consumers said that they had paid ranged from less than $1 to over $1 million. Of these 2,715 complaints, about:

- 50 percent were less than $100;
- 35 percent were between $100 and $999;
- 10 percent were between $1,000 and $4,999; and
- 5 percent were $5,000 or more.

The largest reported amount of money paid by a consumer was $1,734,000. Available CIS information indicated that this complaint involved a consumer's concerns about a credit bureau referring inaccurate information to a debt collection agency.

In reviewing the 18,143 complaints in which consumers were initially contacted through the mail, we identified five CIS categories that included the highest number of consumer complaints, which totaled 10,776 complaints, or about 59 percent. The five categories included

- Telephone: pay per call/information services, which can involve consumer complaints about calls to publicly available telephone numbers, such as 1-900 numbers, for which consumers incur per-minute charges in return for information or entertainment. Also, complaints can involve unauthorized charges on consumers' telephone bills, also known as "cramming" (3,487 complaints).

[2] In order to obtain the most recent CIS data possible, we requested that FTC provide us with data for an 18-month period that, at the time of our request, extended from October 1, 1997, through March 31, 1999.

- Telephone: carrier switching, also known as "slamming," in which companies would switch consumers' telephone services from one company to another without consumer authorization (1,051 complaints).

- Prizes/sweepstakes/gifts, which can oftentimes involve consumer complaints about mailed material that solicit advance fees for consumers to be able to participate in a sweepstakes or contest (2,859 complaints).

- Credit bureaus, which can generally involve consumer complaints about the methods by which such bureaus maintain and disseminate credit information (2,025 complaints).

- Third party debt collection, which can involve consumer complaints about methods used by various companies or individuals to collect debts owed by consumers (1,354 complaints).

For the five CIS categories, we found that a total of 10,355 complaints, or about 96 percent, included comments that could provide insight into the nature of problems that consumers had experienced with deceptive mail. We randomly selected 20 consumer complaints from each of the 5 categories for a total of 100 complaints. A discussion of the types of comments in the five categories and some examples follow.

Two of the five CIS categories involved problems that consumers reportedly experienced with mailed material that involved various telephone services, including pay-per-call and specific information services as well as slamming and cramming. Generally, consumers' comments in these two categories focused on complaints about unauthorized actions by companies in providing various telephone services, including (1) switching telephone services from one company to another without consumer authorization, (2) charging consumers for services they never requested, and (3) charging for services that consumers claimed were cancelled.

For the prizes/sweepstakes/gifts category, consumer comments focused on complaints about companies' requirements for participating in sweepstakes. According to FTC, various requirements, such as advance payments, fees, or purchases of products, should not be required before consumers may participate in sweepstakes. Also, consumers complained about being required to call specific telephone numbers for which they were charged fees.

In the credit bureaus category, the comments included consumers' complaints about inaccurate information on their credit reports. Also,

consumers expressed concerns about such issues as denial of credit and dissemination of credit information to companies and individuals without permission.

For the third party debt collection category, consumer comments focused generally on harassment that consumers reportedly experienced from debt collectors. Such harassment included being called nasty names, receiving numerous telephone calls, and being treated without dignity. Also, some consumers disputed owing specific debts or the amounts of the debts.

Postal Inspection Service Consumer Complaint and Investigation Databases

The Postal Inspection Service maintained two databases—the Fraud Complaint System (FCS) and the Inspection Service Data Base Information System (ISDBIS)—that included information related to consumers' problems with deceptive mail. FCS was designed to collect and maintain consumer complaint information about various types of alleged fraudulent activities, including those involving deceptive mail marketing practices. ISDBIS was designed to be a case-tracking system that recorded information related to specific cases that postal inspectors used as they investigated specific organizations or individuals involved in various mailing activities that were allegedly intended to defraud consumers, businesses, and the federal government.

Consumer Complaint Process

To gain a better understanding of how consumer complaints about deceptive mail were included in FCS, we obtained information about the overall process through which consumers could file complaints with the Postal Service. According to Postal Inspection Service officials, if consumers have concerns or wish to file complaints about material that they have received through the mail, consumers may visit or call their nearby Postal Inspection Service offices or postal facilities, which included post offices, stations, or branches. If consumers' concerns are related to mailed material that they believe is deceptive, misleading, or fraudulent, postal employees are expected to refer consumers to the Postal Inspection Service. The methods of these referrals generally include providing consumers with the telephone number or address of the appropriate local Postal Inspection Service office, the Internet website address of the Postal Inspection Service, or a Postal Inspection Service mail fraud complaint form. Also, Postal Inspection Service officials told us that in some cases, to provide additional assistance to consumers, postal employees may offer to forward the questionable mailed material directly to the Postal Inspection Service.

We visited a total of 15 postal facilities to observe how postal employees referred consumers to the Postal Inspection Service. The facilities

included post offices and stations in the metropolitan areas of Dallas, Texas; Los Angeles, California; and Washington, DC. At the facilities, we asked postal employees working at counters how to handle mail believed to be deceptive. At 8 of the 15 facilities we visited, postal employees appropriately referred us to the Postal Inspection Service. At the 7 remaining facilities, postal employees either referred us to organizations other than the Postal Inspection Service or were unable to provide any guidance. For example, two postal employees referred us to a national toll-free 1-800 number (i.e., 1-800-ASK-USPS).[3] According to postal officials, consumers could reach the Postal Inspection Service through 1-800-ASK-USPS.

We made three calls to 1-800-ASK-USPS to determine whether consumers could reach the Postal Inspection Service through this number. During one call, the responding customer service representative provided us with the telephone numbers of both the local consumer affairs office and Postal Inspection Service office. During the remaining calls, the representatives either provided us the telephone number for the local consumer affairs office or the address of the Direct Marketing Association (DMA), which we were told could remove consumers' names from mailing lists.[4]

Postal Inspection Service's Fraud Complaint System

We obtained FCS data for an 18-month period, (i.e., October 1, 1997, through March 31, 1999). The data we obtained focused on two of the four complaint categories within FCS—fraud and chain letters—because postal officials told us that these categories were most likely to include relevant information about consumers' problems concerning deceptive mail.[5]

Our analysis of FCS data indicated that the Postal Inspection Service had received 16,749 consumer complaints regarding fraud and chain letters. Complaints in the fraud category totaled 7,667, or about 46 percent, of the total complaints in these two categories, and 9,082 complaints, or about 54 percent, were included in the chain letter category.

[3] The purpose of the 1-800-ASK-USPS number is to provide consumers with a quick means of obtaining assistance with and information about a wide range of postal issues, such as the hours of operation at specific postal facilities, mailing rates for packages, and appropriate ZIP codes.

[4] DMA was established in 1917 as an international, nonprofit trade association whose primary objective was to serve its members in bringing about more effective direct marketing techniques. As of June 1999, DMA had about 4,500 member companies from the United States and 53 other nations. Examples of DMA members included catalogers, publishers, book and record clubs, financial service companies, manufacturers, and advertising agencies.

[5] According to Postal Inspection Service officials, the other two FCS categories included (1) consumers' general inquiries or requests for information and (2) consumer complaint program, which involves complaints about such matters as fraud, bad business practices, or misunderstandings between consumers and companies.

According to FCS data, no monetary losses were reported for the 9,082 complaints in the chain letter category. However, for the 7,667 complaints in the fraud category, a total of about $5.2 million in monetary losses was reported by consumers. These losses were reported in 2,976, or about 18 percent, of the 16,749 fraud and chain letter complaints. Also, the 2,976 complaints that cited losses amounted to about 39 percent of the 7,667 complaints in the fraud category. The remaining 4,691 fraud complaints, or about 61 percent, cited no monetary losses.

For the 2,976 fraud complaints that cited monetary losses, the amounts of money individual consumers said that they had paid ranged from less than $1 to over $365,000. Of these complaints, about:

- 55 percent were less than $100;
- 29 percent were between $100 and $999;
- 15 percent were between $1,000 and $29,999; and
- 1 percent were $30,000 or more.

The largest monetary loss reported by a consumer was $365,432. However, available FCS information was insufficient to describe the nature of the consumer complaint associated with this loss.

Similarly, we attempted to determine the nature of other consumer complaints in the fraud and chain letter categories using a random sample of 50 complaints with comments from each category for a total of 100 complaints. For these complaints, we found that the comments were unclear or lacked sufficient detail to provide insight into the nature of consumers' deceptive mail problems.

We recently learned from a Postal Inspection Service official that additional fraud complaints were contained in a third FCS category called "consumer complaint program." According to the official, for the period October 1, 1997, through March 31, 1999, the category included a total of about 48,000 complaints, which generally involved such matters as fraud, bad business practices, or misunderstandings between consumers and companies. Although the Postal Inspection Service was unable to specifically identify how many of these complaints involved fraud, officials determined that about 4,000, or about 8 percent, of these complaints were associated with active mail fraud investigations. The officials, however, could determine neither the number of investigations involved nor whether these complaints led to such investigations.

Postal Inspection Service's Investigative Database

We obtained information from ISDBIS that focused on fraud against consumers. For fiscal year 1998, our analysis identified a total of 1,869 ISDBIS cases, which included 1,333 cases that carried forward into fiscal year 1998 from fiscal year 1997, and 536 cases that were opened during fiscal year 1998. The cases involved various types of allegedly deceptive mail marketing practices, including investment schemes, lotteries, fraudulent charity solicitations, work-at-home schemes or plans, and advance fee loan schemes.

By the end of fiscal year 1998, 576 cases had been closed, of which 293, or about 51 percent, involved four top deceptive mail marketing practices or schemes. The four were (1) lotteries, (2) telemarketing, (3) investment schemes, and (4) work-at-home plans.

During fiscal year 1998, the Postal Inspection Service initiated various law enforcement actions resulting from investigative cases involving the four top deceptive mail schemes. According to ISDBIS data, a total of 911 enforcement actions were taken, which included arrests, convictions, and other actions. Of the total actions taken, 480, or 53 percent, involved arrests and convictions. Also, ISDBIS data for sweepstakes showed that a total of 43 actions were taken.

Efforts by Organizations to Address Deceptive Mail Problems and Educate Consumers

For our most recent work, we obtained updated information on the two initiatives that we discussed in our previous testimony, namely Project Mailbox and the National Association of Attorneys General (NAAG)[6] multi-state sweepstakes subcommittee. Also, we obtained updated information from various federal, state, and local agencies and nongovernmental organizations about their recent efforts to help educate and make consumers more aware of the potential problems that could result from deceptive mail marketing practices. These efforts involved activities that were initiated by various organizations, including FTC, the Postal Inspection Service, state Attorneys General offices, and nongovernmental organizations, such as the American Association of Retired Persons (AARP) and NAAG.

Project Mailbox

Project Mailbox was established to help educate consumers and appropriately deal with organizations, companies, and individuals that

[6] NAAG is a professional association that was established in 1907. Its members include the Attorneys General of 50 states and chief legal officers for other jurisdictions, such as the District of Columbia and the Virgin Islands. The U.S. Attorney General is an honorary member of NAAG. NAAG's overall goals include (1) promoting cooperation and coordination on interstate legal matters and (2) increasing citizen understanding of the law and law enforcement's role to ensure both protection of individual rights and compliance with the law.

attempted to defraud consumers through the use of mass mailings. In fiscal year 1998, FTC, the Postal Inspection Service, and Attorneys General offices for various states initiated 203 law enforcement actions that targeted specific organizations, companies, and individuals that allegedly attempted to deceive, mislead, or defraud consumers through various mail marketing practices. The practices included a wide range of schemes, including not only sweepstakes, prize promotions, lotteries, advance fee loans schemes, and government look-alike mail, but also such schemes as guaranteed scholarships, vacation and travel packages, and fraudulent charity solicitations.

For the 203 law enforcement actions, FTC, the Postal Inspection Service, and various state Attorneys General offices provided us some information on 101, or about 50 percent, of the actions, which provided perspective on these actions. These federal and state organizations estimated that a total of about 841,000 consumers had purchased products and/or services from the organizations, companies, or individuals that were the targets of the law enforcement actions. Also, an estimated total of about $424 million was identified as sales to consumers or funds consumers had paid to the targeted organizations, companies, or individuals. We have no information on the extent to which deceptive mail problems may have been involved with the total number of consumers identified and the payments made. However, FTC, the Postal Inspection Service, and various state Attorneys General offices estimated that about 10,400 consumer complaints led to or initiated the 101 law enforcement actions.

NAAG Multi-State Sweepstakes Subcommittee

In February 1999, NAAG's Subcommittee on Sweepstakes and Prize Promotion convened a hearing in Indianapolis, Indiana. The purpose of the hearing was to gather information about sweepstakes promotions and create consensus on the best approaches for deterring and punishing those who participate in fraudulent sweepstakes activities. Witnesses at the hearing included representatives of the direct mail marketing industry, individual consumers from various states, federal government representatives, and experts from the academic community.

Based on information discussed at the hearing and lessons learned from years of investigations and litigation, the subcommittee generally recommended that the sweepstakes industry adopt specific voluntary practices to ensure that consumers are not misled. Some of the recommended practices included (1) clearly disclosing the odds of winning the sweepstakes or contest, (2) not representing or implying that ordering a product increases a consumer's chance of winning, and (3) having a

standard, simple, uniform means for entering sweepstakes both for consumers who place orders and those who do not.

Other Consumer Education Activities of Federal, State, Local, and Nongovernmental Organizations

FTC, the Postal Inspection Service, and various state, local, and nongovernmental organizations have either completed or initiated efforts to help educate consumers and raise their awareness about problems that could result from deceptive mail. These efforts range from the establishment of a national toll-free hotline to the publication of consumer awareness articles.

FTC Activities

FTC has initiated or participated in activities to help consumers deal with deceptive mail marketing practices. For example, FTC:

- established, on July 7, 1999, a national toll-free hotline (i.e., 1-877-FTC-HELP or 1-877-382-4357) that consumers could use to file complaints on various topics, including deceptive mail. According to FTC, the hotline is intended not only to make FTC more accessible to consumers who wish to file complaints but also to make consumer complaint data available to law enforcement agencies in the United States and Canada.
- maintains a website through which consumers may obtain information that can help them address potential problems associated with deceptive mail. This information covers topics ranging from prize offers to magazine subscription scams to receipts of unordered merchandise.

In addition, FTC officials told us that FTC has continued to work with other organizations, such as NAAG, to encourage these organizations to share consumer complaint information with FTC, so that more comprehensive data on consumer complaints can be centrally collected and maintained in FTC's Consumer Information System (CIS). CIS fraud consumer complaint data are made available to various law enforcement organizations through FTC's Consumer Sentinel website.

Postal Inspection Service Activities

According to Postal Inspection Service officials, the Inspection Service's efforts to educate consumers are important to its continuing fight against deceptive mail marketing practices. These efforts range from national to local activities that are designed to help consumers avoid being victimized by deceptive mail marketing practices. For example, the Inspection Service:

- mailed out postcards in May 1993, to about 210,000 households in the United States, informing consumers that they had won prizes and asked consumers to call a telephone number. However, when consumers called

the number, they reached the Inspection Service and were warned against responding to the postcards because similar solicitations are often used by companies to scam consumers.

- is developing another postcard mailing to alert consumers to potential problems that could be caused by deceptive mail and telemarketing and identify a national hotline through which consumers may file complaints. The postcards are to be distributed to about 114 million households nationwide in October 1999.

- distributed in December 1994, a video news release that was sent to various television news stations throughout the United States. The video included information on how consumers could identify whether elderly relatives were having problems in handling mailed material from organizations.

- is developing a video that will include information to help consumers avoid both problems with deceptive mail and other types of deceptive marketing practices via the telephone. The video is scheduled for distribution to about 16,000 public libraries around October 1999.

In addition, according to Postal Service field officials, the Service has and continues to help educate consumers and raise their awareness about deceptive mail practices. In many instances, postal field personnel work with their local postal inspectors to prepare news releases and make presentations before consumer groups.

State and Local Activities

Officials in the state and local organizations that we contacted cited the following examples of their efforts to help educate consumers about deceptive mail.

- Representatives from the Connecticut Office of the Attorney General have conducted half-day consumer education sessions for groups of senior citizens to provide them information about deceptive mail. Since January 1, 1999, the office has sponsored 4 sessions with about 1,000 consumers in attendance.

- Since January 1999, staff from Florida's Division of Consumer Services have spoken to consumer groups, many of which involved senior citizens, about fraud-related issues. These efforts focused on telemarketing fraud, but have also involved discussions about deceptive mail, including sweepstakes.

- In April 1999, local consumer affairs staff from Montgomery County, Maryland, conducted an adult education class focusing on consumers' rights and responsibilities, but information was also provided on sweepstakes and fake award notification letters.

- In the spring of 1999, the administrator of the Office of Consumer Affairs in Alexandria, Virginia, made a presentation on pyramid schemes received through the mail that pay commissions for recruiting distributors, not for making sales. The presentation was made to both staff in Alexandria's Office of Aging and local consumers.

Activities of Nongovernmental Organizations

Various nongovernmental organizations, including DMA, AARP, and Arizona State University, reported that to help educate consumers, these organizations offered conferences and seminars as well as distributed information on deceptive mail marketing practices. Representatives of the organizations identified several examples, which included

- DMA prepares and distributes action line reports on deceptive mail problems, as well as other marketing issues. These reports are distributed to approximately 800 to 900 consumer affairs professionals and press contacts who are encouraged to share the reports with consumers. A recent action line report, dated July 11, 1999, established a special Sweepstakes HelpLine, which is intended to help various caregivers, such as adult children, who care for elderly relatives; consumer affairs personnel; and social service professionals address problems some people may have with sweepstakes.

- AARP has conducted 26 training seminars throughout the United States that were attended by about 1,300 law enforcement professionals. The seminars were held during 1998 and provided the professionals with information on deceptive mail, including sweepstakes, prize promotions, and foreign lotteries.

- Arizona State University, in cooperation with AARP and the Office of the Arizona Attorney General, hosted a conference entitled "New Directions: Seniors, Sweepstakes and Scams." The conference, which was held in October 1998, was designed for individuals who have been and continue to be involved in consumer education and awareness efforts. Among the conference attendees were representatives from FTC, the Postal Inspection Service, and NAAG. Information on deceptive mail marketing practices was presented and attendees were encouraged to share this information with consumers.

Mr. Chairman, this concludes my prepared statement. I would be pleased to respond to any questions you or the members of the Subcommittee may have.

Contact and Acknowledgment

For future contacts regarding this testimony, please contact Bernard L. Ungar at (202) 512-8387. Individuals making key contributions to this testimony included Gerald Barnes, Anne Hilleary, Lisa Wright-Solomon, Anne Rhodes-Kline, and George Quinn.

Scope and Methodology

In developing the scope and methodology for our work, we first obtained a general description of the term "deceptive" as it could be applied to mailed material. According to FTC, mailed material would generally be considered deceptive if the material included a representation or practice or if the material omitted information that caused a consumer to be misled and eventually suffer some loss or injury, despite the fact that the consumer behaved reasonably under the circumstances.

Both FTC and the Postal Inspection Service identified various types of mailed material that have been used to induce consumers to remit money, pay upfront fees, or purchase goods or services through deceptive means. However, in many cases, the promised goods or services were not delivered or were not of the quality that consumers may have reasonably expected to receive. Some examples included

- lotteries from foreign countries or from states that did not have authorized lotteries.
- chain letters that required consumers to remit payments to participants in the chain letter scheme for which substantial financial returns were promised but never delivered.
- mailed material that involved various types of consumer credit schemes, such as loans, credit repair offers, and credit card solicitations, for which advance fees were required.
- requests for charitable donations from organizations that were not legitimate charities.
- mailed material that looks as if it has been distributed or endorsed by a government agency, also referred to as government look-alike mail.

In some instances, mailed material may be illegal in that it violates specific postal or other statutes. For example, chain letters that request money or other items of value and promise a substantial return to the participants are generally illegal. Such letters are considered a form of gambling and sending them through the mail violates section 1302 of Title 18 of the U.S.Code, the Postal Lottery Statute.

To obtain updated information about the extent and nature of consumers' problems with deceptive mail, as well as consumer education efforts, we attempted to contact the 17 federal, state, and local agencies and nongovernmental organizations that we contacted for our September 1998

testimony. In our earlier work, we identified these agencies and organizations as those which had been involved in dealing with consumers' complaints about questionable or deceptive mail marketing practices involving mailed sweepstakes material and cashier's check look-alikes. The 17 agencies and organizations included 2 federal agencies—FTC and the Postal Inspection Service—as well as other state and local government agencies and nongovernmental organizations such as

- state attorneys general offices for such states as Florida and West Virginia;
- local government offices that handled consumer protection issues; and
- various nongovernmental organizations including (1) American Association of Retired Persons; (2) National Consumers League, which established National Fraud Information Center; and (3) Direct Marketing Association.

Based on our most recent work efforts, we obtained information from 12 of the 17 agencies and organizations, which are listed in attachment II to this statement. At the 12 agencies and organizations, we interviewed officials and reviewed documents to obtain available information about the extent and nature of consumers' deceptive mail problems and consumer education efforts. Also, we obtained and analyzed consumer complaint data from FTC and Postal Inspection Service databases. In addition, during the course of our work, we obtained from FTC, the Postal Inspection Service, and 45 state attorneys general offices information on specific law enforcement actions involving organizations, companies, and individuals that attempted to defraud consumers through the use of deceptive mail.[1]

To obtain information about the consumer complaint process at the Postal Service, we interviewed postal headquarters officials in the Postal Inspection Service and the Postal Service's Office of Consumer Advocate. Also, we interviewed postal officials at various field locations in different parts of the country who were knowledgeable about the consumer complaint process. Specifically, we spoke with consumer affairs and marketing officials in postal district offices and inspectors in Postal Inspection Service offices located in the metropolitan areas of Dallas, Texas; Los Angeles, California; and Washington, DC. In addition, to obtain

[1] According to FTC, for Project Mailbox in fiscal year 1998, five states did not identify such actions. The states included Alaska, Louisiana, New Hampshire, Rhode Island, and Tennessee. Also, no such actions were identified for the District of Columbia.

insight into how the consumer complaint process was implemented, we visited 15 postal field facilities, including post offices and stations, that were located in the metropolitan areas of Dallas, Texas; Los Angeles, California; and Washington, DC. These locations were selected mainly because staff from our Dallas Regional Office, as well as headquarters staff, were available to conduct face-to-face meetings with appropriate postal field employees.

In addition, we had an outside contractor conduct a survey to obtain opinions from the U.S. adult population about specific types of deceptive mail. Through the survey, we attempted to determine whether survey respondents had received any mail delivered by the U.S. Postal Service within the last 6 months involving sweepstakes or documents resembling cashier's checks that the respondents believed were in any way misleading or deceptive.

We contracted with International Communications Research (ICR) of Media, Pennsylvania, a national market research firm, to administer our survey question, which was worded as follows.

"We would like to ask you a question concerning mail delivered by the U.S. Postal Service. Within the last 6 months, have you received any mail delivered by the U.S. Postal Service involving sweepstakes or documents resembling cashier's checks that you believe were in any way misleading or deceptive?"

A total of 1,014 adults (18 and older) in the continental United States were interviewed between November 18 and 22, 1998. The contractor's survey was made up of a random-digit-dialing sample of households with telephones. Once a household was reached, one adult was selected at random using a computerized procedure based on the birthdays of household members. The survey was conducted over a 5-day period, including both weekdays and weekends, and up to four attempts were made to reach each telephone number.

To ensure that survey results could be generalized to the adult population 18 years of age and older in the continental United States, results from the survey were adjusted by ICR to account for selection probabilities and to match the characteristics of all adults in the general public according to such demographic groups as age, gender, region, and education. Because we surveyed a random sample of the population, the results of the survey have a measurable precision or sampling error. The sample error is stated at a certain confidence level. The overall results of our survey question

regarding the public's opinion about misleading or deceptive mail are surrounded by 95 percent confidence levels of plus or minus 4 percentage points or less.

The practical difficulties of conducting any survey may introduce nonsampling errors. As in any survey, differences in the wording of questions, in the sources of information available to respondents, or in the types of people who do not respond can lead to somewhat different results. We took steps to minimize nonsampling errors. For example, we developed our survey question with the aid of a survey specialist and pretested the question prior to submitting it to ICR.

We did our work from November 1998 through July 1999, in accordance with generally accepted government auditing standards. We did not verify consumer complaint data obtained from FTC and Postal Inspection Service nor did we verify data provided by FTC, Postal Inspection Service, and state Attorneys General offices on specific law enforcement actions.

Attachment II

List of Federal, State, and Local Government Agencies and Nongovernmental Organizations Contacted and Their Locations

Name of agency/organization	Location
Federal government agencies:	
Federal Trade Commission (FTC)	Washington, D.C.
U.S. Postal Inspection Service	Washington, D.C.
State government agencies (Offices of Attorneys General):	
Connecticut	Hartford, Connecticut
Florida	Tallahassee, Florida
Local government agencies:	
Citizen Assistance (Consumer Affairs) for City of Alexandria	Alexandria, Virginia
Consumer Affairs Division for Montgomery County	Rockville, Maryland
Nongovernmental organizations:	
American Association of Retired Persons (AARP)	Washington, D.C.
Arizona State University (Gerontology Program)	Tempe, Arizona
Direct Marketing Association (DMA)	Washington, D.C.
National Association of Attorneys General (NAAG)	Washington, D.C.
National Consumers League (NCL)/National Fraud Information Center (NFIC)	Washington, D.C.
U.S. Public Interest Research Group (USPIRG)	Washington, D.C.

Source: GAO.

Mr. MCHUGH. Thank you very much, Mr. Ungar.

Next, we have Ms. Sara Cooper, executive vice president of the National Consumers League. Ms. Cooper, thank you for being here. Please make your presentation.

Ms. COOPER. Thank you. The National Consumers League welcomes the opportunity to provide insight about deceptive sweepstakes and prize offers. Fraud and deception strike at the very integrity of the marketplace, robbing consumers of not only their money, but their confidence in the free enterprise system.

At the League's National Fraud Information Center, our counselors handle hundreds of calls a day helping consumers recognize the danger signs of fraud, and collecting information about possible fraud, which is relayed to law enforcement agencies.

Of the 50 categories of telemarketing fraud that we record, sweepstakes and prize offers consistently rank in the top 10. In the first 6 months of 1999, this category is No. 4, accounting for about 11 percent of the telemarketing fraud incidents reported to us. Many fraudulent telemarketing offers are initiated by mail.

In the first 6 months of this year, 56 percent of the telemarketing fraud incidents reported to our hotline began with a mailing. In the sweepstakes and prize offer category, the percentage is even higher; 71 percent. Older people are particularly vulnerable to fraudulent sweepstakes and prize offers.

From January through June 1999, 24 percent of all consumers who reported telemarketing fraud to our hotline were age 60 or older. In the sweepstakes and prize offer category, that age group represented 58 percent of the complaints. The amount of money lost is also higher in the sweepstakes and prize offer category.

In the first 6 months of this year, victims lost an average of $2,198 per person, compared to $1,766 per person over all telemarketing fraud categories. One woman from Kentucky recently wrote to our Fraud Center and enclosed a stack of 257 checks totaling $7,871 that she has written over the last 2 years to Publisher's Clearing House.

She also enclosed some of the mailings she received and said in a note, "This is the type of promises that made me keep placing orders. Although I knew that no order was required, like others, I felt that if you did not order, you did not have a chance."

When we called Publisher's Clearing House, we found that this woman had already been taken off its mailing list as part of a new policy to stop mailing to consumers who are clearly buying too much in response to the company's sweepstakes promotions. We are pleased that Publisher's Clearing House has taken this step and that it has announced its intention, starting this fall, to change its mailings. What is needed is a bright line for consumers; a clear and prominent disclosure that the mailing is only an invitation to enter a game of chance, what the odds are of winning, that no purchase is necessary.

This disclosure must be as emphatic and straightforward as possible, not simply "you may not have automatically won," as H.R. 237 and H.R. 170 would require, but flatly stating, "You have not won anything yet. Here is how to enter for free. These are your chances of winning. You do not have to buy anything. You have just as much a chance of winning if you do not make a purchase."

Consumers should not have to hunt for this information. These messages should not be obscured or counteracted by other messages imparted to the reader through the text or the design of the mailing. Requirements for honesty in sweepstakes and prize offer mailings should be codified in law and Postal Regulations, not only to guide legitimate businesses and organizations that use sweepstakes and prize offers as incentives, but to make it easier for consumers to spot possible fraud.

When reputable companies and organizations know the rules and follow them, we will be able to tell consumers that if these disclosures are not clearly made in the mailing, it is a scam. The Postal Inspection Service needs more tools to stop fraudulent and deceptive mailings for games of chance. It must be able to issue subpoenas to aid in its investigations, issue orders to stop mailings that violate the law, take action to detain mail in any location where the defendant is located, sends, or receives mail, and obtain civil penalties that are substantial enough to serve as real deterrents.

It is time to make honesty an integral part of sweepstakes and prize mailings. Thank you.

[The prepared statement of Ms. Cooper follows:]

Testimony of the National Consumers League
presented by Sara Cooper, Executive Vice President
to the House of Representatives Committee on Government Reform
Subcommittee on the Postal Service
regarding Deceptive Mailings Related to Games of Chance
August 4, 1999

The National Consumers League, America's pioneer consumer organization, welcomes the opportunity to provide insight about deceptive sweepstakes and prize offers. For one hundred years, NCL has advocated for fairness in the marketplace and the workplace. Fraud and deception strike at the very integrity of the marketplace, robbing consumers of not only their money but their confidence in the free enterprise system..

In 1992, we commissioned a Louis Harris & Associates survey of consumers' experiences with fraud. Ninety-two percent of the respondents said they had received a postcard or letter telling them that they had definitely won a prize, and nearly a third responded to the offer. The survey also revealed that more than five million people had bought something by telephone in the previous two years that they felt was a fraud, and two-thirds of Americans would not know where to call to find out if a telemarketing offer was legitimate.

The survey clearly showed the need for a central source of advice about telemarketing and assistance for fraud victims. Rising to this challenge, NCL created the National Fraud Information Center, a unique hotline for consumers to call for advice and to report suspected telemarketing fraud. Our fraud center counselors handle hundreds of calls a day, helping consumers recognize the danger signs of fraud to prevent victimization. We also collect information about possible fraud from consumers, which is relayed to more than 160 federal, state and local law enforcement agencies in the United States and Canada, including the Postal

Inspection Service when use of the mail is involved. These incident reports alert agencies to scams that may merit investigation and victims that need their assistance.

Recognizing that fraud was migrating onto the Internet, in 1996 NCL established a companion program, the Internet Fraud Watch, to provide advice about online solicitations and collect information about cyberfraud.

Of the fifty categories of telemarketing fraud that we record, sweepstakes and prize offers consistently ranks in the top ten. In the first six months of 1999, this category is number four, accounting for about 11 percent of the telemarketing fraud incidents reported to us.

Many fraudulent telemarketing offers are initiated by mail. In the first six months of this year, 56 percent of the telemarketing fraud incidents reported to our hotline began with a mailing to the consumers. In the sweepstakes and prize offer category, the percentage is even higher, 71 percent. Typically, consumers receive postcards or letters announcing that they have won a sweepstakes or prize and instructing them to call to claim their winnings. When they call, they are lured into making payments that are described as "bonding fees," "processing costs," or "taxes," or they are convinced that they need to buy products as part of "promotional offers" in order to qualify for the prizes or awards. If they receive any prizes at all, they are usually cheap trinkets, not the expensive items or large cash awards they were promised.

Some consumers are hit repeatedly by "reloaders" who tell them that they can win even greater amounts of money or more valuable prizes if they additional amounts. Sadly for those who believe that their ships have finally come in, their hopes are dashed when they eventually realize that they have not in fact won anything, or that what they paid to receive is worthless. Even sadder is the fact that many people never realize this. We receive calls at the fraud center

from friends and relatives of victims, pleading for help because they cannot stop their loved ones from continuing to send money for sweepstakes winnings or prizes that will never materialize.

Older people are particularly vulnerable to fraudulent sweepstakes and prize offers. From January through June 1999, 24 percent of all consumers who reported telemarketing fraud to our hotline were age 60 or older, but in the sweepstakes and prize offer category, that age group represented 58 percent of the complaints. The amount of money lost is also higher in the sweepstakes and prize offer category. In the first six months of this year, sweepstakes and prize offer victims lost an average of $2,198 per person, compared to $1,766 per person over all telemarketing fraud categories.

Sweepstakes and prize offer victims come from every state. Many of the companies are also in the United States, but more than 13 percent of the companies against whom consumers made reports about fraudulent telemarketing sweepstakes and prize offers in the first six months of this year were located in Canada (for all telemarketing fraud categories it was about nine percent) and one percent were located in countries other than the United States or Canada.

One problem in educating consumers about fraudulent sweepstakes and prize offers is that it is becoming increasingly difficult to distinguish them from legitimate ones. Some mailings by respected companies and organizations imply that consumers have won when they have not, or that they have a better chance of winning than they really do, or that their chances will be improved if they purchase something.

One woman from Kentucky recently wrote to our fraud center and enclosed a stack of 257 checks totaling $7,871.89 that she has written over the last two years to Publishers Clearing House. She also enclosed some of the mailings she received and said in a note "This is the type

of 'promises' made that kept me placing orders - although I knew that no order was required - like others I felt if you did not order you didn't have a chance!"

When we called Publishers Clearing House, we found that this woman had already been taken off of its mailing list as part of a new policy to stop mailing to consumers who are clearly buying too much in response to the company's sweepstakes promotions. We are pleased that Publishers Clearing House has taken this step and that it has announced its intention, starting this fall, to change its mailings. The company says it will include "no purchase necessary" messages on the outer envelopes as well as the inner contents of mailings, emphasize that every entry has an equal chance of winning and that buying won't help you win, and reduce the number of mailings that individuals receive.

What is needed is a bright line for consumers -- a clear and prominent disclosure that the mailing is only an *invitation* to enter a game of chance, what the odds are of winning, that no purchase is necessary, and that making a purchase will in no way improve one's chances of winning. This disclosure must be as emphatic and straightforward as possible -- not simply "you may not have automatically won," as H.R. 237 and H.R. 170 would require, but flatly stating "you have not won anything yet," "here is how to enter for free," "these are your chances of winning," "you don't have to buy anything," and "you have just as much chance of winning if you don't make a purchase."

Consumers should not have to hunt for this information, and these messages should not be obscured or counteracted by other messages imparted to the reader through the text and the design of the mailing.

Requirements for honesty in sweepstakes and prize offer mailings should be codified in law and postal regulations, not only to guide legitimate businesses and organizations that use sweepstakes and prize offers as incentives, but to make it easier for consumers to spot possible fraud. When reputable companies and organizations know the rules and follow them, we will be able to tell consumers that if these disclosures are not clearly made on the mailing, it's a scam.

The Postal Inspection Service needs more tools to stop fraudulent and deceptive mailings for games of chance. It must be able to issue subpoenas to aid in its investigations, issue orders to stop mailings that violate the law, take action to detain mail in any location where the defendant is located, sends or receives mail, and obtain civil penalties that are substantial enough to serve as real deterrents.

It is time to make honesty an integral part of sweepstakes and prize mailings. Thank you for considering our views as you consider this important consumer protection issue.

Respectfully submitted by:

National Consumers League
1701 K Street NW, Suite 1200
Washington, DC 20006
(202) 835-3323

Mr. McHUGH. Thank you.

Next, is Mr. Lee Cassidy, executive director of the National Federation of Nonprofits. Lee, welcome. We look forward to your comments, sir.

Mr. CASSIDY. Thank you, Mr. Chairman.

Nonprofits are different from commercial organizations and so is my testimony. We agree that deceptive mailings, whether sweepstakes or any other type of mail should be prevented, to the extent that they reasonably can be, consistent with constitutional protections.

We had the opportunity to work with the staff of the Senate Permanent Subcommittee on Investigations as S. 335 was being developed. I am pleased to say that many of our suggestions have been included. From our standpoint the bill, which does not specifically exclude nonprofits, although it seems to say that it intended to, really ought to be amended to say that nonprofits are not included in the sweep of the sweepstakes testimony.

There was no testimony in the Senate, and to my knowledge, no evidence in any venue of any kind, that indicates nonprofits are part of a perceived problem with deceptive sweepstakes mailings. To the contrary, I did not have the opportunity to read all of the testimony submitted here today, but I scanned it. I did not see anything in what I read today, or what I scanned today, that was any different from that. I think there are two reasons why nonprofits sweepstakes have not been identified as a part of the problem. One is nonprofits do not offer huge prizes. You do not get $1 million, $5 million, or $11 million in a nonprofit sweepstakes. You may get a trip to Europe. You may even get a car, but that is vastly different from $11 million.

The other reason is that charitable contributions, by their very nature, are voluntary. Everybody knows they are voluntary. So, the potential for abuse is lessened almost to the point of nonexistence. The Senate committee report does make a statement saying, "Advocacy mailings that solicit funds and discuss the general status of Federal benefits are not covered by this bill."

In context, and one needs to know the context, that was to explain a problem that was in an earlier draft of the legislation that would have prohibited nonprofits from using the mail to lobby on Federal benefits. The statement says that is not what the legislation was intended to cover.

We believe that perhaps, through the back door, the Senate legislation actually made a positive statement. Innumerable times, the Senate legislation says that you have to say "no purchase required," and made no comment about how that might relate to an organization that is not selling anything, but is simply asking for contributions, and made no relevant statement about "no purchase required" or "no contribution required" as relating to nonprofits.

So, as I say, perhaps the Senate backed into it. We believe that there was no intent to include nonprofits in the sweep of this legislation.

The Supreme Court has spoken three times on the subject of nonprofits and charities, particularly having greater protection for speech under the first amendment, than do commercial organiza-

tions. My prepared testimony cites those three Supreme Court rulings.

One, the Supreme Court has said that charitable solicitation is an inseparable part of a charity message and it cannot be regulated by the same provisions as commercial speech.

Two, because it has the effect of altering content, compelled speech, such as required disclosures or statements, is constitutionally suspect.

Three, the only constitutionally permissible means of achieving the goal of a State, such as identifying or preventing fraud, is that which is the most narrowly tailored.

Congress has also acted several times saying nonprofits are not commercial organizations. The FTC Act of 1914, I believe it is, specifically prohibited or not prohibited, but specifically directed the FTC to regulate commercial organizations and not nonprofit ones, in a later amendment, which included trade associations, again, Congress excluded other nonprofits.

So, there has been no evidence offered demonstrating that nonprofits are a part of the problem. The Senate committee, being aware of the lack of such testimony, we believe said that nonprofits should be exempt, and that not doing so would do violence to the first amendment.

I did file an amendment to my prepared testimony in the form of two articles taken from recent issues of the publication Philanthropy Monthly. They expound on the first amendment issues and discuss other practical reasons why nonprofits ought to be exempt.

There are three other suggestions we have relating to S. 335. First, the Senate committee report says that it expects the Postal Service to notify, on a timely basis, sweepstakes sponsors whose mail has been detained, and to tell them that the mail is available for inspection.

We believe that the Postal Service should be required to notify them, and to do so in a timely manner. If a nonprofit or in fact if any organization that is dependent on the mail for its revenue had to wait any significant length of time to receive incoming contributions, their entire financial stability could be damaged.

Second, S. 335 says that the standard for the Postal Service releasing such mail would be that it is clearly not connected to the alleged unlawful activity. Again, go back to the need to receive contributions. Retaining mail for any reason in a free society is obnoxious, even when the purpose is clear and preventive. For that reason, we believe that the standard should be not clearly connected, thus putting the burden of proof on the Postal Service, rather than on the mailer.

Last, I want to be sure that this subcommittee understands the difficulty of saying to someone, we will put your name on a do-not-mail list, honoring that, and doing so within 45 days. It is virtually impossible.

Nobody wants to send unwelcome mail. It is wasted money. Many mailings, large mailings particularly, are prepared well in advance of 45 days. It would be virtually impossible to go into a stack of 100, 200, or 500,000 pieces of mail, find one, pull it out, and to do so in 45 days. So, we suggest that 90 days is a more rea-

sonable standard, and that the penalties ought to recognize the difficulty of accomplishing that.

Thank you, Mr. Chairman. We appreciate the opportunity to appear.

[The prepared statement of Mr. Cassidy follows:]

TESTIMONY OF LEE M. CASSIDY

NATIONAL FEDERATION OF NONPROFITS

BEFORE THE HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON POSTAL SERVICE

JULY 29, 1999

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to appear today to speak on behalf of nonprofit organizations. I am Lee M. Cassidy, Executive Director of the National Federation of Nonprofits, a 300-plus member coalition including charities, religious groups, public television and radio stations, fraternal organizations, fine and performing arts institutions, colleges, universities and their alumni associations, and other nonprofits. NFN is an advocacy organization, working since 1982 to assure that legislation and regulations affecting fundraising and other communications with donors and members are fair and reasonable.

Nonprofits, and especially charities, rely on the trust accorded by the contributing public. If there is no trust, it is impossible to raise funds for the good works charities perform. No trust, no contributions. For that reason, all legitimate nonprofits are of one mind when it comes to rooting out bad apples: get rid of them. Don't let bad apples permit the contributing public to believe that the entire barrel is spoiled.

So nonprofits agree that deceptive mailings, whether sweepstakes or other types of mail, should be prevented to the extent they reasonably can be. Legislation should not discourage creative marketing, but neither should it permit reasonable people to be deceived.

We had the opportunity to work with the staff of the Senate Permanent Subcommittee on Investigations as S. 335 was being developed, and I'm pleased to say that several of our suggestions are incorporated in the report of the Committee on Governmental Affairs. There is much in S. 335 that we like. But from the standpoint of nonprofits, the legislation continues to have provisions which would unnecessarily and perhaps unconstitutionally restrict charities and other nonprofit organizations as they seek funds to pursue their good works.

We believe that legislation, which is designed to solve a perceived problem, should begin by clearly and accurately identifying and stating the problem. Laws that attempt to solve

problems which don't exist, or that solve the wrong problems, instantly bring into play an additional law.....the Law of Unintended Consequences. And we're concerned that S. 335 would do just that.

During the hearings that led to S.335 there was no testimony, in fact no statement of any kind, that nonprofits are part of a perceived problem. To my knowledge, there has not been such testimony at any time, in any venue. Quite the opposite. All the testimony, and all the discussion in the Senate Governmental Affairs Committee report, was about commercial organizations. Not one word of testimony was about charities, about public television, about any nonprofit organization that may use sweepstakes as a means of gaining contributions, of identifying potential donors, or of upgrading current donors.

I can't say with certainty whether the perception of the Senate Governmental Affairs Committee that some sweepstakes may be deceptive precisely reflects the testimony given to the Permanent Subcommittee on Investigations. I do know that no witness has testified, and no one has implied, that donors have felt pressured to send contributions to charities in order to improve the odds of winning big prizes.

I believe there are two reasons for that.

First, as a general rule, nonprofits don't offer huge prizes, so there's little reason for the average person, or even those who may be more naïve or more gullible than the average person, to become excessively excited about the prospect of winning. An automobile or a trip to Europe, which are typical Grand Prizes in nonprofit sweepstakes, are not to be scoffed at. But those prizes pale in comparison with the hundreds of thousands or even millions of dollars in prizes offered by some commercial sweepstakes sponsors. Those multi-million dollar prizes don't come from charities.

The second reason is that charitable contributions by their very nature and definition are voluntary, so the potential for abuse is lessened almost to the point of non-existence.

I have read the entire report of the Senate Committee on Governmental Affairs, and was struck by the repetition of two words: "purchase", and variations and derivatives of that word, and "consumers". In fact, I marked those words with a yellow highlighter, and went back and counted the number of times they appeared. I counted **73** instances (and may have missed a few) where the word "purchase" or a variation of that word appeared in the report, including in the legislation. I counted at least **38** references to "consumers". The words "buy" and "customer" also appeared numerous times. But with the exception of a single comment which *might* be interpreted as relating to charities, there was no reference to donations or contributions, except in the context of a commercial organization operating a game of skill.

The possible reference to charities is in the section titled "Background and Need for Legislation", which is nearly three pages of very small type. It's a long section. The section includes the phrase, "other groups use sweepstakes mailings to *raise funds* or promote services." That incidental comment does not mention charities or other nonprofits. But if it were the intent of the bill's sponsors to identify nonprofits and solicitations for donations as part of the perceived problem the bill is intended to resolve, that certainly would have been the place to do so.

Again, the situation is exactly the opposite. In the report's Section-by-Section Analysis of the legislation, there is a clear and positive statement that certain mailings, by nonprofit advocacy organizations, are *exempt* from the bill's provisions. In a paragraph discussing the Committee's concern with mailings which may contain false representations relating to the impact of a purchase or lack of purchase on the status of an individual's federal benefits or services, the report states, "Advocacy mailings that solicit funds and discuss the general status of federal benefits are not covered by this bill."

One needs to know the context of that statement to understand the reason it was included in the Governmental Affairs Committee report. An early draft of the legislation could have been interpreted to prohibit any nonprofit organization from asking its supporters, in *any* communication sent through the mail, to contact elected officials to request that

federal benefits not be reduced or otherwise altered. The subcommittee staff readily agreed to eliminate the offensive and unintended language, and apparently included the quoted sentence in the report to assure that the intent was clear. But as it is written that language appears to give nonprofit advocacy groups an exemption from the legislation which is not available to charities, public television stations, or to other nonprofits that may use sweepstakes.

I feel certain that such was not the intent of either the staff or the Members of the Committee on Governmental Affairs.

Report language, while critically necessary to interpret the intent of the sponsors of any legislation, is *itself* subject to interpretation, especially years down the road. When attempting to ascertain legislative intent, what is included in the legislation is preferable to report language. Therefore, I believe the legislation should clearly state that nonprofits are exempt from its provisions.

Charities and other nonprofit organizations use sweepstakes for very different reasons than do commercial organizations. Magazine publishers, seed companies, and other commercial organizations look to sweepstakes mailings to generate orders. Some percentage of those who receive the mailings will order the magazines or the seeds or whatever the company is selling. Nonprofits, on the other hand, use sweepstakes to directly solicit contributions, to acquire the names of individuals to whom future solicitations might be mailed and, in the case of public television and some other nonprofit organizations, to attempt to convince those who are already members or donors to make additional contributions, hopefully of a larger amount.

No witness has testified that sweepstakes sponsored by nonprofits are objectionable and must be regulated more than they currently are. I believe it's significant that, while 23 states currently regulate sweepstakes, only one, the State of Florida, specifically mentions charities in its statute. That is not because charities are generally not regulated. To the

contrary, 41 states regulate fundraising by charities, yet only one even mentions charitable sweepstakes.

The states are in an excellent position to know whether charitable sweepstakes are a concern, yet with a single exception they have elected not to act.

Where there's no problem, there's not only no need for a solution, any intended solution would, as I said earlier, bring to bear the Law of Unintended Consequences.

For example, S. 335 would require the words "No Purchase Required" be printed on the envelope or the reply card. Coming from a commercial sweepstakes sponsor, that's an understandable statement, and in proper context. But potential donors to nonprofit organizations would be confused by such a statement. They haven't been asked to buy anything. They haven't been told there's anything they can buy. In fact, the nonprofit isn't selling anything; it's soliciting contributions. Potential donors would be sent two directly conflicting signals: One, that no purchase is required, and Two, that a contribution would be appreciated.

But what has a purchase or lack of purchase got to do with making a contribution?

I believe that the Senate Committee on Governmental Affairs made a positive, though somewhat confusing, statement of its intention to bring commercial mailers of sweepstakes under the bill's aegis <u>and to exempt</u> <u>nonprofits</u>, by specifying that the words "No Purchase Required" be included in sweepstakes mailings, while specifying no equivalent requirement for nonprofits.

There is another, even larger issue, and it is that charitable solicitation, including solicitation through the medium of sweepstakes, enjoys the same protection under the First Amendment as does political or pure speech. Three Supreme Court decisions over the last 19 years have established that protection. The Supreme Court has "underscored their understanding of the significance of charitable fundraising by sharply distinguishing

(from commercial speech) what regulation is appropriate for the pure speech of charitable solicitation....".[1]

In what has become known as the "Riley Trilogy"[2], the Court has stated, in summary, that:

- charitable solicitation is an inseparable part of the promulgation of a charity's message and cannot be regulated by the same provisions as commercial speech;
- because it has the effect of altering content, compelled speech (such as required disclosures or statements), when applied to fundraising, is constitutionally suspect;
- the only constitutionally permissible means of achieving a legitimate state goal (identifying or preventing fraud) is that which is the most narrowly tailored for the purpose.

In the first of the three cases, Village of Schaumburg v. Citizens for a Better Environment, Justice White wrote for the majority that "charitable solicitation does more than inform private economic decisions", and "has not been dealt with in our cases as a variety of purely commercial speech". Clearly, the Court said that charitable solicitation is entitled to a higher level of protection than commercial speech.

The second case in the trilogy is Secretary of State of Maryland v. Joseph H. Munson, Inc. In that case the Court ruled that the offending legislation was not narrowly tailored to achieve permissible ends, and that the regulation of charitable solicitation was subject to the standard of "strict scrutiny".

The third case is Riley v. National Federation of the Blind , in which Justice Brennan wrote that "our prior cases teach us that the *solicitation of charitable contributions is*

[1] Testimony of Henry C. Surhke before the Senate Permanent Subcommittee on Investigations, March 8-9, 1999

protected speech", and rejected the State's assertion that "this provision (related to fees paid to professional fundraisers) is simply an economic regulation with no First Amendment implications…". Moreover, Justice Brennan wrote that there is a chilling effect of unwarranted regulation, which causes charities to "bear the costs of litigation and risk the mistake of adverse findings."

We're pleased that the Supreme Court has afforded greater protection to charities under the First Amendment than to commercial speech. But we're equally pleased that Congress has done so as well. When the Federal Trade Commission Act was passed in 1914, it specifically gave jurisdiction to the Commission only over commercial organizations. When amendments later extended the jurisdiction to trade associations, charities were still explicitly exempt. And the reason is that nonprofits are not part of the problem. That was an excellent example of tailoring the solution as narrowly as possible.

In 1989, in testimony before the House Committee on Energy and Commerce, a Postal Service witness testified about the lack of complaints or inquiries about charities. He noted that, while there were then an estimated 420,000 charities in the United States, the FTC had received complaints or inquiries concerning "fewer than 20" over a four year period.

So I ask that this subcommittee recognize, as the Senate Committee on Governmental Affairs did but, I believe, imperfectly stated in its Report, that sweepstakes come in different flavors, that those sponsored by nonprofit organizations are quite different from those sponsored by commercial organizations, and that there was no intent by the Senate and no need perceived by the House to have nonprofits covered under these proposed new regulations.

I ask that the subcommittee state explicitly that all nonprofits, not just advocacy organizations, are exempt from the legislation's provisions for these reasons:

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[2] Village of Schaumburg v. Citizens for a Better Environment, 445 U.S. 972 (1980); Secretary of State of Maryland v. Joseph H. Munson, 467 U.S. 947 (1984); Riley v. National Federation for the Blind, 487 U.S. 781 (1988)

- because no evidence has been offered demonstrating that nonprofit-sponsored sweepstakes are part of the perceived problem of deceptive mailings;
- because the Senate Committee on Governmental Affairs, being aware of the lack of such testimony, intended that they be exempt;
- and because not exempting nonprofits would do violence to the First Amendment protections given charitable solicitation by the Supreme Court in the three cited cases.

We believe the case for exempting nonprofits from this legislation is a strong and convincing one, and nonprofits should not be included in the sweep of this sweepstakes legislation. But we are also concerned over three provisions of the bill that would affect any organization subject to its provisions, and would be of special concern to nonprofits if they are not exempted.

First, the Postal Service would have the authority, after receiving permission from a District Court, to detain a sweepstakes sponsor's incoming and outgoing mail. The Senate Committee on Governmental Affairs report states that, "The Committee *expects* that the USPS will give timely notification of the detention (of mail) and of the mail's location and availability for examination.", But we believe the Committee's expectation is much more likely to be met if it is included in the legislation as a requirement, not just as an expectation in the report.

Next, the standard for mail to be released by the Postal Service after detention and inspection by the mailer is that it be "clearly not connected" with the alleged unlawful activity. We believe that the detention of any mail for any reason, even for a punitive or preventive purpose, is so obnoxious in a free society that the standard should be "not clearly connected", thus putting the burden of proof on the Postal Service rather than on the mailer.

My last point has to do with creating a "do not mail" list. No legitimate organization wants to mail to any person who doesn't want to receive the mail. Sending unwanted

mail is a complete waste of financial and other resources. But because organizations continually rent and exchange mailing lists, it is not possible to state with perfect assurance that someone who has requested that he or she not receive mail, or certain types of mail, will never receive that type of mail. Moreover, it is virtually impossible to assure with even reasonable certainty that within a 45 day period names can be added to "do not mail" lists and no mail will be sent.

Most bulk mailings are prepared weeks, even months in advance of their being given to the Postal Service for delivery, and to find and remove an individual's mail from a large bulk mailing is equivalent to finding a needle in a haystack. So I suggest that 90 days is a much more reasonable and realistic time frame, and hope that the penalties for failure to act with speed and precision will reflect those difficulties.

I appreciate the opportunity to share these views and concerns with the subcommittee, and hope that they will inform your deliberations and help improve the legislation.

Thank you.

AMENDMENT TO

TESTIMONY OF LEE M. CASSIDY

BEFORE THE HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON POSTAL SERVICE

AUGUST 4, 1999

Announced Target: "Sweepstakes" But Fallout For Sweepstakes *Fundraising*

Part I

by Henry C. Suhrke

Government, wearing its "consumer protection" glasses, is looking at sweepstakes. Understanding what's behind this government oversight involves some history. One of the biggest factors is the tobacco experience which turned a health inquiry into a huge source of revenue. Other factors include the new cooperation of State Attorneys General (with each other in class action suits and with the federal government). Perhaps a real understanding also requires seeing this oversight as part of a series in which the next inquiry category may already be visible -- guns. The combination of successful experience, process, and expectation is, in any case, now being addressed to sweepstakes.

For-profits are the big users of sweepstakes. Charities, who are smaller users, employ sweepstakes to bring their fundraising appeals to public attention. This has all sorts of implications for regulation -- implications which have not received much attention from lawmakers or from most charities. The prime focus of this article is "how sweepstakes fundraising is different" from commercial sweepstakes and the difference it makes for regulation.

The lawsuit described on pages 16 through 29 of this issue challenges the constitutional basis of the current "consumer protection" rationale of state regulation of sweepstakes. Recognizing what is at stake the State in question (Connecticut) has fought hard to prevent the case from even being heard. It has lost that argument. But the dispute about the substance of the matter is, for that reason only now beginning.

Meanwhile the government oversight assault on sweepstakes has rolled right along -- with scarcely a nod to the consequences for charity. A number of states have filed lawsuits against various sweepstakes operators, mostly those connected with magazine subscription sales. Some states have filed lawsuits against charitable sweepstakes operators. Under the leadership of Mississippi Attorney General Michael Moore (who put together -- and kept together -- the coalition of Attorneys General in the tobacco litigation) a group of 13 state Attorneys General held a public hearing in Indianapolis on February 24th for the purpose of drafting a "model law" on Sweepstakes and Prize Promotions that the National Association of Attorneys General would support and also to strategize on joint litigation.

On March 8th and 9th U.S. Senator Susan Collins presided over hearings of the Senate Permanent Subcommittee on Investigations of the Committee on Governmental Affairs on

"Deceptive Mailings and Sweepstakes Promotions". Three Senate bills have been introduced to provide for new regulatory legislation (with 2 companion bills in the House). Current and possible additional provisions of these bills was a focus of the hearing. The hearings (like those in Indianapolis) heard from unhappy consumers on the one hand, and industry representatives on the other.

No charities were heard in either hearing nor was any difference in charities' use of sweepstakes and the implications for regulation mentioned at all.

Are Sweepstakes an Appropriate Fundraising Method for Charities?

It is somewhat surprising that a question about suitability still arises. The issue really became academic when governments introduced and became ever more aggressive in marketing lotteries. (A lottery requires the participant to make a purchase - usually of a lottery ticket; a sweepstakes, by definition may require no payment by the participant). Some religious groups object to games of chance as abetting greed; others use bingo, for example, as social gatherings that bring people together and also raise needed funds. There is a considerable irony (many would say hypocricy) in State government fault finding about aggressive marketing tactics, a field in which they set a strong example. In any case, if a charity feels that sweepstakes are not a desirable fundraising medium, it is free not to use it.

How Are Charities Different Where Sweepstakes Are Concerned

Here are four areas where charities use of sweepstakes differentiates them from the usage of commercial entities such as American Express, Readers Digest or Time, Inc. from the standpoint of regulatory legislation.

1. Government is now asking charities for help in carrying the social burdens of providing for the homeless, the sick, the poor, the disabled, or the disadvantaged. At the same time it is significantly reducing public outlays to aid these same classes of people. If government is serious in its requests -- and we must presume that it is -- then it would be against government's own interest to impose added regulatory costs on these very entities unless there is a strong showing of abuse by charities, based on more than anecdotal evidence. The purpose of charitable organizations is not just to make a bigger profit for shareholders. Public policy has been to assist the work of charities unless there is a demonstrable, credible case that they are serving other purposes.

2. No product sale is involved in a sweepstakes that includes a charitable solicitation. Since a contribution is voluntary by definition, there is automatically less likelihood of abuse in such a sweepstakes mailing. There are automatically no rooms or garages full of unread magazines or light bulbs or other products.

3. Charitable solicitation is protected speech at the level of political or pure speech. Hence regulation which would deny a solicitation entrance to the U.S. mails unless compelled, detailed disclosures of text, type size, positioning, etc. are made, runs afoul of the U.S. Constitution. Such provisions are in all of the currently proposed bills.

4. Penalties and fines which could result from disagreements as to the meaning of such terms as "clearly disclose," "conspicuously disclose," "prominently display in a manner such as the Postal Service shall prescribe" (all in current legislative proposals) would have to come from the only source of charitable revenue: the gifts of donors intended to be used for a charitable purpose. One bill specifies fines of up to $2 million. Senator Levin (D. MI) during the hearing, suggested fines in the thousands of dollars per item, adding "that means for each envelope." Such a use of contributions contravenes good public

policy.

Are There Victims?

One of the interesting factors in assessing the future course of current legislative proposals is the public reaction to the "victims" presented at public hearings. In the case of tobacco, accusers were able to cite harm to a broader public from lung cancer treatment costs, the perils of "second hand smoke," etc. Here harm was claimed mostly by potential heirs, appalled at the use their parents made of their own money.

Did this handful of relatives of sweepstakes participants constitute a meaningful sample? Sweepstakes packages from one commercial mailer alone go to every family in the United States. The total universe of mailings runs into the hundreds of millions of packages. To have found twelve aggrieved individuals among these hundreds of millions (and their children, in this case) is surely not a difficult nor necessarily a useful accomplishment.

Moreover, industry representatives presented surveys indicating that the overwhelming majority of participants clearly understood the rules and conditions of the sweepstakes. What of the "public" reaction? One young person (on an Internet chat site) wondered whether it was really government's role to compensate for the "stupidity of people who don't read their mail."
Others professed no sympathy for alleged victims because their motive was "to get something for nothing;" If that turned out for ill, perhaps a lesson has been learned.

The Role of the American Association for Retired Persons

The question of -- and/or the extent of -- victimhood also interested the American Association of Retired Persons (AARP) who came to the inquiry because of a possible targeting of elderly people.

Whether or not sweepstakes "target" the elderly was, in fact, a prominent query in both the Indianapolis and Washington hearings. In each city industry representatives testified that in no case did they target elderly people. In each case for-profit sweepstakes operators indicated that their purpose was to sell (mostly) magazine subscriptions. Because the key to successful subscription sales (like fundraising) is "acquisition" i.e. getting new subscribers, and because this process is quite expensive, it would be foolhardy to target promotional material other than to those who would likely be interested in the subject matter of the magazine. One industry witness (AFE) testified that 75% of their mailing list were under the age of 65. Other mailers didn't have a breakdown by age -- which, itself, makes a relevant comment on the possibility of targeting by such a criterion.

Nevertheless, AARP has undertaken a sweepstakes project. One of the witnesses in Washington, Mrs. Tierney, who identified herself as an AARP Board member, described part of their research..

1. She cites 10,000 people "who gave their age as over 50" who had complained to a "National Fraud Information Center" about "telemarketing consumer fraud." She says that, based on these calls, "the number one scam was sweepstakes, with magazine sales ranking number 5." This is an effort that can be dignified as "research" only with great difficulty. The allegations of 10,000 callers is compared with no relevant universe. The connection with telemarketing is never explained; and the classification system which distinguishes "sweepstakes" per se from magazine sales (the largest single user of sweepstakes) is mystifying.

2. She cites a second effort, "Operation Mailbox." Here we are offered 5,000 pieces of mail (again compared with no percentage of total pieces mailed) requested from AARP members in a

search for complaints over a six month period. AARP volunteers and staff in cooperation with regulators "opened, read, and sorted" these complaints. Operation Mailbox announced "over 150" actions as a result, but we are given no data on the results of these actions. Readers of PM, on the other hand, will recall a quite different reception of the Connecticut actions.

3. AARP has also sponsored research on "what drives people to participate in sweepstakes and to ascertain what their expectations might be." To this end they contracted for the services of Dr. William Arnold, an Arizona State University professor, who also testified in Indianapolis. Ms Tierney cited some "preliminary results" of his findings. The first of these was that 40% of older Americans who receive sweepstakes solicitations, respond to them. This simply does not jibe with data presented by a Time, Inc. representative that 82% of sweepstakes recipients do not respond at all. The discrepancy is far too large to be easily accounted for -- even by AARP's defining as "older" anyone over 50. Still more relevant is industry data which notes that 9 out of 10 of those who "respond" don't buy a magazine! In view of the huge costs involved for the industry in acquisition activity, it seems likely that their data merits a presumption of accuracy over Dr. Arnold's "preliminary" results.

The most questionable proposition Ms Tierney puts forward however involves a further interpretation of Dr. Arnold's work. Ms Tierney says:

"What is distressing, however, is the finding that 23% of those who participate in sweepstakes believe that purchasing something increases their chances of winning. Combine that figure with the 17% who feel that purchasing *might* increase their chances and you have fully 4 out of 10 participants who don't believe the statement, "No purchase necessary to win!"

Ms Tierney believes this perception "should be addressed" and various Senators at various times cited AARP research as a reason for even more, and larger statements denying that any purchase is necessary.

But surely the relevance of Dr. Arnold's finding is that despite multiple existing notices that no purchase is required, and despite testimony that their own children had so advised parents, participants continued to *believe* that a purchase increases their chances of winning or might increase such chances. There is thus, no necessary connection at all between the number of notices, their size, their proximity to any other text, their clarity, their color, or any other aspect and the *belief* of the participant as to the effect on chances of winning. It is entirely possible that such a belief might, in fact be strengthened by a drumbeat of warning type disclosures.

AARP, by its presentation as bona fide research, data subjected to no rigorous, scientific testing and by a likely misinterpretation of the preliminary conclusions of academic research, has made a dubious contribution to public policy. It stands in contrast, moreover, with the last Senate appearance of AARP cited in these pages when Senator Simpson accused *it* of deceptive practices (using such come-ons as low-priced prescription drugs, insurance, and travel tours to lure the elderly into lending their numbers, without due consultation, to various policy positions, which were, in fact, decided by a tiny group).

Can Regulation Solve The Problem?

Assuming for argument's sake that "the problem" is "too aggressive marketing to the extent of deception," one must then look at the primary regulatory demands made by regulators. These were very specific. Senators Collins and Levin and others cited repeatedly as their "prime concerns" warnings that "no purchase is necessary" and that a purchase will not increase the chances of winning.

Yet these are precisely the attitudes that

are, by the only respectable research available, seen to be dependent on *beliefs* which contravene already existing warnings, disclosures, and the personally delivered advice of those nearest and dearest to the participant.

One participant, after failing eyesight, turned over his mail to his daughter, who thus was able, after previous failed attempts, to deflect sweepstakes mail. When, later on, the daughter and her husband bought a new car, her father accused the couple of paying for the new purchase with his sweepstakes winnings, with which they had absconded! A sad tale. But consider, how large a type size, how repeated a caution, how clear a wording; how conspicuous a notice would have persuaded a father who preferred to think his own daughter capable of theft!

In a culture where the idea of winning games of chance has been validated by the power and advertising budgets of the State in legally monopolized lotteries, does there exist a pattern of disclosures that by specifying wording, type-sizes, page positioning, envelope design, and "clarity" of sentence structure, can force an individual to spend or not to spend his money as the State wishes rather than as he wishes? It seems highly doubtful.

There is another view of "regulation" as the answer to "the problem". It is presented in the nearby box.

Consumer Advocate John Stossel Luncheon -- The Tomato Surprise.

The Indianapolis "hearing" had been so thoroughly scripted that Attorneys General could safely fly in from near and far assured of benign television exposure showing them sympathizing with unfortunate victims on the one hand, and badgering heartless exploiters on the other. For lunch the planners added an extra fillip by bringing in national television personality John Stossel, noted for his consumer advocacy reports on major national networks. The Attorneys General gathered at reserved tables near the speaker's podium eager for a celebrity blessing. Apparently no one had asked Stossel what the nature of his remarks would be. The AGs were in for a surprise.

Stossel started out describing some of his advocacy programs. One of the first concerned Alka Seltzer, then a standard remedy for an upset stomach Stossel said he called 20 doctors, all of whom told him that Alka Seltzer was not especially good for an upset stomach, being a mixture of aspirin and bicarbonate of soda. Instead the doctors by a wide majority prescribed another set of ingredients, which he described to his audience. Today, he noted, Alka Seltzer still has its uses, but upset stomach is not one of them; instead a favorite remedy is Maalox, which happens to include the ingredients doctors had earlier specified and which is one of today's leading upset stomach medicines.

This and other experiences started Stossel thinking about how useful regulation was. He said he'd begun his work assuming that regulation was necessary because greedy merchants would try to cheat people. Now he wonders whether (a) in the long run the market will solve many problems and (b) even in the short run the costs of regulation might outweigh the benefits. It was, he thought, a matter of perspective. As he produced one example after another, the AG tables were less and less relaxed.

What are the unseen costs of regulation? It retards entrepreneurship, which is the source of our

prosperity. It causes lawyers to spend untold hours getting paperwork approved to let a product on the market. When a new drug finally is approved, there is great hoopla that "we are now saving 10,000 lives because of this new drug! However no one says that that also means we lost 10,000 lives a year during all the years when approvals were being sought. Were they all necessary? He applied the same logic to automobiles. Volvo now advertises "we're safer!" Would competitive advertising have produced safer cars without all of the acrimony and sturm and drang of anti-car consumer warfare?

Grasping his microphone, Stossel started to walk toward the AG tables, saying, "I'm going to do a Giraldo. Suppose, he went on, that I've invented a new fuel. It is cheaper than current fuel oil, odorless, but very flammable. Would you (handing the microphone to Attorney General Butterworth of Florida) approve it for use? Butterworth: No, I'll let you try it first. Then (handing the microphone to Attorney General Moore of Mississippi) Suppose it had killed 25 people, would you approve it? Moore: No, I would not. Stossel: well, of course the fuel is natural gas, which we have used for years. But if it were introduced today, you can see what its reception might be.

Stossel acknowledged that the market assumes informed decisions and that the media generally do not do a very useful job in informing citizens. However, he insisted that self-regulation does work, citing his own industry. He said that the networks -- ABC, NBC, and CBS all turn away at least one half of all ads they are offered and that they make more money as a result -- because advertisers trust them, at least in part *because* of their selectivity in choosing advertisers.

A question period brought some interesting exchanges -- in part because the room was filled with staff members who came along with the AG's. A first question: Would you let market freedom extend to medical doctors who are not regulated? Stossel: Yes, if their patients were informed of their credentials. Another Question: In Hong Kong, where I come from, the market is supreme, but you wouldn't see a model there would you? Stossel: Well you must consider that the people came there to get out of China. You know Patrick Henry didn't say Give me Liberty or Safety!

His peroration: more regulation simply hasn't worked; it hasn't deterred crooks. It has only enriched lawyers. What we need is more perspective on what and how we regulate. The AGs returned to their afternoon (industry) panel with undiminished zest. Jay Nixon of Missouri muttered that he was glad Stossel hadn't "cited clean air and water!"

Part II of this Article will discuss provisions of the various bills that have been introduced in Congress to regulate sweepstakes.

The New "Notification System" in Proposed Sweepstakes Legislation
Part II

by Henry C. Suhrke

Part I of this article discussed the public hearings on Sweepstakes of the National Association of Attorneys General in Indianapolis (February 24, 1999) and of the U.S. Senate Permanent Subcommittee on Investigations in Washington March 8th and 9th.

The ostensible purpose of these hearings was to discuss additional regulation of sweepstakes.The use of sweepstakes by charitable organizations to bring their mission to the attention of potential donors was not on the agenda at either hearing.This is no minor oversight since permissible regulation of charitable speech must meet more strict judicial scrutiny than regulation of ordinary commercial speech.There are other differences.Money penalties levied on a charity come from the gifts of donors.It is now widely accepted that making the poor or other beneficiaries of a charity pay the price of an alleged organizational offense is not good public policy.

Senator Collins of Maine presided over the March hearings.She had earlier introduced a bill covering some of her concerns entitled, "Deceptive Mail Prevention and Enforcement Act".The hearing Subcommittee and subsequently the full Committee on Government Affairs has now reported out an expanded bill which is expected to go to the full Senate for a vote. This article is an overview of the salient provisions of the (revised) bill, S. 335 with emphasis on provisions that would affect charitable users of sweepstakes.

S. 335

S. 335 has 9 sections.*Section 1* provides only the "short title" cited above. *Section 2* is headed, "Restrictions on Mailings Using Misleading References to the United States Government." This subject did not come up in the hearings.It has a history, however.Some years ago when a number of nonprofit organizations raised public questions about the adequacy of Social Security in view of the politicization of the resources of the Social Security "Trust Fund," legislation was passed restricting the speech of such organizations on the claim that they were "alarming" the elderly.Some highly placed alumni of the Social Security Administration were active in these organizations, and many commentators agree that there was serious cause for alarm.The present expansion of S. 335 continues along the earlier, mistaken "government knows best" route.It targets matter that "reasonably could be interpreted or construed as implying any Federal Government connection, approval, or endorsement through . . . citation to a Federal Statute, name of a Federal Agency, . . . " Since criticism of an Agency or of a statute, necessarily implies a "connection," this section would seem to be cueing up for its turn a court review.

Section 3 is called 'Restrictions on Sweepstakes and Deceptive Mailings." The core of this section is to declare to be "nonmailable matter" which "shall not be carried or delivered by mail and may be disposed of as the Postal Service directs" matter which does not contain various statements or makes certain forbidden representations. Among the required disclosures are a statement of "all terms and conditions of the sweepstakes promotion . . ... in language that is easy to find, read, and understand."An example of a forbidden representation is "that an individual is a winner of prize unless that individual has won a prize."

Charities ought to worry about these provisions because:employees at the Postal Service at some 30,000 points of entry into the postal system must interpret "language that is easy to find, read, and understand."Contrary to most fundraising speech, the sweepstakes message which a postal employee finds wanting, may be kept out of the mails and disposed of as the Postal Service sees fit. "Prior restraint" in spades.

Section 4 (Postal Service Orders to Prohibit Deceptive Mailings) is a one sentence technical change for the Postal Service. *Section 5* (Temporary Restraining Order for Deceptive Mailings) authorizes the Postal Service to apply to a federal district court for an order to detain relevant mail *in preparation for* or during the pendency of an action under these Sections."Upon a proper showing" the order will remain in effect during the proceedings, including any judicial review.No finding of "intent to make a false representation" or "to conduct a lottery" is required to support the issuance of an order under this section.

"As Justice May Require"

Section 6 (Civil Penalties and Costs) provides for penalties graduated according to the number of pieces in the mailing, e.g."$50,000 for each mailing of less than 50,000 pieces; $100,000 for each mailing of50,000 to 100,000 pieces, with an additional $10,000 for each additional 10,000 pieces above 100,000, not to exceed $2,000,000."The fact that any such penalty paid by a charity would have to come from money given for a charitable purpose has already been mentioned.The bill gives no recognition to such an affront to public policy. It says only that "the Postal Service shall determine the civil penalty, taking into account the nature, circumstances, extent, and gravity of the violation or violations . . . and with respect to the violator, the ability to pay the penalty, the effect of the penalty on the ability of the violator to conduct lawful business, any history of prior violations of such section, the degree of culpability, and other such matters as justice may require." To put into the hands of the Postal Service a broad power to assess penalties "as justice may require" calls for perspective. In this case the contrast with the Supreme Court instruction to legislators that fundraising speech be regulated by the narrowest possible rule and without undue discretion left in the hands of government officials is startling.

Section 7 (Additional Authority for the Postal Inspection Service)gives the Postmaster General subpoena power "to require by subpoena the production of any records which the Postmaster General finds relevant or material to the investigation." Query:might that include the confidential list of donors sent sweepstakes materials by the NAACP or Planned Parenthood or a Right-to-Life Organization?

The Notification System

Section 8 (Requirements of Promoters of Skill Contests or Sweepstakes Mailings) is an entirely new section. The nub of Section 8 is the required setting up of a single "notification system." Here is the language of the bill:"Any promoter that mails a skill contest or sweepstakes shall participate in the establishment and maintenance of a single notification system that provides for any individual (or other duly

authorized person) to notify the system of the individual's election to have the name and address of the individual excluded from all lists of names and addresses used by all promoters to mail any skill contest or sweepstakes."

This will be an interesting exercise. Note some of the features.There may be only *one* system.All sweepstakes mailers *must* take part. The system must cover *all* lists that a sweepstakes mailer might use. Some questions are in order. (1) An individual writes in and wishes to removed only from sweepstakes other than that of her local public television and her favorite animal charity. Can she get selective immunity? (2) the large sweepstakes operators find the book no longer worth the candle and withdraw from the sweepstakes field, leaving only several small (but still mailing over 500,000 pieces) charitable groups. Must they maintain and pay for the single, national "system"? (3)Many public television groups use the sweepstakes to provide a fillip benefit for their donors. Public television "X" uses sweepstakes only for this purpose. Must it nevertheless participate (i.e. help pay for) a national system which purports to regulate its communications with its own donors?

Section 9 (State Law Not Preempted) is the embodiment of the deal made with State Attorneys General. It has two provisions.First, nothing in the Act, will prohibit States from imposing more restrictive requirements, regulations, damages, costs or penalties. Second, nothing shall prohibit an authorized State official from proceeding in State court on the basis of violations of a state statute. There seem to be some tenuous linkages proposed here.The Postal Service, is after all, a federal establishment.That States could impose narrower rules than the federal government on the delivery of the mail is a fairly radical suggestion.The final *Section 10* (Effective Date) provides that, except for Section 8, this Act shall take effect 120 days after the date of its enactment.

What lies ahead?The full Senate will have an opportunity to address the subject, and then there will be action required in the House.The complete absence of any reference to the position of charitable organizations in the discussion to date, means that some education of legislators is required sooner rather than later. PM

Mr. MCHUGH. Thank you, Lee. I noted that suggestion and we are going to take a look at that. It is an interesting point and an important one obviously, as were other things in your testimony. So, we will be reviewing those.

Next is Ms. Virginia Tierney who is a member of the board of the American Association of Retired Persons. Ms. Tierney, thank you for being here. Thank you for your patience. We look forward to your comments.

Ms. TIERNEY. Thank you, Mr. Chairman. I thank the members of the subcommittee also because on behalf of AARP, I want to thank you for inviting us here this afternoon to discuss the importance of enacting legislation to deter the use of deceptive mailings.

AARP commends you, Chairman McHugh, for calling this hearing to focus the House of Representatives' attention on the issue. As you may be aware, AARP played an active role in securing the passage of S. 335 by the Senate on Monday of this week. Therefore, we are pleased that Representatives LoBiondo, Condit, and Rogan have introduced bills in the House to address the issue of deceptive mailings.

We anticipate that these bills and this hearing will propel the debate, ultimately leading to enactment of legislation in the House that we hope will closely mirror the Senate version. AARP also, Mr. Chairman in addition to your thoughts, is not here to condemn legitimate sweepstakes. We acknowledge that they appeal to some of our members, and are important to magazine publishers' efforts to obtain subscriptions.

However, even sweepstakes that are not outright fraudulent have often been promoted through mailings that confuse and mislead recipients. These, and other forms of deceptive mailings, are a major concern to AARP because they have severe effects on our members who are victimized in large numbers.

AARP has contracted for the services of Dr. William Arnold to do a little research on this subject. He is an Arizona State University professor. He is surveying older Americans who participate in sweepstakes. One of his more distressing findings, and these are preliminary, is that 23 percent of those who participate believe that purchasing something increases their chances of winning.

Combine that figure with the 17 percent who feel that purchasing might increase their changes and you have fully 4 out of 10 participants not believing the statement, "No purchase necessary to win." Copies of letters from our members highlighting the ordeals they have gone through and the range of concerns they raise are attached to our written statement.

Additionally, a recent AARP bulletin story elicited over 300 written responses; many providing a sense of the devastating effect these mailings can have on a person in his or her family. AARP agrees with the 87 percent of respondents in Dr. Arnold's study who believe that the Government needs to do something to deal with deceptive mail. That is why we are pleased that this committee is taking action to aid consumers.

Both House bills represent an important first step in addressing consumer concerns. The bills directly address the use of "you have automatically won" type language in sweepstakes promotion materials that we believe is at the core of the fraud and deception.

Both pieces of legislation include provisions requiring language on the envelope, as well as on the top of the first page of the enclosed material alerting consumers of the fact that they may not have won. These are important provisions. AARP applauds the respective Members for including them.

H.R. 237 includes a provision that requires that the envelope to a sweepstakes type mailing also include the mailing address of the principal place of business of the person making the solicitation or offer. AARP strongly supports this provision. While AARP supports the majority of the provisions in both House bills, we believe the Senate-passed bill includes some attractive elements that would strengthen the House bills.

Adding the requirement that mailings contain a statement saying that "purchase will not improve your chance of winning" would, in and of itself, bolster House legislation, including sections providing the Postal Inspection Service with enhanced authority to stop deceptive mail, and with subpoena authority to shutdown fraudulent operators would significantly improve the legislation as well.

Other measures that AARP recommends as amendments to House legislation include providing definition and guidelines to games of skill and providing stiff penalties for noncompliance. AARP has long contended that the most direct means of eliminating fraud is to take the profit out of it.

Finally, we urge this committee to seriously consider adopting the notification system provisions of the Senate bill. These would provide consumers with numbers to call to have their names removed from the mailing list of companies that promote products and services through sweepstakes. The ability to have one's name removed from mailing lists is an important consumer protection.

Facilitating such removal, through the use of a toll-free number such as specified in the Senate bill, is even better. H.R. 170 and H.R. 237 represent valuable contributions to the effort to stem deceptive mailings. AARP hopes that this committee will build on this effort by amending House-introduced legislation with key Senate-adopted bill provisions. Doing so will ensure that consumers are provided with significantly increased protection. Again, I thank you for this opportunity to address the committee today. I look forward to responding to any questions you may have for me. Thank you.

[The prepared statement of Ms. Tierney follows:]

TESTIMONY BEFORE THE

POSTAL SERVICE SUBCOMMITTEE

OF THE

HOUSE GOVERNMENT REFORM COMMITTEE

ON

DECEPTIVE MAILINGS

AUGUST 4, 1999

WASHINGTON, D.C.

WITNESS: VIRGINIA TIERNEY

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Mr. Chair and Members of the Committee:

My name is Virginia Tierney and I am a member of the Board of Directors of AARP. On behalf of AARP, thank you for inviting us here this afternoon to discuss the impact of deceptive mailings, including fraudulent sweepstakes, on older Americans. We will also comment on the importance of enacting legislation that will aid the U.S. Postal Service and law enforcement agencies' efforts to deter these fraudulent practices throughout the country.

AARP commends Chairman McHugh for calling this hearing to focus the House of Representatives' attention on this issue. As you may be aware, AARP worked with Senators Collins, Cochran, Levin, Edwards and others to secure language in last week's Manager's Amendment to S. 335 by the full Senate. Therefore, we are pleased that Reps. LoBiondo, Condit and Rogan have introduced bills in the House to address the issue of deceptive mailings. We anticipate that these bills and this hearing will propel the debate, ultimately leading to enactment of legislation in the House that we hope will closely mirror the Senate version.

AARP is not here to condemn legitimate sweepstakes. We acknowledge that they appeal to some of our members and are important to magazine publishers' efforts to obtain subscriptions. However, even sweepstakes that are not outright fraudulent have often been promoted through mailings that confuse and mislead recipients.

These and other forms of deceptive mailings are a major concern to AARP because of the severe effects they have on our members, who are victimized in large numbers.

AARP's involvement in this issue is not new. In the past three years, we have launched campaigns against charity and telemarketing fraud based on research examining older victims' behavior and perceptions, partnerships with enforcement and consumer protection agencies, and warnings to consumers through public service announcements, educational workshops and program activities. AARP's research into telemarketing fraud and charitable solicitations, which are closely tied to direct mail fraud, has identified sweepstakes as a prime area of concern.

Sweepstakes were the number one form of telemarketing consumer fraud reported to the National Consumer League's (NCL) National Fraud Information Center (NFIC) in 1995, 1996 and 1997. NCL will be providing you with specifics later in the panel. Their numbers will help to tell the story statistically, but they won't begin to convey the personal anguish caused to individuals, and the friends and family associated with them.

AARP has taken extraordinary steps to educate our members and the public at large as to how to differentiate between legitimate offers and misleading, deceptive or fraudulent ones. Our goal is to reduce fraud and deception in telemarketing and mailed solicitations. As part of this mission, AARP has worked in tandem with the

Attorney General's office in my home state of Massachusetts, as we have with other state Attorneys General, to gather information and warn consumers about potential fraud.

Additionally, we were active participants in Operation Mailbox. Operation Mailbox was a coordinated effort undertaken with the Federal Trade Commission (FTC) and federal and state law enforcement agencies to identify fraudulent mail.

In December, 1997, as a function of the AARP Anti-Telemarketing Fraud campaign, we placed an article in our monthly publication The Bulletin. The article asked members to check their own mail for cards and letters that looked suspicious or that carried claims that the recipient was a "guaranteed contest winner." We also requested that they watch for mail that offered "no risk" investments, get-rich-quick schemes, or solicitations for dubious charities as well as mail that alerted the recipient to immediately call a 1-800 or 1-900 number. We asked that such mailings be forwarded to the Association. We told our members that law enforcement experts would be reviewing the mail for possible legal actions.

Throughout the following six months, AARP members submitted over 10,000 pieces of mail. Dozens of members sent envelopes and boxes stuffed with solicitations. Over and over our members asked the same questions; "Is this a legitimate solicitation?" and "Can you help me get the money I've won or help me get my money back?"

Subsequently, for more than three months AARP volunteers and staff opened, read and sorted the mail sent in by members. In cooperation with the FTC and federal and state agencies, who formed the Operation Mailbox task force, AARP identified more than 5,000 pieces of mail that might require legal action. An outside firm was hired to code the pieces under the system used in the Consumer Sentinel database. Consumer Sentinel data is used by subscribing law enforcement agencies to identify and investigate suspected fraudulent businesses or individuals.

Based in part on AARP's contribution of over 5,000 complaints, at no cost to law enforcement, the FTC/Operation Mailbox strike force announced over 150 federal and state enforcement actions against the sponsors of these mailings in October of last year.

While Operation Mailbox was a tremendous success, we believed that more needed to be done to identify what drives people to participate in sweepstakes and to ascertain what their expectations might be. With that in mind we embarked on research in this area. AARP contracted for the services of Dr. William Arnold, an Arizona State University professor and a recognized expert on this topic. We would like to share some of Dr. Arnold's findings with the Committee this afternoon. A part of the research effort looked at the attitude of the consumer. Results in this area show that 40% of older Americans – with a mean age of 72 – who receive sweepstakes solicitations, respond to them. Of those who respond by purchasing a

product or service, the consumer who asks to be billed later is more likely to continue to participate in sweepstakes than is the person who pays in advance.

What is distressing, however, is the finding that 23% of those who participate in sweepstakes believe that purchasing something increases their chances of winning. Combine that figure with the 17% who feel that purchasing might increase their chances and you have fully 4 out of 10 participants who don't believe the statement, "No purchase necessary to win!" Finally, 87% of those interviewed for Dr. Arnold's study believe that the government should do something about deceptive mailings.

The concern over the perception that a purchase might be necessary to win is one area that can and should be addressed by the companies that do the mailings, irrespective of what Congress does. Another more serious issue that AARP believes requires Congressional action regards the messages contained in the mailing devices. It is the use of "you have automatically won"- type language in sweepstakes promotional materials. This language is at the core of the fraud and deception.

A sampling of letters from our members highlighting the ordeals they have gone through and the range of concerns they raise is instructive. Copies of several of these letters are attached. One woman asks that the large amount of money just awarded to her spouse, who has been dead for six years, be placed in his estate so that the family can enjoy it. While she states that she doesn't expect to see the

money, she was clearly hurt by the solicitation and asserts, "this kind of nonsense must be stopped."

Two others, both homebound and coping with disabilities, simply ask, "Where is my money?" and "Please help me get it." Yet another has waited over a year for the promised $100,000, but is equally agitated that she didn't receive her "guaranteed" $250 for participating. In a similar vein, a member offers that the sweepstakes sponsor has made a series of promises to her over a two-year period, going so far as to schedule a special date for their appearance, only to disappoint.

As was mentioned earlier, this is a problem that often involves other family members as well. A daughter writes in regard to her independent 87-year-old father and raises a different set of concerns. She is uncomfortable intervening in her father's affairs, but does so because he recently canceled a trip to visit his only sister, stating that "it conflicted with the date he was to be in New York to collect his winnings." What is more alarming is the fact that he has taken $13,000 out of his savings and spent $11,000 between May and August on books and magazines. Unfortunately, these are but a few of the many examples of harm consumers have experienced from fraudulent and deceptive sweepstakes promotions – and reflect just a handful of the letters AARP has received.

Obviously, something needs to be done. That is why we are pleased that this Committee is taking action to aid consumers. We are glad that consumer concerns

with sweepstakes are being addressed by Reps. LoBiondo and Condit through their co-sponsorship of H.R. 170 and by Rep. Rogan, who has introduced H.R. 237. AARP agrees with the 87% of respondents in Dr. Arnold's study who believe that the government needs to do something to deal with deceptive mail. This afternoon, we will comment on some of the provisions of the two House bills and offer suggestions as to how to more closely align the House legislation with that of the Senate-passed version.

Both H.R. 170 and H.R. 237, introduced early in the Session, represent an important first step in addressing consumer concerns surrounding the issue of deceptive mailings. The bills directly address the use of "you have automatically won"- type language in sweepstakes promotional materials that we commented on earlier. Both pieces of legislation include provisions requiring language on the envelope as well as on the top of the first page of the enclosed material, alerting consumers to the fact that they may not have won. These are important provisions and AARP applauds the respective Members for including them.

In H.R. 170, Reps. LoBiondo and Condit address the problem surrounding "negotiable instrument look-alikes," and require that disclaimer language be printed in at least 16-point type. These provisions, if enacted, will protect consumers as well – and are particularly valuable for older consumers who have a higher incidence of impaired vision.

Rep. Rogan's H.R. 237 includes a provision that requires that the envelope to a sweepstakes-type mailing also include the mailing address of the principal place of business of the person making the solicitation or offer. AARP views this type of disclosure as critical and therefore, strongly supports this provision of the bill. Rep. Rogan is also to be commended for including a clause directing the mailing companies to provide a statement regarding when and how a listing of the official winners can be obtained.

While AARP supports the majority of the provisions in both H.R. 170 and H.R. 237, we believe the Senate-passed bill includes some attractive elements that would strengthen the House bills. Adding the requirement that mailings contain a statement saying that "purchase will not improve your chance of winning" would in and of itself bolster the House legislation. Including sections providing the Postal Inspection Service with enhanced authority to stop deceptive mail and with subpoena authority to shut down fraudulent operators would significantly improve the legislation as well.

Other measures that AARP recommends as amendments to House legislation include providing definition and guidelines to games of skill and providing stiff remunerative penalties for noncompliance. AARP has long contended that the most direct means of eliminating fraud is to take the profit out of it. A penalty structure similar to the one the Senate adopted would serve as a deterrent.

Finally, we urge this Committee to seriously consider adopting the notification system provisions of the Senate bill. The notification system would provide consumers with numbers to call to have their names removed from the mailing lists of companies that promote products and services through sweepstakes. The ability to have one's name removed from mailing lists is an important consumer protection, and facilitating such removal through the use of a toll free number, as specified in the Senate bill, is even better for consumers.

H.R. 170 and H.R. 237 represent valuable contributions to the effort to stem deceptive mailings. AARP hopes that the Committee will build on this effort by amending House-introduced legislation with key Senate-adopted bill provisions. Doing so will ensure that consumers are provided with significantly increased protection.

Again, I thank you for the opportunity to provide the Committee with background and recommendations on this critical issue that impacts so many Americans – particularly older Americans – so severely. AARP stands ready to work with the Chair and members of the Committee to enact legislation that will curtail the fraud and deception surrounding sweepstakes-type mailings.

I look forward to responding to your questions.

Need help.

I am an AARP member in good standing

I just received the enclosed documents — I thought all of this was now considered illegal. —

It says [redacted] has won $833,337.00 — now if I was gullable I would believe this — I am not and I dont.

However do these people have a clue how upsetting this can be. [redacted], my best frend and spouse for 40 years died Oct 31, 1991 — so help me tell this people to deposit this money into his estate — ~~so~~ so his family can enjoy what he has won after being dead over six years.

This kind of nonsense must be stopped — How many older people are taken advantage of?

Thanks

[redacted]

Feel free to forward this to whoever can help stop this

Email

[redacted]

[redacted]

Genmtlemen

I am 100% xisaBLED VEETRAN OF THW AST THERWW WARS.
PLEASE EXCUSE MY TYOINYMI dco better [redacted] computer.
I haVE WON MILLI ONS OF DOLLARS IN [redacted] contest,B
UT TO DATE,have not ereceived one dine of those molliuons.
I(have also millions in othe5r offers withoutr receiving
even one dollar. In this m,aolong there is an offer to but
[redacted] at a batrgain price.

LADIES AND GENTS I HOPE THAT YOU CAN HIT THESE PEOPOLE HJARD
WITH HEAVY FINES OR PUT THEM OUT OF BUSINESS.

Thanksn for your attention,

NOTE: COPY OF OFFER enclosed

[redacted]

[redacted]

3-19-98

AARP

RE: [redacted]

To whom it may concern.

My name is [redacted] membership # . I have been a member for a long time, and I have seen the results of your considerable power when you address a matter that effects the members of AARP. Being lied to and conned out of the money the elderly and vunerable, who for the most part are on a fixed income, and have no other recourse than our members to champion our cause, we are left to our own means to right a wrong. I am sure you are aware of the way we were led to believe we had a chord

(2)

althow very slim, to win
something to help line out our
lives in something less than
Bugets and not enough money to
cover insurance and every-day living
expenses.

I am 67 years old, handicapped
and Broke. I am in Bad health
and still have to work to Buy medicine
and Dr. Bills. More often than not
By the end of the month, it is a choice
if I Buy medicine or food.

I have compile Documentary Stuff
that I should have been the
Winner, Copies that I am sending
with this letter. I hope and pray
there is something that the Power
of our Membership can help me
and other in the same situation.

thank you in advance

[redacted]

[redacted]

GRAND PRIZE ELIGIBILITY NOTICE

DYV

Deliver to: [redacted]

Prize Claim #: UWOY5QH14

If you have and return the Grand Prize winning entry in time, we will officially announce that:

DUR SWEEPSTAKES RESULTS ARE NOW FINAL:
[redacted] HAS WON
A CASH PRIZE OF $833,337.00!

Dear [redacted]:

You probably thought it could never happen to you! And even now, [redacted] STILL find it hard to believe that [redacted] of [redacted] could actually be our $833,337.00 cash prize winner. But it's absolutely true: [redacted] is now positively guaranteed to be awarded $833,337.00 -- the biggest single cash payment ever made to ANYONE in a sweepstakes presented by SPORTS ILLUSTRATED -- if you have and return the grand prize winning entry in time! In fact, the funds have been put on reserve for the express purpose of paying the entire $833,337.00 amount in full. And now that we've been authorized to pay the prize money, the very next time you hear from us, it could well be to inform you that

Can you make them send it?

A BANK CHECK FOR $833,337.00 IS ON ITS WAY TO [redacted]

So you'd be wise to put any doubts aside, and follow these simple instructions: Affix the Grand Prize Validation Seal to the official entry certificate. Then mail it in one of the official sweepstakes envelopes enclosed. That's all we ask of you, and the cash could be yours. Just how much money are we talking about?

Let's say you put the entire $833,337.00 in a bank and receive only 5% annual interest on the money. You'd still enjoy a guaranteed income of almost $41,667.00 a year -- without even touching your original deposit! There's no denying it, $833,337.00 is enough money to put [redacted] on the sunny side of the street for the rest of your life. [redacted] it's so important for you to validate the official entry certificate and return it to us as soon as you possibly can. Because there's no way you can be paid the $833,337.00 if you fail to return an entry. Truth is, if you hold the grand prize winning number,

YOU'LL FORFEIT THE $833,337.00 IF YOU FAIL TO RESPOND TO THIS NOTICE!

And then, the Grand Prize that should have gone to [redacted] will have to go to an ALTERNATE winner! Because the money is [redacted]nally guaranteed to be awarded whether we hear from you or not! So be absolutely certain to validate and return your entry as instructed. And I'd advise you to do so immediately for a very important reason:

[redacted]

February 23, 1998

[redacted]

Dear Prize Coordinator,

On January 9, 1997 I received an envelope in the mail with this letter enclosed. I followed all the instructions, filled everything out and mailed it back to you on January 10, 1997.

As you can see by the copy of the letter I have enclosed I am a guaranteed winner. I'm sorry I didn't make a copy of what I sent back to you. I did write on my letter; as you can see; that January 15, 1998 I would get my check for at least $100,000.00 and by no later than 30 days later. As of today I have received nothing. Also I had a color - coded address label, which must of made me one of the maximum TEN (10) recipients. I returned this label as instructed and I have not received my $250.00 for that yet either.

I have given you more than ample time to get my check or checks to me. I want to know where my money is ($100,250.00)? I will give you until March 10, 1998 to explain to me why I have not recieved any money. If I have not heard from you by March 10, 1998, I will send a copy of this letter and my First prize Notification letter to My State Attorney General, AARP and Janet Reno. I know they are checking into sweepstakes and prizes. I feel they will get to the bottom of this for me.

I hope you will check into this matter.

Thank you,

[redacted]

[redacted]

4-17-98

RECEIVED

MAY 15 1998

LAKEWOOD, CA

Dear Miss Dixon,

May I have a listing of all the fraud people I hear from in the mail? I've been able to get rid of those who request money as I do not send money in the mail.

I still get lots of junk mail & would like to eliminate those that are considered in fraud.

I have been dealing with [redacted] and now have stacks of magazines and I love to read. Over the past 2 years they made promises, set a special date & never showed up. They have sent me 3 pieces of jewelry & recently promised a set of fur wear. Now I get a letter saying that it's a tie - that after stelling me the whole year that I'm the winner.

[redacted]

October 14, 1997

Dear Sir or Madam:

Your Customer Service Department has forwarded this letter to you at my specific request, because I want it to be read by the highest level of management I can reach. It expresses my deep concern with some of your current subscription marketing strategies and policies. Please allow me to describe a situation for you.

My father, [redacted] is 87 years old and is blind in one eye. He is relatively healthy and quite alert for his age, very proud, and fiercely independent. For these reasons, my sister and I have tried to let him manage his own affairs for as long as he seems able.

[redacted] has been a trusted name in our household for some time; our family has purchased a number of publications over the years. More recently, however, it has become evident that my father is totally consumed with winning your various sweepstakes. In fact, he was so convinced he was going to win last year that he canceled a trip to visit his only sister because it conflicted with the date he would have to be in New York to pick up his winnings. When he didn't win (as he felt the letter had promised he would), we thought he might be a bit wiser for the experience. Unfortunately, we are learning (belatedly) that it just increased his addiction. He seems to feel that if he makes a larger "down payment" in the form of more purchases before the next drawing, he will win.

He does very little reading now because of his partial blindness, watches minimal TV, and does not own a VCR. Yet he is buying countless video tapes and publications from you that he cannot use.

In the beginning, we were not overly concerned, because he seemed to enjoy giving his purchases to friends and relatives. We felt that if it gave him pleasure, it was OK to spend his Social Security any way he pleased. However, we recently discovered that since April he has drawn approximately $13,000 out of his **life savings** to cover several checks to [redacted]

Unfortunately, my sister and I have now had to intercede. I recently worked with your Customer Service Division to cancel all future mailings and tag his accounts (all three) so that no more orders will be accepted. A refund check for a small portion of the unneeded material has been received. Although your representative was helpful, that does not negate the questions that arise from this situation.

Why did not some sort of alarm go off in your system that might trigger something like an inquiry letter, e.g., "Mr. Murphy, did you really mean to order four copies of

Charlotte's Web? Or five copies of *Victor Borge Then and Now?"* All of these were ordered within a **three month period**.

The transaction records which I requested and received indicate that my father spent over $11,000 with you from May 8 through August 21 of this year. Is there nothing in your system that would cause someone to look at this and wonder if it is accurate? Each customer service representative to whom I spoke indicated that this was an inordinate amount of activity -- yet nothing was ever done to investigate these accounts.

Research has shown that when people of limited means get older, they fear running out of money more than anything else. In my father's particular logic, he sees winning the sweepstakes as the easy solution. He is not a wealthy man, and these withdrawals have put a sizable dent in his nest egg. These are the funds meant to see him through the rest of his life.

In hindsight, it is obvious that my sister and I should have become involved in our father's finances sooner; our efforts to let him maintain his independence led us to play a passive role. The unfortunate thing is that he is competent in all other respects. I believe that he -- like many other elderly people -- has fallen prey to the speculative "promises" made in the sweepstakes literature from your company and others. While I'm sure your legal department has cleared everything that the marketing department develops, I do think there should be some morally higher ground when it comes to targeting senior citizens.

Even though it is mentioned that no purchase is necessary to enter (and win) the sweepstakes, my father states emphatically that "Everybody knows that you have to buy something in order to win." He also defends his purchases by saying, "I have to keep buying -- I've reached the next level!" From what I understand, **anyone** who correctly fills out and returns the entry (with or without a purchase) reaches the "next level," but he remains unconvinced.

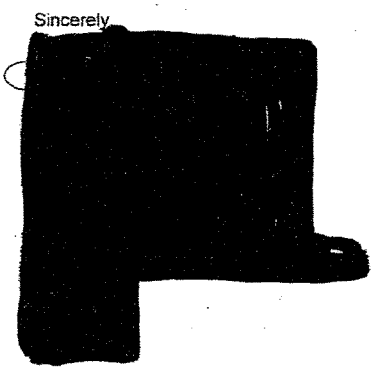
Considering the vulnerability of senior citizens in general, and especially those who are less sophisticated or whose reasoning capacities are diminishing, I believe more should be done to clarify your solicitations. For example:

- The odds of winning (or not winning) should be prominently placed and in larger type.
- Language should not imply that one has already won (or is very close to winning). Attaching a small disclaimer after such a statement has little effect on those people who want to believe that they will win.
- It should be **emphasized** in prominently placed type that it is absolutely not necessary to purchase anything to win.

This whole situation has so tarnished my image of the [redacted] as a trusted vendor and friend to America's families that I will never again purchase anything remotely connected to your publications. While your stockholders may be pleased with their earnings results, my father has been made thousands of dollars poorer by chasing one chance in several million for financial security in his old age.

I would like a response from a company officer, just to verify that this letter was read by someone in a position to act on some of these concerns. I do NOT expect to receive a form letter or something from a customer service representative. I would hope that as the recipient of this letter you will do a little research into my father's accounts, so that you can see the fiscal extent of his belief in you. The Customer Service Department has sent me a copy of recent transactions, but surely there is some way that you can determine the amount of money he has sent to you over the last five years, at least. I would like to know that figure. I hope to hear from you soon. Additionally, I do not want my father to be involved in any correspondence at this point.

Sincerely,



CC: Curtis W. Reynolds, Attorney at Law
American Association of Retired Persons (AARP)

Mr. MCHUGH. Thank you, Ms. Tierney.

I should note that I recently received a mailing from AARP asking me to join. Unfortunately, it was not a fraudulent solicitation because apparently when you reach 50 you become eligible.

Ms. TIERNEY. You would be very welcomed.

Mr. MCHUGH. Nice hearing from you.

We turn our attention to Mr. Jerry Cerasale, senior vice president for Government Affairs of the Direct Marketing Association. Jerry, welcome, and the stage is yours.

Mr. CERASALE. Thank you very much. Good afternoon, Mr. Chairman and members of the subcommittee. The DMA appreciates this opportunity to testify before you. It is a specific pleasure for me to testify before you on something other than H.R. 22. If you are nostalgic, I am sure I can work it in someplace in this piece.

Many, many companies use sweepstakes as a promotion tool. It provides excitement and interest in the terms of Americans for Americans. It is used by McDonald's and people even outside of the mails. We want to keep that as a promotional too. Therefore, the DMA supports Federal legislation to set some guidelines.

We specifically support Federal legislation to help the Postal Service go after the fraudsters; the people who ask you to send in taxes, pre-paid taxes, or send in money for shipping and handling when there is absolutely no prize. We think we should go after them and give some support in that area and help with the stop orders, et cetera.

We do also support Federal legislation that would set national standards for sweepstakes promotions and disclosures. The DMA believes that legislation, however, should not prescribe specific language, or specific placement, or presentation of such a disclosure.

We therefore agree with the approach of S. 335 that the Senate passed on Monday which provides a clear and conspicuous notice of specific disclosures. We believe that approach will provide adequate disclosure and notice to Americans without any question of conflict with the first amendment.

One of the things we are very specific about here is the last thing we want is to have a bill passed that has any conflict with the first amendment and have to go through this again. We want a bill passed that will survive and will provide notice and information to America so that they know what is going on and what is happening.

We would like you to include in any legislation that all disclosures that have to be made in sweepstakes be made in a clear and conspicuous manner. This way we think that these clear and conspicuous disclosures would set the national standard for sweepstakes promotions. We would hope that standard would be consistent with that used by the Federal Trade Commission.

That standard has been in effect for many decades. It applies to advertising and lots of other forms of commercial speech. We hope that the standard would be consistent with that. We do have a concern with a bill that was passed by the Senate in that for two specific disclosures, it added the term "prominant" in addition to clear and conspicuous.

We think that clear and conspicuous, as used by the FTC, includes the term "prominent" as they have so said. The definition

of "prominent" includes the term conspicuous. We think that we want to try and avoid confusion to marketers. That is the last thing we want here, especially with the very high penalties in this bill.

We also do not want to inadvertently have any effect on the decades' law of what clear and conspicuous means. We would think that prominent is a part of clear and conspicuous and hope that you would agree. S. 335 also requires sweepstakes promoters to provide an address or a phone number allowing individuals and, very importantly, care givers to request removal from sweepstakes mailing lists.

We think that is a very important portion of S. 335. It is a very important idea to try and provide protection to Americans. We would hope that would be included in any bill that the House would pass. The DMA believes that the legislation you are considering and will consider is needed. It is needed today. It is needed to present a national standard for sweepstakes mailings.

Recently, the National Association of Attorney's General proposed some guidelines that would have sweepstakes promoters place, on a separate piece of paper, in every sweepstakes promotion statements that no purchase is necessary, and a purchase will not increase your odds of winning; similar to statements that would be required by S. 335 that we agree with.

However, a clear and conspicuous notice that no purchase is necessary, that a purchase will not increase the odds of your entry winning in the mailing, in the rules, and on the order or entry form would not meet the requirements of the NAG guidelines. We think that a patchwork quilt of local, State, and Federal laws dealing specifically with the disclosures that are required in sweepstakes mailings would make a mess, a true mess, for national sweepstakes mailers, legitimate mailers.

Therefore, we ask and we urge you to setup national standards for disclosures of mailings using sweepstakes as a promotional tool. We think that is very, very important to avoid confusion on all sides. Since sweepstakes promotions are used by a vast array of businesses in innumerable situations, any legislation concerning them must be carefully crafted to protect consumers without harming legitimate business promotions.

We stand ready to work with you and your staffs to draft such legislation and have it passed this session of Congress. Thank you again for the opportunity to testify. I am glad to answer any questions you might have.

[The prepared statement of Mr. Cerasale follows:]

TESTIMONY OF
JERRY CERASALE
ON BEHALF OF
THE DIRECT MARKETING ASSOCIATION
BEFORE THE
SUBCOMMITTEE ON THE POSTAL SERVICE
OF THE COMMITTEE ON GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES

August 4, 1999

Mr. Chairman and members of the Subcommittee it is a privilege to testify before you today on the important topic of sweepstakes promotions. I am Jerry Cerasale, Senior Vice President, Government Affairs for The Direct Marketing Association (The DMA).

The DMA has over 4,800 company members who either provide goods and services directly to consumers throughout the world or supply those that do. In the United States direct marketing has a $1.4 trillion annual impact on the economy and directly or indirectly supports over 13 million jobs.

Many DMA members use sweepstakes promotions to heighten consumer interest in their product offers. Our members have found that sweepstakes increase consumers' excitement and enjoyment of their "at home" shopping experience. In fact, over 80% of American households have received sweepstakes offers and an Opinion Research Center poll found that 56% of Americans have entered a sweepstakes in the past year. Not only have direct marketers found sweepstakes to be a useful promotion technique, but many retail sellers have as well—to name just a few, McDonald's, Blockbuster, Coca-Cola, Pizza Hut, Taco Bell—as well as Visa and Discover Card. A sweepstakes is a prize promotion where prizes are awarded, by chance, to entrants who do not have to pay or purchase to enter or to increase their odds of winning.

Unfortunately, fraudulent operators and scam artists have also learned that disguising their schemes to look like sweepstakes helps them defraud the American public. Their promotions are similar to sweepstakes, but the fraudsters require an entrant to pay up front for the "taxes" on the grand prize or for shipping and handling for the prize. After the consumer pays, no prize ever comes and there is no one at the promoter's address. Those "promotions" are

not legitimate sweepstakes, and they undermine consumer confidence in legitimate sweepstakes promotions of DMA members and others.

The DMA supports legislation that provides greater tools to the Postal Service to combat these scam promotions. We urge you to examine the provisions of S. 335 as passed by the Senate Committee on Governmental Affairs that provide:

1. increased authority for the Postal Service to issue subpoenas for information, after providing due process; and,
2. for stop mail orders issued in one United States District Court to be enforceable in all Districts in the United States.

We believe that these or similar provisions will assist the Postal Service protecting American consumers and preventing erosion of consumer trust in direct marketing.

From recent, well-publicized events, we have learned that a small minority of American consumers is confused by legitimate sweepstakes promotions. They believe that they must purchase something in order to enter or that a purchase will increase their odds of winning with that entry. Those beliefs are incorrect. We are not certain exactly what is the cause(s) of this confusion—the specific wording of the promotions, the increased number of sweepstakes promotions, or as Professor Elizabeth Stearns of the University of Washington believes, aggressive advertisements for state lotteries that require you to pay to play. Fortunately, a vast majority of Americans are not confused. We know from an Opinion Research Center survey that 94% of all Americans understand that they are not necessarily a winner in a sweepstakes promotion. 95% of Americans who enter sweepstakes know that no purchase is necessary to enter. In fact, 4 out of 5 individuals who enter a DMA member's sweepstakes make no purchase. One DMA member testified before the Senate Permanent Subcommittee on Investigations that 9 out of 10 sweepstakes entrants make no purchase. This is clear evidence that those entrants understand the sweepstakes promotion.

Even though the number of Americans who are confused by sweepstakes promotions is small, The DMA supports legislation that sets a national standard for those promotions to help avoid the confusion and allow those who are confused to no longer receive sweepstakes promotions.

Any legislation, however, should not prescribe commercial speech that runs afoul of the First Amendment. Therefore, we disagree with the approaches in the bills proposed by Representatives Lobiando and Rogan. We believe that mail recipients can be given required notice without a law prescribing specific language, placement, and size. Thus, the law would be consistent with the First Amendment. In addition, we believe that any bill should establish national standards and not delegate that authority to the Postal Service or any other federal agency.

The DMA has worked very closely with the Senate Committee on Governmental Affairs to draft legislation establishing a series of disclosures, in any sweepstakes promotion that includes entry materials, to avoid confusion without prescribing specific wording, placement or

appearance of the disclosures. We believe that this approach will provide adequate disclosure without conflicting with the First Amendment.

The legislation in the Senate states that the disclosures must be displayed clearly and conspicuously, and there is significant case law regarding the definition of such disclosures. The promotions should include statements to the effect that no purchase is necessary and that a purchase will not enhance the odds of that entry winning. Those two disclosures must appear in three places: (1) on the order-entry form; (2) in the mailing; and, (3) in the rules. The promotion also must contain:

- The rules.
- All terms and conditions.
- The name of the promoter.
- An address at which the promoter may be reached.
- The number and nature of prizes.

In addition, promotions must not contain contradictory statements and cannot represent that non-purchasers will be disqualified from receiving future sweepstakes mailings. A sweepstakes promotion cannot represent that an individual is a winner unless that is true.

We believe that these clear and conspicuous disclosures should avoid confusion for some consumers and set the standard for sweepstakes promotion disclosures. The manager's amendment in the Senate contains a definition of clear and conspicuous. The DMA agrees that a definition of clear and conspicuous should be included in the language of a sweepstakes bill. The definition should be consistent with that used by the Federal Trade Commission when it evaluates advertising, including that the message be understandable to the group to which the advertisement is primarily directed acting reasonably. The manager's amendment in the Senate contains the term "prominent" in addition to "clear and conspicuous" for the disclosures that no purchase is necessary and that a purchase will not increase the odds of the entry winning. We are concerned that the addition of this term may cause confusion for marketers and for those enforcing the provisions of this bill, if it becomes law. Clear and conspicuous under the FTC includes the term prominent. Every statement that is clear and conspicuous is prominent in the circumstances presented. For example, a clear and conspicuous statement in the rules of a sweepstakes will be prominently displayed in those rules. The addition of the term "prominent" does not add to the requirements in the bill. The addition merely creates the question of why the term was added. That adds confusion to the well settled term of "clear and conspicuous" and I believe detracts from the understanding of the requirements.

S. 335 as reported establishes significant penalties for violation of these disclosures. We concur.

The DMA also supports similar disclosures and penalties for games of skill.

We are not naïve enough to believe that these disclosures will eliminate confusion on the part of a few consumers. The recent examinations of sweepstakes promotions has revealed that some caregivers of individuals who are confused by sweepstakes promotions and who purchase

items they neither want nor need have had difficulty preventing those in their care from receiving sweepstakes promotions. Thus, The DMA supports the provision in S. 335 requiring sweepstakes promoters to remove individual's names who contact them (or whose caregivers contact) from sweepstakes mailing lists.

The manager's amendment to S.335 will have a substitute for section 8 requiring that every mailing containing sweepstakes entry materials provide a clear and conspicuous disclosure of an address and/or toll-free telephone number at which an individual, caregiver or guardian may request removal of a name from that company's sweepstakes mailing list. We concur with that approach. This provides assistance to caregivers who are looking after individuals who are confused by sweepstakes promotions and would remain confused even with additional clear and conspicuous declarations.

The managers amendment replaces the national removal list provision of S. 335 as reported by the Senate Governmental Affairs Committee. We have significant concerns with that provision. Sweepstakes promotions come in all shapes and sizes. The one-size fits all national notification system that would have been established under the original section 8 of S. 335 would provide a competitive advantage for certain marketers and would prevent certain marketers, including many non-profit organizations, from using sweepstakes promotions because of the costs of maintaining and implementing the national system.

The DMA believes strongly that the legislation you are considering today is needed to present a national standard for sweepstakes mailings. Recently, the National Association of Attorneys General has proposed guidelines for sweepstakes promoters to include a separate insert with disclosures that no purchase is necessary and that a purchase will not increase the chances of winning. Clear and conspicuous notices of the same **in the mailing, in the rules and on the order entry form** would not be required by the Attorneys General and would not be sufficient. This guideline directly conflicts with the approach of the legislation you and the Senate have considered. Layers and layers of differing state, local and national laws will cause significant problems for marketers in national economy. We ask you—we urge you—to set a national standard for disclosures for mailings using sweepstakes as a promotional tool.

Since sweepstakes promotions are used by a vast array of businesses in innumerable situations, any legislation concerning those promotions must be carefully crafted to protect consumers without harming legitimate business promotions. The DMA stands ready to work with you and your staffs to draft such legislation and have it passed this session of Congress.

Again, I thank you for the opportunity to testify before you today and will attempt to answer any questions.

The Direct Marketing Association is a trade association representing Internet and direct marketing companies and their suppliers and does not receive any federal, state or local funding for any of its operations.

Jerry Cerasale

Jerry joined DMA in January, 1995, as Senior Vice President, Government Affairs. He is in charge of DMA's contact with the Congress, all federal agencies and state and local governments. Prior to joining DMA he was the Deputy General Counsel for the Committee on Post Office and Civil Service, United States House of Representatives. He served for 12 years at the Postal Rate Commission as Legal Advisor to Chairman Steiger and most recently as Special Assistant to the Commission. He was an attorney advisor to Federal Trade Commission Chairman Steiger. Prior to the PRC he was employed in the Law Department of the Postal Service. He received his B.A. in Government and Economics from Wesleyan University, Middletown Connecticut and his J.D. from the University of Virginia School of Law. He served in the U.S. Army and resides in Manassas, Virginia with his wife and three children.

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Jerry Cerasale
Senior Vice President
Government Affairs

September 14, 1999

The Honorable John McHugh
Chairman
Subcommittee on the Postal Service
Committee on Government Reform
U.S. House of Representatives
B349-C Rayburn HOB
Washington, DC. 20515

Dear Chairman McHugh:

The Direct Marketing Association, Inc. (DMA) appreciates this opportunity to present its views further on legislation regarding sweepstakes mailing. As you know, the DMA has been a supporter of appropriate legislation in the area of sweepstakes. However, it has several concerns regarding certain provisions of the Deceptive Mail Prevention and Enforcement Act, S. 335, 106th Cong. (1999) (the "**bill**"). DMA takes this opportunity to provide its views on the disclosure and preemption provisions of the bill and to recommend how those provisions should be modified.

Disclosure

Section 3 of the bill would amend 39 U.S.C. § 3001 to add a requirement that sweepstakes promotions contain certain disclosures to avoid being deemed deceptive and therefore "nonmailable matter." Specifically, a sweepstakes promotion will be considered nonmailable matter unless it:

- Prominently discloses in the mailing, in the rules, and on the order or entry form that no purchase is necessary to enter the sweepstakes (§ k(3)(a)(ii)(I));

- Prominently discloses in the mailing, in the rules, and on the order or entry form that a purchase will not improve an individual's chances of winning (§ k(3)(a)(ii)(II));

- States all terms and conditions of the sweepstakes promotion, including the rules and entry procedures (§ k(3)(a)(ii)(III));

- Discloses the sponsor or mailer of the promotion and its principal place of business or an address at which it may be contacted (§ k(3)(a)(ii)(IV));

- Contains sweepstakes rules stating the estimated odds of winning each prize, the quantity, estimated retail value, and nature of each prize, and the schedule of any payments made over time. (§ k(3)(a)(ii)(V)).

Each of the above-listed disclosures is required to be "clearly and conspicuously displayed," § k(5), which the bill defines as "presented in a manner that is readily noticeable, readable, and understandable to the group to whom the applicable matter is disseminated." § k(1)(A). The bill's definition of "clearly and conspicuously" is, as noted by Senator Levin, "consistent with the definition used by the Federal Trade Commission." 145 Cong. Rec. S9965-04, *S9973 (Aug. 2, 1999) (Statement of Sen. Levin); *see also* Truth in Lending Act, 15 U.S.C.A. § 1602(f) (West 1999) (defining "adequate notice" as "a printed notice to a cardholder which sets forth the pertinent facts clearly and conspicuously so that a person against whom it is to operate could reasonably be expected to have noticed it and understood its meaning"); *Chrysler Corp.*, File No. 982 3162 (FTC Oct. 1998) ("video or written disclosures must be made in a manner that is readable and understandable to a reasonable consumer"); *RBR Prods., Inc.*, Docket No. C-3696 (FTC Dec. 10, 1996) ("[a] cross-reference shall be deemed clear and conspicuous if it is of sufficient prominence to be readily noticeable and readable by the prospective purchaser when examining the part of the package on which the representation appears"); *Mr. Coffee, Inc.*, File No. 912 3036 (FTC Feb. 18, 1993) (same); *Mobil Oil Corp.*, Docket No. C-3415 (FTC Feb. 1, 1993) ("[a] cross-reference shall be deemed clear and conspicuous if it is of sufficient prominence to be readily noticeable and readable by the prospective purchaser when examining the package"); *Am. Enviro Corp.*, Docket No. C-3376 (FTC March 18,1992) (same); *First Brands Corp.*, File No. 902 3113 (FTC Sept. 10, 1991)(same).

Other statutes define "clear and conspicuous" as requiring a similar level of preeminence. *See, e.g.*, 15 U.S.C.A. §2302(b)(1)(B) (West 1999) (Magnuson-Moss Warranty Act allows the FTC to "prescribe rules for determining the manner and form in which information with respect to any written warranty of a consumer product shall be clearly and conspicuously presented or displayed so as not to mislead the reasonable, average consumer . . . ."); Unif. Commercial Code § 1-201(10) (1998) ("A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it"); 12 C.F.R. Pt. 213, Supp. I (West 1999) (official staff interpretation) (Under Regulation M, "[t]he clear and conspicuous standard requires that

disclosures be reasonably understandable"); *see also In re Noble*, 182 B.R. 854, 858 (Bankr. W.D. Wash. 1995) (applying UCC definition to Bankruptcy Code § 524(c)).

The bill requires that the statements that (I) there is no purchase necessary to enter the sweepstakes and (II) a purchase will not increase an individual's chances of winning must be made "prominently." *See* § k(3)(a)(ii)(I) and § k(3)(a)(ii)(II). Thus, those two disclosures are required to be displayed **both** (1) "clearly and conspicuously" and (2) "prominently." *See* 145 Cong. Rec. S9965-04, *S9972 (Aug. 2, 1999) (Statement of Sen. Levin) ("two critical disclosures – 'no purchase necessary' and 'a purchase will not increase an individual's chances of winning' – are required to be **not only** 'clearly and conspicuously displayed' but 'prominently' displayed **as well**") (emphasis supplied).

Senator Levin, one of the authors of the bill, has indicated that he considers those two disclosures "so important to giving a consumer the information he or she needs to decide whether or not to enter a sweepstakes and if so, whether or not to purchase an advertised product – that they should appear prominently in three places in the mailing." 145 Cong. Rec. S9965-04, *S9973 (Aug. 2, 1999) (Statement of Sen. Levin). Thus, he notes, "Our addition of the term 'prominently' to these two disclosures is intended to emphasize the heightened significance of these disclaimers." *Id.*

Accordingly, it appears that "prominently" is intended to be a more stringent standard than "clearly and conspicuously." In order to satisfy a "prominently" requirement, disclosures "must be highly visible and highly noticeable to the reader," must be made "different from other messages in appearance, manner of presentation, and location," and "must stand out from the rest of the printed material on the three locations where they are required to appear." 145 Cong. Rec. S9965-04, *S9973 (Aug. 2, 1999) (Statement of Sen. Levin). Well-settled principles of statutory construction require that if the term "prominently" is included as an additional term in the statute, it must be construed as having a different meaning from "conspicuously." *See United States v. Alaska*, 521 U.S. 1, 59, 117 S. Ct. 1888, 1918 (1997) ("The Court will avoid an interpretation of a statute that renders some words altogether redundant") (quotation omitted); *Idahoan Fresh v. Advantage Produce, Inc.*, 157 F.3d 197, 202 (3d Cir. 1998) ("In interpreting a statute, courts should endeavor to give meaning to every word which Congress used and therefore should avoid an interpretation which renders an element of the language superfluous . . . . This basic tenet of statutory construction applies equally to the interpretation of regulations").

First Amendment

The fact that the bill would require two of the disclosures to satisfy not only the well-established "clearly and conspicuously" standard, but also the more

rigorous "prominently" standard, raises serious First Amendment concerns. Mailers have long been permitted to choose from a nearly infinite number of ways to provide "clear and conspicuous" disclosures to consumers in order to avoid rendering a promotion deceptive. Satisfying such clear and conspicuous disclosure requirements produced perfectly lawful, non-deceptive mailings. Subjecting the aforementioned two disclosures to the additional and more exacting requirement of "prominently" would reduce the number of options available to sweepstakes mailers, thereby limiting their freedom to choose among perfectly lawful, non-deceptive alternatives.

Because the bill restricts sweepstakes mailers' ability to place sweepstakes promotions in the mail that tell consumers – in **any** "clear and conspicuous" way – that there is no purchase necessary to enter the sweepstakes and that a purchase will not increase an individual's chances of winning, the bill constitutes a restriction on commercial speech. Indeed, it has been said about use of the mails, "The United States may give up the post-office when it sees fit, but while it carries it on the use of the mails is almost as much a part of free speech as the right to use our tongues . . . ." *Lamont v. Postmaster General of the United States*, 381 U.S. 301, 305, 85 S. Ct. 1493, 1496 (1965) (quoting *United States ex rel. Milwaukee Social Democratic Pub. Co. v. Burleson*, 255 U.S. 407, 437, 41 S. Ct. 352, 363 (1921) (Holmes, J., dissenting)).

The more exacting "prominently" standard should be omitted from the bill because it raises serious doubts as to the propriety of its restrictive nature under well-established tenets of constitutional law protecting commercial speech under the First Amendment. The Supreme Court has established the minimum test that must be satisfied when determining whether a restriction on commercial speech[1/] is constitutionally permissible:

> At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask whether the

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1/ Because sweepstakes promotions "propose a commercial transaction" (although they do not require one because there is no purchase necessary to enter), they constitute commercial speech. *State Univ. of New York v. Fox*, 492 U.S. 469, 473-74, 109 S. Ct. 3028, 3031 (1989).

> asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.

Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n, 447 U.S. 557, 566, 100 S. Ct. 2343, 2351 (1980); *see also Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748, 96 S. Ct. 1817 (1976). Under the *Central Hudson* test, "the Government bears the burden of identifying a substantial interest and justifying the challenged restriction." *Greater New Orleans Broad. Ass'n, Inc. v. United States*, 119 S. Ct. 1923, 1930 (1999).

The commercial speech the bill proposes to restrict – disclosures in sweepstakes promotions that already are clear and conspicuous and state that there is no purchase necessary to enter and that a purchase will not increase an individual's chances of winning – is protected by the First Amendment under the first part of the *Central Hudson* test. The speech concerns lawful activity since sweepstakes are lawful when conducted in accordance with pertinent federal and state laws and regulations, and are not misleading as long as the subject disclosures are "presented in a manner that is readily noticeable, readable, and understandable to the group to whom the applicable matter is disseminated," § k(1)(A), *i.e.*, are "clear and conspicuous."

Although the bill does not clearly identify the government's **substantial** interest in requiring certain clear and conspicuous disclosures also to be displayed "prominently," DMA does not dispute that the government's interest in ensuring that mailers give "a consumer the information he or she needs to decide whether or not to enter a sweepstakes and if so, whether or not to purchase an advertised product,"145 Cong. Rec. S9965-04, *S9973 (Aug. 2, 1999) (Statement of Sen. Levin), is substantial. It is not clear, however, whether raising the legal requirement from "clear and conspicuous" to "clear and conspicuous **and prominent**" is sufficient to satisfy the second part of the *Central Hudson* test. (DMA does not dispute that disclosures that are displayed clearly and conspicuously, and prominently in three places do directly – although overly restrictively – advance that interest under part three of the *Central Hudson* test.)

However, requiring disclosures to be displayed clearly and conspicuously **and prominently** is a more extensive restriction on commercial speech than is necessary to provide consumers with needed information. Thus that provision of the bill fails to satisfy the fourth part of the *Central Hudson* test. For regulation of commercial speech to be permissible, there must be "a fit between the legislature's ends and the means chosen to accomplish those ends . . . a fit that is not necessarily perfect, but reasonable,"

and the regulation must be "narrowly tailored to achieve the desired objective." *Fox*, 492 U.S. at 480, 198 S. Ct. at 3035 (citations and quotations omitted); *see also Edenfield v. Fane*, 507 U.S. 761, 767, 113 S. Ct. 1792, 1798 (1993) (laws restricting commercial speech must be "tailored in a reasonable manner to serve a substantial state interest"); *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 416, 113 S. Ct. 1505, 1510 (1993). That "fit" is provided by the bill's requirement that all of the requisite disclosures be "clear and conspicuous," inasmuch as consumers who receive sweepstakes promotions containing such disclosures will be provided with sufficient information to avoid being deceived where such information is "readily noticeable, readable, and understandable." A consumer that can readily notice, read, and understand the subject disclosures has, by definition, been given enough information to make a determination as to whether he or she chooses to participate in a sweepstakes promotion or make a purchase. Rather than being narrowly tailored, the bill's requirement that two of the disclosures be displayed clearly and conspicuously **and prominently** goes far beyond what is necessary to inform consumers, and therefore raises serious First Amendment concerns.

Confusion and Ambiguity

Defining "prominently" as a more stringent standard than "clearly and conspicuously" (in context, really more stringent than "conspicuously") will lead to confusion and ambiguity among mailers in that well-established and long-followed precedent, established by the FTC as well as by the judiciary, heretofore has used those terms synonymously or interchangeably. Notably, the Postal Service regulations themselves currently use "conspicuous" and "prominent" synonymously. *See* 39 C.F.R. § 233.2 (West 1999) (wanted circulars used to locate fugitives should be posted "in the **most conspicuous** place in the post office lobby and **other prominent** places") (emphasis supplied); *see also* 15 U.S.C. § 1632 (West 1999) (information shall be "placed in a conspicuous and prominent location"); 27 U.S.C. § 215 (West 1999) (statement "shall be located in a conspicuous and prominent place");16 C.F.R. 307.6 (West 1999) ("A **conspicuous and prominent** place is a part of a label that is likely to be displayed, presented, shown, or examined")(emphasis supplied); *In re Noble*, 182 B.R. 854, 858 (Bankr. W.D. Wash. 1995) ("The plain language of [Bankruptcy Code] § 524(c) requires a "conspicuous statement to be made prominent in some fashion");*Tiger Direct, Inc.*, File No. 9723075 (FTC June 1999) ("'Reasonable period of time' shall mean that period of time specified in respondent's advertisements, promotional materials or solicitations if such period is clearly and **prominently** disclosed in the advertisement, promotional material or other solicitation; or if no period of time is clearly and **conspicuously** disclosed in the advertisement, promotional material or other solicitation . . .") (emphasis supplied); *Royal Furniture Co.*, 93 F.T.C. 422 (1979) ("Such language shall be considered prominently and conspicuously displayed only if so positioned as to be easily observed and read by intended individuals").

Indeed, in *Edgeworth v. Fort Howard Paper Co.*, cited by Senator Levin to support a stringent meaning of "prominent," the court's definition was derived from an EEOC regulation containing both terms and using them interchangeably. 673 F. Supp. 922, 923 (N.D. Ill. 1987) (interpreting 29 C.F.R. § 1601.30, which requires that notices be "posted in conspicuous places . . . . Such a notice must be posted in prominent and accessible places where it can be readily observed by employees, applicants for employment and union members").

Thus, a requirement that the statements that (I) there is no purchase necessary to enter the sweepstakes and (II) a purchase will not increase an individual's chances of winning be "prominently" displayed, according to a more stringent definition than the disclosures that must only be "clear and conspicuous," will cause ambiguity and confusion among those seeking to comply with statutes enforced by the Postal Service, FTC, and others in which "prominently" and "conspicuously" always have had the same meaning. If "conspicuous" means something less stringent than "prominent," there is a risk that well-established standards created by statutes requiring "conspicuous" disclosures will be interpreted as requiring something less, a result which ultimately will lead to less, not greater, consumer protection.

Therefore, to avoid First Amendment concerns and to prevent confusion and ambiguity among those seeking to comply with the bill as well as with numerous other statutes, the requirement that the subject disclosures be displayed "prominently" should be deleted from the bill.

Preemption

DMA also is concerned about the proposed preemption provision of the bill. In § 9, the bill would preempt only those state laws that impose less restrictive requirements. Section 9(a) provides:

> Nothing in the provisions of this Act (including the amendments made by this Act) or in the regulations promulgated under such provisions shall be construed to preempt any provision of State or local law that imposes **more restrictive** requirements, regulations, damages, costs, or penalties. No determination by the Postal Service that any particular piece of mail or class of mail is in compliance with such provisions of this Act shall be construed to preempt any provision of State or local law.

(emphasis supplied). Thus, states would be free to impose regulations that are **inconsistent** with the bill.

Preemption only of less restrictive provisions, and not of inconsistent provisions, would result in an intolerable situation for sweepstakes mailers, who must design their promotions in order to comply with all applicable laws and regulations. Most companies offering sweepstakes promotions are national in scope and offer their sweepstakes opportunities to consumers in many, if not most, states. It is economically unfeasible to design a different promotion for each state in order to comply with each state's laws.

For example, the bill requires certain disclosures to be displayed in three places in the promotion. A state law requiring those disclosures to be placed in three places, but in different places from those specified in the bill, would force the sweepstakes mailer to design a promotion with the disclosures in six different places. Multiply that by the number of different state requirements, and you can understand the nightmare that sweepstakes promoters may face. If there were differences in the regulations, or even just the locations specified by the laws of each state, the mailer would be placed in the economically impossible position of having to create a different promotion to satisfy each state's inconsistent law.

Another effect under the bill's preemption provision would be for mailers attempting to comply with the requirements of multiple states to design promotions containing extremely lengthy, detailed and complex disclosure sections. However, overwhelming consumers with a mass of disclosures would likely have little positive effect on providing them with the information they need in order to decide whether to enter a sweepstakes and whether to make a purchase.

Without uniformity, the only option would be for mailers to comply with the requirements and restrictions of the state with the most onerous requirements. Thus, as a practical matter, that state would dictate national policy and requirements for all.

A more workable alternative would be to revise § 9 to provide for preemption of any state or local law containing provisions **inconsistent** with the bill. DMA proposes the following language:

> The provisions of this Act, including the amendments made by this Act, and the regulations promulgated thereunder, supersede those provisions of any State law, municipal ordinance, or other local regulation which are inconsistent with them, or require that a disclosure or right be given in a language, form or manner that is different in any way from that required by this Act.

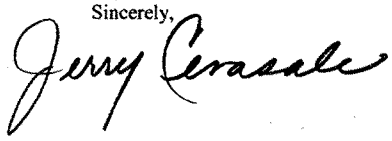
Preemption of all inconsistent state and local laws would provide mailers with a uniform standard to follow in designing sweepstakes promotions, which would ensure that

consumers are adequately provided with the information they need to decide whether to participate in a sweepstakes and whether to make purchases.

Conclusion

The Deceptive Mail Prevention and Enforcement Act should rely on the time-honored standard of "clear and conspicuous" disclosures and should not tread on First Amendment rights or create confusion over heretofore established and understood requirements by adding an additional "prominent" requirement. The Act should provide the national uniformity that is required for national mailers by preempting inconsistent state and local laws that address the same issues addressed by the Act.

Sincerely,



Mr. MCHUGH. Thank you, Jerry. Let me assure you it is wonderful to hear anybody say anything about something other than H.R. 22. We are mutually happy here.

Next is Mr. Michael Pashby. He is executive vice president of consumer marketing for the Magazine Publishers of America. Mr. Pashby, thank you for being here. Thank you for your patience. We are looking forward to your comments.

Mr. PASHBY. Good afternoon, Mr. Chairman, and members of the subcommittee. As the chairman mentioned, I am Michael Pashby. I am executive vice president of consumer marketing for Magazine Publishers of America, which is the trade association for the American consumer magazine industry.

I have already submitted detailed comments. So, in the interest of time, and as he has suggested, I will provide a summary of the key points.

Our industry has used sweepstakes promotions to attract new readers for over 30 years. As Chairman Burton pointed out, this promotional tool provides over 50 million, or about one-third, of all new readers each year.

Following the events of last year, consumers have apparently lost confidence in this promotional tool. Our industry has suffered a very, very significant reduction in orders.

We believe that a multi-prong effort, including legislative action to amend title 39, is appropriate and necessary to protect vulnerable consumers, stop fraud, and to rebuild confidence in our industry.

Today, I would like to concentrate on the legislative proposals that we believe will have a very important role in achieving a long-term solution that provides sufficient consumer protection while allowing sweepstakes to continue as a viable sales technique.

We have worked very, very closely with Senators Collins, Levin, and Edwards during the past 6 months, and are pleased that S. 335 was approved unanimously by the Senate on Monday. We look forward to working with you in fine tuning certain provisions but, in general, S. 335 as passed, is a comprehensive bill that attempts to balance the needs of consumers and the Postal Service with the needs of legitimate business.

It creates a national standard for effective consumer disclosures, while avoiding mandated speech requirements that could create first amendment issues or intimidate consumers into thinking that sweepstakes are so inherently unsavory or unethical that they should be avoided.

As we, and others, have pointed out to the Senate during their deliberations, restrictions on commercial speech may not be any more extensive than necessary to accomplish the Government's interest. We believe S. 335, with its flexible disclosure standards that accommodates different mailing approaches, is a more appropriate vehicle for this subcommittee's deliberations than H.R. 170 and H.R. 237, introduced by Representatives LoBiondo and Rogan. Although well-meaning, both bills raise commercial speech concerns by specifying precise wording, type size, and placement of disclosures. In addition, H.R. 170 and H.R. 237 provide for expansive rulemaking authority for the Postal Service, even though it is not

subject to the public hearing and due process protections of the Administrative Procedure Act.

We believe that the House should adopt the well-established and well-understood clear and conspicuous standard for disclosures. This standard has been used by the Federal Trade Commission and the courts for many years, over which time a comprehensive, but flexible meaning has emerged. Our written testimony details the steps that we believe this subcommittee must take to explicitly incorporate the full meaning of the clear and conspicuous standard. This will provide the Postal Service and courts appropriate guidance, while retaining legitimate mailers with flexibility in marketing styles, and approaches. As we state in our written testimony, we believe that adding the word "prominantly," as the Senate has now done, introduces an unnecessary and potentially troublesome ambiguity into this bill.

A key component of the Senate bill is to allow consumers to opt out of receiving sweepstakes mailings. Our customers are important to us. We support giving them that choice. We are pleased that the Senate properly recognized that for this to be an effective and workable protection for consumers, it must be handled as a company-by-company system. In addition, magazines and newspapers have been granted an extremely limited exception so that they may continue to mail issues containing sweepstakes promotions to paid subscribers. Although certain companies will find it very challenging to comply with the opt out system, we urge this subcommittee to embrace the company-by-company approach and recognize the importance of the magazine exception.

As one final important point that merits this subcommittee's strong consideration. We support Congress' intent to create uniformed standards for sweepstakes disclosures. Magazines are nationally marketed and mailed. The Postal Service requires stronger enforcement powers on a national scale. Yet, the Senate and the House legislation explicitly state the State laws are not preempted. We believe that the complex overlay of potentially conflicting State legislation could undermine the clarity and consistency sought by Congress.

We urge this subcommittee to preempt inconsistent State disclosure requirements, particularly in light of the many different and sometimes inconsistent and irreconcilable State legislative proposals that the industry has faced this year. For example, proposals arose in one State legislature this year that any sweepstakes mailing not having the "You have not automatically won" warning at the top of the first page of the mailing would result in a crime; and a more serious crime to the extent mailed to people over 59; in another State, a completely different list of disclosure requirements, with a different "clear and conspicuous" disclosure definition is pending before the legislature. Indeed, at least one State has proposed to ban sweepstakes mailings completely.

It is impossible for national marketers, such as the magazine industry, to effectively deal with such a patchwork of different, specific, and sometimes criminally mandated disclosure requirements.

Thank you for providing our Association with an opportunity to present our views. We look forward to working with this subcommittee to bring this important matter to a fair, speedy, and expeditious conclusion. We would be happy to answer any questions.

[The prepared statement of Mr. Pashby follows:]

TESTIMONY OF
MICHAEL PASHBY
ON BEHALF OF
THE MAGAZINE PUBLISHERS OF AMERICA
BEFORE THE
SUBCOMMITTEE ON THE POSTAL SERVICE
OF THE COMMITTEE ON GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES
AUGUST 4, 1999

Good afternoon, Mr. Chairman and members of the Subcommittee. My name is Michael Pashby and I am Executive Vice President of Consumer Marketing for the Magazine Publishers of America. I am pleased to join you today to discuss the issue of sweepstakes promotions, an important promotional marketing tool for the consumer magazine industry.

The Magazine Publishers of America (MPA) is the trade association for the U.S. consumer magazine industry. The Association was established in 1919, and today MPA represents more than 200 domestic publishing companies, with approximately 1200 magazine titles. Our membership also includes more than 75 international companies and 90 associate service providers.

Sweepstakes is a marketing tool that has been used in our industry for over thirty years and we hope that through the efforts of your Subcommittee and our own efforts, this tool will continue to serve the magazine industry well in the future. Magazine sweepstakes promotions are national mailings sent to every state, reaching most of the households in America. Consumers entering legitimate magazine sweepstakes have a chance to win money or valuable prizes and an opportunity to try the magazine they want, risk free, and at a discounted price. Over the years, sweepstakes promotions have brought us many satisfied customers, with sweepstakes accounting for between 20 and 33 percent of all new magazine subscriptions.

Mr. Chairman, you called this hearing to review the necessity of amending Title 39 to address the mailing of deceptive materials relating to games of chance. MPA believes that legislative changes to Title 39 are an appropriate component of a multi-prong solution to the current controversy over sweepstakes mailing practices, particularly by expanding

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the Postal Service's ability to stop fraudulent and deceptive mailings, creating a uniform national standard for disclosures, and guaranteeing consumer choice. We believe, furthermore, that both industry and Congress have a role to play in achieving a long-term solution that provides sufficient consumer protection while allowing sweepstakes to continue as a viable sales technique.

What do we see as industry's role? MPA believes that our Association's role is to lead our membership with self-regulatory efforts and consumer education. To this end, in January, MPA adopted Ethical Business Practices for Sweepstakes Promotions. These ethical business practices highlight the key disclosures that should be clearly stated in all sweepstakes promotions mailed by our members. The practices also recommend that publishers identify consumers who are overly-responsive to sweepstakes, offer them an opportunity to cancel excessive subscriptions, and remind them that no purchase is required to enter sweepstakes. Finally, our practices advocate that publishers establish a sweepstakes opt-out system for their company, so that consumers who do not wish to receive sweepstakes promotions can opt-out of future mailings.

We, and the other associations represented here today, also believe in the importance of consumer education. We are committed to making sure consumers fully understand sweepstakes mailings, and are seeking to undertake cooperative efforts with consumer groups to develop consumer-friendly educational brochures. We have held preliminary discussions with AARP in this regard, and hope to be able to craft useful and informative consumer education materials describing sweepstakes disclosures, terms and conditions, and tips for spotting fraudulent promotions.

Our Association also envisions a role for Congress and your Subcommittee in the multi-prong solution, namely crafting legislation to allow the Postal Service increased enforcement authority to stop fraudulent and deceptive mailings and to set a national standard for clear disclosure of sweepstakes terms and conditions. We have been active supporters of the legislative process, fully participating in the Senate's consideration of sweepstakes legislation. Our efforts included submitting extensive comments to Senator Susan Collins on S. 335, the Deceptive Mail Prevention and Enforcement Act, as well as on additional legislation previously proposed in the Senate.

While recognizing the need for sweepstakes legislation to address fraudulent and deceptive mailing practices, we have been mindful of the

need to ensure that legislative proposals are consistent with First Amendment principles. In our comments and meetings with Senate staff, we urged the Senate to craft legislation that creates a national standard and "bright line" approach that industry can follow, while avoiding mandated speech requirements that could violate the First Amendment. The Freedom to Advertise Coalition, of which MPA is a founding member, also filed comments to the Senate describing how Congress could achieve an appropriate balance between effective consumer disclosures and commercial speech protection. The Coalition urged Congress to avoid mandating express wording, type size or style, or placement of sweepstakes disclosures. Our Association is pleased that the current draft of the Senate legislation attempts to avoid such constitutionally-troubling provisions.

In this regard, we believe that the Senate legislation is a more appropriate vehicle for this Subcommittee's deliberations than the legislation introduced by Representative LoBiondo (H.R. 170) and Representative Rogan (H.R. 237). These two legislative proposals, albeit well-meaning, do, in fact, mandate specific wording, type size, and precise placement of disclosures and would, therefore, unduly burden commercial speech, particularly in view of the fact that such requirements would take up an unreasonable proportion of the space available for the promoter's own communication.

Another consideration that we raised in our Senate comments and that we bring to your attention today concerns the inadvisability of providing additional rulemaking authority for the Postal Service to promulgate regulations regarding sweepstakes disclosures. We ask that this Subcommittee remain mindful of the fact that the Postal Service is not subject to the Administrative Procedure Act and the public hearing and due process protections afforded by that law. We are pleased that the current version of the Senate legislation avoids granting additional unfettered rulemaking authority to the Postal Service. The bills introduced by Representatives LoBiondo and Rogan, however, do not adequately limit non-APA compliant rulemaking. Both H.R. 170 and H.R. 237 provide for broad Postal Service rulemaking authority in implementing the legislation.

Rather than cede rulemaking authority to the Postal Service, we urge this Subcommittee to enact legislation that correctly mandates use of the universally accepted "clear and conspicuous" standard for consumer disclosures. This standard has been used by the Federal Trade Commission and the courts for many, many years.

Throughout the Senate's deliberations, we have consistently advocated the "clear and conspicuous" standard. We believe that existing precedent provides an adequate yet flexible standard and are pleased that S.335 as reported by the Senate Governmental Affairs Committee incorporates this standard. The Committee Report explains why the Committee chose to rely on the common sense application of the term "clear and conspicuous" and how this standard will ensure that disclosures are readily apparent and understood by the average reader.

We do, however, have a number of concerns about the interpretation of this standard in the manager's amendment that we understand may be considered by the full Senate. First, while the definition of "clearly and conspicuously displayed" included in the manager's amendment makes clear that a disclosure is clear and conspicuous, and therefore effectively communicated, when it is displayed in a manner that is readily noticeable, readable and understandable to the group of recipients to whom the mailing is disseminated, it fails to explicitly incorporate the full clear and conspicuous standard. As the FTC has stated, it examines disclosures and representations from the perspective of consumers acting reasonably in the circumstances. Furthermore, the FTC has stated that if representations are directed primarily to a particular group, reasonableness should be evaluated from the perspective of that group. We believe that any definition of "clearly and conspicuously displayed" included in the bill should expressly reflect the full standard and well-established precedent.

Second, the manager's amendment specifies that two of the required sweepstakes statements must be "prominently" disclosed. This is apparently in addition to the need for the statements to be clearly and conspicuously displayed. However, the clear and conspicuous standard includes any number of word variations, including clear and prominent. The FTC has stated that all of these variations are deemed to be synonymous. Adding the work "prominently" introduces an unnecessary and potentially troublesome ambiguity into the bill.

Another area of concern that I would like to bring to the Subcommittee's attention involves the opt-out system included in the version of sweepstakes legislation reported by the Senate Committee on Governmental Affairs. Added just prior to the Committee's action, Section 8 of S. 335, as amended by the Committee substitute, would have mandated creation of a central notification and opt-out system that every sweepstakes promoter would have to help establish and maintain. Each of our associations has objected to this central opt-out system on both

conceptual and practical grounds. We have raised many concerns about the workability of such a system, particularly in light of the fact that if the system were not successfully established within one year, all sweepstakes promotions would become nonmailable.

We have also raised concerns that the central opt-out system reported by the Senate Committee on Governmental Affairs could apply to sweepstakes and games of skill that are contained within magazines as either editorial or paid advertising pages. Without an exception for such promotions, publishers might not be able to mail magazines to paid subscribers if such subscribers were on the central opt-out list.

We understand, and are very pleased, that the manager's amendment to be offered on the Senate floor replaces the central opt-out system with a company-by-company approach. Furthermore, we understand that the manager's amendment includes an exception for sweepstakes and skill contest promotions included within a magazine.

We believe that a company-by-company opt-out system will accomplish our mutual desire to provide customers with a choice of whether to receive sweepstakes and games of skill mailings, without creating an unworkable and prohibitively expensive central system. A company-by-company approach will work, although it will be challenging for sweepstakes promoters whose sweepstakes are inserts in third-party mailings to implement. We also believe a company-by-company system ultimately serves the consumer better than a centralized system. When consumers or their care givers communicate directly to a trained customer service representative at the company, that representative will be able to track down variations on names and addresses and will be able to discuss both refund and cancellation policies directly with the consumers. This system would, thereby, satisfy not only the suppression requirements but also provide relief to those consumers who may have made inappropriate purchasing decisions. We urge this Subcommittee to restrict its consideration of an opt-out system to a company-by-company approach. We also urge this Subcommittee to recognize the importance of the magazine exception so that we can fulfill service to our subscribers.

There is one final point that I believe merits this Subcommittee's strong consideration. Our Association supports Congress' intent to create a uniform standard for sweepstakes disclosures that will ensure such disclosures are readily noticeable, readable, and understandable to the target audience. However, the Senate legislation and the legislation introduced by Representative LoBiondo explicitly state that state laws are

not preempted. We believe that a complex overlay of potentially-conflicting state legislation could undermine the clarity and consistency sought by Congress. We urge the Subcommittee to preempt inconsistent state disclosure requirements, particularly in light of the recently-announced recommendations of the state Attorneys General. While the Attorneys General have stated their support for national legislation, their recommendations incorporate a different standard than that recommended by the Senate. To the extent that states may individually choose to adopt some of the Attorneys Generals' recommendations, consumers could ultimately be faced with confusing mailings, which is precisely what this legislation is designed to avoid.

In conclusion, we believe that this Subcommittee's deliberations should concentrate on the Senate legislation, S. 335, as presented with the manager's amendment. This legislation has been the subject of months of discussion and thorough questioning by concerned members of the Senate. Although the result of these discussions is a tough bill that will require substantial changes in our disclosures to all consumers, it gives proper attention to two crucial areas. First, it provides increased authority for the Postal Service to crack down on fraudulent operators who would prey on vulnerable consumers and who undermine the reputations of our members. The need for this enforcement authority was clearly demonstrated in the Senate hearing held on July 20. Second, it provides a national disclosure standard and a guarantee that consumers, or care-givers on their behalf, can opt-out if they so choose.

With some finetuning by this Subcommittee on the clear and conspicuous standard, the Senate legislation could serve as an effective component of a comprehensive response to sweepstakes concerns. In conjunction with the efforts of our associations and individual companies, the Subcommittee can move forward with a balanced effort to ensure consumer protection while maintaining the viability of sweepstakes as a fair and effective marketing tool.

The events of the past few months have convinced us that we must be more vigilant with regard to this very important promotional tool. Testimony presented to the state Attorneys General and the Senate revealed heart-rending cases of people who inappropriately spent large sums on products they neither wanted nor needed, in the vain belief that this would help them win a prize. These are very sad stories and our industry recognizes that it has a responsibility to try to identify these people and help them. Nevertheless, we feel that such limited but tragic anecdotes should not be used to trample the First Amendment or to negate the FTC's

reasonable man standard. We believe that the proposed sweepstakes opt-out system will offer substantial relief to these individuals and their caregivers. We are also pleased that our member companies have been very responsive in accepting returns and offering refunds when such cases are brought to their attention.

Thank you for providing our associations an opportunity to present our views. We look forward to working with the Subcommittee in bringing this important matter to a fair and expeditious conclusion. I would be pleased to answer any questions you may have.

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August 31, 1999

The Honorable John McHugh, Chairman
Subcommittee on the Postal Service
2441 Rayburn House Office Building
Washington, DC 20515-3224

Dear Mr. Chairman:

At the hearing you held on August 4 on sweepstakes and potentially deceptive mailings, you solicited additional input from witnesses on a number of issues. Specifically, you said you welcomed further comments on the terms "clear and conspicuous" and "prominent" as used in S. 335, the Senate-passed version of the Deceptive Mail Prevention and Enforcement Act. You also expressed interest in additional information on First Amendment considerations related not only to the Senate bill, but also to the two bills pending before the House, H.R. 170, introduced by Representative Rogan, and H.R. 237, introduced by Representative LoBiando. A third issue on which you sought further input relates to the need for Federal preemption in this area to avoid a potentially inconsistent and confusing patchwork of state disclosure requirements.

We submit the attached paper to provide background and analysis on two of these subjects: (1) the evolution and meaning of the phrase "clear and conspicuous" in the context of consumer disclosures, and potential problems from the simultaneous use of the term "prominent" in the Senate legislation; and (2) constitutional restrictions on excessive disclosure requirements. We are also attaching a copy of the comments of the Freedom to Advertise Coalition, of which MPA is a founding member, submitted to the Senate Permanent Subcommittee on Investigations during their March hearings. These comments describe the First Amendment implications of potential sweepstakes legislation.

We are preparing a separate paper on the Federal preemption issue and will submit that shortly. We would be happy to answer any further questions you may wish to pose to the Magazine Publishers of America and to provide further information on any of these issues.

Respectfully submitted,

James R. Cregan
Executive Vice President

Attachments

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MAGAZINE PUBLISHERS OF AMERICA

MEMORANDUM

DATE: August 30, 1999

RE: S.335
The "Clear and Conspicuous" Standard as Applied to Consumer Disclosures

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CONCLUSION 17

I. Confusion Concerning the Standard For Disclosure Communications

A. Statement of the Problem

S.335, the "Deceptive Mail Prevention and Enforcement Act" as passed by the Senate, provides that any sweepstakes or game of chance mailing must contain five affirmative disclosures and must not contain any of four other statements. These nine disclosures and prohibitions are deemed necessary to ensure that sweepstakes promotions will not be misleading or deceptive (section 3001(k)(3)(A)(ii)(I)-(X) at pages 6-8 of the bill) and it is specifically provided at section (k)(5) that each of the

required five disclosures "shall be clearly and conspicuously displayed." The July 1, 1999 report on the bill by the Senate Committee on Government Affairs states quite properly that this "clear and conspicuous" requirement "insures that the statements required by the bill are readily apparent and understood by the average reader." (Report at p.22) Unfortunately the manager's amendment adopted on the Senate floor added the word "prominent" to the first two of the five affirmative disclosures, relating to the "no purchase is necessary" notice and the "purchase will not improve the recipient's chances of winning" notice. In colloquy appearing in the Congressional Record, Senator Levin characterized this addition as intending to add emphasis or heightened significance to those disclosures, thereby causing them to be "highly visible and highly noticeable to the reader.". In the colloquy he defined "prominent" as used to mean that those disclosures must be different from the surrounding terms of the promotion, and that it requires:

> ...making the two disclosures to which "prominently" applies different from other messages in appearance, manner or presentation and location. These two disclosures must stand out from the rest of the printed material on the three locations where they are required to appear.

He then concluded that the Postal Service should be guided that "these two disclosures should be obviously, clearly and conspicuously displayed in a prominent manner and location." Congressional Record, S.9973 (Aug. 2, 1999)

We suggest that the amendment and colloquy confuses the substance of a "clear and conspicuous" disclosure with the mechanics of how the disclosure is to be delivered, and in so doing creates a serious ambiguity in the bill. It is suggested that since recognized jurisprudence on this subject teaches that the phrase "clearly and

conspicuously" is a legally recognized standard of effective communication, and that the word "prominent" is merely one indicia of that standard, using both in combination confuses substance with mechanics and creates an unfortunate ambiguity that can only lead to confused enforcement by the Postal Service. MPA urges the House to deal with this ambiguity by eliminating the word "prominent" from the first two disclosures in the bill, as added by the manager's amendment. Alternatively, but far inferior, the House could separately define "prominent" as one indicia of "clear and conspicuous" consistent with the established jurisprudence on the subject.

B. Evolution and Meaning of the Phrase "Clear and Conspicuous" in the Context of Consumer Disclosures

In the context of its duty to implement section 5 of the Federal Trade Commission Act, which provides simply that unfair or deceptive acts or practices are unlawful, the FTC at the request of Congress in 1993 articulated its policy on what is misleading and deceptive - in the context of consumer solicitations. A statement or omission is potentially deceptive if it: (1) is likely to mislead the consumer (or otherwise be unfair), (2) from the perspective of a consumer acting reasonably under the circumstances, and (3) is material. "Thus, the Commission will find deception if there is a representation, omission or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment." (Deception Statement, 103 FTC 110 at 166 (1983)). A similar standard applies in virtually every state, most of which have adopted some form of "little FTC Act." Haskell v. Time, Inc. et al., 857 F.Supp. 1392 (E.D. Calif. 1994).

Affirmative disclosures are one means that the FTC uses to avoid deception. The FTC promulgates "across the board" disclosure requirements, such as tobacco or other general health warnings on appropriate products, and "trigger disclosures" as a result of specific claims that would likely be misleading if not qualified (FTC Staff Report, Consumer Information Remedies, (1979)). The ultimate test is whether the disclosure is effectively communicated to consumers so that "it is displayed in a manner that is readily noticeable, readable and/or audible (depending upon the medium) and understandable to the audience to whom it is disseminated." (FTC Report: Electronic Media, Applicability of FTC Rules, Guides, CCH Trade Reg. Rep., ¶ 50,164 at p.49,238 (May 6, 1998) (hereinafter Electronic Media Report). The clear and conspicuous standard is intended to be an effective but flexible criteria to insure that consumers, acting reasonably, have the information necessary to act prudently while at the same time giving advertisers or marketers "creative leeway" in presenting the required information (Wilkie, Affirmative Disclosures, Perspectives on FTC Orders, Journal of Marketing and Public Policy, 1, 95-110 (1982)). The "clear and conspicuous" standard of disclosure is by definition this standard, regardless of the precise terminology used. Thus as the FTC has stated:

> In all cases the required or advised disclosures must be effectively communicated to consumers. To achieve this general performance standard, the Commission's rules and guides require that disclosures be "clear and conspicuous," using that term or other conceptually similar articulations. [Examples noted[1]] The Commission views such terms as synonymous, and this Notice collectively refers to them as the "clear and conspicuous" standard.

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[1] The following are examples of other articulations found in the Commission's rules and guides: "clearly, adequately, and conspicuously," "clearly, conspicuously, and non-deceptively," "adequate and non-deceptive" (Guides for the Nursery Industry ("Nursery Guides"), 16 CFR 18.8(b)); "sufficiently clear and prominent" (Jewelry Guides, 16 CFR 23.1 n.2); "of such conspicuousness and clarity" (Leather Guides, 16 CFR 24.2(g), and Guides for the Watch Industry, 16 CFR 245.3(o)); "clearly and adequately" (Tire Advertising and Labeling Guides ("Tire Guides"), 16 CFR 228.14(b)(3); Bait Advertising Guides, 16 CFR 238.3(c); Retail Food Store Advertising and

(Electronic Media Report at p.49,238)

The standard therefore is effective communication to the intended consumers. Descriptive words such as "prominent," "adequate," "proximity" and others are merely a way of describing the "clear and conspicuous" standard. This standard has been recognized by the courts as "staples of commercial law" with application to consumer protection, insurance, fair credit and collection practices, etc. Channelle v. Citicorp National services, Inc., 89 F.3d 379, 382 (7th Cir. 1996). It is at the same time a flexible standard giving the promoter or copywriter some flexibility to draft the solicitation material, including the disclosures, in such a way as to be effective as a sales document while complying with these anti-deception requirements. The Commission has stated that in determining whether the effective communication standard - or "clear and conspicuous" standard - has been met, it considers "the disclosure in the context of all of the elements of the advertisement" and specifically:

> ...a disclosure's type size, placement, color contrast to background, duration, and timing, as well as the existence of any images that detract from the effectiveness of the message. In audio messages, such as those delivered over the radio, the Commission may examine the volume, cadence, and placement of a disclosure, as well as the existence of any sounds that detract from the effectiveness of the message. In all media, the Commission further evaluates the language and syntax of the disclosure to determine whether it is likely to be understood by the relevant audience.
>
> (Electronic Media Report at p.49,238)

The particular formulation or emphasis on one or more of these factors is not important; the Commission, and indeed the courts, view the solicitation as a whole and

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Marketing Practices Rule, 16 CFR 424.1); "of sufficient clarity and conspicuousness" (Guides for the Decorative Wall Paneling industry ("Wall Paneling Guides"), 16 CFR 243.1(c)(4)); "legible and conspicuous" (Rules and Regulations Under Fur Products Labeling Act, 16 CFR 301.38(a)(1)); and "conspicuous" (Tire Guides, 16 CFR 228.11).

pass judgment on whether, taking all of these factors into account, the disclosures are effectively communicated to the intended consumers, acting reasonably. (Electronic Media Report at p.49,240.) In the context of this standard, the word "prominent" has no special significance. It is one of the mechanical indicia of whether the structural part of the standard has been met. Thus, "sufficiently clear and prominent" (Jewelry Guides, 16 CFR 23.1 n.2.) is just another iteration of the same standard having no different meaning, and in reciting the factors used to evaluate whether the "clear and conspicuous" standard has been met in the electronic media context, the FTC in its report points to the following factors, all of which should be considered: proximity and placement; prominence; access to disclosures; undistracting factors; repetition and combined audio and video presentation. (Electronic Media Report at p.49,239). Prominence is just one of the factors, but not any more significant to the test than the other factors.

This is no longer merely an FTC policy. As noted above in the Channelle case, it has been recognized as a "staple of commercial law." Other courts have adopted it in the context of consumer protection. As stated by the Ninth Circuit in Freeman v. Time Inc., et al., 68 F.3d 285, 289 (9th Cir. 1995), quoting from the Haskell opinion cited above:

> ...the reasonable person standard is well ensconced in the law in a variety of legal contexts in which a claim of deception is brought. It is the standard for false advertising and unfair competition under the Lanham Act, for securities fraud, for deceit and misrepresentation and for common law unfair competition. This list no doubt could be much expanded.

The Freeman and Haskell cases are particularly relevant because both were legal challenges under California law to sweepstakes promotions of several major

magazines or subscription agents. By contrast, the cases cited in the Congressional Record deal with the construction of a legal document or the placement of a mandated labor notice. Cases involving the construction of legal documents, such as insurance policies or credit agreements, that provide that certain protective provisions prominently appear in the agreements, are not particularly helpful to the understanding of "the clear and conspicuous doctrine" in the consumer solicitation context. (e.g. Allstate Ins. Co. v. Clemmons, 742 F.Supp.1073 (D. Nev. 1990); Edgeworth v. Fort Howard Paper, 673 F.Supp. 922 (N.D.Ill. 1987) Channelle v. Citicorp National Services, Inc., supra.).

C. The Need to Clarify S.335

The intended impact of S.335 section 3001(k)(5) is that all five required disclosures must meet the "clear and conspicuous standard" and therefore must be effectively communicated to the consumer. The colloquy that the first two disclosures should be held to a different standard because of the word "prominent," confuses the substantive "clear and conspicuous" standard with the mechanics of how to comply with it. There can be no more effective standard than the "clear and conspicuous" standard which means "effective communication"; isolating two of the disclosures and imposing a structural or mechanical requirement as to those two does not effectively improve the "effective communication" standard. Instead, it only generates ambiguity and confusion as to whether something different than the "clear and conspicuous standard" is intended for those two disclosures - and by contrast a different standard or requirement is intended for the remaining three disclosures. It is the function of the statute to set the standard; it is the function of the copywriter to decide upon the mechanics needed to meet that standard.

D. Statutory Construction Rules

It is not sufficient to argue that the insertion of the word "prominent" in the first two mandated disclosures is harmless if "prominent" in this context means nothing more than the ultimate "clear and conspicuous" standard. It is a cardinal principle of statutory construction that meaning must be given to all of the words in a statute and no word or phrase can be construed to be unnecessary or surplusage. 82 Corpus Juris Secundum, Statutes § 346. As stated by the authors:

> A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage or superfluous, meaningless, void, insignificant or negatory if that result can be avoided, or unless it is not possible to give affect to every word without doing violence to the plain meaning of the word....
>
> Rosado v. Wyman, NY, 397 U.S. 397; Kawaauhau v. Geiger, 118 S. Ct. 974 (1998)).

Thus, the word prominent, as inserted in two of the disclosures, must be construed to mean something as contrasted to the "clear and conspicuous standard" that is otherwise applicable. It effectively undercuts the "clear and conspicuous standard" which is otherwise well established, in that "prominency" is but one of many indicia of "clear and conspicuous." It forces the Postal Service into the untenable position of giving some special meaning to "prominent" in this context, when in fact it is surplusage.

II. Constitutional Restrictions on Excessive Disclosure Requirements

A. Statement of the Issue

H.R.170 (Mr. LoBiondo) would mandate a warning label on sweepstakes mailing envelopes that "this is a game of chance - you have automatically won," and also on the top of the first page of the enclosed promotional material. H.R.237 (Mr. Rogan) would

mandate similar warning notices. S.335 does not have a "warning label" provision, but does provide affirmative disclosures and prohibitions as discussed above, and requires that two be "prominent." MPA believes that a legislatively mandated warning label of the type proposed, or a requirement that disclosures be more "prominent" than would meet the widely accepted "clear and conspicuous," would exceed the Congress' interest in preventing deception and would give rise to constitutional problems.

The Congress has a legitimate interest in preventing deception, as manifested by F.T.C.A. § 5. As explained in the first section of this memorandum, the FTC over two decades or more has developed the "clear and conspicuous" disclosure standard to be an effective but flexible criteria to avoid deception. It requires that the necessary disclosure material be displayed in a manner that is: "readily noticeable, readable, and/or audible (depending upon the medium) and understandable to the audience to whom it is disseminated acting reasonably." (Electronic Media Report at p.49,238) This three part test is intended to be an effective but flexible criteria to prevent deception while at the same time giving advertisers or marketers "creative leeway" in presenting the required information." If a promoter or mailer has complied with that legal standard by insuring that the necessary disclosures have satisfied that three-part effective communication test, the government's interest in preventing deception will have been satisfied. As such, the government's interest - which is solely to prevent deception - will have been exhausted. It is submitted that if the Congress goes beyond that standard and in addition requires warning labels of a particular type size, placement, proximity or other mechanical mandate, the Congress will have not only mandated effective communication, but will have in addition mandated precisely how that effective

communication must be accomplished. Doing so would go beyond the Congress' legitimate public interest or permissible authority. Once any legislature or regulator goes beyond mandating the substance of effective communication - as the "clear and conspicuous standard" is intended to do - and further mandates how that effective communication is to be accomplished, it exceeds its legitimate governmental interest in preventing deception and tramples on the First Amendment protection afforded commercial speech.

B. The Central Hudson Test

"Commercial speech that is not false or deceptive and does not concern unlawful activities...may be restricted only in the service of a substantial government interest and only through means that directly advance that interest." Zauderer v. Office of Disciplinary Counsel, 471 US 626, 638 (1985); Greater New Orleans Broadcasting Association Inc. et al. v. United States et al. _____ US _____, 1999 U.S. Lexis 4010 (June 14, 1999). Indeed there appears to be a growing sentiment on the Supreme Court that commercial speech should be entitled to all of the protections afforded noncommercial speech. 44 Liquormart, Inc. et al. v. Rhode Island et al., 517 US 484 (1996), (Thomas, J. concurring). Clearly the First Amendment does not protect unlawful or deceptive statements, Zauderer, supra at 637-38, so that the sponsors of promotions using sweepstakes or other sales techniques that are found to be deceptive, have consistently been unsuccessful in using the First Amendment as a defense to an enforcement proceeding. Kraft Inc. v. F.T.C., 970 F.3d 311, 324-27 (7th Cir. 1992). If a promoter has neutralized the risk of deception by "clearly and conspicuously" disclosing all relevant or required qualifications, then the promotion or advertising qualifies for all of

the First Amendment protections and the government's interest in regulating it is exhausted. Congress in fostering the prevention of deception has an interest in mandating needed affirmative disclosures that give consumers relevant information, and in insuring that those needed disclosures are "effectively communicated." Thus the court recognized in Zauderer that proper affirmative disclosure requirements "trench much more narrowly on an advertiser's interests than do flat prohibitions on speech." Zauderer, supra, 471 US at 651. The court then immediately qualified that observation with the following statement:

> We do not suggest that disclosure requirements do not implicate the advertiser's First Amendment rights at all. We recognize that unjustified or unduly burdensome disclosure requirements might offend the First Amendment by chilling protected commercial speech. But we hold that an advertiser's rights are adequately protected as long as disclosure requirements are reasonably related to the State's interest in preventing deception of consumers.
>
> Zauderer, supra 471 US at 651.

S.335 properly attempts to reflect the government's interest in preventing deception by mandating that five affirmative disclosures be included in all sweepstakes mailings (as well as prohibiting four presumptively misleading statements) and by requiring that they be communicated in a "clear and conspicuous" manner. (S.335 at section 3001(k)(3)(A)(ii)(I)-(X) and section 3001(k)(5))

Commercial speech is judged for First Amendment purposes by the four step test initially promulgated in Central Hudson Gas and Electric Corp. v. Public Service Commission, 447 US 557, 566 (1980) (see general discussion in "Comments of the Freedom to Advertise Coalition For the Hearings on Deceptive Mailings and Sweepstakes Promotions, March 8-9, 1999 submitted to the Senate Permanent Committee on Investigations." A copy is being supplied with this memorandum.) That

four step criteria requires that: (1) commercial speech be lawful and not misleading; (2) the asserted governmental interest in regulating the speech must be substantial; (3) the regulation and statutory mandate in question must directly and materially advance the government's asserted interest; and (4) the regulation or legislatively mandated requirement must not be more extensive than necessary to serve that interest. Without question, sweepstakes promotions are not inherently deceptive and can and usually do satisfy the first test (see Haskell v. Time, Inc. et al., 857 F.Supp. 1392 (E.D. Calif. 1994); Freeman v. Time Inc., et al., 68 F.3d 285, 289 (9th Cir. 1995) (where the California federal courts found several magazine sweepstakes promotions to be appropriate and lawful)).

The second test is equally self-evident: the government clearly has an interest in insuring that all promotions, including sweepstakes promotions, not be deceptive. That has obviously been the mandate for the Federal Trade Commission for decades. There is also little doubt that the five affirmative disclosures set forth in S.335, as well as the four prohibitions, are intended to provide sufficient information to recipients (or avoid misinformation) that they are not misled by the mailings, and to the extent that they serve that purpose, they do materially advance the government's interest and are consistent with the third Central Hudson criteria. (Indeed the MPA believes that substantively, the disclosures go beyond what is needed to prevent deception, but the substance of those disclosures is not the subject of this memorandum.) At issue is both the substance of the required disclosures and the manner in which they must be delivered. The sufficiency of the substance of the required disclosures is not addressed

in this memorandum. What is at issue is the manner in which they must be communicated.

C. The Use of Mandated Words or Type Size Under Central Hudson

What is principally at issue is whether the mandated manner of delivering the disclosures complies with the fourth Central Hudson test. At what point does a legislative mandate on disclosures become more extensive than necessary? It is submitted that section 3001(k)(5) of S.335, mandating that the required disclosures "shall be clearly and conspicuously displayed" is designed to fully exhaust the government's interest in insuring that the substance of the disclosures are effectively communicated. As described in the first part of this memorandum, the "clear and conspicuous standard" by definition is met only by communicating disclosures in such a way as that they can be readily seen, read (or heard) and understood by the recipients acting reasonably. This is the ultimate test of effective communication. The indicia as to whether that test has been met is flexible depending on the nature of the communication, taking in all of the criteria articulated by the FTC in its report quoted previously in this memorandum (Electronic Media Report at p.49,238).

Efforts to preempt the "clear and conspicuous standard" by articulating some particular form of warning message, such as is contained in H.R.237 (Rogan) or H.R.170 (LoBiondo) run the serious risk of violating the Central Hudson mandate that regulations not be more extensive than necessary. It is perilous for the Congress to legislate precisely what words or form of delivery constitutes effective communication when in fact that should be the province of the promoter and its copyrighters. It is their responsibility to decide upon the precise wording of the message consistent with the

promoter's obligation to "clearly and conspicuously" deliver the disclosures so that they are effectively communicated to the recipients.

The same risk appears in S.335 by the insertion of the word "prominent" in the first two mandated disclosures, i.e. the "no purchase is necessary" message and the "a purchase will not enhance your chance of winning" message. In addition to creating confusion, and perhaps even an inconsistency, by adding additional delivery criteria to those two disclosures - as is discussed in the first section of this memorandum - requiring some "higher standard" conceptually creates the same constitutional issue as does the warning label requirement in H.R.170 and H.R.237. Any standard beyond the "clear and conspicuous" standard is a standard that goes beyond effective communication. The government's sole interest is to insure that the disclosures are effectively communicated. It has no public interest which justifies further regulation if effective communication is accomplished. By adding an additional "prominence" standard to the "clear and conspicuous" or effective communication standard, the legislature goes beyond its legitimate public interest in the same way as it would if it mandated a specific form of warning label. It is only a matter of degree. Any mandate beyond "clear and conspicuous" goes beyond the government's interest in protecting the public.

Memphis Publishing Company v. Leech, 539 F.Supp. 405 (W.D. Tenn 1982) is illustrative of the constitutional problem associated with governmental mandates as to the form of a particular message. In that case a Tennessee statute mandated that any publication with at least 20% of its circulation in Tennessee that carries any liquor advertising was required to include a notice that importing liquor from other states is a

crime in Tennessee. The statute further said that the notice "shall be printed in a space equal to or greater than 30% of the total space devoted to each such advertisement in print no smaller than the largest print type employed in such advertisement." The court ruled that that restriction on advertising exceeded the permissible limits of the fourth Central Hudson criteria and was therefore unconstitutional. The court ruled that:

> To withstand First Amendment scrutiny, § 47-18-117 must be no broader than necessary to advance the education of Tennessee citizens regarding the crime of importing alcohol into the state. The excessive size and type face requirements in the act fall far short of satisfying this requirement.
>
> The act requires that each warning be printed in space at least 30% the size of the accompanying advertisement and in print no smaller than the largest type employed in the advertisement...This type face requirement often will render the forty word warning larger than 30% of the regular advertisement size. This requirement is more onerous than necessary to inform those sought to be informed. Therefore, the warning instead appears to be directed at deterring the out of state purchase of liquor by Tennessee citizens.... Such a measure extends beyond the [constitutional] province of the Tennessee legislature.
>
> 539 F.Supp. at 411-12. See also Tillman v. Miller, 1996 WL 767 477; 24 Media L. Rep. 2561 (M.D. Georgia 1996).

D. The Need to Permit "Creative Leeway"

Legislators or regulators in an overzealous effort to insure that mandated disclosure messages will in fact be read by most recipients can effectively destroy the promotion completely. That was the conclusion of the federal court in Memphis Publishing Co., supra when it concluded that "the warning instead appeared to be directed at deterring the out of state purchase of liquor by Tennessee citizens." It was also a cogent warning of dissenting Judge Wood of the Federal Court of Appeals in Chicago when he objected that the Federal Trade Commission's injunction mandating that the publisher of the Encyclopaedia Britannica force its salesmen to give prospective customers very specific warnings before initiating any sales call. The FTC issued the

extreme mandate and the two judge majority permitted it only because of the FTC's protracted feud with that publisher and its record of intransigence. In Judge Wood's opinion, he made the following observation:

> The Commission has seen fit to dictate the exact size of the warning card, 3 x 5, the exact language to be printed on it and "none other," and even the particular type to be used in its printing, 10-pint bold face type. Further, with this card in hand a salesman is directed to immediately give it to a prospect and to "direct each such person to read it" before anything else is said or done. The commission has similarly dictated the wording, size, and type to be used in the "Notice to Consumer" to be contained in the advertising and has specified where the warning is to be placed on return forms.
>
> In my view this is a case where an agency, though with good intentions, in its big brother role has unnecessarily intruded too far into the conduct of legitimate business. The Commission surely has more compelling responsibilities than to dictate the size, wording, and printer's type to be used inflexibly by the company. Britannica was not given the opportunity to propose or to submit any less damaging forms or remedies to the Commission for prior review.
>
> The remedies appear to me to go beyond any reasonable cure and are more akin to bureaucratic punishment imposed upon a company found by the Commission to be errant. Britannica makes plain the severe, adverse business impact which can be anticipated by its use of the prescribed stark warnings and procedures. It seems to me that to require a salesperson to use the warning card will suggest to many prospects that the sales representative and his company are afflicted with some strange marketplace malady. Even prospects who are predisposed to acquire for themselves and their families the wealth of information found in an encyclopedia may be expected to turn to some competitor who does not exhibit such abnormal and strange commercial behavior.
>
> Encyclopaedia Britannica Inc. et al. v. Federal Trade Commission, 605 F.2d 694 (7th Cir. 1979) (The Commission subsequently modified its order to substantially modify this requirement.)

One critical purpose of this rigorous constitutional standard is to protect legitimate businesses from overzealous legislators or regulators who are in good faith committed to protecting the consumer. The disclosures designed to prevent deception, however, cannot so overwhelm the promotion as to frighten the recipient and destroy the promotion. The advertiser or promoter must be given fair latitude to draft effective

copy consistent with its nondeception obligation. Thus it is stated by the court in Baker v. The Registered Dentists of Oklahoma, 543 F.Supp. 1177 (W.D. Okla 1982) dealing with restrictions on dental advertising:

> What are advertisements that do not catch the public's eye? They are not read and therefore no one can benefit from them.
>
> An absolute prohibition of [display] ads is not required. The court is willing to give a little credit to the public in this decision. Readers can distinguish between "hype" and "gimmickry" and helpful information.
>
> 543 F.Supp. at 1182.

Similarly, the Federal courts in California have recently found on two occasions that magazine sweepstakes promotions did not go beyond reasonable hype that the reasonable consumer could well understand. Haskell v. Time, Inc. et al., supra, and Freeman v. Time, Inc. et al., supra.

The Federal Trade Commission in promulgating the "clear and conspicuous" standard for measuring effective communication intended to balance the needs of consumers with the ability of promoters and their copywriters to utilize reasonable "creative leeway" in drafting effective promotional language which at the same time is nondeceptive. Wilkie, Affirmative Disclosures, Perspectives on FTC Orders, Journal of Marketing and Public Policy, 1, 95-110 (1982)).

Conclusion

The FTC's "clear and conspicuous" standard for effective consumer disclosures, which standard has been adopted by the courts, effectively carries out the government's interest in preventing deception without being excessively restrictive. S.335 specifically

incorporates that standard. Adding to it other standards such as "prominent" or other attempted descriptions of the required manner of communication, in addition to creating ambiguities and uncertainties, creates a serious issue of constitutional permissibility. The legislature may mandate effective communication of required disclosures; it cannot mandate more.

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FREEDOM TO ADVERTISE COALITION

SUMMARY OF THE FIRST AMENDMENT IMPLICATIONS OF PROPOSED SWEEPSTAKES LEGISLATION

- Sweepstakes Promotion Legislation Must Be Consistent with First Amendment Principles. While the Freedom to Advertise Coalition (FAC) wholeheartedly endorses the goal of ensuring non-deceptive sweepstakes promotions, FAC urges Congress to be mindful of the First Amendment implications of any forthcoming legislation that seeks to regulate commercial speech.

- Restrictions on Commercial Speech Must Survive Rigorous First Amendment Scrutiny. The First Amendment protects commercial speech, including the right to be free from government-compelled speech. Government entities can, however, compel commercial speech if such legislation passes scrutiny under the Supreme Court's *Central Hudson* test.

- Under the *Central Hudson* Test, the Government Bears the Burden of Justifying Any Restrictions on Commercial Speech. In the sweepstakes promotion context, the most pressing issues under the *Central Hudson* test are: (1) whether the regulation would directly and materially advance the government's asserted interest; and (2) whether the regulation unduly burdens commercial speech or is more extensive than necessary to serve that interest. The government bears the burden of justification.

- Congress Can Achieve Its Goal Here Without Adopting Overly-Broad Specific Mandates that Run Afoul of the First Amendment. Any forthcoming regulation -- whether mandated by Congress or promulgated by the Postal Service -- should set forth the principles governing disclosures by sweepstakes promoters and couple such requirements with enhanced enforcement tools such as increased penalties for sweepstakes fraud and deception. These types of new provisions, together with existing regulatory controls and voluntary industry practices, should provide the federal government with the tools necessary to achieve its goal of ensuring that sweepstakes promotions are non-deceptive.

- Congress Should Avoid Constitutionally-Questionable Provisions such as Dictating in Express Terms the Wording, Type Size or Style or Placement of Sweepstakes Disclosures. FAC believes that such overly-broad requirements:
    - would not materially or directly advance the government's interest here, especially given the nature and limited scope of the problem and the availability of existing governmental tools and industry practices; and
    - would impose an impermissible burden on the commercial speech rights of sweepstakes promoters, particularly in view of the fact that such requirements would take up an unreasonable proportion of the space available for the promoter's own communication.

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FREEDOM TO ADVERTISE COALITION

COMMENTS OF THE

FREEDOM TO ADVERTISE COALITION

FOR THE HEARING ON

DECEPTIVE MAILINGS AND SWEEPSTAKES PROMOTIONS

MARCH 8-9, 1999

SENATE PERMANENT SUBCOMMITTEE ON
INVESTIGATIONS

COMMITTEE ON GOVERNMENTAL AFFAIRS

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Introduction

The issue of deceptive mass mailing practices has garnered a great deal of congressional attention in the 106th Congress. In turn, members of the House and Senate have introduced legislation that would amend Federal postal law and impose a number of new requirements on marketers of mailings that include a solicitation or offer in connection with a sales promotion for a product or service. For purposes of this memorandum, such legislation will be referred to as "sweepstakes legislation."

It is well recognized that commercial speech that is not misleading or concerned with an illegal activity[1] is entitled to First Amendment protection. Under the First Amendment, there is a narrow constitutional range in which the government can restrict or compel commercial speech in the name of consumer protection. While the Freedom to Advertise Coalition (FAC)[2] strongly supports the fight against consumer fraud and deception, FAC also believes that Congress must be vigilant in ensuring that it passes sweepstakes legislation that stays within the narrow range and properly preserves free speech rights protected by the Constitution.

FAC is most concerned about the scope and specificity of new regulations. FAC accepts that the government may require sweepstakes promoters to provide certain information to consumers, such as the estimated odds of winning a prize or the fact that no purchase is necessary to enter and win a sweepstakes, in order to avoid fraud or deception by omission. However, FAC strongly opposes regulations that would mandate the specific wording, typeface, or placement of such disclaimers.[3] FAC believes that such regulations, whether written into a bill or promulgated by the Postal Service, would unduly and unconstitutionally burden sweepstakes promoters. Instead of mandating such specifics, the government should require promoters to make certain disclosures, but give them a reasonable degree of discretion to determine the best manner in which to make the required disclosures.

Since there are a number of sweepstakes proposals under congressional consideration, this memorandum focuses on our general constitutional concerns. We address: (1) the commercial free speech doctrine, particularly the right to be free from government-mandated speech; (2) the constitutional implications of proposed legislation; (3) how the current regulatory framework and

---

[1] The Constitution provides no protection for misleading speech or speech that is concerned with an illegal activity. Such speech is regulated by federal agencies including the U.S. Postal Service (Postal Service), the Federal Trade Commission (FTC), and the Department of Justice (DOJ), as well as state agencies.

[2] The Freedom to Advertise Coalition was formed in 1987 in the interest of protecting the right to truthfully advertise all legal products under the First Amendment's freedom of commercial speech. FAC's members include the American Advertising Federation, the American Association of Advertising Agencies, the Association of National Advertisers, the Direct Marketing Association, the Magazine Publishers of America, the Outdoor Advertising Association of America, and the Point-of-Purchase Advertising Institute.

[3] Any regulation that would require mandatory wording and typeface on disclaimers raises serious First Amendment issues. At least one legislative sweepstakes bill, H.R. 170, includes a mandate on the exact size of the font, as well as examples of particular phrasing for disclaimers. It and other proposals would give the Postal Service the power to prescribe specific wording, as well as the exact size and manner of the type used in the disclaimer, including typography, layout, and color of the printing. Further, at the March 8-9, 1999 sweepstakes hearings held by the Permanent Subcommittee on Investigations of the Senate Committee on Governmental Affairs, there was additional discussion about mandating language and placement of sweepstakes disclosures.

industry practices obviate the need for any speech-invasive regulations; and (4) concerns about expanding the U.S. Postal Service's rulemaking authority in this area, especially in view of the fact that the Postal Service is not subject to the Administrative Procedure Act (APA) and the public hearing and due process protections provided by that law.

I. The Commercial Free Speech Doctrine and the Right to Be Free From Government-Compelled Speech

A. *Development of the Commercial Speech Doctrine*

The Court first extended specific First Amendment protection to commercial speech in *Virginia Pharmacy Board v. Virginia Citizens Consumer Council*, 425 U.S. 748 (1976). There, the Supreme Court held that commercial speech merits an intermediate level of First Amendment protection, noting that "the particular consumer's interest in the free flow of commercial information . . . may be as keen, if not keener by far, than his interest in the day's most urgent political debate." *Id.* at 763. Since that decision, the Court has continued to reaffirm the value of commercial speech.

Four years after *Virginia Pharmacy*, the Supreme Court articulated a rigorous four-part test for determining whether a commercial speech regulation will survive a First Amendment challenge in *Central Hudson Gas & Elect. Corp. v. Public Serv. Comm'n.* 447 U.S. 557, 566 (1980). The *Central Hudson* test requires that: (1) the commercial speech be lawful and not misleading if it is to qualify for First Amendment protection; (2) the asserted governmental interest must be substantial; (3) the regulation must directly and materially advance the government's asserted interest; and (4) the regulation must not be more extensive than necessary to serve that interest. *Id.* The party seeking to uphold a restriction on commercial speech bears the burden of justifying it. *Edenfield v. Fane*, 507 U.S. 761, 770, (1993) (*quoting Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60, 71 n.20, (1983)).

B. *The First Amendment and Government-Compelled Disclosures*

When the government requires a speaker to add a government-mandated message to his speech, it amounts to what courts have called "compelled speech." The right to be free from unreasonable government regulations that compel speech is well recognized as a vital part of the First Amendment. As the Court stated in *Wooley v. Maynard*, 430 U.S. 705, 714 (1977), the First Amendment protects "both the right to speak freely and the right to refrain from speaking at all." Justice Lewis Powell noted in *Herbert v. Lando* that it is a "fundamental principle that the coerced publication of particular views, as much as their suppression, violates the freedom of speech." *Herbert v. Lando*, 441 U.S. 153, 178, n. 1 (1979) (Powell, J., concurring).

While a law that compels speech interferes with protected speech, the Court has held that advertisers can be required to disclose information "necessary to prevent [the advertisement from] being deceptive." *Virginia Pharmacy Board v. Virginia Citizens Consumer Council*, 425 U.S. 748, 772, n.24 (1976). In implementing regulations to ensure that commercial speech is not deceptive, however, the government must still be mindful of the First Amendment.

Under current law, the First Amendment test for compelled disclosures appears to differ slightly from the *Central Hudson* test for other forms of commercial speech. Specifically, some cases suggest that disclosure requirements must not be "unduly burdensome," rather than "not more extensive than necessary" as required under the fourth prong of *Central Hudson*. *See Zauderer v. Office of*

Disciplinary Counsel of the Supreme Court of Ohio, 471 U.S. 626 (1985). Other cases suggest that *Central Hudson* applies to cases of compelled disclosure. *See Tillman v. Miller*, 133 F.3d 1402 (11th Cir. 1998) (per curiam) (the Eleventh Circuit applied *Central Hudson* reasoning to overturn an overly burdensome disclosure requirement).

In *Zauderer*, the Supreme Court considered the constitutionality of commercial disclosure requirements compelled in the interest of consumer protection.[4] The Court used traditional commercial speech analysis like that in *Central Hudson*, except where it found no need to inquire whether the state interest could be achieved by less restrictive means since, it said, disclosure requirements are always less restrictive than laws that suppress speech. *Id.* at 651, n. 14. However, the *Zauderer* Court expressly noted that "unjustified or unduly burdensome" disclosures could offend the First Amendment. *Id* at 651.

Justice Brennan wrote a separate opinion to emphasize that the disclosure requirement not be overly extensive. He argued that the state must prove either that the ad has deceived or is essentially likely to deceive consumers. He also stated that the government must show that the disclosure requirement effectively counters the deception. According to Justice Brennan, the disclosure requirement "may be no broader than reasonably necessary to prevent the deception." *Id.* at 658 (citing *In re R.M.J.*, 455 U.S. 191, 203 (1982)).

In *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484 (1996), two opinions representing the views of seven Justices emphasized the need for narrow tailoring of restrictions on commercial speech. *Id.* at 507, 530. In that case, a unanimous court, while fragmented into a principal opinion and three concurring opinions, held that a Rhode Island ban on liquor price advertisements was unconstitutional. Justices O'Connor, Souter, Breyer, and the Chief Justice endorsed the application of the *Central Hudson* test, emphasizing the significance of less restrictive means as a way to accomplish the state's goals. *Id.* at 528-534. More importantly, Justices Stevens, Kennedy, and Ginsburg emphasized the First Amendment problems associated with regulating or compelling speech, even in the name of consumer protection. These Justices endorsed *Central Hudson* to decide the constitutionality of laws regulating "misleading, deceptive, or aggressive sales practices" or requiring "the disclosure of beneficial consumer information." *Id.* at 501.

In summary, the Court's decision in *44 Liquormart* indicates that when a disclosure is compelled in the name of preventing consumer harm, it must survive First Amendment scrutiny under *Central Hudson* and be "no more extensive than necessary" under *Central Hudson's* fourth prong. However, as discussed in further detail in Part II, mandated disclosure requirements for size, type and layout would fail both *Central Hudson's* narrow tailoring standard and the "unduly burdensome" standard applied in *Zauderer*.

C. *Trends in Commercial Speech Jurisprudence*

The importance of protecting the stream of commercial information is well recognized and recent developments indicate a trend toward allowing greater protection for commercial speech. In fact, in *44 Liquormart, Inc. v. Rhode Island*, the Court's most recent analysis of the commercial speech doctrine, the Court reinvigorated First Amendment protections for commercial speech.

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[4] In *Zauderer*, the Court upheld an Ohio disciplinary rule which required lawyers who advertised contingent fee arrangements to state in their ads that clients whose claims were unsuccessful could still be responsible for out-of-pocket costs.

The distinction between commercial speech, which receives less protection than noncommercial forms of speech, and noncommercial speech, which receives full First Amendment protection, has recently fallen under attack. As Justice Thomas emphasized in *44 Liquormart*, "I do not see a philosophical or historical basis for asserting that 'commercial' speech is of 'lower value' than 'noncommercial' speech." *44 Liquormart*, 517 U.S. at 522. Other federal courts have also recently questioned the reasoning behind this distinction, suggesting that commercial speech deserves full protection under the First Amendment.[5]

The decision in *44 Liquormart* continues a judicial trend toward broadening First Amendment protections for commercial speech. At this time, the Court may be on the verge of further expanding constitutional protections in this area since a commercial speech case is currently pending before the Court. This case provides a new opportunity for the Court to address the scope of protections afforded to commercial speech and decide whether the expansive trend will continue.[6]

II. The Constitutional Implications of Proposed Sweepstakes Legislation

A. Prong 1: Sweepstakes Promotions Must Promote a Lawful Product and Not Be Misleading

The first prong of *Central Hudson* requires that sweepstakes promotions promote a lawful product and not be misleading in order to qualify for First Amendment protection. Courts appear to be reluctant to find a particular form of purported commercial speech to be "misleading" under this threshold test. This reluctance can be explained by the fact that such a determination short-circuits the application of the full *Central Hudson* four-prong test, it gives a legislative body *carte blanche* to ban the challenged speech outright, and it raises the distinct possibility that both protected and unprotected speech will be swept under such a prohibition. For these reasons, courts are disinclined to give "wooden deference" to a governmental entity's determination that a category of speech is misleading. Rather, courts tend to speak in terms of "potentially misleading" speech and look beyond the first prong to focus on the remaining aspects of the *Central Hudson* test. As one court commented in *Puerto Rico Tele-Com, Inc. v. Ocasio Rodriguez*, 747 F. Supp. 836, 843 (D. Puerto Rico 1990):

> "if commercial speech is to be afforded any meaningful constitutional protection, the government cannot simply justify its regulations with a hollow or talismanic determination that an advertisement is 'misleading.' Wooden deference to a state's determination as to the misleading nature of an advertisement would obviously place in jeopardy some commercial speech that is in fact not misleading and thus deserving of at least limited first amendment protection." *Id.* at 843.

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[5] *See, e.g., United Reporting Publ'g Corp. v. California Highway Patrol*, 146 F.3d 1133 (9th Cir. Cal. 1998) in which the 9th U.S. Circuit Court of Appeals questioned the validity of the Supreme Court's commercial speech doctrine, noting that "the current debate centers not on whether commercial speech is a form of expression entitled to constitutional protection but on the validity of the distinction between commercial and noncommercial speech."

[6] The Supreme Court is expected to rule later this year on *Greater New Orleans Broad. Ass'n v. United States*, 149 F.3d 334 (5th Cir. 1998) (involving the constitutionality of Federal Communications Commission rules limiting gambling ads).

As another court stated in *Association of Nat'l Advertisers, Inc. v. Lundgren*, 809 F. Supp. 747, 756 (1992), "[i]f First Amendment scrutiny in the commercial speech arena is to have any bite at all, a legislative body cannot justify its restrictions on commercial speech simply by declaring that marketing claims are misleading. . . .For this reason, the court cannot say that due to their allegedly misleading nature, the commercial messages at issue are not protected by the First Amendment at all." Here, sweepstakes promotional materials are not, *per se*, false or misleading merely because they lack government-mandated warnings. In fact, the vast majority of sweepstakes promotions are honest, fair, and do not mislead consumers. While there are some promotions that are allegedly misleading, all sweepstakes promotions should not be denied First Amendment protection by mechanical operation of the first prong. Rather, a court should consider the remaining prongs under the *Central Hudson* test in deciding the constitutionality of mandatory disclosures for sweepstakes promotions.

B. *Prong 2: The Government's Asserted Interest Must Be Substantial*

The second prong of *Central Hudson* requires an analysis of the government's interest in pursuing specific mandatory disclosures in sweepstakes legislation. Here, FAC does not dispute that the government's presumable interest in ensuring non-deceptive sweepstakes is an important one. The more pressing issues are whether any forthcoming legislation would satisfy the third and fourth prongs of the *Central Hudson* test. There is considerable doubt – with respect to regulations that would mandate specific wording, typeface, and placement of disclosures – that such regulations would meet the remaining prongs of the *Central Hudson* test. Particularly, would such regulations directly and materially further the government's interest in reducing the problem of sweepstakes fraud and deception, and is there an appropriate fit between the regulations and the government's interest?

C. *Prong 3: Mandated Disclaimers Must Directly and Materially Advance the Government's Interest in Curtailing Mail Fraud and Deception*

Under the third prong, the government carries the burden of demonstrating that the form of disclaimer required by legislation directly and materially advances the goal of curbing sweepstakes fraud. *Central Hudson Gas & Electric Corp.*, 447 U.S. at 564. As the Supreme Court has noted, [t]his burden is not satisfied by mere speculation or conjecture; rather, a governmental body seeking to sustain a restriction on commercial speech must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree." *Edenfield v. Fane*, 507 U.S. 761, 770-771 (1993)[7].

Even if the government's asserted interests are arguably substantial, the evidence on record suggests that broad, overly-burdensome regulations setting out disclosure requirements such as specific language, typeface, and placement of information would fail to directly and materially advance the government's interests. First, the problem of fraud and deception, while important, nonetheless appears relatively limited in scope, and second, there is no indication that prescribing the wording, typeface, and placement of a disclosure would serve the government's asserted interests in a direct and material manner.

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[7] *See also Ibanez v. Florida Dep't of Business and Prof. Reg., Board of Accountancy*, 512 U.S. 136 (1994) ("State's burden is not slight.")

The evidence shows that nearly all consumers who respond to sweepstakes promotions are not misled by promotional materials.[8] With sweepstakes and games of skill, consumers must take an affirmative action in order to respond to promotional materials. This exercise of choice requires reflection. As recent surveys show, most consumers enjoy sweepstakes promotions and behave reasonably in response to them.

Further, the evidence also indicates that many sweepstakes promotions already provide disclosures in clear, easy-to-read formats.[9] This suggests that certain consumers who are "misled" by promotional materials are doing so despite existing warnings, and that overly-broad, additional government-ordered mandates on disclosures are not likely to materially advance the government's interest in ending such cases.

To allow concerns for a limited population of consumers to drive regulations that impinge on the First Amendment would be to follow a dangerous course. The Court has consistently held under the Constitution that the government may not require that speech intended for a general audience of consumers fit the special needs of a small population.[10] If similarly broad regulations serve as any indication, such legislation would lead to protracted and expensive litigation, rather than a constructive solution to the problems at hand.[11]

In summary, any action Congress takes must be made in light of the fact that there are only a limited number of cases in which consumers are confused or misled by sweepstakes promotions. Further, there are laws and enforcement mechanisms already in existence, as well as the voluntary procedures

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[8] Industry statistics show that only a very small number of consumers are misled by sweepstakes promotions and that the great majority of those who respond to sweepstakes promotions understand the promotional materials. *See* Testimony of Deborah J. Holland, Publishers Clearing House, before the Permanent Subcommittee on Investigations, Senate Committee on Governmental Affairs, March 9, 1999, p.3: "Typically, more than 70% of those persons receiving a package do not respond at all to a Publishers Clearing House mailing. Of those that choose to respond, the number of persons who enter without an order is equal to 2, 3 or even 4 times as many as the number who order, and (on average) about 65% of the responses to a mailing are non-order entries." Testimony of Naomi Bernstein, American Family Enterprises, before the Permanent Subcommittee on Investigations, Senate Committee on Governmental Affairs, March 9, 1999, p.5: "The vast majority of people who receive our mailings understand them and do not believe either that they have won or they must order to win. As the data we have provided to the Committee demonstrates, more than 4 out of 5 of all recipients of our mail do not respond at all. Of those who do respond, more than half enter the sweepstakes without ordering - plainly indicating their understanding that no purchase is necessary." Testimony of Elizabeth Valk Long, Time, Inc., before the Permanent Subcommittee on Investigations, Senate Committee on Governmental Affairs, March 9, 1999, p. 13: "We firmly believe - and all relevant statistics confirm - that the vast majority of our customers (i) understand our mailings, and (ii) buy our magazines on their own merits, not merely to participate in the sweepstakes."

[9] *See id.* Sweepstakes promoters already include prominent disclosures that no purchase is necessary, the odds of winning a prize, etc.

[10] *See, e.g., Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 73 (1983), finding that government may not "reduce the adult population . . . to reading only what is fit for children."

[11] *See, e.g.*, litigation related to the Communications Decency Act of 1996 (CDA), Pub. L. No. 104-104, 110 Stat. 56, which was enacted, in part, to protect minors from harmful material on the Internet. In *Reno v. ACLU*, 519 U.S. 1025 (1996), the Supreme Court, after extensive litigation, struck down the CDA's provisions criminalizing certain "indecent" speech on the Internet on First Amendment grounds.

that sweepstakes promoters have instituted, which combat deception and protect consumers.[12] Also, there is insufficient evidence to suggest that requiring specific wording, typeface, and layout of disclosures would advance the government's interests in a direct and material way. As the Supreme Court has noted, mere speculation or conjecture "does not suffice when the State takes aim at accurate commercial information for paternalistic ends." *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. at 507. Given this background, Congress must act in a manner that is sensitive to the First Amendment and not paint with too broad a brush.

D. *Prong 4: Regulations Must Be Appropriately Tailored to the Government's Interest*

As discussed in the first section of this memorandum, there is a question as to whether a commercial disclosure requirement must survive the standard enunciated in *Zauderer* that the requirement not be "unduly burdensome," or whether it must survive the seemingly stricter "narrow tailoring" requirement under *Central Hudson*. The Court's decision in *44 Liquormart* indicates that a court should consider whether the restriction is no more extensive than necessary (narrowly tailored). However, under either view, disclosure requirements cannot be overly broad or they will run afoul of the First Amendment. FAC believes that any disclosure requirement that would mandate specific language, typeface, or placement would exceed the parameters of the First Amendment as an unnecessary burden on commercial free speech.

1. *Disclosure Requirements Can Unreasonably Burden Speech*

FAC is concerned that a government-mandated message may take up an unreasonable proportion of the space available for the speaker's own communication. Such a regulation would encroach on an advertiser's communicative resources and unnecessarily appropriate a portion of a private promoter's time to the government. In this way, a regulation would resemble a government taking which would be unconstitutional under the Fifth Amendment.

Courts have found that excessive size and typeface requirements for warnings on alcohol beverage ads violate the First Amendment. *See Memphis Publishing Co. v. Leech*, 539 F. Supp. 405 (W.D.Tn. 1982). In *Memphis Publishing*, the court found that the requirement that the warning "be printed in a space at least 30% the size of the accompanying advertisement and in print no smaller than the largest type employed in the advertisement" was "more onerous than necessary to inform those sought to be informed." *Id.* at 412. As such, the warning requirement failed the fourth prong of the *Central Hudson* test and the court struck the regulation down as an unconstitutional burden on commercial free speech.

Similarly, specific requirements about the size, type, and placement of sweepstakes disclosures would unnecessarily infringe on a promoter's commercial free speech rights. Allowing sweepstakes promoters to make such determinations in carrying out government-mandated policy will serve the government's interest of informing consumers without placing overly-burdensome requirements on promoters.

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[12] *See* discussion *infra* Part III on current regulations, enforcement mechanisms, and industry practices that combat sweepstakes fraud and deception.

2. *Less Restrictive Means Are Available*

It is clear that the government's interest in ensuring non-deceptive sweepstakes promotions can be served very well by proposals that are less restrictive on commercial speech than a disclosure rule that requires specific language and typeface. For example, measures that call for somewhat stronger financial penalties, as well as provisions that grant the Postal Service stronger tools of enforcement such as the right to issue subpoenas on a reasonable basis, will help the government achieve its goals without restricting commercial speech. These less burdensome alternatives would advance the government's interests without intruding on the First Amendment. Any more restrictive regulations -- such as a requirement that disclosed information be stated in a specific language or format -- would be vulnerable to challenge on First Amendment grounds.

Moreover, as discussed in detail in the following section, the current regulatory rubric and industry practices for fighting sweepstakes fraud and deception are extensive.

III. Speech-Invasive Requirements are Unnecessary Because Current Regulations are Sufficient to Combat Sweepstakes Fraud and Deception

> "The immense state and federal administrative machinery dedicated to eradicating deceptive trade practices evidences our policy choice to favor consumer protection. Yet even here, the First Amendment cannot allow the state free rein to compel speech whenever it asserts the public could potentially be misled."[13]

The U.S. Postal Service, Federal Trade Commission, Department of Justice, and state agencies actively regulate and enforce laws against sweepstakes fraud and deception. This successful regulatory regime obviates the need for additional regulations that would impinge on free speech. In fact, the Postal Service has urged Congress to enhance its ability to enforce existing laws against sweepstakes fraud and modify the law to require "clear and conspicuous disclosure of the solicitor's name and principal place of business on any solicitation for funds or for the sale of goods or services." But nowhere in the Chief Postal Inspector's September 1998 testimony does the Postal Service ask for expanded rulemaking authority so that it can prescribe specific disclosure language, typeface, and placement.[14]

A. *The Postal Service*

As detailed in Chief Postal Inspector Kenneth Hunter's testimony before the Senate Subcommittee on International Security, Proliferation, and Federal Services on September 1, 1998, the Postal Service is actively engaged in fighting sweepstakes fraud and deception. The Postal Service and its law enforcement and audit agency, the Postal Inspection Service, has jurisdiction to fight sweepstakes fraud and deception under both the Mail Fraud Statute and the False Representation and Lottery Statute.

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[13] Nicole B. Casarez, "Don't Tell Me What to Say: Compelled Commercial Speech and the First Amendment, 63 Mo. L. Rev. 929, 976 (1998).

[14] *See* Statement of Kenneth J. Hunter, Chief Postal Inspector, before the Subcommittee on International Security, Proliferation, and Federal Services, Senate Committee on Governmental Affairs, p.11. September 1, 1998.

The Mail Fraud Statute (Title 18, USCA, § 1341), designed to fight white-collar fraud and product and service misrepresentation, is the oldest federal consumer protection statute. In fiscal year 1998, the Postal Inspection Service conducted 1377 investigations into possible mail fraud violations.[15] Its efforts led to the conviction of 1533 individuals associated with fraudulent schemes, which resulted in fines worth over $12.1 million and restitution of $316 million.

The False Representation and Lottery Statute (Title 39, USCA § 3005) is a civil law used to protect the public from aggravated monetary loss where it is difficult to prove fraudulent intent. Under the statute, the Postal Service can take administrative action to return to consumers all mail sent in response to a lottery or false advertising scheme. The Deceptive Mailings Prevention Act of 1990 (39 USCA, §§ 3001(f) and (g)) added to the requirements of the False Representation and Lottery Statute and placed restrictions on mailings designed to look like official government materials. Under this law, solicitations using a symbol or name that a reasonable person would construe as implying a connection with the federal government cannot be mailed without a disclaimer of government affiliation.

B. The Federal Trade Commission

Under Section 5 of the Federal Trade Commission Act, the FTC is authorized to eliminate "unfair or deceptive acts or practices in . . . commerce." 15 U.S.C. §45(a)(1). The FTC has actively policed sweepstakes fraud and deception under Section 5. For example, in March 1995 it filed suit against the Research Awards Center and others alleging that the defendants' initial solicitations falsely promised consumers that they were "guaranteed winners" of cash or a new car. The FTC's action led to a $1.25 million settlement for consumer redress. As this case illustrates, the mechanisms for fighting consumer sweepstakes fraud and deception are already working.

C. The Department of Justice

The DOJ also plays a role in regulating telemarketing since it enforces federal criminal mail and wire fraud statutes. The Fraud Section of the U.S. Attorney's Office oversees federal criminal prosecutions of offenses including consumer fraud such as telemarketing fraud, sweepstakes and premiums fraud, and fraud by businesses against customers.

To combat fraudulent mail schemes, the U.S. Postal Inspection Service and the Department of Justice often work in tandem. For example, in December 1998 the government announced a $1 million settlement stemming from the government's February 1998 lawsuit against four Caribbean-based corporations that fraudulently offered the chance to win large cash prizes in exchange for fees. Instead of winning prizes, consumers were only offered more promotions seeking more fees. In the settlement agreement, the defendants agreed to end their activities and pay $1 million to reimburse defrauded consumers.

D. Voluntary Industry Practices and Consumer Education Efforts

Voluntary industry practices and consumer education efforts illustrate that there are many ways to combat sweepstakes fraud and deception that do not compromise the First Amendment.

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[15] *Id.* at 2.

As the testimony at the March 8-9, 1999 hearing on Deceptive Mailings and Sweepstakes Promotions held by the Senate Permanent Subcommittee on Investigations shows, sweepstakes promoters have every incentive to promote responsible sweepstakes since their businesses rely on consumer confidence. To serve their business purposes, sweepstakes promoters have implemented a number of voluntary practices. These include providing clear notices that, for example, no purchase is necessary.[16]

Also, sweepstakes promoters have joined the federal and state agencies with jurisdiction over mass mail fraud to enhance consumer education about sweepstakes fraud and deception. In October 1998, the FTC, Postal Inspection Service, and National Association of Attorneys General announced new initiatives designed to combat mass mail fraud. These initiatives highlight the importance of the consumer in the fight to end such fraud. As a result, the FTC has launched a new consumer education campaign and the Postal Service has planned to send a special crime prevention mailer to over 120 million households.

Relevant consumer groups are also contributing to the fight on mass mail fraud. In particular, the American Association of Retired Persons (AARP), the Better Business Bureau (BBB) and the Yellow Pages Publishers Association (YPPA) have all contributed, through funds or labor, to the "Consumer Sentinel," which is the database used by federal, state, and Canadian law enforcement officers in their efforts to fight mail fraud and deception.

IV. Concerns About Expanding the Postal Service's Rulemaking Authority--Dangers of Unfettered Agency Discretion

As discussed above, expanding the Postal Service's enforcement powers may be an appropriate means of combating sweepstakes fraud and deception. However, FAC *strongly opposes* any legislation that would provide the Postal Service with the broad blanket authority to prescribe regulations as to the wording and style of disclosures. The Postal Service should not be given such authority since such specific disclosure requirements would unduly burden commercial speech. Our concerns are deepened by the fact that the Postal Service *is not* subject to the Administrative Procedure Act and the public hearing and due process protections afforded by that law.[17]

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[16] *See, e.g.*, Testimony of Naomi Bernstein, American Family Enterprises (AFE), before the Permanent Subcommittee on Investigations, Senate Committee on Governmental Affairs, March 9, 1999, p.9-10, that AFE discloses the odds of winning a prize as well as repeated statements that "no purchase is necessary." Testimony of Elizabeth Valk Long, Time, Inc., before the Permanent Subcommittee on Investigations, Senate Committee on Governmental Affairs, March 9, 1999, p. 4, that Time Inc.'s sweepstakes mailings set forth the odds of winning and reiterate that "no purchase is necessary." Testimony of Deborah J. Holland, Publishers Clearing House (PCH), before the Permanent Subcommittee on Investigations, Senate Committee on Governmental Affairs, March 9, 1999, pp.4,7, that PCH is actively engaged in consumer education and protection programs and that its sweepstakes promotions include clear "no purchase necessary" notices, as well as other consumer information.

[17] *See, e.g.*, *Hines v. U.S.*, 60 F.3d 1442, 1449, n.6 (9th Cir. 1995) (The Postal Service is "exempt from compliance with the Administrative Procedure Act.")

In conclusion, although FAC wholeheartedly endorses the goal of eliminating sweepstakes fraud and deception, we urge Congress to act in a manner that is consistent with the First Amendment. While FAC supports giving narrowly-crafted, non-speech invasive tools to federal authorities, it opposes any regulation -- whether included in a sweepstakes bill or promulgated by the Postal Service -- that would mandate the wording, type size or style, or placement of disclosures. FAC is especially concerned that such burdensome disclosure requirements would set a dangerously broad precedent for other categories of speech beyond sweepstakes promotions.

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Mr. MCHUGH. Thank you very much, Mr. Pashby.

The saying goes, last and certainly not least. Ms. Linda Goldstein who is chair emeritus and head of government and legal affairs committee for the Promotion Marketing Association. To you, particularly, we owe appreciation for patience, Ms. Goldstein. We look forward to your comments.

Ms. GOLDSTEIN. Thank you, Mr. Chairman, and members of the subcommittee. On behalf of the PMA, we appreciate the opportunity to participate in today's hearings and to offer our comments on the various legislation being considered. The PMA has been the leading trade association representing the promotion marketing industry since 1911.

We have over 650 members representing diverse aspects of the industry, including many of this Nation's leading retailers and manufacturers of consumer products and services. Our membership is quite diverse and includes industry leaders and Fortune 500 companies from a broad segment of product and service categories, such as fast food, entertainment, soft drinks, packaged goods, telecommunications, financial services, publishers, travel, and nonprofit organizations.

PMA thus brings a broad and somewhat unique perspective to this issue. We share the very concern raised earlier today by Chairman Burton. Specifically, we are concerned, not only with how the proposed legislation will impact sweepstakes mailings, but on how the legislation will impact the broader segment of the entire American business community that utilizes sweepstakes in a variety of different shapes and forms.

We support the efforts of Congress to provide clear standards in this area which will provide increased consumer protection and added enforcement authority for the Postal Service, without unduly restricting the continued use of sweepstakes as a viable marketing tool by legitimate segments of the American business community.

We have been working extensively with the Senate to this end. We support legislation that will establish uniform, national standards for sweepstakes mailings. In fact, such legislation will actually help our members by restoring consumer confidence in this valuable marketing tool. We believe, however, that there are two fundamental principles which must be embodied in any specific legislation.

First, it must be consistent with basic first amendment principles. Second, it must be sufficiently flexible to allow individual marketers to comply in a manner consistent with the different forms and formats in which their promotions may be presented. For example, if, as Chairman Burton pointed out, a mailing merely states that you could be a winner rather than that you are a winner, the need to state on the outer envelope that "you have not won" becomes less compelling.

The bills now before Congress represent two very different approaches to this issue. Representatives Rogan and LoBiondo would require specific mandated disclosures, in specified type sizes, and in specified locations. We do not support such an overall approach. Mandating specific language, type size, and placement raises serious commercial free speech issues.

We are also concerned about any grant of broad rulemaking authority to the Postal Service. We fear the possibility that such a delegation could have the effect of greatly expanding the requirements of the statute in ways contrary to, or even inconsistent, with the intended purpose.

Senator Collins' approach, we believe, is better because it embodies the more flexible, clear and conspicuous standard. In its current form, S. 335 requires clear and conspicuous disclosure of the fact that no purchase is necessary to enter, and that a purchase will not improve one's chances of winning.

The bill also requires disclosure in the rules of all other material terms and conditions of the sweepstakes in a manner which will be easy to find, read, and understand. We believe these sorts of requirements are appropriate and set a standard which is meaningful for consumers, reasonable for business, and clear for law enforcement authorities. The name removal system will also provide an easy, effective means for consumers or their care givers to have the names of those who do not choose to receive or should not receive sweepstakes mailings removed from such lists.

PMA also appreciates the limited exemption given to sweepstakes which appear in magazines and do not contain a means of ordering. This exemption is very important to many of our members who promote their sweepstakes in such publications and would find it extremely burdensome to comply with the requirements of S. 335.

While we generally support the approach of S. 335, we do have some concerns with the bill, many of which relate to the manager's amendment. Those concerns are set forth in detail in our written comments. In the interest of time, we will simply focus on two important issues.

First, the manager's amendment requires that some disclosures appear clearly and conspicuously, and that others appear prominently. As the bill was approved by the Senate Governmental Affairs Committee, only the term "clearly and conspicuously" was used. The standard of clear and conspicuous has a rich, judicial, and administrative meaning. It is well-understood by the advertising community.

The term "prominently" lacks such a history. While we believe and indeed the FTC has stated that the terms "clear and conspicuous" and "prominent" have identical meanings. We are very concerned that the use of different terms to convey the same meaning in a statute may cause ambiguity and confusion. We urge that a single uniformed standard of clear and conspicuous disclosure be applied to all mandated disclosures.

We believe that section 8, which was largely added by way of the manager's amendment, needs some clarification. In general, we support the concept that an individual should be able to have his or her name removed from a mailing list. We are particularly pleased that the manager's amendment replaces a central opt out system with a company-specific approach.

Finally, we respectfully request that the House consider strong language in favor of some Federal preemption. This statute regulates advertising sent through the U.S. Postal System. Virtually every entity using direct mail sweepstakes does so in interstate

commerce. Advertisers can live with reasonable regulation, but be destroyed by inconsistent requirements that require different formats for different States.

The need for Federal preemption is underscored by the recent recommendations issued by the sweepstakes subcommittee of the National Association of Attorney's General. In that report, NAAG recommends a number of specific disclosures which duplicate the disclosures required in S. 335. They would, however, need to be made in different language, type sizes, and locations.

To force marketers to make duplicate disclosures to convey the same essential information is unnecessarily burdensome and may in fact result in consumer confusion. We urge this subcommittee to consider preemption of these disclosure items. Continuing proliferation of inconsistent State laws truly represents an undue burden on interstate commerce.

Again, we appreciate the opportunity to participate in this important hearing. I will be pleased to answer any questions you might have.

[The prepared statement of Ms. Goldstein follows:]

TESTIMONY OF
LINDA A. GOLDSTEIN
ON BEHALF OF
THE PROMOTION MARKETING ASSOCIATION
BEFORE THE SUBCOMMITTEE ON THE POSTAL SERVICE
OF THE COMMITTEE ON GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES
AUGUST 4, 1999

Good afternoon, Mr. Chairman and members of the Subcommittee. My name is Linda Goldstein and I am representing the Promotion Marketing Association (the "PMA"). On behalf of the PMA, I appreciate the opportunity to participate in today's hearings and to submit comments on the various legislative proposals currently being considered to regulate sweepstakes mailings. The PMA looks forward to working with this Subcommittee as it has worked extensively with the Senate over the recent months, in crafting meaningful and effective legislation which will establish minimum federal standards for sweepstakes mailings without unduly burdening the vast majority of legitimate marketers who utilize sweepstakes honestly and fairly as an effective marketing tool for promoting bona fide products and services to consumers.

The PMA has been the leading trade association representing the promotion marketing industry since 1911. Our membership of over 700 domestic and international companies includes many of this nation's leading retailers and manufacturers of consumer products and services, all of whom utilize sweepstakes along with other promotional tools, such as premiums, rebates and coupons, as part of an overall marketing strategy. Our membership is quite diverse and includes industry leaders from a vast segment of product and service categories, including fast food companies, soft drink manufacturers, package goods companies, telecommunications companies, financial services companies, entertainment companies, publishers, airlines and other

travel related services, credit card companies, and non-profit organizations. PMA's membership also includes suppliers providing vital services, such as printing, production, fulfillment and promotion administration. University faculty who teach about promotional activities are also members.

The breadth and diversity of PMA's membership is equally matched by the breadth and diversity in the manner and types of sweepstakes our members conduct. Our members utilize sweepstakes in a myriad of different forms and formats and our members promote their sweepstakes in all forms of media including radio, television, newspapers, magazines, direct mail and the Internet. Even within the context of direct mail, our members present their sweepstakes in many different ways other than simply just as direct mailings to consumers. Our members promote their sweepstakes through space ads in publications sent through the mail, on catalogs and as inserts in cooperative mailings. PMA thus brings a broad and somewhat unique perspective to the sweepstakes issue. PMA's focus extends beyond the narrow genre of personalized direct mail sweepstakes utilized to promote the sale of magazines, but encompasses the impact of any proposed legislation on the entire American business community, spanning a vast segment of industries who utilize sweepstakes in a variety of formats as a legitimate and effective marketing tool.

Sweepstakes promotions are widely utilized by American businesses because they are a legitimate and highly effective marketing tool. In fact, sweepstakes promotions are used by over 60% of all American companies that utilize promotions -- legitimate, reputable companies that form the cornerstone of the American marketplace. Why do these companies utilize sweepstakes

as a promotional tool? Because they work! Consistently for 30 years, sweepstakes have had the capacity to generate more responses from consumers than any other form of direct mail solicitation. Not because they are deceptive or misleading, but because they are exciting and fun and provide the opportunity for the consumer to receive added value. To survive, legitimate businesses must create long term relationships with their customers. A business builds such a relationship by offering quality products and services in a truthful manner at fair prices. Our members are not in the business of misleading consumers, because such tactics would undermine the very consumer confidence and loyalty that our members strive so hard to achieve.

PMA believes that the vast majority of sweepstakes are conducted legitimately and honestly by responsible marketers and are understood by the vast majority of consumers as evidenced by the fact that 4 out of 5 persons who respond to a sweepstakes respond without order. We acknowledge, however, that there are some people who may misunderstand advertising messages including those contained in sweepstakes promotions.

Although we believe that the segment of the population that is being misled or confused by sweepstakes mailings represents a very small segment of the population as a whole, our hearts go out to these people. Their stories are tragic and we are committed to adopting measures designed to reduce the incidence of inappropriate purchasing behavior. We support strong consumer education designed to assist consumers in distinguishing between legitimate and fraudulent sweepstakes promotions, and we continually educate our members through legal seminars and bulletins on legal and ethical requirements for conducting sweepstakes. Many companies are also instituting policies to help identify high volume purchasers, to make sure they

understand that no purchase is necessary to enter a sweepstakes, and to provide refunds and cancellation of orders where appropriate. Senator Collins' proposed legislation will for the first time give care givers a legally enforceable way to tell companies to stop sending mail to their loved ones.

The PMA also believes that a legislative solution is appropriate in addition to industry self regulatory initiatives. Accordingly, the PMA welcomes and supports federal legislation which will establish uniform, minimum national standards for sweepstakes mailings. We and the other associations represented here today, have been actively working with the Senate for the past several months towards drafting meaningful, effective legislation which will curb fraudulent and deceptive practices while not unduly restricting the use of sweepstakes as a legitimate marketing tool. We appreciate the Senate's willingness to listen to the industry's concerns and issues and commend their efforts to strike an appropriate balance that implements strong consumer protection measures while not unduly hindering the continued viability of sweepstakes as a legitimate marketing tool.

While PMA supports the concept of federal legislation, there are two fundamental principles which must be embodied in any specific legislation that PMA would support. First, since sweepstakes are a lawful form of promotional activity and hence a commercially protected form of free speech, the legislation must be consistent with basic first amendment principles. The legislation must be sufficiently tailored and narrow to curb fraudulent and deceptive marketing practices while not unduly restricting the legitimate use of sweepstakes as a valuable marketing tool. Second, given the diversity of PMA's members and the variety of sweepstakes

used, the legislation must be sufficiently flexible to allow individual marketers to comply in a manner consistent with the different forms and formats in which their promotions may be presented. For this reason, PMA believes that Senator Collins bill, S.335, presents the best overall approach to a legislative solution, because it does not mandate specific advertising copy, type size or placement requirements for disclosures, but embodies the more flexible standard of clear and conspicuous disclosure. An approach which seeks to mandate specific language, type size and placement requirements is overly restrictive and violative of basic first amendment principles.

There are many ways in which a disclosure can be clearly and conspicuously communicated depending on the format and size of the advertisements, the context in which the disclosures are presented, and the surrounding text and graphics. To attempt to mandate a single, uniform way in which material information is to be disclosed to consumers is far more restrictive than necessary to achieve the intended purpose. Moreover, to the extent that any such legislation would create a burdensome standard of disclosure for sweepstakes mailings that would not be applicable to state run lotteries or even to the advertising of sweepstakes in other media, the Supreme Court's recent decision in Greater New Orleans Broadcasting Association, Inc. v. U.S. would suggest that there may be serious first amendment concerns.

While PMA supports S.335 because of its overall conceptual approach, we also believe that the cumulative impact of the various provisions of Senator Collins' bill will be significant, and will have a meaningful impact on future sweepstakes mailings. Specifically, the affirmative disclosures mandated by Senator Collins' bill will ensure that all of the material terms and

conditions of the sweepstakes are clearly and conspicuously communicated to the consumer, including the very important fact that no purchase is necessary to enter, that a purchase will not increase one's chances of winning, the actual numerical odds of winning, and all other pertinent terms and conditions of the sweepstakes. The prohibition on certain misleading representations and marketing practices, combined with the increased enforcement authority delegated to the Postal Service, will help ensure that the truly fraudulent and deceptive marketers will be unable to continue to prey on the vulnerable and gullible. Finally, the name removal system contemplated by the Manager's Amendment will provide an easy, effective means for consumers or their care-givers to have the names of those who do not choose to receive or should not be receiving sweepstakes mailings removed from such lists.

Senator Collins' bill also appropriately addresses an issue of serious concern to PMA, which we hope the Subcommittee will appreciate and respect. A large segment of PMA's members promote their sweepstakes by means of a print advertisement placed in a magazine or newspaper of general circulation. These advertisements do not share many of the common characteristics of the typical direct mail sweepstakes addressed to an individual. Specifically, these advertisements are mass media advertisements; they are not directed or addressed to a specific named individual and often do not even provide a vehicle for purchasing or ordering a product. While these sweepstakes were clearly not the intended focus of the legislation, they would have inadvertently fallen within the ambit of the legislation simply because of the fact that magazines and newspapers are delivered to subscribers through the mail.

Senator Collins' bill (and the proposed Manager's amendment) appropriately excludes such advertisements from the disclosure requirements and from the name removal system required pursuant to Section 8. It would be quite burdensome and difficult for companies who are simply placing an advertisement in a magazine to comply with all of these requirements in Senator Collins' bill. The mandated disclosures would be burdensome because, unlike direct mails, space in these periodicals is limited and expensive. These advertisements, for example, will often not include the complete rules, but an abbreviated set of rules containing the material terms of the promotion and a mechanism by which the consumer can obtain the complete set of rules. Compliance with the name removal system would be burdensome because many of these marketers are retail-oriented marketers who use direct mail only occasionally and incidentally. Absent an exemption, many of these marketers would likely elect to simply place their ads in other media not subject to these requirements, resulting in a substantial loss of advertising revenue to the newspapers and magazines. We urge the Subcommittee, therefore, to preserve this exemption.

With all due respect to representatives Rogan and LoBiando, their two legislative proposals (H.R. 170 and H.R. 237) suffer from two fatal flaws in approach which would preclude PMA support.

First, both proposals mandate specific wording, type size and placement requirements for the mandated disclosures and as such place an undue burden on commercially protected free speech in violation of the principles of the First Amendment.

Second, the PMA is quite concerned about any grant of broad rulemaking authority to the Postal Service. We fear the possibility that such a delegation could have the effect of greatly expanding the requirements of the statute in ways contrary to or inconsistent with the statute's intended purpose.

The PMA supports the concept of federal legislation because it believes the establishment of minimum federal standards will help restore consumer confidence in sweepstakes. PMA cannot, however, support legislation whose final outcome, impact and interpretation is uncertain, particularly when such uncertainty is subject to further rulemaking authority of the Postal Service.

Notwithstanding our general support of S.335, PMA does have some concerns with the bill, many of which relate to the Manager's Amendment that we understand may be considered by the Senate. Our concerns are as follows:

1. The Manager's Amendment requires that some disclosures appear "clearly and conspicuously" and that others appear "prominently." As the bill was approved by the Senate Governmental Operations committee only the term "clearly and conspicuously" was used. While we believe that the Senate intended the terms "prominently" and "clearly and conspicuously to have identical meanings, we are concerned that use of different terms to convey the same meaning in a statute may cause ambiguity and confusion. Moreover, while the term "clearly and conspicuously" has a rich judicial history, the term "prominently" lacks such a history thereby

injecting an untenable element of uncertainty into the bill. We strongly urge that a single uniform standard of "clear and conspicuous" be applied to all mandated disclosures.

2. PMA is also troubled by the definition given to the term "clearly and conspicuously" in the Manager's Amendment. While the language is largely taken from the Federal Trade Commission's ("FTC") 1983 Policy Statement on Deception, it fails to incorporate the reasonable person standard which is a key component of the FTC's definition. To the extent that this statute may be relied upon by enforcement agencies other than the FTC, the express application of the reasonable person standard to this definition is critical. The definition should also clarify that reasonableness will be determined from the perspective of the group to whom the representation is principally directed. A marketer should not run the risk of being held to a higher than reasonable standard because its audience includes some minors, senior citizens or other less vulnerable people, if the mailing was not principally directed to such group of individuals.

3. We believe that Section 8 of the Senate's bill which was largely added by way of the Manager's Amendment needs some clarification. The purpose of the Section is to create a requirement that sweepstakes promoters create on a company specific basis a mechanism for individual's and their care-givers to have names removed from sweepstakes mailing lists. We support the intent of the Section and the concept that an individual should be able to have his or her name removed from a mailing list. We note that the Senate clearly listened to industry's practical concerns with respect to this section. We are particularly pleased that the Manager's

Amendment replaces a central opt-out system which would have been impractical and unworkable with a company specific system and urge the Subcommittee to preserve this approach. Our remaining concerns are as follows:

A. Our first concern is with Section 8(c)(1)(c). We believe that it should use language which is consistent with that in subsection 8 (d) and afford promoters some flexibility with regard to the language they use to describe the notification system. In particular, we believe that words, other than the word "prohibit," may be more appropriate to explain the system to consumers. To that end, we suggest that the subsection should be modified to require a promoter to provide consumers with a statement which:

> "Informs consumers that the notification system established pursuant to subsection (c)(2) and (d)(1) may be used to exclude their names from the mailing of all skill contests or sweepstakes by that promoter to such individual."

B. Section (8)(c)(2) provides that notice may be given by an individual "or other duly authorized person." Section 3(1)(1) of the bill also contains provisions related to the notification system and specifies that a direction to a promoter to remove an individual from a sweepstakes mailing list may be given by that person or by a conservator, guardian or individual with

power-of-attorney. For clarity's sake, we suggest incorporation of the formulation from Section 3 into Section 8.

C. We believe that the Senate's intent in Section 8 is to create a mechanism for removing names from sweepstakes and skill contest mailings. That intent is reflected in Section 8(c)(2) which provides that names must be excluded from "all lists of names and addresses used by that promoter to mail any skill contests or sweepstakes." Language used in Section 8(d)(1), however, could be read to prevent a promoter from sending promotions which do not include sweepstakes or skill contests to people on their "do not mail me sweepstakes" list. We suggest that the language in Section 8(d)(1) parallel that in Section 8(c)(2).

D. There are instances in which peoples names are placed on lists either as a prank or by a guardian against the protected persons consent. Promoters are protected from liability for such exclusion in Section 8. That exclusion should also apply to the provisions dealing with notification system in Section 3.

Finally, PMA respectfully requests that the House consider strong language in favor of federal preemption in this area. This statute regulates advertising sent through the United States postal system. By definition that system is federal in nature. Virtually every entity using direct mail sweepstakes does so in interstate commerce. Advertisers can live with reasonable

regulation. National advertisers can be destroyed by inconsistent regulations that require different formats for different states. In fact, the need for federal pre-emption in the area is underscored by the recent recommendation issued by the sweepstakes subcommittee of the National Association of Attorneys General ("NAAG"). In that report, NAAG recommends a number of specific disclosures which duplicate the disclosures required in S.335. NAAG, however, would require such disclosure to be made in specific language, type size and location. To force marketers to make duplicate disclosures to convey the same essential information is unnecessarily burdensome and may in fact result in consumer confusion. If the Subcommittee is not willing to implement full pre-emption, it should at least consider pre-emption of those items specifically covered in the legislation. Continuing proliferation of inconsistent state laws truly represents an undue burden on interstate commerce.

Conclusion

In conclusion, therefore, PMA believes that S.335 and the Manager's Amendment represent a solid approach to regulation of sweepstakes and skill contests. As we noted, we are troubled by a few provisions of the Manager's Amendment. Taken as a whole, however, we endorse S-335 and encourage this Subcommittee and the full House to move forward with legislation in this area. The hearings, press reports and existence of pending legislation have led to uncertainty. There has been an unfortunate decline in consumer confidence in sweepstakes and a resulting loss of business by companies which use sweepstakes and loss of jobs by their employees. We believe that enactment of responsible Federal legislation in the form of S-335 will restore that confidence, provide consumers the desired increased protections yet preserve the long-term viability of sweepstakes as a legitimate and effective marketing tool.

Mr. MCHUGH. Thank you very much. I want to ask a couple of questions. Maybe a number of the panelists can respond and then go to my colleagues who have been very patient and have been here all afternoon.

It is clear and conspicuous to me that we have some prominent first amendment questions. Commissioner Swindle, did you hear me say I dropped out of law school after 10 days?

Mr. SWINDLE. I did not even think about going.

Mr. MCHUGH. Your agency was referred to as having developed some pretty recognizable, generally accepted requirements, provisions that come out of the use of "clear and conspicuous" and the lack of that kind of background with respect to the word "prominent." To those of us who are not blessed with a law school education, the debate over the word "prominent" seems somewhat off-point.

I do not mean to diminish the importance of the word. Can you help those of us on the subcommittee, and also more importantly for the record, better understand the clear and conspicuous standard? Does the word "prominent" become so problematic, in your judgment, as the FTC's experience would suggest?

Mr. SWINDLE. Mr. Chairman, I want to beg ignorance, quite frankly, to the particular point. I do not recall exactly what it is. I have a note here which can explain this to me. Prominent is defined in case law, I am told.

Mr. MCHUGH. Excuse me. I want to be sure I heard you.

Mr. SWINDLE. Prominent is defined in case law. I will be more than happy to provide the chairman with a paper that would lay out the use of the term. I think we all, from our various points of view, see problems with words like "substantial" and "reasonable." They lead to inevitable debate as to exactly what they mean, but I will send a definition.

Mr. FATTAH. Excuse me, Commissioner.

Is that your counsel behind you?

Mr. SWINDLE. I do not know. It is someone who can help us.

Mr. MCHUGH. Just some guy handed you a note and you read it.

Mr. FATTAH. I thought it maybe was somebody who could help us with the question.

Mr. SWINDLE. We will provide it for the record, Mr. Fattah.

Mr. MCHUGH. OK. I appreciate it.

[The information referred to follows:]

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Commissioner

August 27, 1999

Chairman John M. McHugh
Postal Service Subcommittee of the
Committee on Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman McHugh:

Thank you for the opportunity to present the Commission's views at the Subcommittee's August 4, 1999, hearing on the need to amend 39 U.S.C. § 3001. One focus of the hearing was the inclusion, in the final version of S.335, of a requirement that certain disclosures be displayed "prominently,"[1] while other required disclosures must be "clear and conspicuous." You and other Subcommittee members expressed an interest in receiving a more detailed explication of my views on this issue.

With respect to the incorporation of the term "prominent" into S. 335, Senator Collins explained the managers' amendment adding that term by stating, "The committee report accompanying S. 335 provides a detailed description of the clear and conspicuous standard enunciated by the Federal Trade Commission and in court decisions. The standard was designed to prevent deception, and we expect those enforcing this Act to make use of this standard to protect consumers . . ." 145 Cong. Rec. at S9975 (daily ed. Aug 2, 1999). Senator Collins also stated:

> Furthermore, the managers' amendment adds the word "prominent" to the two most significant disclosures required by S. 335 * * * We view these disclosures as particularly important. As such, and because of the brevity of these disclosures, we believe that it is particularly important that they be easily identifiable by the reader. The Federal Trade Commission has used a variety of terms to describe clear and conspicuous, including sufficiently clear and prominent. Because many of the other

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[1] Specifically, S.335 requires that a sweepstakes solicitation "prominently disclose in the mailing, in the rules, and on the order or entry form, that no purchase is necessary to enter such sweepstakes . . . and that a purchase will not improve an individual's chances of winning with such entry."

> disclosures required by S. 335 may be lengthy and may only appear in one place in a mailing, we believe that what is "clear and conspicuous" for one disclaimer may differ from what is necessitated by another. A disclosure of a few words, such as 'no purchase necessary,' would by its very nature dictate a different yardstick than would the entire contest rules, which might consist of several hundred words. *We expect all disclosures to be clear and conspicuous but these two disclosures should be 'prominent' in the three required places in each mailing.* (Emphasis added.) *Id.*

The "clear and conspicuous" standard for disclosure of material information to consumers is central to much of the case law that has developed under Section 5 of the FTC Act, 15 U.S.C. § 45, which empowers the Commission to take action against deceptive commercial practices. The underlying legal concept is that where material information has been clearly and conspicuously disclosed, the likelihood of deception is minimized or eliminated.

The term "clear and conspicuous" refers to a general standard of effective communication. As the Commission recently stated:

> Ordinarily, a disclosure is clear and conspicuous, and therefore is effectively communicated, when it is displayed in a manner that is readily noticeable, readable and/or audible (depending on the medium) and understandable to the audience to whom it was disseminated. (footnote omitted)

63 Fed. Reg. 25002, Notice Seeking Comment on the Interpretation of Commission Rules and Guides for Electronic Media (May 6, 1998).

The Commission has used a variety of verbal formulations for the "clear and conspicuous" standard, including, for example, "sufficiently clear and prominent"[2] and "with such clarity and prominence as will be noticed and understood by prospective purchasers"[3] The Commission views such terms as synonymous. *Id.*

The "clear and conspicuous" standard is a flexible one. Whether material information is disclosed "clearly and conspicuously" depends on a number of factors, including the medium used for the solicitation and the disclosure (*e.g.*, print, video, radio, or Internet), type size, placement, color contrast to background, duration and timing, and the existence of other competing visual or audio information that may detract from the disclosure. The Commission also considers "the language and syntax of the disclosure to determine whether it is likely to be understood by the relevant audience." *Id.* As Senator Collins indicates, in the case of some disclosures, more may be necessary to render them "clear and conspicuous" than is necessary in the case of other disclosures.

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[2] Guides for the Jewelry, Precious metals, and Pewter Industries, 16 C.F.R. § 23.1 n.2

[3] Guides for the Advertising of Warranties and Guarantees, 16 C.F.R. § 239.1(b).

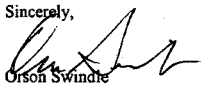
Moreover, some disclosures may be deemed to be of such paramount importance that Congress may wish to set a higher or more specific standard for ensuring their communication. Thus, S.335 provides for two particular disclosures to be made in specified places, and the legislative history of that bill, quoted above, indicates an intent to establish a *more* prominent level for these disclosures than for others. In this respect, the Subcommittee may want to consider an express comparative requirement, such as that used in another statute enforced by the Commission, the Truth-in-Lending Act, which provides, in relevant part:

> Information required by this subchapter shall be disclosed clearly and conspicuously, in accordance with regulations of the Board. The terms "annual percentage rate" and "finance charge" shall be disclosed *more conspicuously* than other terms, data, or information provided in connection with a transaction, except information relating to the identity of the creditor. (Emphasis supplied.) 15 U.S.C. § 1632(a).

Such an approach could achieve the purpose that seems to be behind use of the word "prominent" in S. 335, without risking the confusion that could arise from the use of two apparently synonymous terms to create distinctly different standards of disclosure.

I hope the views and information expressed in this letter are helpful to the Subcommittee in its deliberations. Please do not hesitate to contact me if you have any further questions or concerns.

Sincerely,



Orson Swindle

Mr. MCHUGH. I am not trying to make light of this. I understand this is an important issue. Mr. Ungar, I do not think GAO has, or do you?

Mr. UNGAR. I do not. I do have counsel here. I am not sure she is still here.

Mr. MCHUGH. Commissioner, if you could pursue that for us. I would say particularly to Ms. Goldstein and to Mr. Pashby, who brought it up, if you would like to provide us with more material on that so as we go along we are not insensitive to your concern. Frankly, we did not think it was a problem or an issue until the Senate, as you know, in a colloquy in a final action did add that to their language.

Let me turn to first amendment concerns. I certainly do not want to, with so many press here, make light of the first amendment. That was something that Mr. Pashby and Ms. Goldstein had the courage to say in their written, as well as their oral statement, their submitted statement, given what we had said earlier. It was mentioned in others as well.

Would either of you like to expand on how requirements of type size, particular placement, and such evolves into a first amendment concern, commercial speech concern?

Mr. PASHBY. By asking me, you have also chosen yet another person in this room who is not a lawyer. I do have a memorandum from the Freedom To Advertise Coalition, which does detail the complete background to our comments on the first amendment.

Mr. MCHUGH. Then we would like that to be submitted for the record please.

Ms. Goldstein.

Ms. GOLDSTEIN. I am embarrassed, I guess, to say at the moment that I am an attorney. So, I will just attempt to address the issue briefly, from the perspective particularly of PMA. We are pleased to hear a general consensus today that sweepstakes are a legitimate marketing tool and a legitimate form of promotion and, hence fall within the ambit of commercially protected free speech.

As such, any regulation that is adopted or legislation that is adopted has to be sufficiently tailored and not more restrictive than necessary to achieve the intended purposes. Our concern with mandated type size or placement requirements is that it deprives the marketer of the flexibility to determine, on an individual basis, how, where, and in what format disclosures might best be made.

If I may, I will try to provide just one example. Some of the legislative proposals suggested that disclosures be included on the first page of a solicitation. For example, that the "no purchase necessary" be disclosed on the first page.

I would suggest that in a mailing in which the actual invitation to purchase or order is made somewhere else, it might actually be more appropriate or meaningful to a consumer to have that disclosure appear in closer relationship to where that invitation exists.

Yet, the legislation would simply assume that the first page of the notice is the best and most appropriate place to make that disclosure. Our members use sweepstakes in a variety of different ways. They take different formats. They are presented in different type sizes, in different forms of packages, and they may contain a host of other materials along with those mailings.

We believe that any attempt to mandate exactly how or where those disclosures should be made may actually result, in some instances, in less rather than better informed disclosure for the consumer.

Mr. MCHUGH. Would it be an infringement of commercial speech if, instead of requiring that that language appear on the first page, that it was required to appear exactly where the solicitation appeared, as you just cited as an example? Would that not violate the same principle?

Ms. GOLDSTEIN. Again, every solicitation may contain different components. The marketing community has lived with the concept of "clear and conspicuous" for many, many years. It has an established meaning within the advertising community. The increased penalties that S. 335 would provide, would certainly provide a strong incentive to the marketing community to do this right, and not to take unnecessary chances. So, I think the combination of a judicially established standard, coupled with the added enforcement, powers, and penalties of S. 335 will accomplish the desired purpose of ensuring that consumers have the information in a place where they can readily find it, see it, and understand it, yet allow marketers the flexibility to decide, with each particular format, how those disclosures can best be made.

Mr. MCHUGH. You make a very cogent argument on behalf of your Association's position. I do appreciate it. We are going to try to pursue this from my perspective, reflective more of what Jerry Cerasale said because we want to get it right. We do not interpret constitutionality here. The courts do that.

I think it would be very unwise of us to chart a course that responds to a very serious problem that it does not take the vulnerability and subsequent court actions into consideration. I also want to thank you for reminding me why I dropped out of law school actually. So, with that, let me yield to the ranking member.

Mr. FATTAH. Thank you. Ms. Goldstein, you are right. There is a consensus that sweepstakes is a legitimate marketing tool. I think there is also a consensus that the fraudulent activities, of which we have so many prominent examples, has to come to an end.

I think that the Senate, in adopting the "prominent," in addition to "clear and conspicuous," was trying to suggest that they wanted to raise the bar, because people have found a way to almost get away with what is, in many senses, is a very serious crime and perpetrated particularly on the elderly.

I know there are many members of your Association who are quite responsible. I think that the industry itself has not found a way to deal with this problem. Even though it is helpful to hear your comments today, it is something that we will have to wrestle with.

I want to ask Commissioner Swindle, the FTC is right now taking action against travel companies who have been involved in a fraudulent activity that the mail is being utilized to tell people that they have won a vacation, which is not dissimilar to the hearing today as far as I am concerned.

Whenever you defraud somebody using a telephone, or whether you do it through sweepstakes, or whether you do it through a "you

won a vacation scheme" it is all the same to me. You are taking action right now. I am trying to understand.

If you could, help us understand what potential correlation there may be to an action that you are taking. I think you are using the basis that the solicitation was made in the mail. It would be interesting in hearing your comments.

Mr. SWINDLE. First and foremost, we act under the Federal Trade Commission Act obviously. We deal in these cases with deceptive and misleading statements misleading consumers. We have rather broad authority under that.

In these particular cases, which I think there was a press conference on yesterday, they clearly convey to consumers a concept of what they would be receiving. Money was paid for that. In fact, the consumer did not receive anything. That is misleading advertising. It is fraudulent. It is deceptive. Under those parameters, we have the authority to go and seek retribution and penalty.

I think what is at stake here with the proposed legislation is to try to give the Postal Service the means by which if one of the envelopes comes through the system and is obviously misleading from its outward appearance, we would like to give the Postal Service more authority to perhaps curtail the numbers of those types of solicitations going out.

Once they go out and a consumer is unfairly deprived of his resources and misled, we can act on our authority. I think in one case, we are trying to cut down on the misleading use of the mail service. As you say, Congressman, there are many other ways that people are deceived through the Internet, telemarketing, and all sorts of ways. We still act on all of those the same way using the deception and misleading advertising facets of the law.

Mr. FATTAH. Thank you very much. I raised a question earlier about making available, as an additional remedy, and I note for some of the discussion that there is a belief that the Senate bill is a basis for us to build a consensus around. I think there is. I think that is true; this notion of a private action by individuals.

I would be interested in any response to that from some of the consumer representatives on the panel: AARP and the National Consumer Federation representatives.

Ms. TIERNEY. Could I have a little more idea of what it is that you are asking?

Mr. FATTAH. What I am suggesting is perhaps amending a final version of this bill in addition to whatever other remedies, that is law enforcement action, action by the Postal Service to take away mailing privileges, whatever that is. If someone has actually been defrauded, been victimized, or if someone's family has been victimized by one of these schemes, they would have a cause of action available to them under this law to personally seek redress in the courts.

Ms. TIERNEY. AARP is very concerned, this very thing that you speak about, the victimization.

We have, with our testimony that has been submitted, some letters from our members. As for the remedies of what could be done, we think that S. 335, when it gives the Postal authorities the chance to stop them, perhaps to stop the mailings, would go a long

way toward helping these people. What do you think if the Postal Service had the subpoena authority, so to speak.

Mr. FATTAH. That is my only point. If somebody is out $15,000, it does get them their $15,000 back.

Ms. TIERNEY. It does not give them $15,000 back. Maybe they would not have been out that much if there had been prevention at the other end. As for going through the court system, what they can do, we have examples given to us of people who have tried to go through the courts.

They have tried to get the companies who send out the deceptive mailings to make some restitution in instances where, for instance, someone has magazine subscriptions that go up to 2010 or beyond. These are very difficult issues to address at this time. I think we would have to go to the court system to see what could be done about it.

AARP would be very much in favor of finding a way where victims could receive some remedy. We are most of all interested in the ways it could be prevented; that people would not be responding.

Mr. FATTAH. Prevention is our first responsibility. I also think there should be a redress for those who are victimized, if at all possible.

Ms. TIERNEY. We would agree.

Mr. FATTAH. I read through the notes of your members. One of them, in particular, who is a veteran who made tremendous sacrifices on behalf of our country, to come home and be a victim of this type of scheme, under the color of the Constitution, and protections guaranteed thereunder. I would be interested in your comments, Ms. Cooper.

Ms. COOPER. I can tell you, the League certainly supported the private right of action in terms of the telemarketing fraud legislation.

Mr. FATTAH. Yes. I am familiar with that.

Ms. COOPER. I do not see why we would not support the addition of a similar avenue for consumers in this legislation; any additional aids that consumers can have to help them when they have lost a lot of money. Now, a concern we would have would be the dollar limitation for allowing consumers to seek redress.

Mr. FATTAH. I do not know yet. I just thought of it. I am going to have my staff review it. We are going to work with the chairman, in a bipartisan way, to see whether there is a possibility of strengthening this legislative proposal as we go forward. If I could ask one more question, Mr. Chairman?

Mr. MCHUGH. Yes.

Mr. FATTAH. Mr. Cassidy, who represents the Federation of Nonprofits. I have a great deal of sympathy for the nonprofit community. I have one concern though as we go forward. I think I am in agreement with you. For the most part, nonprofits are not the target, if you will, of this effort. We have some nonprofits that look like for-profits in their activities and are very large and involved in what seem to be commercial enterprises.

So, I am just wondering whether in the stack of mail that we have, because I have not had a chance to really think about it in the context that you raise it, whether any of these letters or offers

are in fact from nonprofit entities. If they are, then I think we will have to figure out how we separate that.

I think that to a degree that you are right, that when we deal with nonprofits, the prizes are cars and things of that sort. They are not nationwide solicitations promising of millions of dollars to people, if they just buy enough subscriptions. So, I want to thank you for your comments. I will be glad to look at it.

I will be interested in whether or not, not whether it is called a profit or nonprofit, but what it actually does on a day-to-day basis, and whether or not it has been a part of this type of activity. Thank you.

Mr. MCHUGH. Thank you. The gentleman from Ohio. Thank you for your patience, Mr. LaTourette.

Mr. LATOURETTE. I thank you, Mr. Chairman.

I want to return to the "prominant" discussion and the "clear and conspicuous," if I may. I would like to hear anybody from any of the trade associations that would indicate that the first amendment stands and protects deceptive or fraudulent commercial speech. I do not think that is the speech that we are talking about. Is that right?

Ms. Goldstein, I was more than interested in your discussion. I do think the legislation runs afoul of the first amendment if we tell you what to say or perhaps how to layout your program. I would like to talk to you about type size, if I could.

In particular, are any of you aware of any solicitations, sweepstakes solicitation, by any of the organizations that you represent where the rules, the odds of winning, the limitations, the disclaimers were in a bigger type size than the offering?

There are not any, right? I mean, you do not make the offer you are going to win a $1 million this big, and then the odds are 119 million to 1, this big; right? Can you discuss with me maybe what is the constitutional infirmity of requiring that the limitations, the odds, the fact that you are not a winner, whatever language you choose to use to comply with the statute, are in the same type size as whatever type size you use to make an offering to someone? Where do we run afoul of the first amendment in that? We have not told you what to say.

Ms. GOLDSTEIN. Again, I think we get back to that essential prong of the test articulated by the Supreme Court in Central Hudson, which is that the legislation cannot be more restrictive than necessary to achieve the intended purpose. I am not sure any of us sitting here today could say that any particular type size is the absolute correct type size for a disclosure, or that disclosures that may be either larger or smaller, depending on the surrounding context, would not be equally conspicuous. The flexibility of the clear and conspicuous standard means that the adequacy of the type size would have to be judged within the context of the surrounding material and the manner in which the surrounding material is presented.

Mr. LATOURETTE. I understand that. Obviously, the solicitation is clear and conspicuous. You want the fact that you are making an offer, that is clear and conspicuous. I do not think the FTC or any of the regulators would say that you are. Well, I had one here. It is a bank check for $833,000.00 and it is on its way to this ad-

dress in my district. That is clear and conspicuous. I think that is right.

Somebody decided that is going to be the type size we use for that. Then somebody says, well, maybe a little smaller type size to describe a little bit more about our offering. Again, someone has chosen the type size that says, you are really not a winner, whatever limitation we have used is about, I do not know, I am not in the printing business, but it looks to me to be about one-tenth of the size might be generous. So, I guess I am confused about why it would be a violation of the first amendment to say—you can pick the type. You can make it all big. You can make it all small.

Whatever type size you choose to use, make it the same. Is it your position, and I will turn to the others who are representatives of the other associations, that runs afoul of the first amendment? I mean, is that your position?

Ms. GOLDSTEIN. Again, I do not mean to monopolize the time on this issue.

Mr. LATOURETTE. You and I are the only lawyers in the room. So we get to do that and we are all being paid by the hour now.

Ms. GOLDSTEIN. Our basis for raising constitutional issues with that type of requirement is that it still may be more restrictive than is necessary to accomplish the purpose. There are many other forms of advertising that contain a combination between an advertising message and necessary disclosures.

Here, we are singling out a particular form of promotion. In fact, we are singling out a form of promotion in a particular media. I think we have to be very careful about the restrictions we impose. The Supreme Court's recent decision in the New Orleans Broadcasting case would suggest that where we are setting different standards for different media, we may need to be even more careful.

I would come back to the same point that in a proper context, and given the overall representations that are made in the piece, those disclosures in smaller type size may be just as adequate to convey the information.

Just one other point I would like you to consider is that there is a very practical reason why the disclosures that are generally contained in the official rules tend to be smaller. That is that there is a lot of information that needs to be communicated. Many of our members conduct multi-level prize promotions in which there could be hundreds of prizes.

A requirement to list all of those prizes and all of the odds associated with those prizes could be quite burdensome, and in fact could take up the entire advertisement in and of itself. Again, I think that just underscores the need to consider how this regulation will effect not just one type of sweepstakes, but one in which the marketer may be offering 500 prizes.

Mr. LATOURETTE. What if we just said half as big as your solicitation? Again, you do not have to answer that. The last question I want to ask, and I have been begging the Chair's indulgence. I appreciate the time, Mr. Chairman. This business about "clear and conspicuous" and "prominent," again, when they were teaching me contract law, I heard several times that prominent means the same

thing as clear and conspicuous. So, that is what we used to call surplusage.

Surplusage is something where you can have it or not have it. To hear that the word "prominant" gives you heartburn, it does not make it ambiguous. If it all means the same thing, it means the same thing.

Mr. PASHBY. That is precisely our point.

Mr. LATOURETTE. Well, then why object? Why do we not just put it in there then?

Mr. PASHBY. Because what we have is all the disclosures use the clear and conspicuous standard. Two of the disclosures have an additional standard of being prominent.

Mr. LATOURETTE. I understand.

Mr. PASHBY. We are saying these are one in the same things.

Mr. LATOURETTE. I understand. We all agree that what the Senate was trying to do is raise the bar; right?

Mr. FATTAH. I think we are all in agreement that the Senate knew that when it added the word prominent, that it had an additional impact.

Mr. LATOURETTE. If it means the same thing, then it should not bother you at all. I think the concern is that it does bother you at all. I think the concern is that it does bother you. Now, what it maybe means is that your legal departments are going to have to say "clear and conspicuous" and "prominant" means the same thing as the case law "clear and conspicuous" means. Maybe that is it, or maybe Mr. Fattah is exactly right and prominent means something else. Prominent, I think as an old Latin student, meant that you just have to have it out front.

Mr. PASHBY. I think the legal departments of many other industries will be worried about this as well, because it seems to set a standard of clear and conspicuous to be somewhat less than prominent. Prominent has been used synonymously with clear and conspicuous. Now, it seems to be put to a higher standard for other industries as well in their disclosures.

Mr. LATOURETTE. The last thing is the notice that the chairman put up there about this $833,000. I think I would just like the opinion of those who have testified as to whether or not the language, if you have and return the grand prize winning entry in time, will confirm that as clear and conspicuous under any definition you choose to use?

You can just drop me a note and I would appreciate it.

There might be a problem with that. It might be prominent. It is first. So, I would say that it is prominent. I do not know if it is clear and conspicuous. Thank you, Mr. Chairman.

Mr. MCHUGH. I thank the gentleman.

Mr. FATTAH. Before the chairman wraps up.

Mr. MCHUGH. Yes.

Mr. FATTAH. I want to thank the chairman for having this hearing. I think it has been very helpful and illuminating on a very prominent matter.

Mr. MCHUGH. Well clearly, we are happy for his prominent participation in his free use of the speech. In all seriousness, ladies

and gentlemen, thank you so much for being here. We are going to ask for your further indulgence in that we want to reserve the right to submit questions to you for a written response. We have a lot of things we did not get to.

[The followup questions and responses referred to follow:]

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Commissioner

October 20, 1999

Chairman John M. McHugh
Postal Service Subcommittee of the
Committee on Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Chairman McHugh:

Thank you again for the opportunity to present the Commission's views at the Subcommittee's August 4, 1999, hearing on the need to amend 39 U.S.C. § 3001, and for the opportunity to respond to a number of follow-up questions contained in your letter of August 30, 1999. The paragraphs below set forth each of these questions, followed by the answer.

> **Question:** GAO testified that there is no centralized database tracking the extent of problems in this area, *i.e.*, the [Postal] Inspection Service, the FTC, etc. all have their own information. *However, given your testimony and GAO's conclusion that consumers' problems appear substantial, do you believe that one of the various federal agencies should take the lead in developing a centralized database so as to ensure we have comprehensive data on these problems? What would be the benefits, if any, of a centralized entity to coordinate consumer problems in this area? Costs? Do you believe that such an approach is important in assessing how any legislation we may pass in this area is working?*

Answer: The Commission believes that a federal agency should take the lead in developing a centralized database of consumer fraud complaints and has undertaken significant efforts to take the lead in making such a database a reality. The Commission has expended considerable resources to accomplish this goal, including an additional $3.8 million fiscal year 1999 appropriation from Congress earmarked specifically to "institute a toll free telephone number to make it easier for citizens to contact the U.S. government with complaints, and accelerate and expand the Consumer Sentinel and Internet fraud database."[1] (The Consumer Sentinel database is described below.)

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[1] Conference Report on the FTC's 1999 Appropriations, Omnibus Consolidated Appropriations Act, Pub. L. No. 105-277.

We continue to develop new connections with additional organizations that collect consumer complaints and that have already expressed interest in contributing data to Consumer Sentinel. Recently we have been working with the Postal Inspection Service, which is leading the development of a large, multi-agency campaign aimed at educating consumers about telemarketing fraud. The FTC and Postal Inspection Service are teaming up to handle the consumer complaints we expect to receive as a result, and the Postal Inspection Service is arranging to put the complaints it receives from this project into Consumer Sentinel. We believe this is a model of the kind of inter-agency cooperation necessary to make the idea of a centralized database a reality, and we hope to expand on these efforts with both the Postal Inspection Service and other agencies.

The benefits of a centralized consumer complaint database are clear. Such a database is a key component for effective law enforcement. By aggregating complaints from a variety of sources, law enforcers can more efficiently track trends, problem areas, and the most egregious actors, while more effectively directing scarce enforcement resources. It also enables many law enforcement agencies to identify potential consumer witnesses whose testimony can be used to support law enforcement action. Another benefit of a centralized database is that it provides a means to measure the effectiveness of legislative, enforcement, or educational actions taken to fight fraud and deception.

Recognizing the benefits of a centralized database, the Federal Trade Commission, in cooperation with the National Association of Attorneys General and our Canadian partners, Canshare and Phonebusters, developed Consumer Sentinel. Consumer Sentinel is a unique database of consumer fraud complaints and other investigatory resources that is available through a secure Internet web site to law enforcement agencies across the United States and Canada. Currently, over 210 agencies are members of Consumer Sentinel. Membership is open to any law enforcement agency that enters into a confidentiality agreement with the Federal Trade Commission.

To increase the usefulness and effectiveness of Consumer Sentinel, the Federal Trade Commission actively seeks partners willing to contribute complaint data to the system. All fraud complaints received by the Federal Trade Commission are available on the site, including those received directly from consumers through our new nation-wide, toll-free consumer help line (1-877-FTC-HELP), or through our electronic complaint form, available to consumers on our web site (www.ftc.gov). In addition, each Sentinel member can independently enter individual consumer complaints directly into the database. Also, a host of other law enforcement agencies and private organizations currently contribute their consumer complaint data, on a frequent periodic basis, to Consumer Sentinel, including the National Consumer League's National Fraud Information Center, the Canadian call center, Phonebusters, 31 Better Business Bureaus from across the United States, and others. The Federal Trade Commission takes primary responsibility for transferring data from these contributors into Consumer Sentinel, making the sharing of data relatively easy from the contributor's point of view. In this manner, Consumer

Sentinel is becoming the primary, centralized database of consumer fraud complaints throughout the United States and Canada. During 1999, an average of over 200 complaints per day have been added to Consumer Sentinel.

> **Question:** Please describe the meaning of the term "clear and conspicuous" as used by your agency. How would the addition of "prominent' to the "clear and conspicuous" standard affect the application of the standard where "prominent" is not included?

Answer: The "clear and conspicuous" standard for disclosure of material information to consumers is central to much of the case law that has developed under Section 5 of the FTC Act, 15 U.S.C. § 45, which empowers the Commission to take action against deceptive commercial practices. The underlying legal concept is that where material information has been clearly and conspicuously disclosed, the likelihood of deception is minimized or eliminated.

The term "clear and conspicuous" refers to a general standard of effective communication. As the Commission recently stated:

> Ordinarily, a disclosure is clear and conspicuous, and therefore is effectively communicated, when it is displayed in a manner that is readily noticeable, readable and/or audible (depending on the medium) and understandable to the audience to whom it was disseminated. (citing the Federal Trade Commission Policy Statement On Deception *appended to Cliffdale Associates, Inc.*, 103 F.T.C. 110, 174 (1984).)

63 Fed. Reg. 25002, Notice Seeking Comment on the Interpretation of Commission Rules and Guides for Electronic Media (May 6, 1998).

The Commission has used a variety of formulations for the "clear and conspicuous" standard, including, for example, "sufficiently clear and prominent"[2] and "with such clarity and prominence as will be noticed and understood by prospective purchasers"[3] The Commission views such terms as synonymous. *Id.*

The "clear and conspicuous" standard is a flexible one. Whether material information is disclosed "clearly and conspicuously" depends on a number of factors, including the medium used for the solicitation and the disclosure (*e.g.*, print, video, radio, or Internet), type size, placement, color contrast to background, duration and timing, and the existence of other

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[2] Guides for the Jewelry, Precious Metals, and Pewter Industries, 16 C.F.R. § 23.1 n.2

[3] Guides for the Advertising of Warranties and Guarantees, 16 C.F.R. § 239.1(b).

competing visual or audio information that may detract from the disclosure. The Commission also considers "the language and syntax of the disclosure to determine whether it is likely to be understood by the relevant audience." *Id.* In the case of some disclosures, more may be necessary to render them "clear and conspicuous" than is necessary in the case of other disclosures.

Moreover, some disclosures may be deemed to be of such paramount importance that Congress may wish to set a higher or more specific standard for ensuring their communication. Thus, S. 335 provides for two particular disclosures to be made in specified places, and the legislative history of that bill indicates an intent to establish a *more* prominent level for these disclosures than for others. In this respect, the Subcommittee may want to consider an express comparative requirement, such as that used in another statute enforced by the Commission, the Truth-in-Lending Act, which provides, in relevant part:

> Information required by this subchapter shall be disclosed clearly and conspicuously, in accordance with regulations of the Board. The terms "annual percentage rate" and "finance charge" shall be disclosed *more conspicuously* than other terms, data, or information provided in connection with a transaction, except information relating to the identify of the creditor. (Emphasis supplied.) 15 U.S.C. § 1632(a).

Such an approach could achieve the purpose that seems to be behind use of the word "prominent" in S. 335, without risking the confusion that could arise from the use of two apparently synonymous terms to create distinctly different standards of disclosure.

> **Question:** Take us through a call made by a consumer to your hotline – 1-877-FTC-HELP. Let's pretend the consumer is calling to complain or report on a deceptive prize promotion. What do you do, how do you assist the consumer and what type of follow-up is there?

Answer: A consumer who calls the Federal Trade Commission's hotline (1-877-FTC-HELP) with a complaint about a deceptive sweepstakes or prize promotion will first be asked a series of questions to obtain complete information about the complaint. For example, we record the name, address, telephone number and e-mail address (if any) of both the promoter of the sweepstakes and the consumer. Through questioning by the FTC counselor, we also determine when the transaction occurred, how the promoter initially contacted the consumer, how much money the promoter sought from the consumer, how much the consumer actually paid, and the method of payment used. This information is entered into the Consumer Sentinel database as the consumer and FTC counselor are conversing, and is immediately accessible in real time by

the more than 210 law enforcement agencies that are members of the Consumer Sentinel system. In this way, we are helping consumers by making their complaints immediately available to the widest audience of law enforcers possible.

After gathering complete information about the complaint, the FTC counselor continues the telephone conversation and assists the consumer by providing information to answer the consumer's questions and to help the consumer avoid being defrauded in the future. For example, the counselors provide tips on how to spot and avoid suspicious prize promotions. Drawing from a wide array of brochures and other educational materials prepared by the Commission staff, the counselor offers to send the consumer materials appropriate to the problem that prompted their complaint. The counselor explains how to seek a remedy for the consumer's specific problem, and how to spot similar problems in the future. Finally, the counselor advises the consumer on how to obtain additional information on a variety of consumer topics from the FTC in the future. The counselors explain that the FTC cannot take action on individual complaints, but that the complaint data is invaluable in detecting patterns of unlawful activity and in supporting law enforcement action against wrongdoers whose conduct adversely affects the public interest.

> **Question:** Please share with this subcommittee the number and type of enforcement actions brought by the Commission against direct marketers. What are some of the more egregious cases? Who are the top 5 offenders of the direct marketers which are engaged in fraudulent prize promotions or sweepstakes?

Answer: In the last decade the Commission has brought hundreds of law enforcement actions against direct marketers, *i.e.*, marketers that solicit consumers either by means of telemarketing or direct mail or both. Virtually all of these cases were filed in federal district courts across the nation under Section 5 of the FTC Act, which prohibits "unfair or deceptive acts or practices in or affecting commerce," and Section 13(b) of the FTC Act, which empowers the Commission to seek, and the courts to grant, preliminary and permanent injunctive relief to halt violations Section 5 (or other laws enforced by the FTC), and to order consumer restitution, disgorgement of ill-gotten gains, and the full range of other equitable remedies appropriate to correct such law violations. *FTC v. H. N. Singer, Inc.*, 668 F.2d 1107, 1110-12 (9th Cir. 1982).

The defendants in these cases operated scams selling a very wide range of goods, services, or investments: bogus water purifiers and home security devises, deceptive vacation certificates, copier supplies, credit cards or other credit products and services, so-called "recovery" services (fraudulent offers to recover, for a fee, funds lost through previous scams), business opportunities, and opportunities to invest in everything from precious or strategic metals to fine art, coins, gemstones, oil and gas leases and FCC licenses. A significant number of telemarketing and direct mail cases involving sales of consumer goods or services employed a prize promotion or sweepstakes as an inducement for consumers to purchase the offered goods or services.

With respect to the two dozen telemarketing or direct mail cases filed in federal district court specifically targeting allegedly fraudulent prize promotions or sweepstakes, the five most egregious, in terms of causing the greatest estimated dollar injury to consumers, are: Nishika, Ltd. ($140 million in estimated injury); S.E.C. Enterprises, Inc. [Denny Mason] ($113 million in estimated injury); Direct American Marketers, Inc. [DAMI] ($100 million in estimated injury); Sierra Pacific Marketing, Inc. ($51 million in estimated injury); and Pioneer Enterprises, Inc. ($38 million in estimated injury). Press releases announcing Commission law enforcement action against these companies are attached.

> **Question:** To what do you attribute the increase in consumer complaints to your response center? What more can Congress and law enforcement agencies do to make the public more aware of the serious problems associated with deceptive sweepstakes?

Answer: We attribute much of the increase in consumer complaints we have received at the Consumer Response Center first to greater awareness, consumer education efforts, and the recent availability of a toll-free hotline number for consumers to call and to the increased publicity surrounding the availability of that number. Consumers now must remember only one telephone number to obtain assistance from the Federal Trade Commission. In addition, they do not have to pay any long distance charges to access that assistance.

The FTC's campaign to educate consumers about this new resource is extensive. This education campaign has already resulted in the distribution of press releases and news articles to approximately 5,000 television and radio outlets, 11,000 newspapers and magazines, and 600 online databases; the production of two public service announcements and their distribution to more than 2,500 radio stations across the country; the distribution, via satellite, of an audio news release to radio stations that has generated 580 broadcasts, reaching a potential 4.5 million listeners; and the production by AARP of a video news release that was distributed, via satellite, to television stations across the country.

It is impossible to overstate the importance and value of consumer education as a weapon to combat the problems associated with deceptive sweepstakes. One key message of our consumer education efforts is that consumers do not have to pay to play a sweepstakes – if a payment or a purchase is required, the sweepstakes or prize promotion is unlawful. Our consumer education efforts also endeavor to make consumers aware of their rights under the laws, including the Telemarketing Sales Rule. The Federal Trade Commission has undertaken significant consumer education efforts with respect to deceptive prize promotions and sweepstakes, and continues to look for partners to help in spreading the word about this continuing consumer problem.

Question: How closely related are sweepstakes scams and deception to telemarketing fraud? Is there any connection between the companies which engage in sweepstakes fraud and those engaged in telemarketing scams?

Answer: As noted above, deceptive sweepstakes and other sweepstakes scams are often employed by fraudulent telemarketing operations, and many of the telemarketing companies that the Commission has sued have used such devices.

Question: What are your thoughts on the private right of action provision contained in the Telephone Consumer Protection Act of 1991? Should such a provision apply to sweepstakes?

Answer: In the Telephone Consumer Protection Act of 1991, Congress created a private right of action for consumers, based on a violation of that Act or of the FCC regulations[4] prescribed by the Act. 47 U.S.C. § 227(c)(5). Specifically, this statute empowers consumers to bring an action in state court to obtain injunctive relief and to recover "actual monetary loss from such a violation, or to receive $500 in damages for each such violation, whichever is greater." *Id.* The statute also authorizes courts to award treble damages "if the court finds that the defendant willfully or knowingly violated" the Act or the FCC regulations. *Id.* I am unaware, however, of any effort to assess the effectiveness of this statute.[5]

A private right of action may create a strong deterrent against fraudulent or deceptive practices in sweepstakes and prize promotions, and private enforcement may complement public enforcement to help eliminate such practices. However, my own view is that the Subcommittee should be mindful of the risk of over-deterrence. I do not believe it would benefit consumers if companies were discouraged from offering legitimate, nondeceptive promotions because of the cost of defending numerous (or even frivolous) lawsuits, or the risk of conflicting decisions concerning, for example, whether a disclosure is sufficiently conspicuous. In particular, in considering any private right of action, I believe that the Subcommittee should consider the specific kinds of obligations that would be imposed by various legislative proposals on sweepstakes and whether

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[4] 47 C.F.R. § 64.1200.

[5] The FTC's Telemarketing Sales Rule, 16 C.F.R. Part 310, contains provisions that, like the Telephone Consumer Protection Act and the FCC regulations under it, require telemarketers to implement "do-not-call" procedures. There is no private right of action, however, under the FTC's Rule. In accordance with the FTC's policy of subjecting all its trade regulation rules to periodic regulatory review, the Commission will in the near future initiate a review of the Telemarketing Sales Rule, including the "do-not-call" provisions. It is anticipated that the effectiveness of these provisions will be explored in the course of that regulatory review.

the benefits to be gained from private enforcement of those obligations would be greater than costs that ultimately will be born by the consuming public. In short, we should be very mindful of the inevitable unintended consequences.

I hope the views and information expressed in this letter are helpful to the Subcommittee in its deliberations. Please do not hesitate to contact me if you have any further questions or concerns.

Sincerely,

Orson Swindle
Commissioner

Enclosures

FOR RELEASE: NOVEMBER 8, 1994

NEVADA TELEMARKETERS CHARGED WITH MAKING FALSE REPRESENTATIONS IN PRIZE-PROMOTION SCHEME;
FTC asks court to issue injunction, return funds to consumers

The Federal Trade Commission has brought suit in federal district court in Nevada charging that a Henderson-based network of companies and their principal officers made numerous false representations in connection with a prize-promotion telemarketing scheme. The FTC alleged that consumers have been promised that they had won valuable prizes, such as a new car or cash, and that to receive them, they had to authorize a one-time charge of up to $700 on their credit cards. Some weeks later, consumers received merchandise that was often of limited value, along with their prize, which in almost all cases, the FTC alleged, was a vacation voucher that contained a number of onerous conditions and additional costs. The FTC has asked the court to order a halt to the alleged scheme, and to order the defendants to pay consumer redress.

The FTC's complaint detailing its charges in this case names as defendants: **Nishika**, Ltd., American 3-D, Ltd., **Nishika** Corporation, American 3-D Corporation, **Nishika** 3-D Camera Sales, Inc., all located in Henderson, and James D. Bainbridge, who is president, owner, or has a controlling interest in all of the companies (collectively, **Nishika**.) In addition, the complaint names Bentley Industries, Inc., of Los Angeles, California, and company owner and president, Daniel A. Fingarette, also known as William A. "Bill" Burke.

- more -

(**Nishika**--11/08/94)

THE ALLEGED SCHEME

According to the FTC, the defendants have solicited hundreds of thousands of consumers across the country through certificates or other notifications, stating that they are guaranteed to receive one of four to six listed awards or prizes, such as a car, cash of $1,250 or more, a television/stereo system or a vacation travel package. According to the complaint, consumers who call the defendants' telemarketers in response to the certificate are led to believe that they have been specially selected to receive an award at least as valuable as the cash prize (typically $1,250), and that they are just as likely to receive the new car. Consumers are also told that the numbers on their certificates are special and entitle them to receive additional valuable items.

In many instances, according to the FTC, consumers are told that the value of the prizes and other items totals several thousand dollars. In order to receive the prizes and bonuses, consumers are persuaded to authorize a "one-time" charge of up to $700 -- often referred to as a shipping and handling fee -- on their credit cards. Ultimately, consumers received merchandise of limited value to the consumers. The "award" almost always was a travel voucher that contained a number of additional costs and restrictions, making it virtually impossible to use.

According to the complaint, defendant Burke recruited and supervised the telemarketers who answer consumers' calls. In addition, under the authority of Bainbridge, Burke allegedly

provided the telemarketers with the sales script, copy for the mail notifications and some of the merchandise shipped to consumers. Bainbridge and **Nishika**, Ltd., also allegedly supplied some of the merchandise and obtained merchant accounts with Visa or MasterCard, through which they processed charges for their telemarketers' customers.

The FTC's complaint states that, as a result of the alleged misrepresentations by the defendants, consumers have suffered substantial injury. The agency has asked the court to order a temporary restraining order and ultimately a permanent injunction to halt the alleged scheme. In addition, the FTC has asked the court to order the defendants to pay redress to consumers. A hearing will be scheduled shortly.

The FTC filed its complaint in the U.S. District Court for the District of Nevada, in Las Vegas, on Nov. 7. The Commission vote to file the complaint was 3-0, with Commissioner Christine A. Varney not participating. The FTC's Seattle Regional Office is handling this matter.

(**Nishika**--11/08/94)

The FTC received substantial assistance in this matter from the Office of the Attorney General of Nevada and the Better Business Bureau of Houston, Texas. The FTC also received information used in the investigation from other State Attorneys General, the FBI, the Postal Inspection Service, and other Better Business Bureau offices.

NOTE: The Commission files a complaint when it has "reason to believe" that the law has been or is being violated and that a proceeding is in the public interest. The complaint is not a finding or ruling that the law has actually been violated. The case will be decided by the court.

Copies of the complaint are available from the FTC's Public Reference Branch, Room 130, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580; 202-326-2222; TTY for the hearing impaired 202-326-2502.

# # #

MEDIA CONTACT: Howard Shapiro, Office of Public Affairs
202-326-2176

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Seattle Regional Office
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915 Second Avenue
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(Civil Action No. CV-S-94-00967-HDM (RJJ))

(FTC File No. 912 3359)

(**nishika**)

FOR RELEASE: MARCH 18, 1996

FTC ACTION TO PROVIDE AS MUCH AS $11.3 MILLION FOR CONSUMERS VICTIMIZED BY HUGE PRIZE-PROMOTION TELEMARKETING SCHEME

The Federal Trade Commission has negotiated two settlements that could result in as much as $11.3 million for the victims of a nationwide prize-promotion telemarketing scheme run out of Henderson, Nevada. The defendants in the case -- **Nishika**, Ltd., five other companies and two individuals -- allegedly induced consumers nationwide to pay up to $700 each for a "3-D" camera and other items by engaging telemarketers to tell the consumers that they had won a valuable award. In fact, the FTC charged in federal district court, most consumers received only travel certificates of little value.

The defendants have signed settlement agreements with the FTC to end the litigation. The first settlement includes the FTC's monetary claim and has been approved by two federal bankruptcy courts; the second would bar the defendants from engaging in similar deceptive schemes in the future and requires federal district court approval to become binding.

The FTC filed its charges in the case in November 1994 against **Nishika**, American 3-D, Ltd., **Nishika** Corporation, American 3-D Corporation, **Nishika** 3-D Camera Sales, Inc. and James D. Bainbridge, who is president, owner or has a controlling interest in these companies; as well as Bentley Industries, Inc., of Los Angeles, and company owner and president, Daniel A. Fingarette, also known as William A. "Bill" Burke.

The defendants allegedly solicited hundreds of thousands of consumers through certificates and other notifications. When consumers called in response, they were led to believe they had been specially selected to receive one of several awards, ranging from a cash award (typically, $1,250) to a new car, the FTC alleged. In order to receive their prizes, consumers were persuaded to authorize a "one-time" charge of up to $700 -- often referred to as a shipping and handling fee -- on their credit cards. The "award" consumers almost always received was a travel voucher that contained a number of additional costs and restrictions, making it nearly impossible to use, the FTC charged.

The defendants have each filed voluntary bankruptcy petitions, and the FTC filed a claim in each of the proceedings in the amount of $80 million. The bankruptcy courts now control all of the defendants' assets. The bankruptcy settlement negotiated by the FTC allows for the competing claims of other creditors against the defendants and sets forth the FTC's priority claim. Based on the formula in the settlement, the FTC could receive as much as $9.6 million for a consumer redress fund, with another $1.7 million going to consumers who already are listed as creditors in the bankruptcy proceedings.

The district court settlement would prohibit the defendants, in connection with any marketing program involving a premium incentive item, from misrepresenting:

- the value, quality, nature or content of the good, service, or premium incentive item;
- the value of the premium incentive item compared to the amount of money the consumer will pay;
- the likelihood that any consumer will receive a specific premium incentive item; and
- the terms or conditions governing any prize promotion, including whether the consumer must make a purchase or payment.

In addition, the settlement would require the defendants, when engaging in telemarketing, to disclose at the beginning of the initial contact with consumers the fact that they are selling goods or services.

Moreover, before the consumer pays, the defendants must clearly and conspicuously disclose all material terms and conditions of the offer, including any necessary payments the consumer must make, procedures they must follow to obtain the premium item, the defendants' refund policy or the fact that they have no such policy and, when a consumer asks, the reasonable retail value of the premium item.

The settlement also would require the defendants to take reasonable steps to monitor any entities engaged in a telemarketing sales program to which they are providing assistance, in order to ensure that the entities are complying with the above provisions, and to terminate their relationship with anyone who repeatedly violates these provisions. Further, the defendants would be prohibited from providing assistance -- including supplying goods, services or premium incentive items; providing customer lists; and processing consumer credit card charges -- to entities that the defendants know or should know are making the false or misleading representations prohibited by the settlement.

The settlement also prohibits the defendants from transferring their customer lists to third parties.

Finally, there are various reporting and other requirements in the district court settlement that would assist the FTC in monitoring the defendants' compliance.

The Commission vote to approve the settlements for filing in the respective courts

was 5-0. The bankruptcy settlement was approved by the U.S. Bankruptcy Courts for the Central District of California and the District of Nevada on Feb. 14 and 15, respectively. The settlement with the injunctive provisions was filed in the U.S. District Court for the District of Nevada, in Las Vegas, on March 15, and is subject to that court's approval. This case was handled by the FTC's Seattle Regional Office with assistance from the Nevada Attorney General's office, and the Houston, Texas, Better Business Bureau, among other entities.

NOTE: These settlements are for settlement purposes only and do not constitute an admission by the defendants of law violations. They have the force of law when approved by the courts.

Copies of the settlements, as well as the November 1994 complaint detailing the FTC charges, are available from the FTC's Public Reference Branch, Room 130, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580; 202-326-2222; TTY for the hearing impaired 202-326-2502. To find out the latest news as it is announced, call the FTC NewsPhone recording at 202-326-2710. FTC news releases and other materials also are available on the Internet at the FTC's World Wide Web site at: *http://www.ftc.gov*

(FTC File No. X950016)

(Civil Action No. U.S. District Court: CV-S-94-00967-HDM (RJJ))

Bankruptcy Court in the District of Nevada:

- the **Nishika** companies:

  BK-S-94-24385 LBR
  BK-S-94-24479 LBR
  BK-S-94-24480 LBR
  BK-S-94-24481 LBR
  BK-S-94-24386 LBR
  BK-S-94-24387 LBR

- for Bentley and Fingarette:

  LA 94-49865 VZ

LA 94-49863 VZ

(nishika2)

Search text: **nishika**
Document 2 of 4
Title: **Nishika, Ltd.**

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FOR RELEASE: APRIL 2, 1996

2,682 VICTIMS OF CREDIT-CARD NUMBER TRAFFICKING SCHEME TO GET PARTIAL REFUNDS, FOLLOWING FTC LAW-ENFORCEMENT ACTION

The Federal Trade Commission announced today that it has distributed funds out of a $292,500 redress account to 2,682 consumers across the nation who were victimized as part of a telemarketing scheme in which the defendants allegedly were trafficking in consumers' credit card numbers. According to the FTC, the victims had agreed only to use a 3D camera on a free-trial basis, but the defendants already knew the consumers' credit card numbers and each of the consumers' accounts was charged without their knowledge or authorization. The FTC obtained a settlement in the case against 10 corporations and four individuals. The settlement required the $292,500 redress payment and these funds have been used to send checks for $93.34 each to the consumers who suffered the largest losses at the hands of the defendants.

The FTC first announced the case in December 1994, when it filed both a complaint detailing alleged law violations and a settlement of those charges in federal district court. The FTC's complaint names Capital Club of North America, Inc.; Philip A. Herman Marketing Consultants, Inc.; List Marketing Management, Inc.; Subscription Services, Inc.; National Media Corporation; Media Arts Publications, Ltd.; Business Publications, Inc.; GLS Direct, Inc.; NIS of South Jersey, Inc. (both the New Jersey and Florida corporations); Philip A. Herman; Michael Salaman; Ross Housley and Rocco Petrucelli. The defendants do business primarily out of New Jersey and Pennsylvania.

The FTC charged in the case that National Media and Media Arts, both infomercial producers, sold or rented their customer lists to third-party "service companies." The lists contained not only the customers' names, addresses and telephone numbers, but also their credit card types, account numbers and expiration dates, and this credit information was provided to the service companies without the consumers' knowledge or consent. The roles of the other defendants included maintaining the lists, marketing them to service companies, and conducting telemarketing calls on behalf of the service companies, the FTC alleged.

In addition to the redress payment, the settlements in the case permanently bar the defendants from providing confidential credit-card account information to third parties, and require them to take steps to ensure that future clients for other credit-related lists are not engaged in deceptive or unfair practices.

Consumers receiving pro rata refunds were called on the phone and offered a 3D camera with the brand names **Nishika**, National Consumers Alliance or 3D Marketing, on a free-trial basis. Consumers do not have to return the camera in order to get their refund, although consumers who already have received refunds from other sources will not receive refund checks from the FTC.

Copies of the legal documents in this case are available from the FTC's Public Reference Branch, Room 130, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580: 202-326-2222; TTY for the hearing impaired 202-326-2502. To find out the latest news as it happens, call the FTC's NewsPhone at 202-326-2710. FTC news releases and other documents also are available on the Internet at the FTC's World Wide Web Site at *http://www.ftc.gov*

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Bureau of Consumer Protection
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(FTC File No. 922 3355)

(Civil Action No. 94-6335; U.S. District Court for the District of New Jersey, Trenton)

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Search text: **nishika**
Document 3 of 4
Title: **2,682 Victims Get Partial Refund**

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EMBARGOED FOR 11:00 AM - OCTOBER 1, 1997

FEDERAL , STATE LAW ENFORCERS, 1,500 PRIVATE SECTOR VOLUNTEERS LAUNCH "PROJECT MAIL BOX"

Public Private Partnership Tackles Con Artists Who Prey On Seniors

More than 1,500 private sector volunteers have joined a coalition of federal, state and local law enforcers to target direct mail con artists who prey on senior citizens. The Federal Trade Commission, U. S. Postal Inspection Service, the National Association of Attorneys General (NAAG), 25 state Attorneys General and local law enforcement officials and AARP announced 190 law enforcement actions against fraudulent direct mail schemes, including one firm that used over 200 different business names and bilked consumers out of $100 million a year.

"Even though we live in the hi-tech age, the old fashioned 'snail mail' is still a favorite medium for con artists," said Jodie Bernstein, Director of the FTC's Bureau of Consumer Protection. "Today we're announcing a four pronged, federal/state, public/private initiative to target the scammers who use the mails to con consumers. First, efforts by federal, state and local agencies have resulted in 190 law enforcement actions. Second, the FTC, Postal Inspection Service, state Attorneys General, NAAG and AARP have formed a strike force to collect and review direct mail for future law enforcement action. Third, AARP has announced a "Project Senior Sting" mail collection and ongoing state-wide "Project Senior Sting" efforts in

Massachusetts and Arizona -- where unsolicited mail is being turned over to law enforcement agencies to search for possible examples of fraud. Finally, in conjunction with the U.S. Postal Inspection Service, and the Yellow Pages Publishers Association, we're launching a consumer education campaign to help consumers and small businesses spot mail fraud," she said.

"AARP believes that the law enforcement actions announced today are an important step in the war against consumer fraud," said AARP President Margaret A. Dixon. But it is equally important to educate consumers about these types of crimes to help them avoid becoming victims in the first place."

The scams targeted in the law enforcement sweep conned consumers with a range of deceptive claims, including misrepresentations that a mailing was from the government; deceptive claims that consumers have won something; misrepresentations that consumers have unclaimed assets; phony billing scams; bogus advance fee credit card offers; and false contest claims.

"Those who target our mailboxes with fraudulent offers are cunning and clever. They play the numbers game," according to Winconsin Attorney General James E. Doyle, President of the National Association of Attorneys General. "If they send out enough offers and only a small number of consumers respond from each state, they can still make a bundle."

In one FTC case, a U.S. District Court issued a temporary restraining order, ordered an asset freeze and appointed a receiver to oversee the business assets of National PC Systems, of Encino, California, and its principals. The FTC charged that the company sent mailings that appeared to be bills for computer service contracts to organizations that had not ordered these services, including churches and non-profit organizations. Many

mailings indicate that they are "renewals" or "upgrades of service" to previous contracts, or warn that an account is "past due." The defendants also deceptively claim to have "1200 convenience centers located Coast to Coast" and list a local or regional return address. Their solicitations provide an 800 number for consumers to call for "unlimited maintenance and repair service" including assistance by telephone.

Many organizations mistakenly paid the defendants hundreds of dollars after receiving the deceptive mailings. Other organizations purposely paid them to receive the promised services.

According to the FTC, the defendants rarely if ever, provided any of the services promised. In fact, the complaint states that return addresses on the defendants mailings are actually leased mail drops, not service facilities; the defendants' 800 number that organizations call in attempt to recover their funds or seek services, lands the organization in what one called a "phone mail jail"; and rather than "1200 convenience centers," defendants operate out of one location, in Encino, California.

The FTC is seeking to bar future violations by National PC and its principals and obtain redress for consumers who lost money. The U. S. Postal Inspection Service provided invaluable assistance to the Commission on this case.

The FTC also expects to file a federal court settlement in another case in the near future with **Direct American** Marketers, Inc. (DAMI). DAMI sent mail to consumers using more than 200 different company names. Many of the names, such as "Awards Claim Center," "Consumer Cash Claims," and "Prize Transfer Sweepstakes," suggested that DAMI was a sweepstakes judging or payout operation. Their mailings notified consumers that they had won prizes or cash awards. Using statements like,

> *"THIS DOCUMENT CONFIRMS AND GUARANTEES YOUR AWARD IN A NATIONAL SWEEPSTAKES,"* and
>
> *"PLEASE CONTACT OUR OFFICE AT ONCE. WE ARE HOLDING A $15,000 CERTIFIED AWARD CHECK WHICH MUST BE CLAIMED BEFORE THE END OF THE CURRENT DISBURSEMENT PERIOD,"*

DAMI directed consumers to call a 900 number to redeem their prize. What consumers got for making the call was a $25 phone bill and the chance to enter a sweepstakes in which the odds of winning the grand prize were about one in five million, according to the FTC. In fact, "in virtually all cases," consumers won either one dollar or no prize at all, the FTC complaint says. To settle the FTC charges, DAMI and its president, Anthony C. Brown, will be barred from engaging in any prize promotions that involve pay-per-call services in the future. In addition, they will pay $500,000 for consumer redress. Four state Attorneys General also have sued or settled with the defendant.

The Commission votes to file the FTC cases were 4-0.

The National PC Systems case was filed in U.S. District Court for the Central District of California, in Los Angeles.

NOTE: The Commission files a complaint when it has "reason to believe" that the law has been or is being violated, and it appears to the Commission that a proceeding is in the public interest. The complaint is not a finding or ruling that the defendant has actually violated the law. The case will be decided by the court.

Copies of the legal documents in the **FTC cases**, an FTC Tip Sheet, "**Is There A Bandit in Your**

Mailbox?" and a Business Alert, **"When Yellow Pages Directories Are Bogus"** are available on the Internet at the FTC's World Wide Web site at: *http://www.ftc.gov* and also from the FTC's Public Reference Branch, Room 130, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580; 202-326-2222; TTY for the hearing impaired 202-326-2502. To find out the latest news as it is announced, call the FTC NewsPhone recording at 202-326-2710.

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(National PC Systems)
(FTC File No. 962 3232 (DAMI))
(FTC File No. 972-3129 (National PC Systems/Checkwriter Systems))

(mailbox)

Search text: **Direct American**
Document 1 of 1
Title: **PROJECT MAIL BOX**

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FOR RELEASE: 3 P.M., FEBRUARY 24, 1993

FTC ENFORCEMENT NET CAPTURES TWO MORE CLUSTERS
OF TELEMARKETING COMPANIES BASED IN LAS VEGAS
Allegedly deceptive prize-schemes hit elderly, others nationwide

A federal district court has ordered two major clusters of Las Vegas, Nevada-based telemarketing companies and their principal officers, charged by the Federal Trade Commission with engaging in deceptive prize-promotion schemes, to halt the challenged sales practices. The court also froze the defendants' assets to preserve funds for consumer redress. According to the FTC, the defendants falsely represented to consumers across the nation that they had won valuable prizes, and then used a variety of misrepresentations to get the consumers to purchase cosmetics, vitamins, "environmentally safe" cleaning products, water purifiers or other products. The defendants also aided and abetted other telemarketers engaging in similar deceptive sales practices, the FTC charged, adding that the schemes have been particularly successful in victimizing elderly consumers.

These cases follow on the heels of a 1992 FTC case against a third major Las Vegas-based cluster of telemarketing companies that allegedly used a similar prize-promotion scheme. The defendants in that case, led by Pioneer Enterprises, Inc., recently agreed to halt the practices challenged by the FTC and to pay $1.5 million in consumer redress as part of an agreement to settle the FTC charges.

- more -

Las Vegas Telemarketers--02/24/93)

Defendants named in the cases being announced today are:

1. Sierra Pacific Marketing, Inc., which also does business as American Premier Products; Legacy Unlimited, Inc., of Nevada and Legacy Unlimited, Inc., of Arizona; Steven Morris Rowe, president of both Sierra Pacific and Legacy-Nevada, and a co-owner of Legacy-Arizona; Gary D. Hosman, vice president of Sierra Pacific; and Robert Morris Rowe, a director of Legacy-Nevada and president of Legacy-Arizona (collectively, Sierra Pacific).

2. A cluster of companies, including S.E.C. Enterprises, Inc.; National Health Care Associates; Future World, Inc.; American Health Associates, Inc.; AA Investments, Inc.; New Image Way; S.E.C. Enterprises Sales Inc.; and Security Printing, Inc.; as well eight other individuals, including Denny Ray Mason and Benedict Spano, who are officers, directors or managers of the above-named firms (collectively, **Denny Mason**).

According to the FTC complaints detailing its allegations in the cases, the defendants have mailed consumers "Certificate[s] of Award Guarantee" or made unsolicited telephone calls or both, in which they stated that recipients had been selected to receive one of four or five listed prizes or awards as part of special promotions. At that point, the defendants allegedly launched into a deceptive pitch to entice the consumers to purchase various types of merchandise in order to receive their prizes.

In the course of this sales pitch, the defendants allegedly misrepresented to consumers the value of the awards, or told them they had won the most valuable prize -- typically a car -- worth

thousands of dollars and certainly more than the purchase price of the merchandise. For example, the FTC charged in one of the complaints, almost all consumers received the least valuable prize -- typically a watch or jewelry, for which the defendants had paid less than $60.

Consumers who fell prey to the schemes initially spent $399 or more, but some have spent thousands in a single transaction and tens of thousands in the course of subsequent dealings with the companies, the FTC alleged.

That's because consumers who initially purchased merchandise were solicited again -- or "reloaded" -- to buy even more, the FTC alleged. The defendants falsely told these consumers that they were more likely to win a really valuable prize in the "advanced level" of the promotion -- as long as they bought more merchandise, the FTC charged. The consumers often spent thousands of dollars more in the hope of winning a fabulous prize, but typically received only prizes of nominal value, such as inexpensive Las Vegas Telemarketers--02/24/93)

jewelry or home electronics products, the FTC charged. For instance, the FTC told the court, one consumer described the "big-screen projection system" he received as a large, clear sheet of plastic that was supposed to be placed in front of the consumer's current television to magnify the picture.

Moreover, the defendants used sales techniques that were particularly successful with elderly consumers, the FTC alleged. These techniques included placing repeated calls to consumers who initially declined to purchase -- in some cases, several times an hour or on a daily or weekly basis for weeks -- and threatening legal action when consumers tried to cancel their orders.

The misrepresentations made by the defendants, their failures to disclose material information to consumers, and their assistance to other telemarketers engaging in the same deceptive practices, all constitute violations of the FTC Act, the FTC charged.

Upon filing of the FTC complaints, the court immediately granted temporary restraining orders halting the challenged practices and freezing all defendants' assets, pending hearings on the FTC's requests for preliminary injunctions. The preliminary injunctions would continue the conduct prohibitions and asset freezes until after the trials. The FTC is seeking permanent injunctions and redress for injured consumers.

The additional individuals named in the **Denny Mason** complaint are Anthony Della-Iacono, also known as Anthony Della, president of National Health Care Associates; Fletcher McKamie, secretary/treasurer of National Health Care Associates; Michael Minetti, president of American Health Associates, Inc; Pat Brett, secretary/treasurer of New Image Way; Ricky Mason, manager of National Health Care Associates; Randy Mason, also manager of National Health Care Associates; and David Jordan, president of S.E.C. Enterprises Sales. **Denny Mason** is listed as an officer or director of S.E.C. Enterprises, Inc., American Health Associates, Inc., New Image Way, Future World, Inc., and National Health Care Associates. Benedict Spano is named as an officer or director of New Image Way, Amerian Health Associates, Inc. and AA Investments.

In addition to the Las Vegas operations, Sierra Pacific also operated telemarketing rooms in Fort Smith and Little Rock, Arkansas; Tulsa, Oklahoma; and, doing business as American Premier

Products, in Atlanta, Georgia. In the past, it allegedly has operated rooms in Colorado Springs, Colorado; Tempe, Arizona; and Portland, Oregon.

The FTC filed its complaints under seal in U.S. District Court for the District of Nevada, in Las Vegas, on Feb. 22. The seal was lifted this afternoon. A hearing on the motion for a

preliminary injunction is set for March 1. The **Denny Mason** case is being handled by the FTC's Denver Regional Office, and the Sierra Pacific case is being handled by the FTC's Seattle Regional Office. The Nevada Division of Consumer Affairs/Telemarketing Unit substantially aided the FTC in these investigations, as did the Federal Bureau of Investigation and the Postal Inspection Service in Las Vegas. The Arkansas Attorney General, as well as the Attorneys General of Arizona, Idaho, and Oregon assisted the FTC in the Sierra Pacific investigation. The Attorney General of Louisiana has provided substantial assistance in the **Denny Mason** case, which also was aided by Attorneys General from California, Oklahoma, and Texas; the Santa Clara County District Attorney's Office in California; and Postal Inspection Service offices in San Diego and Phoenix. The Commission vote to file the complaints was 5-0.

NOTE: The Commission files a complaint when it has "reason to believe" that the law has been or is being violated, and it appears to the Commission that a proceeding is in the public interest. The complaint is not a finding or ruling that the defendant has actually violated the law. The case will be decided by the court.

Copies of the complaints, and the FTC news release and court documents in the Pioneer Enterprises case, are available from the FTC's Public Reference Branch, Room 130, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580; 202-326-2222; TTY 202-326-2502.

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FTC File Nos.: **Denny Mason** -- 922 3215
Sierra Pacific -- 922 3368
Civil Action Nos.: **Denny Mason** -- CV-S-93-135-PMP
Sierra Pacific -- CV-S-93-134-PMP
(dm-sierr)

Search text: **denny mason**
Document 1 of 3
Title: **Las Vegas Telemarketers--02/24/93**

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FOR RELEASE: APRIL 20, 1994

FTC SETTLEMENT IN "PRIZE" SCHEME NETS $900,000 IN REDRESS, PERMANENTLY BARS THREE FROM SIMILAR PROMOTIONAL EFFORTS

Three men who were defendants in a Federal Trade Commission lawsuit filed last year to shut down a Las Vegas-based "prize" scheme which used allegedly deceptive claims to get consumers to purchase a variety of merchandise, would be barred from participating in any prize-promotion marketing program in the future, under a settlement with the FTC. The eight corporate and nine individual defendants in the case also have agreed to pay the FTC $900,000 to be used for redress to consumers -- many of them elderly -- and to be bound by numerous restrictions and disclosure requirements on future telemarketing efforts, as part of the settlement.

Defendants in the case are Denny Ray Mason, Benedict Spano, and Anthony Della Iacono, the three who have agreed not to participate in any way in a promotional scheme offering prizes to consumers, and: S.E.C. Enterprises, Inc., National Health Care Associates, AA Investments, New Image Way, Future World, Inc. American Health Associates, Inc., S.E.C. Enterprises Sales, Inc., Security Printing, Inc., Michael Minetti, Patrick Brett, David Jordan, Ricky Mason, Randy Mason and Fletcher McKamie.

According to the February 1993 FTC complaint, the defendants mailed consumers certificates and made unsolicited telephone calls, telling consumers they had won one of four or five listed prizes (one of which often was a car) as part of special promotions. The ensuing sales pitch to entice consumers to purchase the promoted merchandise allegedly included a host of deceptive claims, including misrepresentations as to the value of the

- more -

Denny Mason--04/20/94)

prizes -- which typically turned out to be watches or jewelry, for which the defendants had paid less than $60 each. The FTC alleged that consumers initially spent $399 or more, but some spent thousands when they were solicited to buy again -- or "reloaded" -- before they had a chance to see the first prize they had won, based on alleged promises that the additional purchases would make them more likely to win even more valuable prizes. One of these "advanced-level" prizes was a "big screen projection system," which turned out to be a large, clear sheet of plastic to be placed in front of a television set to magnify the picture, the FTC told the court.

The defendants also allegedly aided and abetted other telemarketers engaging in similar deceptive sales practices, the FTC charged. The products being sold included cosmetics, vitamins and water purifiers.

The proposed consent judgment to settle these charges, which includes the $900,000 redress payment, requires the court's approval to become binding. As noted above, the settlement also would permanently bar Mason, Spano and Iacono from participating in, or assisting others in any way to run, a prize promotion scheme. This would include any scheme that involves any telemarketing sweepstakes or other contest where a prize or gift is offered, whether or not the defendants are trying to sell a product or service.

In addition, the settlement would prohibit all 17 defendants

from engaging in, or assisting others in, any telemarketing scheme that misrepresents anything about the "prize," the likelihood of, or conditions for, receiving it, or the consumers' ability to get a refund. Further, in connection with any telemarketing promotion they run, the defendants would be required to have their own merchant account before accepting any consumer credit-card purchase, and to ship any purchased goods within 30 days. They also would be prohibited from asking consumers to provide photographs or testimonials unless they have shipped the consumers' orders at least 10 days prior, and from resoliciting consumers before the consumers receive their first-round prizes or merchandise or within 45 days after asking consumers for a photograph or testimonial.

The settlement also would require the defendants to disclose in any future telemarketing effort:

-- at the outset of their initial contact with a customer, the fact that it is a sales presentation;

-- before obtaining a consumer's credit-card information or agreement to purchase, all material terms and conditions of

the promotion, including the refund policy and instructions, and the fact that consumers are under no obligation to purchase in order to receive their prize;

-- when making representations about the value of a prize or when consumers ask about the value, the actual cost of the item to the defendants; and

-- when asked by consumers, the odds of receiving a specific prize.

Any solicitation material the relevant defendants mail in connection with a promotion where they offer some item to induce consumers to make a purchase, would have to clearly and conspicuously state, "If you respond to this solicitation, you will be asked to make a purchase."

Finally, the settlement would require the defendants to monitor that their employees and clients are complying with the terms of the order and to fire, or stop providing services for, any employee or client in violation.

The Commission vote to file the proposed settlement was 5-0. It was filed in U.S. District Court for the District of Nevada, in Las Vegas, on April 15, 1994. The FTC's Denver Regional Office is handling the case.

NOTE: This consent judgment is for settlement purposes only and does not constitute an admission by the defendant of a law violation. Consent judgments have the force of law when signed by the judge.

A free FTC fact sheet for consumers titled "Prize Offers" offers tips on avoiding scams. Copies of the fact sheet, as well as the settlement and other documents associated with this case, are available from the FTC's Public Reference Branch, Room 130, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580; 202-326-2222; TTY for the hearing impaired 202-326-2502.

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(FTC Matter No. X930022)
(Civil Action No. CV-S-93-00135-PMP-(LRL))
(denny2)

Search text: **denny mason**
Document 3 of 3
Title: **Denny Mason - 04/94**

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FOR RELEASE: JULY 24, 1992 FTC SUES NEVADA TELEMARKETERS OF WATER PURIFIERS, VITAMINS: Charges firms with running 900-number prize-promotion scam and assisting other deceptive schemes A federal court has issued an order temporarily halting a prize-promotion telemarketing scheme allegedly run by **Pioneer Enterprises**, Inc., of Las Vegas, Nevada, and five other companies, following Federal Trade Commission charges filed in the court earlier this week. The FTC alleged in its complaint that Pioneer, which also does business under a number of other names, made unsolicited calls and mailed notifications to consumers stating they had won a valuable award such as a vacation trip, a car, cash or jewelry. The defendants then allegedly made numerous false and misleading statements in order to induce the recipients to purchase vitamins, water purifiers, or other merchandise at prices ranging from several hundred to several thousand dollars -- prices that exceeded the value of the prize awards, according to documents filed in court along with the FTC complaint. Further, the FTC charged, the defendants aided and abetted other telemarketers in running similar schemes to market their products. The FTC complaint names **Pioneer Enterprises**, which also does business as Vita Tek Marketing, Pro Life Marketing, 21st Century II, and Sunshine Promotions; 21st Century Marketing, Inc., of Las Vegas; Great Western Printing, Inc., of Las Vegas; Regency Market- ing Enterprises, Inc., with its last known place of business in Kenmore, New York; Premier Marketing of America, Inc., with its last known place of business in Buffalo, New York; VitaSystems Enterprises, Inc. of Buffalo, New York; and Richard J. Secchiaroli and Christopher A. Easley, both of Las Vegas and both officers of one or more of these companies. - more - **Pioneer Enterprises**--07/24/92) According to the complaint, the defendants have conducted a nationwide prize-promotion marketing program to sell various merchandise, including water purifiers, air purifiers and vita- mins, since at least 1988. The defendants allegedly have made unsolicited telemarketing calls to consumers, or sent them mailers with telephone numbers to call, telling the recipients they have won one or more "major awards," including a Cadillac, $5,000 in cash, a Hawaiian vacation or a diamond watch. During the telephone conversation, the complaint states, the defendants have reiterated the promise of the award and then delivered a sales pitch to induce the consumers to purchase the defendants' mer- chandise in order to receive their award. In some cases, the FTC charged, the defendants have used 900 numbers or other pay-per- call exchanges, telling consumers that, by calling such a number, they can receive their promised award without purchasing the merchandise. In the course of this telemarketing, the defendants allegedly made numerous false statements, including that: -- consumers had been specially selected to receive an "award" or "major award"; -- consumers can get their awards without purchasing the merchandise; -- the value of the awards exceeds the price of the merchandise; and -- consumers will receive a car or another comparatively desirable award, rather than one of the less desirable awards, if they buy the defendants' merchandise. In an additional count against the defendants, the FTC charged that, in contracting with other telemarketers to provide marketing and distribution services -- including the processing of consumer credit card charges -- the defendants aided and abetted these telemarketers to engage in similar deceptive practices. The FTC asked the court to issue preliminary and permanent injunctions prohibiting the challenged practices, and to freeze the defendants' assets to preserve any funds for consumer redress. The complaint was filed under seal in U.S. District Court for the District of Nevada, Southern Division, in Las Vegas, on July 20. The seal was lifted late July 23. NOTE: The Commission files a complaint when it has "reason to believe" that the law has been or is being violated, and it appears to the Commission that a proceeding is in the public interest. The complaint is not a finding or ruling that the defendant has actually violated the law. The case will be decided by the court. (**Pioneer Enterprises**--07/24/92) The FTC has developed consumer fact sheets titled "Prize Offers" and "Fraud by Phone" to help consumers evaluate these types of marketing practices. Free copies are available by writing the FTC's Public Reference Branch, Room 130, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580; 202-326- 2222; TTY 202-326-2502. Copies of the complaint in this case also are available from that address. # # # MEDIA CONTACT: Bonnie Jansen, Office of Public Affairs 202-326-2161 STAFF CONTACT: Eileen Harrington, Division of Marketing Practices, 202-326-3127 (FTC File No.: 922 3058) (Civil Action No.: 92-615-LDG-RJJ) (pioneere)

Search text: **Pioneer Enterprises**
Document 3 of 8
Title: **(Untitled)**

FOR RELEASE: SEPTEMBER 13, 1993

46,000 CONSUMERS TO SPLIT MORE THAN $1 MILLION IN REFUNDS FOLLOWING FTC CASE AGAINST PRIZE-PROMOTION TELEMARKETING SCHEME

More than 46,000 consumers will receive partial refunds totalling $1.14 million from the proceeds of a Federal Trade Commission lawsuit settlement with several telemarketers based mostly in the Las Vegas area. The FTC had charged **Pioneer Enterprises**, Inc. and several other firms in July 1992 with engaging in a deceptive prize-promotion telemarketing scheme to induce consumers to buy a variety of merchandise, including vitamins and water purifiers, and with assisting other telemarketers to run similarly deceptive schemes. The refund checks being mailed this week range from $5 to more than $600, and are being sent to consumers in all 50 states and the District of Columbia.

The FTC complaint spelling out the charges against Pioneer and the other defendants alleges that, beginning in 1988 or earlier, the defendants were mailing notifications and placing unsolicited telephone calls to consumers, in which they stated that each consumer had won a valuable award. The promised awards included luxury cars, cash, jewelry, and Hawaiian vacations, the FTC said.

According to the complaint and other documents filed in the case, when consumers responded to the notifications, the defendants made numerous false and misleading statements to get the consumers to purchase various merchandise at prices ranging from hundreds to thousands of dollars. Contrary to the defendants' alleged claims, these prices far exceeded the value of the prizes typically awarded.

- more -

Pioneer Redress--09/13/93)

The defendants also allegedly provided other telemarketers engaging in similar schemes with marketing, order shipment, credit-card processing and customer services, the FTC said.

In addition to Pioneer, which does business as Vita Tek, Vita Tek Marketing, Pro Life Marketing, 21st Century II, and Sunshine Promotions, the FTC complaint named 21st Century Marketing, Inc.; Great Western Printing, Inc.; Regency Marketing Enterprises, Inc.; Premier Marketing of America, Inc.; VitaSystems Enterprises, Inc.; and company officers Richard J. Secchiaroli and Christopher A. Easley.

The defendants agreed to settle the FTC charges under a consent judgment announced last December that required them to pay $1.5 million in redress and that places strict prohibitions and requirements on their future telemarketing and direct mail activities. The settlement also requires them to take steps to assure that other telemarketers or direct mailers with whom they deal comply with the settlement.

Copies of other news releases and the legal documents associated with this case are available from the FTC's Public Reference Branch, Room 130, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580; 202-326-2222; TTY for the hearing impaired 202-326-2502.

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(FTC Matter No. X920055)
(Civil Action No. 92-614-LDG-RJJ)
(Pioneer3)

Search text: **Pioneer Enterprises**
Document 7 of 8
Title: **Pioneer Redress--09/13/93**

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FOR RELEASE: DECEMBER 2, 1992

NEVADA TELEMARKETERS WOULD PAY $1.5 MILLION IN CONSUMER REDRESS TO SETTLE FEDERAL TRADE COMMISSION CHARGES

Pioneer Enterprises, Inc., of Las Vegas, Nevada, five other companies and two individuals who allegedly ran a deceptive prize-promotion telemarketing scheme to induce consumers to buy a variety of merchandise have agreed to pay $1.5 million to settle Federal Trade Commission charges in connection with the scheme.

The proposed settlement, which must be approved by the court, also contains strict prohibitions and requirements on the defendants' future telemarketing and direct mail activities. One provision would prohibit the defendants from misrepresenting their products or the "prizes" or "awards" they offer to promote such products. The FTC had alleged that, in addition to running their own scheme, the defendants aided and abetted other telemarketers to run similar deceptive schemes. Thus, the settlement also would require the defendants to take steps to assure that other telemarketers or direct mailers they deal with comply with the order.

The settlement stems from FTC charges filed in July against Pioneer, which also does business as Vita Tek Marketing, Pro Life Marketing, 21st Century II, and Sunshine Promotions; 21st Century Marketing, Inc., of Las Vegas; Great Western Printing, Inc., of Las Vegas; Regency Marketing Enterprises, Inc., with its last known place of business in Kenmore, New York; Premier Marketing of America, Inc., last known to operate out of Buffalo, New York; VitaSystems Enterprises, Inc. of Buffalo; and Richard J. Secchiaroli and Christopher A. Easley, both of Las Vegas and both officers of each of these companies.

The FTC alleged in its complaint detailing the charges that, beginning in 1988 or earlier, the defendants made unsolicited calls and mailed notifications to consumers, stating that the consumers had won valuable awards such as a luxury car, cash,

- more -

jewelry, or a Hawaiian vacation. When consumers responded to the notifications, the defendants allegedly made numerous false and misleading statements to induce the consumers to purchase vitamins, water purifiers, or other merchandise at prices ranging from hundreds to thousands of dollars -- prices that far exceeded the value of the prizes typically awarded, according to documents filed in court along with the FTC complaint. Among the services the defendants allegedly provided to other telemarketers engaging in similar schemes, the FTC alleged, were marketing, order shipment, credit-card processing, and customer services.

The FTC filed its complaint on July 20, and the court immediately issued a temporary restraining order prohibiting the defendants from deceptively operating the prize-promotion scheme and freezing all of the defendants' assets.

The proposed consent judgment settling the FTC charges pertains to all telemarketing, direct mail, and "fulfillment" services in which the defendants engage in the future. Fulfillment services include any services the defendants provide to other telemarketers or direct marketers to help them sell their products, including mailing solicitations, providing telephone sales

scripts, offering or providing incentive "prizes" or "awards," and arranging for the processing of their credit-card charge slips.

First, the proposed order contains a general prohibition on the making of any false or misleading statement about any product, service, or incentive items the defendants offer, and specifically prohibits false or misleading claims concerning the following, among other features:

-- the quality or value of such items;

-- the terms or conditions under which the items are available to consumers;

-- that any consumer can receive an incentive item with no obligation to purchase something else; or

-- that the value of any incentive item is equal to or exceeds the amount of money consumers have to pay for other products to receive the incentive item; or

-- that any consumers will receive any specific incentive item.

The proposed consent judgment also contains various disclosure requirements. It would require the defendants to disclose in any prize-promotion telephone call or mail solicitation that the

prize is being offered in connection with a sales promotion. In addition, the defendants would have to disclose the following at the time they initially contact consumers, whether by mail and/or telephone:

-- all material terms and conditions of the promotion;

-- the duration of the promotion;

-- how long it will take to determine which recipients will receive which incentive items;

-- the particulars of any refund policy they offer, including procedures for obtaining refunds and any deadlines that apply.

The defendants also would have to ship merchandise within 30 days of receiving a properly completed order from a consumer, under the proposed order.

Further, the defendants would be required to monitor their employees to ensure the employees are not violating the above provisions, and would be required to fire any person who the defendants know, or should know, has violated the settlement provisions three times within an 18-month period. All consumer complaints would have to be investigated and resolved promptly, under the proposed consent judgment.

In dealing with other telemarketers or direct mailers, the defendants would be prohibited from engaging in factoring -- using a merchant account in their name to process credit-card transactions from customers of other companies that do not have merchant accounts -- and from knowingly aiding and abetting others in engaging in conduct that would violate the order. The defendants would be required to check out potential telemarketing or direct

mail clients to determine the nature of their products, services or incentive items, as well as the truthfulness of the claims they'll be making and whether their business practices would violate the order.

Moreover, the order would require the defendants to obtain a signed written contract from all clients for whom they perform telemarketing, direct mail or fulfillment services. This contract would require the clients to follow the conduct prohibitions and disclosure requirements spelled out above. The order also would require the defendants to monitor their clients' business practices. And the defendants would have to terminate their relationships with any clients who fail to terminate employees who violate the order three times within an 18-month period. In addition, the defendants would be required to investigate any

consumer complaints they receive about their clients, and would be prohibited from providing services for two years to any clients they know are violating the order.

The $1.5 million payment would be due to the FTC within 10 days after the judge approves the settlement.

Finally, the proposed consent judgment would require the defendants to "seed" any customer lists they sell to other marketers with names provided by the FTC. Thus the FTC-named persons would receive copies of solicitations sent out by the defendants' future clients and the FTC could determine their compliance with the settlement. The settlement also would require the defendants to tell the FTC the names of any third parties to whom they provide solicitation lists.

The proposed consent judgment was filed in U.S. District Court for the District of Nevada, Southern Division, in Las Vegas, this morning. It is subject to the court's approval.

NOTE: This consent judgment is for settlement purposes only and does not constitute an admission by the defendant of a law violation. Consent judgments have the force of law when signed by the judge.

Copies of the proposed consent judgment, as well as the previous news release issued in connection with this case, are available from the FTC's Public Reference Branch, Room 130, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580; 202-326-2222; TTY 202-326-2502.

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(FTC Matter No. X920055)
(Civil Action No.: 92-615-LDG-RJJ)
(Pioneer2)

Search text: **Pioneer Enterprises**
Document 1 of 8
Title: **Pioneer Enterprises--12/2/92**

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United States General Accounting Office
Washington, DC 20548

General Government Division

November 4, 1999

The Honorable John M. McHugh
Chairman, Subcommittee on the
Postal Service
Committee on Government Reform
House of Representatives

Dear Mr. Chairman:

As you requested, we are sending our responses to four questions you asked following our testimony at the Subcommittee's August 4, 1999, hearings on the issue of deceptive mail. If you need further information or have additional questions about our responses, please call me on (202) 512-8387 or my assistant director Gerald Barnes on (202) 512-4228.

Sincerely yours,

Bernard L. Ungar
Director, Government Business
Operations Issues

Enclosure

cc: The Honorable Chaka Fattah
Ranking Minority Member

Enclosure

GAO Responses to Questions from the Chairman, House Subcommittee on the Postal Service, Concerning Deceptive Mail Issues

Question 1. Given your conclusion that consumers' problems appear substantial, do you believe that one of the various federal agencies should take the lead in developing a centralized database so as to ensure we have comprehensive data on these problems? What would be the benefits, if any, of a centralized entity to coordinate consumer problems in this area? Costs? Do you believe that such an approach is important in assessing how any legislation we may pass in this area is working?

GAO response. Based on our work, we believe that the Federal Trade Commission (FTC) could serve a leadership role in maintaining a central database to collect and maintain comprehensive data on consumers' problems with deceptive mail. Moreover, we believe that FTC's Consumer Information System (CIS) could serve as the central database. The purpose of CIS is to collect and maintain various data related to consumers' complaints on a wide range of topics, including not only deceptive mail but also such topics as (1) creditor debt collection, (2) home repair, and (3) investments. CIS receives such information not only from consumers but also from various federal, state, and local government agencies and non-governmental organizations that deal with such complaints. In addition, specific CIS data are used by law enforcement organizations and officials to assist them in fulfilling their law enforcement duties. Various officials from federal, state, and local agencies and non-governmental organizations, such as the National Fraud Information Center, told us that they believed that FTC was the most appropriate source for obtaining consumer complaint data related to deceptive mail. We discussed the opinions of these officials with an FTC official who told us that he believed that CIS could serve as the central database for receiving information on consumers' complaints about various types of deceptive mail.

We believe that a central database that includes comprehensive information on consumers' complaints could result in significant benefits. For instance, a central database could help various federal, state, and local agencies and non-governmental organizations, such as FTC, the Postal Inspection Service, state attorneys general offices, and the Better Business Bureau (1) better understand the scope and nature of consumers' deceptive mail problems, (2) conduct and coordinate investigations of specific companies that may be attempting to defraud consumers, and (3) develop methods for helping consumers learn more about avoiding such problems.

Because our work focused on the extent and nature of consumers' deceptive mail problems, we did not gather any information on the costs associated with developing and maintaining a central database. However, we believe various factors exist that could affect such costs. For example, one factor would be the costs associated with developing and maintaining a central database. We found that consumers may report problems to a wide range of agencies and organizations, such as FTC, the Postal Inspection Service, a local better business bureau or consumer protection agency. We believe that in order for a central database to be most useful, a significant effort would be needed to establish a reporting network among these

agencies and organizations to help ensure that all reported consumer complaints are included in the database.

We believe that a central database that maintains comprehensive data on consumers' deceptive mail problems would be a key element in assessing the effectiveness of any deceptive mail legislation. Such a database could be used to develop important baseline data that are needed to (1) determine the extent to which consumers' deceptive mail complaints have changed since the passage of specific legislation and (2) measure progress.

Question 2. How effective is the Postal Service in responding to consumer complaints about deceptive mail and how might this be improved?

GAO response. As indicated in our testimony, we performed a limited review of the Postal Service's consumer complaint program. The results of our work on this issue were based mainly on our visits to 15 postal facilities, including post offices and stations, in the metropolitan areas of Dallas, Texas; Los Angeles, California; and Washington, D.C. We did not perform sufficient work to determine (1) the Postal Service's effectiveness in responding to consumers' deceptive mail complaints, and (2) whether the Service needs to improve how it responds to these complaints.

Nevertheless, based on our limited work, we found that at nearly half of the facilities visited, postal employees did not properly refer consumers' deceptive mail complaints to the Postal Inspection Service. Postal Inspection Service officials mentioned that about the time of our visits, postal facility managers were instructed to alert their employees on how consumers may report deceptive mail complaints. However, given our findings, we believe that handouts or training on these instructions could be provided to postal employees who routinely deal with the public to help ensure that consumers' deceptive mail complaints are appropriately handled.

Question 3. On page 10 of your testimony, you detail how the Postal Inspection Service handles fraud complaints. Exactly how many categories are contained in the Fraud Complaint System (FCS) and to what do you attribute the fact the Inspection Service was not able to identify fraud complaints, the number of investigations involved nor whether the complaints led to investigations? What steps should the USPS take to correct or improve the FCS?

GAO response. According to the Postal Inspection Service, FCS includes the following six categories: (1) mail fraud; (2) chain letters; (3) consumers' general inquiries or requests for information; (4) consumer complaint program, which involved complaints about such

matters as fraud, bad business practices, or misunderstandings between consumers and companies; (5) sexually oriented advertisements; and (6) coupon fraud.[1]

For most of the 48,000 complaints in the consumer complaint category, the Postal Inspection Service was unable to specifically identify how many of the complaints involved fraud. The Postal Inspection Service was able to identify that 4,000, or 8 percent, of these complaints were fraud-related because they included case numbers of active mail fraud investigations. Without such case numbers, the Postal Inspection Service could not easily determine whether any of the remaining 44,000 complaints in the consumer complaint program category were fraud-related.

The Postal Inspection Service was unable to determine either the number of investigations associated with the 4,000 fraud-related complaints or whether these complaints led to investigations primarily because FCS cannot be easily queried. Moreover, there is not a one-to-one relationship between the number of complaints and fraud investigations. For instance, multiple complaints can be associated with a single fraud investigation.

Postal Inspection Service officials told us that FCS was an old computer system that was established sometime during the 1980s. Although FCS could provide some limited information on consumers' fraud complaints, the system was not designed to track specific types or groups of consumer complaints such as those related to deceptive mail. We did not conduct a detailed review of FCS that could allow us to adequately identify appropriate improvements that should be made. The officials mentioned that work was underway to ensure that FCS was Year 2000 compliant and that improvements were being made to help ensure that FCS could be more useful to the Postal Inspection Service.

Question 4. How might the Postal Inspection Service assist the Postal Service in becoming more responsive to consumer complaints about deceptive mailings?

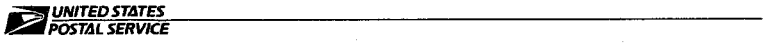
GAO response. The Postal Inspection Service is primarily responsible for handling consumers' deceptive mail complaints. As discussed previously, during our visits to 15 postal facilities, we learned that for about half the facilities visited, postal employees inappropriately referred consumer deceptive mail complaints to organizations other than the Postal Inspection Service, such as local postal consumer affairs offices or the Direct Marketing Association. Such inappropriate referrals may occur because within the Postal Service, local consumer affairs offices are primarily responsible for handling most consumer complaints. Perhaps a coordinated effort between the Postal Service's Office of Consumer

[1] In our testimony, we stated that FCS included four categories. Recently, Postal Inspection Service officials told us that there were two additional complaint categories—sexually oriented advertisements and coupon fraud.

Enclosure

Advocate, which manages the operations of local consumer affairs offices, and the Postal Inspection Service could help ensure that the appropriate referrals of deceptive mail complaints are made. As mentioned previously, employees could be given handouts or training on how to handle deceptive mail complaints.

KENNETH C. WEAVER
CHIEF POSTAL INSPECTOR



November 4, 1999

Honorable John M. McHugh
Chairman
Subcommittee on the Postal Service
Committee on Government Reform and Oversight
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Mr. Chairman:

In response to your request, enclosed are the Postal Inspection Service's responses to questions submitted for the hearing record following former Chief Postal Inspector Hunter's August 4 appearance before your subcommittee.

If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,

K. C. Weaver

Enclosure

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U.S. House of Representatives, Subcommittee on the Postal Service
August 4, 1999 Hearing
Record Questions for the Postal Inspection Service

1. **As you were asked at the August 4, 1999 hearing, how many of the 34 open sweepstakes mailings and 70 open lottery investigations which you reference on page 3 of your written testimony involve nonprofit organizations? How many recently closed cases involved nonprofits?**

   A review of the open sweepstakes and lottery cases disclosed that one sweepstakes case involves a nonprofit organization. A review of 75 recently closed sweepstakes and lottery cases disclosed that none involved nonprofit organizations.

2. **In testimony for the record, the Inspector General stated her office's support for the legislative proposal giving subpoena authority to the Postal Service. However, she suggested that the authority be specifically scoped to deceptive mailings and include a mandate to develop procedures on issuing subpoenas to ensure the integrity of the subpoena process. These procedures would require that:**
   - **A specific case be opened before a subpoena is requested;**
   - **Appropriate supervisory and legal review is implemented;**
   - **Delegation of authority is limited to high-level officials; and**
   - **The Postal Service issue periodic reports on subpoena activity.**

   What are your thoughts on the IG's suggestions?

   We are in agreement with the basic suggestions made in the Inspector General's testimony. Our intent in supporting Senator Collins' legislation was to enhance our current ability to combat deceptive mailings. The proposed administrative subpoena will be most effective if it applies to all of the sections of Title 39 that address deceptive mailings. This would include investigations of violations of Sections 3001 and 3005 and preparation for actions under Sections 3005, 3007 and 3012. We believe the subpoenas will help us develop better information regarding deceptive mailings and the people promoting them in a shorter amount of time. This will assist in bringing legal action earlier and should help reduce the number of victims and amount of losses.

   The Postal Inspection Service has extensive prior experience issuing subpoenas. From 1988 through 1996 we functioned as the Inspector General of the Postal Service and had the authority to issues Inspector General and Program Fraud Civil Remedies Act subpoenas. In order to ensure that the subpoena requests were justified, we used a system very similar to the suggestions by the Inspector General.

   It would be our intent to require that any subpoena request be related to a specific open case and that it would receive appropriate supervisory and legal review to ensure all required elements are addressed to justify the need for a subpoena.

We are concerned about the suggestion that delegation of the authority to issue the subpoenas be limited to the General Counsel or the Deputy General Counsel of the Postal Service. First, we believe this has the potential to create a cumbersome system. The Inspection Service would not send a request forward without thorough supervisory and legal reviews to ensure the request was properly justified. The request would most likely receive the same level of review by an attorney in the Law Department before being forwarded to the General Counsel or Deputy General Counsel for issuance of a subpoena.

Second, the General Counsel, who is also the Senior Vice President for Human Resources (Human Resources, Labor Relations and Diversity), and the Deputy General Counsel have extensive responsibilities considering the size of the Postal Service. We are concerned that the scope of their responsibilities could result in periodic delays in the issuance of subpoenas.

We would suggest that the provisions allow the authority to be delegated to the Chief Postal Inspector, Counsel and Deputy Counsels of the Postal Inspection Service. This would still require that all requests would have to come to Headquarters for review and closely mirrors the process used by the Office of Inspector General to issue their subpoenas.

The issuance of periodic reports would not be a problem since the issuance of subpoenas would be closely monitored. The reporting could be done in conjunction with the currently mandated semiannual reporting of actions under the false representation statutes (39 USC § 3013).

3. Is there a breakdown of what percent of the deceptive mail comes from outside the U.S.?

a. Is it particularly difficult to track and trace the origin of international deceptive mail?

b. What success has there been in bringing closure to these cases?

c. How many remain egregious and on the front burner?

d. In addition to the Nigerian government, do you have the cooperation of other governments in stopping deceptive mailings to the U.S.? Is there reciprocity?

e. Have you noticed a decrease in the amount of sweepstakes mail since the advent of Internet sweepstakes?

We are not able to determine the actual volume of domestic or foreign deceptive mailings. As GAO found in their review of this topic, there is no specific definition of what qualifies as a deceptive mailing. Even if there was a very precise definition of deceptive mail, there is no way to determine the actual number of mailings, especially from outside the United States. Additionally, a rising number of fraud cases are based on the mailing of payments in response to foreign solicitations received via telephone, fax or the Internet.

a. The origin of international deceptive mail can be very difficult to track and trace. Our investigative authority is very limited outside the United States and we have to rely on cooperation by foreign governments. One problem we face is that some mailings that are illegal in the United States do not violate any laws in the country of origin. The best example of this is the foreign lottery mailings.

b. We have had successes in preventing the victimization of American citizens by fraud schemes originating in foreign countries. Most notable is our agreement with the Nigerian government, which allows the interception, and destruction of mail related to what is known as the 419 scam. During the last fiscal year, with the assistance of the U.S. Customs Service, we intercepted and destroyed 2,345,027 solicitations. Another area in which we have had successes is foreign lotteries. In 1994 we began an initiative, again with the assistance of the U.S. Customs Service, through which over 9.7 million pieces of foreign lottery mail have been seized and destroyed. Additionally, in the first half of Fiscal Year 1999 we closed 93 investigations relating to foreign lottery scams. These investigations resulted in the issuance of 87 False Representation Orders that provide for the interception of responses to the solicitations. All the mail intercepted was returned to the senders, preventing them from becoming victims of the scams. We have successfully closed down a fraudulent yellow pages scam in which three foreign nationals mailed over 1 million solicitations. Responses were directed to a network of private mailboxes in over 120 commercial mail receiving agencies, which in turn forwarded the mail to Toronto.

c. There are many foreign-based frauds that we continue to pursue. The ingenious perpetrators of the Nigerian 419 scam have started making mailings from other countries in Africa and Asia. They also have increased the use of fax machines to avoid the mail. We continue to investigate foreign lotteries, many based in Canada and other countries where the mailing of such material is not illegal. We also have several active investigations of advance fees schemes and various telemarketing scams originating in Canada. We are working closely with Canadian authorities on these.

d. In addition to working with the Nigerian government to prevent the victimization of U.S. citizens, Postal Inspectors have also gained the cooperation of Ghana and Canada. Postal Inspectors also play a major role in working with other countries though the Postal Security Action Group of the Universal Postal Union and the Postal Union of the Americas and Spain. We are also are active participants in INTERPOL, with personnel assigned to their offices in Washington, DC, and Lyon, France.

e. Although we are aware of the use of the Internet to promote sweepstakes, we have not seen a corresponding decrease in sweepstakes mailings. Rather, because of our efforts in sweepstakes prevention and the publicity that Congress and State Attorneys General have generated, we have observed a dramatic increase in the number of sweepstakes mailings being sent to us for review. As an example, during the first six months of Fiscal Year 1998 we received 2,569 inquiries. During the same period in Fiscal Year 1999 we received 5,344 inquiries.

4. **You testified that it has been your experience that "consumers who remit fees to 'sweepstakes' and other promotions become 'hot commodities' and are targeted with additional solicitations from promoters".** ***Does this statement apply to both legal and illegal promoters? Are those lists sold to other promoters or kept inhouse?***

It is a common practice among direct marketers to buy and sell mailing lists. Our experience with promoters who use sweepstakes is no different. Based on what we have learned, it is a common practice for a promoter to increase the number of solicitations to individuals who have placed orders or responded to previous solicitations. During the hearings conducted by Congress we heard several of the big firms testify that they do not sell the lists they have created of their "good" customers.

In many of our fraud investigations we have seen promoters inundate individuals with solicitations after receiving an initial order or response. Often this is in the form of solicitations from the same promoter using different promotional names and a variety of addresses.

Another use for the mailing lists is to recontact the victims of sweepstakes or guaranteed prize scams with a promise to "recover" the money the individual previously lost, or obtain the prize they thought they won.

5. **What does it cost the Inspection Service to catch and prosecute deceptive mailers? What is the cost to legitimate mailers (in all categories) for this endeavor?**

An analysis of Postal Inspection Service work hours attributed to investigations of frauds against consumers during Fiscal Year 1999 disclosed a cost of about $22.9 million. This figure does not include the costs incurred by the Law Department or the Judicial Officer in processing cases under the false representations statutes.

The Postal Inspection Service is fully funded by the Postal Service, therefore the costs are passed on to all users of the postal system as part of the overhead costs. The cost of investigations is only offset by funds received from fines, forfeiture and penalties assessed by courts. This is the reason the Senate included provisions in S. 335 for the recovery of a portion of the investigative costs from civil penalties.

6. **You mentioned funds for victim restitution (page 12).** ***What provisions are now available for victim restitution? Who is/would be in charge of determining and dispensing the funds?***

We view the opportunity for refunds as our top priority in false representation cases. Although Chapter 30 of Title 39 does not include any provisions for victim restitution, we attempt to include restitution in consent agreements negotiated as a result of our

investigations. In such instances, either the company or an agreed upon third party would process requests for restitution for an agreed upon period of time.

Cases we pursue in U.S. district court for violations of Title 18 can include a consent decree in which the court retains jurisdiction. Normally the court would be responsible for handling restitution; however, in some instances a receiver or trustee appointed by the court would administer the restitution fund.

7. **On page 8 of your testimony you discuss the use of "straw" owners to set up corporate entities that do not disclose the names of the true promoters. You then note that based on the available public record you are not able to draw a direct link to the real promoter. You suggest that the False Representations and Lottery Statute be amended to require the clear and conspicuous disclosure of the solicitor's name and principle place of business on any solicitation for funds or for the sale of goods and service that is mailed or seeks response by mail. What is to prevent an unscrupulous individual from simply making up a false identity and principle place of business? Please describe how this new requirement would be enforced.**

It would be unrealistic to think that some unscrupulous individuals would not use false identities and business addresses. However, in such instances the use of false identification would be another element in our case demonstrating the deceptive nature of their schemes; and, if the provisions of pending legislation were enacted it would be another factor in determining the amount of civil penalties that would be assessed.

8. **GAO testified that there is no centralized database tracking the extent of problems in this area; i.e., the Inspection Service, the FTC, etc., all have there [sic] own information. *However, given your testimony and GAO's conclusion that consumers' problems appear substantial, do you believe that one of the various federal agencies should take the lead in developing a centralized database so as to ensure we have comprehensive data on these problems? What would be the benefits, if any, of a centralized entity to coordinate consumer problems in this area? Cost? Do you believe that such an approach is important in assessing how any legislation we may pass in this area is working?***

Although we believe the establishment of a centralized database could be beneficial, there are significant hurdles that would have to be overcome. The major hurdle faced by law enforcement agencies that have complaint databases which automatically interact with criminal databases is privacy and information security problems.

A second challenge is a combination of technology, which differs from agency to agency, and the manner in which data is collected, classified and entered in each system. Each agency has developed information systems on based on different hardware and software. Additionally, each agency has a different way of classifying complaints that is related to their enforcement responsibilities and the statutes they administer.

Finally, unless all participants agreed upon specific procedures for the use of the information, there would be significant chances of overlapping investigations that would, at a minimum, result in a waste of funds and resources.

The benefit of such a database would the consolidation of complaints that would assist in establishing the scope of the fraudulent activity and the identification of witnesses. Several agencies have complaint databases that could possibly function as centralized databases. However, their functionality would be dependent upon system capacities, privacy concerns, and required staffing levels. If such a database is established, it would have to be administered by a federal agency.

Funding would be necessary to ensure the agency maintaining such a system would have sufficient resources for establishment and maintenance of the system, as well as the staffing to administer the system. Funding would also be needed by all agencies contributing to the database to make the needed changes to their systems to allow for the transferal of complaint information to the central database.

Since many types of fraud are cyclical in nature and a growing number are originating from foreign countries, the data generated in such a system might be useful in tracking trends in fraud, but would probably not be an accurate indicator of the effectiveness of this legislation.

Ken Hunter, USPS Inspection Service

1. **On page 14 of GAO's report, it lists a number of Inspection Service activities relating to deceptive mail. I was particularly interested in the video news release sent to tv stations across the country. How many stations aired the video and did you receive any inquiries from stations requesting additional releases? Will you provide copies of the October, 1999 video scheduled to be released to public libraries, to tv stations?**

   During February 1999 we made three video news releases available to television stations via satellite link. Information received from a television rating service disclosed segments of the news releases were aired at least 169 times in cities across the country and were viewed in over 5 million households.

   The October 1999 video related to the KNOW Fraud project that will be released to public libraries was produced for the Better Business Bureau by a private company, with assistance from the Postal Inspection Service. Unfortunately, we do not control the distribution of the video. However, we have several related public service announcements (PSA) that will be made available via satellite link to all television stations. The PSAs include appearances by consumer reporter Chuck Whitlock, actor Andy Griffith and President Clinton.

2. **On page 10 of GAO's testimony, they detail how the Postal Inspection Service handles fraud complaints. Exactly how many categories are contained in the Fraud Complaint System (FCS) and to what do you attribute the fact that the Inspection Service was not able to identify fraud complaints, the number of investigations involved nor whether the complaints led to investigations?**

   The current fraud complaint system contains six general categories of complaints: Consumer Protection Program (CPP); mail fraud; chain letter; coupon fraud; mail fraud inquiries; and sexually oriented advertising. The first five represent the general breakdown of mail fraud complaints and inquiries from the public.

   CPP complaints are those that are judged to be based on unsatisfactory business transactions or poor business practices. Under this program we try to assist consumers in resolving their complaints by contacting the company and requesting their assistance in resolving the problem. CPP complaints can lead to mail fraud investigations if, over a period of time, the company is not resolving complaints and is intentionally accepting consumer funds without intending to provide the promised product or service.

   A consumer inquiry can also lead to a mail fraud investigation if additional information is developed that indicates fraudulent or false representation activity is being conducted.

   During the first half of Fiscal Year 1999 the Postal Inspection Service entered 30,224 complaints into the fraud complaint system. Of this total, 15,967 were entered

under the CPP; 2,094 were considered mail fraud; 2,539 related to chain letters; 2 concerned coupon fraud; 9,552 were non-victim fraud inquiries; and 70 concerned unsolicited sexually oriented advertising.

When the information was provided to GAO there was a misunderstanding as to what the CPP was and how we classified complaints. In regard to the issue of determining which complaints led to investigations, we are not able to make such a determination. Cases are initiated based on many different factors. We can only tell if complaints are related to an investigation.

3. What needs to be done to improve the FCS system?

A project is currently underway to develop a new system that will provide more information fields, better search capabilities and automatic lookups in other Inspection Service databases. This includes the ability to track the number of complaints by scheme type and category. We will also be able to identify instances where senior citizens are being targeted and by what types of schemes.

4. Who are some of your more egregious operators of deceptive sweepstakes? (provide top 5 case examples) What companies were involved in the six consent agreements, eight cease and desist orders, false representation orders and voluntary dicontinuances?

The top fraudulent or deceptive sweepstakes cases were:

1. James Blair Down
2. Spanish Lottery
3. Harold Weingold
4. A phony Publishers Clearinghouse

The six consent agreements involved:

1. Top Choice Distributors, United Release Center, Prize Claim Department and Corporate Distribution Office
2. BLC Services, Inc.
3. Mailworks International; Cameron, Morgan & Stallbright; Arizona Prize Headquarters, TLW, Inc.
4. BAJ Marketing
5. Triple Eight International Service
6. Facton Services

The eight cease and desist orders issued were:

1. Data Research Services, Committee on Money and Prize advisement (3/22/99, 98/260)
2. Top Choice Distributors, United Release Center, Prize Claim Department (5/17/99, 98/381)
3. BLC Services (1/27/99, 98/89)

4. Mailworks International; Cameron, Morgan & Stallbright; Arizona Rize Headquarters. Prize Claims Department; Corporate; TLW, Inc. (12/31/98, 98/426)
5. BAJ Marketing (1/27/99, 98/88)
6. Triple Eight International Service (1/27/99, 98/87)
7. Facton Services (1/27/99, 98/86)
8. Gresham Corporation (12/31/98, 98/426)

One voluntary discontinuance
Because these are not public records, the Privacy Act prevents us from releasing the information.

Three False Representation Orders
1. Data Research Services, Inc., Committee on Money and Prize Advertisements (3/22/99, 98/260)
2. Arizona Prize Headquarters, Gresham Corp. (12/31/98, 98/426)
3. Dept. of Revenue and Disbursements, Monetary Fulfillment Agency, Offices of Cashman, Thompson & Hughes, Department of Cash Payouts, Cash Transfer Division, Offices of Cameron, Morgan & Stallbright, CMS Cash Payout 12/31/98, 98/426)

5. **The Inspector General of the U.S. Postal Service has submitted written testimony regarding the integrity of the subpoena process. Inspector General Corcoran has specifically suggested the development of the following procedures:**
   - **a specific case be opened before a subpoena is requested;**
   - **appropriate supervisory and legal review of a subpoena request is performed;**
   - **delegation of subpoena approval is limited to high-level officials; and**
   - **periodic reports on subpoena activity are required.**

   What are your thoughts on these procedures? How do these procedures track with how the Inspection Service currently handles subpoenas?

   We are in agreement with the basic suggestions made in the Inspector General's testimony. Our intent in supporting Senator Collins' legislation was to enhance our current ability to combat deceptive mailings. The proposed administrative subpoena will be most effective if it applies to all of the sections of Title 39 that address deceptive mailings. This would include investigations of violations of Sections 3001 and 3005 and preparation for actions under Sections 3005, 3007 and 3012. We believe the subpoenas will help us develop better information regarding deceptive mailings and the people promoting them in a shorter amount of time. This will assist in bringing legal action earlier and should help reduce the number of victims and amount of losses.

   While we do not currently have any subpoena authority, the Postal Inspection Service has extensive prior experience issuing subpoenas. From 1988 through 1996 we functioned as the Inspector General of the Postal Service and had the authority to

issues Inspector General and Program Fraud Civil Remedies Act subpoenas. In order to ensure that the subpoena requests were justified, we used a system very similar to the suggestions by the Inspector General.

It would be our intent to require that any subpoena request be related to a specific open case and that it would receive appropriate supervisory and legal review to ensure all required elements are addressed to justify the need for a subpoena.

We are concerned about the suggestion that delegation of the authority to issue the subpoenas be limited to the General Counsel or the Deputy General Counsel of the Postal Service. First, we believe this has the potential to create a cumbersome system. The Inspection Service would not send a request forward without thorough supervisory and legal reviews to ensure the request was properly justified. The request would most likely receive the same level of review by an attorney in the Law Department before being forwarded to the General Counsel or Deputy General Counsel for issuance of a subpoena.

Second, the General Counsel, who is also the Senior Vice President for Human Resources (Human Resources, Labor Relations and Diversity), and the Deputy General Counsel have extensive responsibilities considering the size of the Postal Service. We are concerned that the scope of their responsibilities could result in periodic delays in the issuance of subpoenas.

We would suggest that the provisions allow the authority to be delegated to the Chief Postal Inspector, Counsel and Deputy Counsels of the Postal Inspection Service. This would still require that all requests would have to come to Headquarters for review and closely mirrors the process used by the Office of Inspector General to issue their subpoenas.

The issuance of periodic reports would not be a problem since the issuance of subpoenas would be closely monitored. The reporting could be done in conjunction with the currently mandated semiannual reporting of actions under the false representation statutes (39 USC § 3013).

Lee Cassidy, Nonprofits

1. Sara Cooper of the National Consumers League testified that, "Some mailings by respected companies and organizations imply that consumers have won when they have not, ... or that their chances will be improved if they purchase something". How can we take your word for it that nonprofit groups won't or haven't engaged in deceptive mailings? Aren't your groups just as interested in catching the attention of consumers for donations?

U.S. House of Representatives, Subcommittee on the Postal Service
August 4, 1999 Hearing
Record Questions for the National Federation of Nonprofits

1. In your testimony, you suggest that nonprofits be exempt from the legislation. Should any such exemption be based on the mailer's tax-exempt status as determined by the Internal Revenue Service, or on the commercial nature of the mailing (i.e., based on whether it is selling a product)? What types of tax-exempt organizations should be included in the exemption?

2. How do you respond to the rebuttal that the Federation is making a distinction without a difference; in other words, whether you are asking someone to give money – whether to a nonprofit or to a magazine publisher – the bottom line is that there is an attempt to obtain money from a citizen?

NATIONAL FEDERATION OF NONPROFITS

"Advocating for Nonprofits in Postal, Regulatory, Legislative, and Accountability Issues Since 1982"

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Kory Christianson
St. Joseph's Indian School
Roger Courts
Sacred Heart League
Bernie Devlin
Father Flanagan's Boys' Town
Craig Floyd
National Law Enforcement Officers Memorial Fund
Robert Frank
National Law Enforcement Officers Memorial Fund
Vicki Ginn
Burlington United Methodist Family Services
Barry Giaquinto
North Shore Animal League
Robert King
Arthritis Foundation of Southern California
Kate Mathews
Defenders of Wildlife
Jim McLachlan
Paralyzed Veterans of America
Scott Newman
American Foundation for AIDS Research
Nancy Noble
International Fund for Animal Welfare
Eric Wentworth
Council for Advancement and Support of Education
Peter Yoder
Indiana University Alumni Association

EXECUTIVE DIRECTOR
Lee M. Cassidy

September 8, 1999

Honorable John M. McHugh, Chairman
U.S. House of Representatives
Subcommittee on Postal Service
B-349C Rayburn House Office Building
Washington, DC 20515

Dear Chairman McHugh:

Thank you for the opportunity to add to my comments delivered before your subcommittee on August 4. I received two separate pages of inquiries (copies enclosed), but will respond as though they were one.

First, regarding the comments of Ms. Cooper of the National Consumers League, of course nonprofits want to attract the attention of consumers for donations. But the difference in scale of nonprofit sweepstakes amounts to a difference in kind, so the likelihood of abuse is infinitely lessened.

For example, nonprofits do not offer the huge prizes routinely promised by large commercial mailers. Because a trip to Europe is not in the same league as millions of dollars, the likelihood of someone determined to take even outrageous actions to win is greatly reduced. Why would someone contribute $1000 or more (the equivalent of purchasing dozens of magazine subscriptions) to win a $5,000 trip? The risk/reward ratio is on a vastly smaller scale.

Next, the most common use of sweepstakes by nonprofits is to interest current donors or members in making additional, larger contributions. Usually, the number of prizes is significant, while each prize has relatively modest value. It is quite clear that no winner will be suddenly wealthy, and that even if one does make an additional contribution on the assumption that it will improve the chances of winning, the risk/reward ratio is on a much smaller scale, making it less likely that the contribution is made solely to improve the chances of winning.

Regarding the question of whether nonprofits have or will engage in deceptive mailings, my testimony pointed out that there has been no evidence or even suggestion presented to the effect that nonprofits are part of the problem. While I cannot say that any nonprofit or group of nonprofits would sue if the legislation were to include them in its sweep, in the event that one or more did, it would be difficult to demonstrate that the solution to the perceived problem meets the oft-repeated Supreme Court standard of least intrusive to serve a legitimate government purpose.

815 Fifteenth Street, NW, Suite 822 • Washington, DC 20005-2201 • (202) 628-4380 • FAX (202) 628-4383 • email ndc@aol.com

Next, you ask whether any exemption from the sweep of the legislation should be based on the mailer's tax-exempt status, or on the commercial nature of the mailing. Inasmuch as no nonprofit sweepstakes has been demonstrated to be part of the perceived problem, the IRS determination should not be a factor. On the other hand, if a nonprofit organization sponsors a sweepstakes which offers products for sale, I see no difference between that and a commercial organization's mailings.

Regarding the question of whether I am making a distinction without a difference, everyone knows that the purpose of nonprofit mailings is to educate the reader about the organization's mission, in order to convince the reader to participate by making a contribution. Nonprofit mailings by their very nature are requests for funds, and no one assumes otherwise. And, as earlier stated, there has been no evidence presented that nonprofits are part of the perceived problem.

What has not been adequately discussed is the question of the First Amendment. The Supreme Court has said on at least three occasions that charities must be given great freedom to promulgate their messages. Regulating the content of the messages would very likely bump up against those Supreme Court rulings. That alone, it seems to me, is more than adequate justification for exempting charities.

I suggest that there is yet another way to distinguish at least some nonprofit mailings from commercial ones. Mailings made to existing members or donors....those who have already shown a propensity for supporting the nonprofit organization...are different from those which seek for the first time to elicit contributions. The examples attached to my testimony, of sweepstakes mailings from public television stations, fall into that class. Other nonprofit organizations also send sweepstakes mailings to members and prior donors; the Disabled American Veterans is but one example.

Surely sweepstakes mailings to prior donors or existing members should not be covered by the sweep of deceptive mail practices legislation. The onus would be on the nonprofit organization to demonstrate, upon request, that the mailing list was comprised primarily of such persons.

Lastly, I want to comment on another subject: that of printed disclosures. The Direct Marketing Association testified that, if sweepstakes mailers were required to publish disclosures required by each individual state, the result would be "a mess". In fact, it would be much worse than that.

The present situation for charities is that they must register in 41 states before seeking to raise funds within those states (that requirement is the subject of significant litigation on the basis of violation of the First and Fourth Amendments, and for other reasons), and must publish disclosures required by about a dozen states (the number varies depending upon several factors). As the enclosed samples demonstrate, the very modest amount of information charities are required by each state to publish is significant in the aggregate. For sweepstakes mailings, the proposed disclosures would takes at least as much space for each state, and would require possibly page after page of individual disclosures. For that reason, any disclosures should be those required by federal, not state law.

Again, I appreciate the opportunity to expand my remarks, and look forward to final legislation which we can support.

Cordially,

Lee M. Cassidy
Executive Director

Try these healthy living ideas to cut your cancer risk:

- Take a look at your plate...Are most of the foods plant-based? Fill your plate with generous servings of a variety of fruits, veggies and grains.
- Slice ripe peaches, bananas and/or berries on your whole grain cereal in the morning.
- Add a variety of veggies to your salads for good health, exciting flavor and texture. Try leafy lettuce with chopped red cabbage, ripe tomatoes, shredded carrots, chickpeas or kidney beans, diced red peppers and broccoli florets.
- Try a new produce item with each trip to the supermarket. Become acquainted with mangos, yams, jicama, leeks, kale and many others.
- Use whole wheat flour for part of refined white flour in many recipes.
- As we get older it may get harder to maintain a healthy weight. Keep fit with a variety of activities you enjoy to make exercise a lifelong habit and maintain your weight. Try walking, cycling, dancing or gardening.
- Take a brisk walk for ten minutes several times each day.
- Instead of alcohol, enjoy a refreshing mix of fruit juice and seltzer. Add a few chunks of fresh fruit.
- Decrease portion sizes of meat and poultry. Remove half the filling from an over-stuffed deli sandwich. Update a favorite casserole by changing the meat-to-vegetable ratio: chicken and pasta casserole with peas can become pasta and pea casserole with chicken.
- Cut down on fat...Remove skin from poultry, use little fat in cooking, and try lowfat or nonfat dairy products. Remember that lowfat and nonfat products are not necessarily low in calories, so limit portions.
- Instead of salt, experiment with herbs and spices such as rosemary, oregano, basil, turmeric or chives for added flavor.
- Refrigerate foods quickly to prevent spoilage.
- Grill out only occasionally, and don't eat charred foods.

The American Institute for Cancer Research is a nonprofit, tax exempt organization whose purpose is to provide funding support for research into the relationship between diet, nutrition and cancer and to expand consumer knowledge about the results of such research as it relates to cancer prevention and treatment in the United States and worldwide. Contributions to AICR are deductible for federal income tax purposes.

For the fiscal year ending September 30, 1998, the Institute's expenses totaled $29,841,206. Of that amount, 21% was spent directly in support of cancer research, and 46% of expenses went in support of the Institute's public education programs in cancer prevention. Together, research and public education programs accounted for 67% of all expenditures by the Institute. Fundraising costs for the year were 22% of total expenses and 11% of expenses went to administrative costs.

Other agencies in cancer research traditionally have been committed to chemotherapy, radiation and surgery—areas other than nutrition. And, recent budgetary restrictions have further squeezed nutrition to the fringe of their priorities. AICR, which was founded in 1982, is one of the main funding organizations that focuses specifically on issues of diet, nutrition and cancer.

Please let us send you a free copy of AICR's latest Annual Report/Audited Financial Statements by writing to our headquarters, AICR, 1759 R Street, N.W., PO Box 97167, Washington, D.C. 20090-7167, (202) 797-2444. New York residents may also obtain a copy by writing to the Office of Charities, Charities Registration, Department of State, 162 Washington Avenue, Albany, New York 12231.

Virginia residents may obtain a Financial Statement from the State Division of Consumer Affairs, Department of Agriculture and Consumer Services, Washington State residents may obtain financial information by contacting the Secretary of State, Washington State, Olympia, WA 98054-9000. The official registration and financial information of American Institute for Cancer Research may be obtained from the Pennsylvania Department of State by calling toll free, within Pennsylvania, 1 (800) 732-0999. West Virginia residents may obtain a summary of the registration and financial documents from the West Virginia Secretary of State, State Capitol, Charleston, West Virginia 25305. Registration documents and AICR's Annual Report may be obtained from the Maryland Secretary of State. For Florida residents - "A COPY OF THE OFFICIAL REGISTRATION AND FINANCIAL INFORMATION MAY BE OBTAINED FROM THE DIVISION OF CONSUMER SERVICES BY CALLING TOLL-FREE (800) 435-7352. FOR NORTH CAROLINA RESIDENTS "A COPY OF THE LICENSE TO SOLICIT CHARITABLE CONTRIBUTIONS AS A CHARITABLE ORGANIZATION OR SPONSOR AND FINANCIAL INFORMATION MAY BE OBTAINED FROM THE DEPARTMENT OF HUMAN RESOURCES, SOLICITATION LICENSING BRANCH, BY CALLING (919) 733-4510. INFORMATION FILED WITH THE ATTORNEY GENERAL CONCERNING THIS CHARITABLE SOLICITATION MAY BE OBTAINED FROM THE ATTORNEY GENERAL OF THE STATE OF NEW JERSEY BY CALLING 973-504-6215. Michigan Registration Number MICS 9632. REGISTRATION WITH ANY STATE DOES NOT IMPLY ENDORSEMENT.

Single copies of the following brochures and health aids are available free by using the enclosed reply envelope for your request or by writing to AICR's national headquarters: American Institute for Cancer Research, Washington, D.C. 20069. Cancer Research Grants - Diet, Nutrition and Cancers of the Colon and Rectum -The Cancer Process - Questions and Answers About Breast Lumps and Breast Cancer - Diet, Nutrition and Prostate Cancer - Cancer Information: Where to Find Help - Nutrition of the Cancer Patient - Sound Nutrition for Your Pregnancy - Be Your Best: Nutrition After 50 - Menus and Recipes From Around the World - Get Fit, Trim Down - Celebrate Good Health - Cook's Day Off - No Time To Cook - Sneak Health into Your Snacks - Cooking Solo - Diet and Cancer . . . What's the Link? - Everything Doesn't Cause Cancer - Ten Tips to Change Your Diet and Lower Cancer Risk - The Facts About Fat -The Facts About Fiber - Reducing Your Risk of Skin Cancer - Reducing Your Risk of Colon Cancer - Reducing Your Risk of Breast Cancer – Reducing Your Risk of Prostate Cancer – AICR Grocery Shopping List - AICR Vitamin and Mineral Guide - Nutritional Value of Cheese - AICR Nutrition Note Pad - Breast Self-Examination Stickers - Handle Us Gently (Produce Handling Chart) - AICR Guide to Beverages - Billy Buck Hightrail's Secret, Mysterious, Magical Garden - Testicular Cancer - The New Food Labels - Healthy Meals On Hand - Feast on Fruits and Vegetables - Healthy Eating Away From Home - Hints for a Healthy Weight - Antioxidants - Calories, Exercise and Cancer - Phytochemicals - Nutrition, Genetics & Cancer - Infant Nutrition - Fruit, Vegetables and a Healthier You - Healthy Flavors of the World: Asia - Healthy Flavors of the World: Mediterranean - Healthy Flavors of the World: India - Healthy Flavors of the World: Mexico to South America - Diet and Health Recommendations For Cancer Prevention - Moving Towards a Plant-Based Diet- Facts on Preventing Cancer: Alcohol - Facts on Preventing Cancer: Supplements - Facts on Preventing Cancer: Pesticides.

AICR provides a number of services that you can receive free at home or in your local area including the AICR newsletter, educational brochures, nutrition counseling, cancer information and referral, and from time to time educational seminars. If you would like more information on programs available at the local area please call 1-800-843-8114.

This year, approximately 1,228,600 Americans will develop cancer. Every 56 seconds, someone dies of cancer in America, and this year an estimated 564,800 Americans will die of the disease. One out of every four deaths is from cancer, the second leading cause of death in this country. Scientific studies indicate that 35% of all cancer deaths are related to diet. As such, AICR offers one of the most significant hopes through the study of the relationship between diet, nutrition and cancer.

State Disclaimers
Prepared September 7, 1999

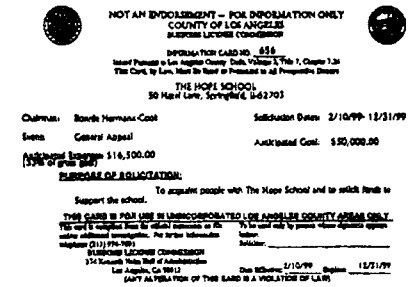
Mothers Against Drunk Driving

A summary of the registration and financial documents filed by this organization can be obtained by contacting: in Maryland, for the cost of copies and postage, the Secretary of State, State House, Annapolis, MD 21401;in Virginia, State Division of Consumer Affairs, P.O. Box 1163, Richmond, VA 23209;in Washington, residents can call the Secretary of State toll-free within the state, 800-332-4483; in Mississippi, by calling the Secretary of State's office at 888-236-6167; IN NEW YORK, OFFICE OF THE ATTORNEY GENERAL, CHARITIES BUREAU, 120 BROADWAY, NEW YORK, NY 10271;IN NEW JERSEY, THE ATTORNEY GENERAL BY CALLING 201-504-6215;IN PENNSYLVANIA, DEPARTMENT OF STATE BY CALLING TOLL-FREE WITHIN THE STATE, 800-732-0999;IN WEST VIRGINIA, SECRETARY OF STATE, STATE CAPITOL, CHARLESTON, WV 25305;IN FLORIDA, THE DIVISION OF CONSUMER SERVICES BY CALLING TOLL-FREE WITHIN THE STATE, 800-435-7352; IN NORTH CAROLINA, FINANCIAL INFORMATION AND A COPY OF THE LICENSE ARE AVAILABLE FROM THE STATE SOLICITATION LICENSING BRANCH AT 919-733-4510; or by writing to Mothers Against Drunk Driving, 511 East John Carpenter Freeway, Suite 700, Irving, Texas 75062. Our license number in Michigan is MICS 9660. Registration with any of the above government agencies does not imply endorsement by the state.

The Hope School

A summary of the registration and financial documents filed by this organization can be obtained by contacting: in New York, NYS Department of Law, Charities Bureau, the Capitol, Albany, NY 12224; in Maryland, for the cost of copies and postage, the Secretary of State, State House, Annapolis, MD 21401; IN NEW JERSEY, FROM THE ATTORNEY GENERAL BY CALLING 201-504-6200; in NORTH CAROLINA, A COPY OF THE LICENSE AND FINANCIAL INFORMATION MAY BE OBTAINED FROM THE DEPARTMENT OF HUMAN RESOURCES, SOLICITATION LICENSING BRANCH, BY CALLING 919-733-4510; in Pennsylvania, residents may call the Pennsylvania Department of State at 1-800-732-0999; for West Virginia residents, the Secretary of State, State Capitol, Charleston, WV 25305; in Virginia, the State Division of Consumer Affairs, P.O. Box 1163, Richmond, VA 23209; Washington State residents may obtain a copy of the last report filed with the Washington Secretary of State by calling toll free within Washington, 1-800-332-4483; IN FLORIDA, RESIDENTS MAY CALL THE DIVISION OF CONSUMER SERVICES AT 1-800-435-7382 or by writing to The Hope School, 50 Hazel Lane, Springfield, IL 62705, or by calling (217)786-3350 ext. 370. Our license number in Michigan is MICS 9649. Registration with any of the above government agencies does not imply endorsement by the state.

The Hope School LA Card



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COUNTY OF LOS ANGELES
BUSINESS LICENSE COMMISSION

INFORMATION CARD NO. 656
Issued Pursuant to Los Angeles County Code, Volume 3, Title 7, Chapter 7.24
This Card, by Law, Must Be Read or Presented to All Prospective Donors

THE HOPE SCHOOL
50 Hazel Lane, Springfield, IL 62703

Chairman: Bonnie Hermann-Cook — Solicitation Dates: 2/10/99- 12/31/99

Event: General Appeal — Anticipated Cost: $50,000.00

Anticipated Expenses: $16,500.00
(33% of gross gain)

PURPOSE OF SOLICITATION:

To acquaint people with The Hope School and to solicit funds to Support the school.

THIS CARD IS FOR USE IN UNINCORPORATED LOS ANGELES COUNTY AREAS ONLY

This card is compiled from the official statement of the entire additional investigation. For further information telephone (213) 974-7891

BUSINESS LICENSE COMMISSION
334 Kenneth Hahn Hall of Administration
Los Angeles, Ca 90012

To be used only by persons whose signature appears below:
Solicitor: _____

Date Effective: 2/10/99 Expires: 12/31/99

(ANY ALTERATION OF THIS CARD IS A VIOLATION OF LAW)

Multiple Sclerosis Association of America

A summary of the registration and financial documents filed by this organization can be obtained by contacting: in Maryland, for the cost of copies and postage, the Secretary of State, State House, Annapolis, MD 21401;in Virginia, State Division of Consumer Affairs, P.O. Box 1163, Richmond, VA 23209;in Washington, residents can call the Secretary of State toll-free within the state, 800-332-4483; in Mississippi, by calling the Secretary of State's office at 888-236-6167; IN NEW YORK, OFFICE OF THE ATTORNEY GENERAL, CHARITIES BUREAU, 120 BROADWAY, NEW YORK, NY 10271;IN NEW JERSEY, THE ATTORNEY GENERAL BY CALLING 201-504-6215;IN PENNSYLVANIA, DEPARTMENT OF STATE BY CALLING TOLL-FREE WITHIN THE STATE, 800-732-0999;IN WEST VIRGINIA, SECRETARY OF STATE, STATE CAPITOL, CHARLESTON, WV 25305;IN FLORIDA, THE DIVISION OF CONSUMER SERVICES BY CALLING TOLL-FREE WITHIN THE STATE, 800-435-7352;IN NORTH CAROLINA, FINANCIAL INFORMATION AND A COPY OF THE LICENSE ARE AVAILABLE FROM THE STATE SOLICITATION LICENSING BRANCH AT 919-733-4510;or by writing to Multiple Sclerosis Association of America, 706 Haddonfield Road, Cherry Hill, NJ 08002-2652. Our license number in Michigan is MICS9986. Registration with any of the above government agencies does not imply endorsement by the state.

American Parkinson Disease Association

NOTICE TO CONTRIBUTORS: Many states require charities who solicit funds from the public to register with the state agency regulating charities. The American Parkinson Disease Association, Inc., (APDA) is registered in every jurisdiction where it is required. Although our financial report is always sent free to anyone requesting a copy, certain states require us to advise you that a copy of our financial report is also available from them. If you desire a copy of our financial report you may write to: American Parkinson Disease Association, Inc. 1250 Hylan Boulevard, Suite 4B–Staten Island, Registration–162 Washington Avenue, Albany NY 12231;State of West Virginia, Secretary of State, Charleston, WV 25305; Commonwealth of Virginia, Department of Agriculture and Consumer Services-Division of Consumer Affairs, P.O. Box 1163, Richmond, VA 23209; Michigan #MICS 9588; State of Pennsylvania, Department of State Charitable Trusts and Organizations Section, Harrisburg, PA 17120 Pennsylvania residents call toll-free 1-800-732-0422. State of Washington, Office of Secretary of State, Charities Division, Olympia, WA 98504-0422. Washington residents call toll-free 1-800-332-4483;State of Maryland, Office of Secretary of State Charitable Division–State House, Annapolis, MD 21401;State of New Jersey, Attorney General of the State of New Jersey, (201) 504-6215; State of North Carolina, Department of Human Resources-Solicitation Licensing Branch, (919) 733-4510; State of Florida, A copy of the official registration and financial information may be obtained from the division of consumer services by calling Toll free, within the State, 1-800-HELP-FLA. Registration does not imply endorsement, approval or recommendation by the State.

REGISTRATION DOES NOT IMPLY ENDORSEMENT

Diabetes Action Research and Education Foundation

Diabetes Action Research and Education Foundation is exempt from Federal income taxes under section 501 (c)(3) of the Internal Revenue Code. A copy of the last financial report filed with the Department of State (New York) may be obtained by writing to: Diabetes Action Research and Education Foundation or New York Department of State, Office of Charities Registration, 162 Washington Avenue, Albany, New York, 12231. A copy of the official registration and supporting documents may be obtained from Maryland Secretary of State, State House, Annapolis, MD 21401. Virginia Residents: a financial statement is available from the State Division of Consumer Affairs in the Department of Agriculture and Consumer Services. West Virginia residents may obtain a summary of the registration and financial documents from the Secretary of State, State Capitol, Charleston, WV 25305. A copy of the official registration and financial information may be obtained from the Pennsylvania Department of State by calling toll free, within Pennsylvania, 1-800-732-0999. A copy of the official registration and financial information may be obtained from the Division of Consumer Services by calling toll free, 1-800-435-7352 (Florida only), within the state. Registration does not imply endorsement, approval, or recommendation by the state.

Deafness Research Foundation

A summary of the registration and financial documents filed by this organization can be obtained by contacting: in Maryland, for the cost of copies and postage, the Secretary of State, State House, Annapolis, MD 21401; in Virginia, State Division of Consumer Affairs, P.O. Box 1163, Richmond, VA 23209; in Washington, residents can call the Secretary of State toll-free within the state, 800-332-4483; In Mississippi, by calling the Secretary of State's office at 888-236-6167; IN NEW YORK, OFFICE OF THE ATTORNEY GENERAL, CHARITIES BUREAU, 120 BROADWAY, NEW YORK, NY 10271; IN NEW JERSEY, THE ATTORNEY GENERAL BY CALLING 201-504-6215; IN PENNSYLVANIA, DEPARTMENT OF STATE BY CALLING TOLL-FREE WITHIN THE STATE, 800-732-0999; IN WEST VIRGINIA, SECRETARY OF STATE, STATE CAPITOL, CHARLESTON, WV 25305; IN FLORIDA, THE DIVISION OF CONSUMER SERVICES BY CALLING TOLL-FREE WITHIN THE STATE, 800-435-7352; IN NORTH CAROLINA, FINANCIAL INFORMATION AND A COPY OF THE LICENSE ARE AVAILABLE FROM THE STATE SOLICITATION LICENSING BRANCH AT 919-733-4510; or by writing to Deafness Research Foundation, 1225 I Street, NW, Suite 500, Washington, DC 20005. Our license number in Michigan is MICS9526. Registration with any of the above government agencies does not imply endorsement by the state.

Concerns of Police Survivors

A summary of the registration and financial documents filed by this organization can be obtained by contacting: IN FLORIDA, THE DIVISION OF CONSUMER SERVICES BY CALLING TOLL-FREE WITHIN THE STATE, 1-800-435-7352; in Maryland, for the cost of copies and postage, the Secretary of State, Charitable Division, State House, Annapolis, MD 21401; in Mississippi, by calling the Secretary of State's office at 1-888-236-6167; IN NEW JERSEY, INFORMATION FILED WITH THE ATTORNEY GENERAL CONCERNING THIS CHARITABLE SOLICITATION MAY BE OBTAINED FROM THE ATTORNEY GENERAL OF THE STATE OF NEW JERSEY BY CALLING 201-504-6215; IN NEW YORK, A COPY OF THE LATEST ANNUAL REPORT CAN BE OBTAINED FROM NEW YORK STATE, OFFICE OF THE ATTORNEY GENERAL, CHARITIES BUREAU, 120 BROADWAY, NEW YORK, NY 10271; in NORTH CAROLINA, financial information about this organization and a copy of its license are available from the State Solicitation Licensing Branch at 919-733-4510; IN PENNSYLVANIA, THE OFFICIAL REGISTRATION AND FINANCIAL INFORMATION MAY BE OBTAINED FROM THE PENNSYLVANIA DEPARTMENT OF STATE BY CALLING TOLL-FREE WITHIN PENNSYLVANIA,1-800-732-0999; in Virginia, State Division of Consumer Affairs, P.O. Box 1163, Richmond, VA 23209; in Washington, residents can call the Secretary of State toll-free within the state, 1- 800-332-4483; IN WEST VIRGINIA, RESIDENTS MAY OBTAIN A SUMMARY OF THE REGISTRATION AND FINANCIAL DOCUMENTS FROM THE SECRETARY OF STATE, STATE CAPITOL, CHARLESTON, WV 25305; or by writing to Concerns of Police Survivors, P.O. Box 3199, South Hwy 5, Camdenton, MO 65020. Our license number in Michigan is MICS No. 10471. Registration with

Help Hospitalized Veterans

Please be advised that some of the cost of this appeal is regarded by HHV as a public education program rather than as a fund raising expense. Most of HHV's public education program efforts are carried out in its direct mail material, such as the one you are now reading.

A copy of the last audited financial report filed with the Department of State may be obtained by writing to: NY State, Department of State, Office of Charities Registration, Albany NY 12231 or HHV, 36585 Penfield Lane, Winchester, CA 92596. A copy of the current financial statement of HHV is available on request for the cost of copies and postage from the Maryland Secretary of State, State House, Annapolis, MD 21401. Washington State residents may obtain a copy of the last report filed with the Washington Secretary of State by calling toll free within Washington, 1-800-332-4483; In Florida, RESIDENTS MAY CALL THE DIVISION OF CONSUMER SERVICES AT 1-800-435-7352; For Virginia residents only, an audited financial statement is available with the Virginia Division of Consumer Affairs, P.O. Box 1163, Richmond, VA 23209. For Pennsylvania residents only, the official registration and financial information of HHV may be obtained from the Pennsylvania Department of State by calling, toll free, within Pennsylvania, 1-800-732-0999. Registration does not imply endorsement. West Virginia residents may obtain a summary of the registration and financial documents from the Secretary of State, State Capitol, Charleston, WV 25305. Registration does not imply endorsement. For New Jersey, information filed with the Attorney General concerning this charitable solicitation may be obtained from the Attorney General of the state of New Jersey by calling (609) 282-8740. Registration with the Attorney General does not imply endorsement. North Carolina residents may obtain a copy of the license to solicit charitable contributions as a charitable organization or sponsor and financial information may be obtained from the department of human resources, solicitation licensing branch, by calling (919) 733-4510. Registration does not imply endorsement, approval or recommendation by the state. In Kansas, the registration number is 169-5121. The annual financial report for the preceding fiscal year is on file with the Secretary of State. The official registration and financial information of HHV may be obtained from Mississippi's Secretary of State office by calling 1-888-236-6167. Registration does not imply endorsement by the Secretary of State. Solicition is being made by professional fundraiser. Professional fundraiser's name and a statement of contracts and reports regarding the charity, are on file with the Illinois Attorney General. In Arizona, financial information filed with the Secretary of State is available for public inspection or by calling toll free 1-800-458-5842.

HHV is audited by a certified public accounting firm. HHV wants to let you know that you are under no obligation to return any of the contents of this mailing. HELP HOSPITALIZED VETERANS (HHV), a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code, was founded in 1971 by a group of citizens seeking to do something meaningful for hospitalized veterans. HHV was organized after research and discussions with doctors, occupational therapists and patients from Department of Veterans Affairs and Military Hospitals.

Help Hospitalized Veterans con't

HHV will send a portion of the funds received to veterans organizations that supply computers and on line services for severely disabled veterans.

Doris Day Animal League

The Doris Day Animal League exists to increase the public's awareness of its responsibility to animals through public and membership information and legislative initiatives, and to ensure adherence to regulations already enacted to protect animals. The Doris Day Animal League is proud of its history of fiscal responsibility.

A summary of the registration and financial documents filed by this organization can be obtained by contacting us at: Doris Day Animal League • Suite 100 • 227 Massachusetts Avenue, N.E. • Washington, D.C. 20002, or by contacting these state agencies: In New York, NYS Department of Law, Charities Bureau, the Capitol, Albany, NY 12224; in Maryland, for the cost of copies and postage, the Secretary of State, State House, Annapolis, MD 21401; IN NEW JERSEY, FROM THE ATTORNEY GENERAL BY CALLING 201-504-6215; IN NORTH CAROLINA, A COPY OF THE LICENSE TO SOLICIT CHARITABLE CONTRIBUTIONS AS A CHARITABLE ORGANIZATION OR SPONSOR AND FINANCIAL INFORMATION MAY BE OBTAINED FROM THE DEPARTMENT OF HUMAN RESOURCES, SOLICITATION LICENSING BRANCH, BY CALLING 919-733-4510; in Pennsylvania, residents may call the Pennsylvania Department of State at 1-800-732-0999; for West Virginia residents, the Secretary of State, State Capitol, Charleston, WV 25305; in Virginia, the State Division of Consumer Affairs, P.O. Box 1163, Richmond, VA 23209; Washington State residents may obtain a copy of the last report filed with the Washington Secretary of State by calling toll free within Washington, 1-800-332-4483; IN FLORIDA, RESIDENTS MAY CALL THE DIVISION OF CONSUMER SERVICES AT 1-800-435-7352. Registration with any of the above government agencies does not imply endorsement by the state. Prepared and mailed by and exclusively for the Doris Day Animal League, a nonprofit organization, Suite 100, 227 Massachusetts Avenue, N.E., Washington, D.C. 20002

Mays Mission for the Handicapped

A summary of the registration and financial documents filed by this organization can be obtained by contacting: in New York, NYS Department of Law, Charities Bureau, The Capitol, Albany, NY 12224; in Maryland, for the cost of copies and postage, the Secretary of State, State House, Annapolis, MD 21401; IN NEW JERSEY, FROM THE ATTORNEY GENERAL BY CALLING 201-504-6215; in NORTH CAROLINA, A COPY OF THE LICENSE TO SOLICIT CHARITABLE CONTRIBUTIONS AS A CHARITABLE ORGANIZATION OR SPONSOR AND FINANCIAL INFORMATION MAY BE OBTAINED FROM THE DEPARTMENT OF HUMAN RESOURCES, SOLICITATION LICENSING BRANCH, BY CALLING 919-733-4510; in Pennsylvania, residents may call the Pennsylvania Department of State at 1-800-732-0999; for West Virginia residents, the Secretary of State, State Capitol, Charleston, WV 25305; in Virginia, the State Division of Consumer Affairs, P.O. Box 1163, Richmond, VA 23209; Washington State residents may obtain a copy of the last report filed with the Washington Secretary of State by calling toll free within Washington, 1-800-332-4483; IN FLORIDA, RESIDENTS MAY CALL THE DIVISION OF CONSUMER SERVICES AT 1-800-435-7352; or by writing to Mays Mission for the Handicapped, 604 Colonial Drive, Heber Springs, AR 72545. Our license number in Michigan is MICS 9200332. Registration with any of the above government agencies does not imply endorsement by the state.

Our Little Brothers and Sisters

A copy of our financial statement may be obtained by writing to the State of Virginia Division of Consumer Affairs, P.O. Box 1163, Richmond, Virginia 23209 or Our Little Brothers and Sisters, P.O. Box 3134, Alexandria, Virginia 22302

Support Our Aging Religious

A summary of the registration and financial documents filed by this organization can be obtained by contacting: IN FLORIDA, THE DIVISION OF CONSUMER SERVICES BY CALLING TOLL-FREE WITHIN THE STATE, 1-800-435-7352; in Maryland, for the cost of copies and postage, the Secretary of State, Charitable Division, State House, Annapolis, MD 21401; in Mississippi, by calling the Secretary of State's office at 1-888-236-6167; IN NEW JERSEY, INFORMATION FILED WITH THE ATTORNEY GENERAL CONCERNING THIS CHARITABLE SOLICITATION MAY BE OBTAINED FROM THE ATTORNEY GENERAL OF THE STATE OF NEW JERSEY BY CALLING 201-504-6215; IN NEW YORK, A COPY OF THE LATEST ANNUAL REPORT CAN BE OBTAINED FROM NEW YORK STATE, OFFICE OF THE ATTORNEY GENERAL, CHARITIES BUREAU, 120 BROADWAY, NEW YORK, NY 10271; in NORTH CAROLINA, financial information about this organization and a copy of its license are available from the State Solicitation Licensing

Support Our Aging Religious con't

Branch at 919-733-4510; IN PENNSYLVANIA, THE OFFICIAL REGISTRATION AND FINANCIAL INFORMATION MAY BE OBTAINED FROM THE PENNSYLVANIA DEPARTMENT OF STATE BY CALLING TOLL-FREE WITHIN PENNSYLVANIA,1-800-732-0999; in Virginia, State Division of Consumer Affairs, P.O. Box 1163, Richmond, VA 23209; in Washington, residents can call the Secretary of State toll-free within the state, 1- 800-332-4483; IN WEST VIRGINIA, RESIDENTS MAY OBTAIN A SUMMARY OF THE REGISTRATION AND FINANCIAL DOCUMENTS FROM THE SECRETARY OF STATE, STATE CAPITOL, CHARLESTON, WV 25305; or by writing to Support Our Aging Religious, 1400 Spring Street, Suite 320, Silver Spring, MD 20910-2735. Our license number in Michigan is MICS No. 10226. Registration with any of the above government agencies does not imply endorsement by the state.

Marine Toys for Tots Foundation

A summary of the registration and financial documents filed by this organization can be obtained by contacting: IN FLORIDA, THE DIVISION OF CONSUMER SERVICES BY CALLING TOLL-FREE WITHIN THE STATE, 1-800-435-7352; in Maryland, for the cost of copies and postage, the Secretary of State, Charitable Division, State House, Annapolis, MD 21401; in Mississippi, by calling the Secretary of State's office at 1-888-236-6167; IN NEW JERSEY, INFORMATION FILED WITH THE ATTORNEY GENERAL CONCERNING THIS CHARITABLE SOLICITATION MAY BE OBTAINED FROM THE ATTORNEY GENERAL OF THE STATE OF NEW JERSEY BY CALLING 201-504-6215; IN NEW YORK, A COPY OF THE LATEST ANNUAL REPORT CAN BE OBTAINED FROM NEW YORK STATE, OFFICE OF THE ATTORNEY GENERAL, CHARITIES BUREAU, 120 BROADWAY, NEW YORK, NY 10271; in NORTH CAROLINA, financial information about this organization and a copy of its license are available from the State Solicitation Licensing Branch at 919-733-4510; IN PENNSYLVANIA, THE OFFICIAL REGISTRATION AND FINANCIAL INFORMATION MAY BE OBTAINED FROM THE PENNSYLVANIA DEPARTMENT OF STATE BY CALLING TOLL-FREE WITHIN PENNSYLVANIA,1-800-732-0999; in Virginia, State Division of Consumer Affairs, P.O. Box 1163, Richmond, VA 23209; in Washington, residents can call the Secretary of State toll-free within the state, 1- 800-332-4483; IN WEST VIRGINIA, RESIDENTS MAY OBTAIN A SUMMARY OF THE REGISTRATION AND FINANCIAL DOCUMENTS FROM THE SECRETARY OF STATE, STATE CAPITOL, CHARLESTON, WV 25305; or by writing to Marine Toys for Tots Foundation, Marine Corps Base, P.O. Box 1947, Quantico, VA 22134. Our license number in Michigan is MICS No. 10716. Registration with any of the above government agencies does not imply endorsement by the state.

Veterans of Foreign Wars

A copy of the latest Financial Report and Registration filed by this organization may be obtained by contacting: Veterans of Foreign Wars, 406 West 34th Street, Suite 219, Kansas City, Missouri 64111, (816) 756-3390. Some states require that special notices be included with each solicitation. If you are a resident of one of these states, you may obtain financial information directly from the state agency. MARYLAND (FOR THE COST OF COPIES AND POSTAGE) Office of the Secretary of State, State House, Annapolis, MD 21401; NEW YORK Office of Charities Registration, 120 Broadway, New York, NY 10271; VIRGINIA State Division of Consumer Affairs, Department of Agricultural and Consumer Services, P.O. Box 1163, Richmond, VA 23209; WASHINGTON Charities Division, Office of the Secretary of State, State of Washington, Olympia, WA 98504-0422, 1-800-332-4483; WEST VIRGINIA residents may obtain a summary from: Secretary of State, State Capitol, Charleston, WV 25305; Registration with any of these governmental agencies does not imply endorsement by the state. A COPY OF THE OFFICIAL REGISTRATION AND FINANCIAL INFORMATION MAY BE OBTAINED FROM THE FLORIDA DIVISION OF CONSUMER SERVICES BY CALLING TOLL-FREE, 1-800-435-7352 WITHIN THE STATE. REGISTRATION DOES NOT IMPLY ENDORSEMENT, APPROVAL, OR RECOMMENDATION BY THE STATE. NORTH CAROLINA: FINANCIAL INFORMATION ABOUT THIS ORGANIZATION AND A COPY OF ITS LICENSE ARE AVAILABLE FROM THE STATE SOLICITATION LICENSING BRANCH AT 919-733-4510. THE LICENSE IS NOT AN ENDORSEMENT BY THE STATE. NEW JERSEY - INFORMATION FILED WITH THE ATTORNEY GENERAL CONCERNING THIS CHARITABLE SOLICITATION MAY BE OBTAINED FROM THE ATTORNEY GENERAL OF THE STATE OF NEW JERSEY BY CALLING 201-504-6215. REGISTRATION WITH THE ATTORNEY GENERAL DOES NOT IMPLY ENDORSEMENT. The official registration and financial information of the Veterans of Foreign Wars may be obtained from the Pennsylvania Department of State by calling toll-free within Pennsylvania, 1-800-732-0999. Registration does not imply endorsement.

Vietnam Veterans Memorial Fund

A summary of the registration and financial documents filed by this organization can be obtained by contacting: IN FLORIDA, THE DIVISION OF CONSUMER SERVICES BY CALLING TOLL-FREE WITHIN THE STATE, 1-800-435-7352; in Maryland, for the cost of copies and postage, the Secretary of State, Charitable Division, State House, Annapolis, MD 21401; in Mississippi, by calling the Secretary of State's office at 1-888-236-6167; IN NEW JERSEY, INFORMATION FILED WITH THE ATTORNEY GENERAL CONCERNING THIS CHARITABLE SOLICITATION MAY BE OBTAINED FROM THE ATTORNEY GENERAL OF THE STATE OF NEW JERSEY BY CALLING 201-504-6215; IN NEW YORK, A COPY OF THE LATEST ANNUAL REPORT CAN BE OBTAINED FROM NEW YORK STATE, OFFICE OF THE ATTORNEY GENERAL, CHARITIES BUREAU, 120 BROADWAY, NEW YORK, NY 10271; in NORTH CAROLINA, FINANCIAL INFORMATION ABOUT THIS ORGANI

Vietnam Veterans Memorial Fund con't

ZATION AND A COPY OF ITS LICENSE ARE AVAILABLE FROM THE STATE SOLICITATION LICENSING BRANCH AT 919-733-4510; IN PENNSYLVANIA, THE OFFICIAL REGISTRATION AND FINANCIAL INFORMATION MAY BE OBTAINED FROM THE PENNSYLVANIA DEPARTMENT OF STATE BY CALLING TOLL-FREE WITHIN PENNSYLVANIA,1-800-732-0999; in Virginia, State Division of Consumer Affairs, P.O. Box 1163, Richmond, VA 23209; in Washington, residents can call the Secretary of State toll-free within the state, 1- 800-332-4483; IN WEST VIRGINIA, RESIDENTS MAY OBTAIN A SUMMARY OF THE REGISTRATION AND FINANCIAL DOCUMENTS FROM THE SECRETARY OF STATE, STATE CAPITOL, CHARLESTON, WV 25305; or by writing to VVMF, 1360 Beverly Road, Suite 300, Mc Lean, VA 22101-3685. Our license number in Michigan is MICS No. 9623. Registration with any of the above government agencies does not imply endorsement by the state.

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September 17, 1999

The Honorable John M. McHugh
Chairman
Subcommittee on the Postal Service
2157 Rayburn House Office Building
Washington, D.C. 20515

Dear Representative McHugh:

I am writing in response to your August 30 letter to AARP's witness, Mrs. Virginia Tierney. Your letter seeks answers to questions raised by the testimony of AARP and others at the August 4 hearing on deceptive mailings before your subcommittee. You have raised some excellent points in your inquiries to which AARP is pleased to respond.

Question 1. **The National Federation of Nonprofits testified that sweepstakes fundraising by nonprofit groups and charities is different from commercial sweepstakes, and that the legislation should exempt non-profits. For example, they note that the use of sweepstakes by charitable organizations – rather than trying to sell magazines or make a profit – is to bring their mission to the attention of potential donors and raise funds for vital causes. How do you respond?**

The major focus of the sweepstakes legislation is the provision of adequate disclosure. Many of the difficulties consumers experience with sweepstakes mailings relate to the confusing, misleading and at times deceptive language used throughout the body of the mailing. AARP believes that clear and conspicuous disclaimers as well as prominently placed statements that "purchase will not increase chances of winning" are universally beneficial, minimally intrusive and should apply to all entities engaged in sweepstakes mailings.

Additionally, AARP joined with the Federal Trade Commission, the Department of Justice, the U.S. Postal Inspection Service and other law enforcement agencies late last year to announce "Operation Missed Giving." The goal of the campaign was to alert consumers to the fact that some of the charitable solicitations they might receive either by phone or through the mail might be fraudulent. We would be happy to provide you with information on the effort, but our purpose in bringing it to your attention today is to point out that the requirements for mailings outlined in sweepstakes legislation should extend to charity-related sweepstakes as well, making it easier for consumers to give wisely.

Question 2. **AARP testified that its research found that 4 out of 10 participants in sweepstake mailings do not believe the statement "no purchase necessary to win." If that is the case, how do you see disclosures as truly changing citizens' behavior?**

601 E Street, NW Washington, DC 20049 (202) 434-2277 www.aarp.org
Joseph S. Perkins *President* Horace B. Deets *Executive Director*

One reason consumers do not believe the statement that "no purchase is necessary to win" is that the companies generating these mailings create the perception that the statement is false. Often consumers who do not purchase an item, but wish to participate in the sweepstakes contest, must follow a series of steps not required for those who do purchase an item. Additionally, the mailing address to which they are sending their "No" entry is different than that of the "Yes" entry. Continued consumer education is needed along with the disclosures to produce change.

Another reason for consumer doubt revolves around the content of the disclosure. Consumers will more likely believe the statement, "Purchase does not increase your chances of winning" than they do "No purchase is necessary to win." AARP believes that the combination of changing the message, streamlining the response procedures, and providing ongoing consumer education will lead toward consumer behavior changes.

Question 3. **On page 3 of your testimony you state that your "goal is to reduce fraud and deception in telemarketing and mailed solicitations." How closely linked are the two, please explain.**

For the past three years AARP has devoted a large amount of time and resources to combating telemarketing fraud. As a result of collaborations with government agencies and the private sector, stronger telemarketing laws at the federal and state level have been enacted and law enforcement efforts have been enhanced both nationally and internationally. Prior to undertaking the above actions, AARP conducted research into the reasons that consumers are susceptible to telemarketing fraud and fraud in general. In addition to discovering that 56% of telemarketing fraud victims were over the age of 50, the research pointed out that older consumers had faith in known institutions, were very trusting, and found it difficult to say no. While this value system has served generations of Americans well, it also makes them targets for deceptive and misleading mail.

The same tactics and techniques that AARP has identified and worked to eliminate in the telemarketing and fake charity arenas are at the center of the problems surrounding deceptive mailings. That is why we link the issues and why the enactment of sweepstakes legislation would provide consumers and law enforcement with a valuable tool to counter deception.

Question 4. **Are there provisions of the Telephone Consumer Protection Act of 1991, in particular, the private right of action, which would be a useful addition to sweepstakes legislation? Why or why not?**

A private right of action would be a useful addition to sweepstakes legislation and AARP would likely support such a provision. AARP supported such a right during the promulgation of the Telemarketing Sales Act at the Federal Trade Commission a few years ago. In general, AARP encourages improved access to the judicial system for people with small claims.

AARP believes that a private right of action provision giving consumers an opportunity to recover losses from sweepstakes companies would be useful in two ways. First, it would allow a consumer to take action immediately rather than wait for a state attorney general's office to gather a critical mass of complaints before instituting an action. The second advantage can best be illustrated by reviewing the recent settlement agreement reached by Publishers Clearing House. In that agreement, consumers have to follow a torturous process in responding to the

settlement, just to receive minimal benefits. A private right of action would provide consumers with an alternative remedy.

Question 5. **What additional steps can the Congress take to keep consumers informed about deceptive sweepstakes?**

The most appropriate step that Congress can take to keep consumers informed about deceptive sweepstakes is to provide funding for the Federal Trade Commission to develop a consumer education campaign on this issue. A comprehensive education campaign that could include brochures, public service advertisements, a dedicated webpage site and promotion of the FTC's toll-free helpline could prove very helpful. Such a campaign could be bolstered by similar efforts conducted by industry and consumer groups.

Chairman McHugh, AARP thanks you once again for inviting us to testify last month on this very important issue. We appreciate the opportunity to respond to the above questions and we commend you on your efforts to enact meaningful legislation to deter misleading and deceptive sweepstakes mailings this session of Congress.

If you have any further questions or concerns, please do not hesitate to call me or ask your staff to call Jeff Kramer of our Federal Affairs staff at 202/434-3800.

Sincerely,

Martin A. Corry
Director
Federal Affairs

JAMES R. CREGAN
Executive Vice President
Government Affairs
(202) 296-7277
mpaadc@erols.com

September 23, 1999

The Honorable John McHugh, Chairman
Subcommittee on the Postal Service
B-349C Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

As mentioned in our letter of August 31, 1999, we are pleased to respond to your request for additional input on a number of issues, including the need for Federal preemption of inconsistent state sweepstakes disclosures statutes. We submitted a paper on two other issues, the clear and conspicuous disclosure standard and First Amendment considerations, with our August 31 letter. We have now completed our paper on the Federal preemption issue and submit it for you consideration.

This paper explains the need for Federal preemption in the area of mandated sweepstakes disclosures so that a single nationwide standard can be used to effectively inform consumers of the key sweepstakes disclosure messages. The paper describes comparable Federal statutes that incorporate such preemption provisions. In particular, we refer the Subcommittee to the preemptive language contained in the Mail or Telephone Order Merchandise Rule, which preempts inconsistent disclosure language, but does not preempt the enforcement authority of the states.

We are also attaching responses to the record questions posed to the Magazine Publishers of America in conjunction with the August 4 sweepstakes hearing and would be happy to provide further information on any of these issues.

Respectfully submitted,

James R. Cregan
Executive Vice President

Attachments

MAGAZINE PUBLISHERS OF AMERICA
1211 CONNECTICUT AVENUE, NW, SUITE 610, WASHINGTON, DC 20036 • (202) 296-7277 FAX (202) 296-0343

MAGAZINE PUBLISHERS OF AMERICA

MEMORANDUM

DATE: September 23, 1999

RE: Senate 335
The need for Federal preemption in the area of mandated sweepstakes disclosures

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When Federal Preemption is Appropriate

The purpose of sweepstakes legislation, and particularly S.335, is to set minimum disclosure standards designed to properly inform recipients of the important factors necessary for them to make informed decisions as to whether they wish to participate. S.335 therefore requires that all sweepstakes promoters that utilize the U.S. mails "clearly and conspicuously" disclose:

1. at three places that no purchase is necessary to enter or win: in the mailing, in the rules and on the order or entry form;

2. at three places that a purchase will not improve the recipient's chances of winning: also in the mailing, in the rules and on the order or entry form;

3. all terms and conditions of the sweepstakes, including the rules and entry procedures, in language that is easy to find, read and understand;

4. the name and address of the sponsor or mailer; and

5. the rules, that include the estimated odds and prize description.

S.335, as well as HR170 and HR237 also pending in the House, are national disclosure statutes for sweepstakes or games of skill distributed through the U.S. Postal Service. Federally mandated labeling or disclosure statutes with nationwide application give rise to special federal preemption issues. Inconsistent or conflicting state labeling

or disclosure requirements have the clear and obvious potential to impede interstate commerce and frustrate federal objectives. This was specifically recognized by Congress when it added preemption to the Nutrition Labeling Act in 1990. 136 Cong. Rec. H5836-01. Sweepstakes of course are one form of sales promotion and are used by literally thousands of companies nationwide that merchandise or advertise directly to consumers. Sweepstakes promotions are typically mailed nationwide and therefore must comply with not only Federal Law but also the laws of all the states or municipalities into which they are distributed. Realistically, a national merchant must comply with the most rigorous labeling or disclosure requirement of any state, as well as any others that differ, as it is generally economically unfeasible to segregate promotions and mailings by state or municipality. It can be virtually impossible for a national merchant to comply with different and inconsistent disclosure or labeling requirements. Thus, typically the Congress or the federal administrative agency delegated authority to issue labeling requirements, impose preemption restrictions against at least inconsistent state labeling laws or regulations. See e.g., Preemption of Testing and Labeling requirements within the Energy Policy and Conservation Act, 42 U.S.C. § 6297; Nutrition Labeling and Education Act of 1990, 21 USC §343-1(Supp. II 1990); Federal Cigarette Labeling and Advertising Act, 50 USC §1333 (1988); Poultry and Poultry Products Inspection Act, 21 USC §467 (e) (1988) and Federal Meat Inspection Act, 21 USC § 678 (1988). Last year Congress included a preemption provision against inconsistent state laws in the Children's Online Privacy Protection Act. 15 U.S.C. § 6502(d) Congress has articulated the need for uniformity in the area of labeling and disclosure on various occasions. See e.g., H.R. REP. No. 538, 101st Cong., 2d Sess.

8-9(1990); 1990 U.S.C.C.A.N. 336, 337-39 (describing the need for uniform regulation of nutritional labeling claims). As observed by a commentator that addressed the analogous need for national uniformity in environmental or "green" labeling laws:

> ...lack of uniformity is unacceptable. Without uniform standards, the costs involved in marketing products to different states can make it virtually impossible for honest manufacturers to provide environmental information. One such cost is the substantial burden of complying with conflicting state green marketing laws. One commentator discussing food labeling, an analogous situation, stated that the costs to manufacturers complying with differing labeling requirements "are literally incalculable."
>
> ....
>
> [I]n essence, regulations adopted by individual states are inappropriate when they impose costs on manufacturers by interfering with economies of scale that would otherwise be available in the production of nationally distributed goods.
>
> Welsh, Environmental Marketing and Federal Preemption of State Law, 81 Calif. L. Rev. 991, 1003-4 (1993)

In addition, multiple labeling requirements even if feasible, would be counterproductive. As emphasized by Prof. Ravi Dhar, who testified at the NAAG hearing on sweepstakes in February of this year, legislators should be careful about excessive disclosure requirements. His advice for effective disclosures -- especially in the area of sweepstakes -- was KISS ("Keep It Simple Stupid"). Ravi Dhar, Why Consumers Respond to Sweepstakes, NAAG Hearing February 24, 1999 (Indianapolis, Ind).

In the area of consumer protection such as is addressed by S.335, the Federal Trade Commission of course has been delegated the responsibility to ensure through the use of trade regulation rules and otherwise that consumers are not misled or deceived. Initially it was unclear whether the FTC had been delegated the full preemptive authority of Congress. In 1975 however Congress unequivocally granted

the FTC full preemptive authority as part of the Magnuson-Moss Warranty-Federal Trade Commission Improvements Act (15 USC §45-46, 49-52, 56-57C, 2301-2312). This act granted the FTC rulemaking authority and all the powers granted to Congress by the Constitution to preempt inconsistent state laws. United States v. American Bldg. Maint. Indus., 422 U.S. 271, 277 (N.6) (1975). The FTC has utilized that preemptive power as part of its rulemaking authority when it has determined that uniform national standards are needed. Thus by way of important example, the FTC's Mail or Telephone Order Merchandise Rule which covers an analogous subject, contains a provision stating the Rule is not intended to preempt enforcement remedies available to the various states laws that are not inconsistent with the Rule, but that it does preempt inconsistent state disclosure provisions. The applicable language is:

> (1) The Federal Trade Commission does not intend to preempt action in the same area, which is not inconsistent with this part, by any State, municipal, or other local government. This part does not annul or diminish any rights or remedies provided to consumers by any State law, municipal ordinance, or other local regulation, insofar as those rights or remedies are equal to or greater than those provided by this part. In addition, this part does not supersede those provisions of any State law, municipal ordinance, or other local regulation which impose obligations or liabilities upon sellers, when sellers subject to this part are not in compliance therewith.
>
> (2) This part does supersede those provisions of any State law, municipal ordinance, or other local regulation which are inconsistent with this part to the extent that those provisions do not provide a buyer with rights which are equal to or greater than those rights granted a buyer by this part. This part also supersedes those provisions of any State law, municipal ordinance, or other local regulation requiring that a buyer be notified of a right which is the same as a right provided by this part but requiring that a buyer be given notice of this right in a language, form, or manner which is different in any way from that required by this part. In those instances where any State law, municipal ordinance, or other local regulation contains provisions, some but not all of which are partially or completely superseded by this part, the provisions or portions of those provisions which have not been superseded retain their full fore and effect.
>
> 15 CFR §435.3b (emphasis added).

Other consumer protection statutes containing federal preemption against inconsistent state laws are the Truth In Lending Act and the Fair Credit Reporting Act. Congress delegated to the Board of Governors of the Federal Reserve the Authority to promulgate disclosure rules and forms (Consumer Credit Cost Disclosure, 15 U.S.C. § 1604) and provided that they preempt state credit disclosure statutes "to the extent that those laws are inconsistent..." (15 U.S.C. § 1610(a)(1). It then specifically granted the Federal Reserve Board the authority to resolve inconsistencies and directed that creditors "may not make disclosures using the inconsistent [state] term or form, and shall incur no liability under the [inconsistent state] laws...." (15 U.S.C. § 1610(A)(1)). Similarly, in the Credit Repair Organizations Act (15 U.S.C. § 1679) and the Fair Credit Reporting Act (15 U.S.C. § 1681) there are provisions that comparable state laws are preempted "to the extent that those laws are inconsistent with any provision of this subchapter...." (15 U.S.C. § 1679, and 1681t(a). The latter then articulates the various credit reporting requirements or prohibitions that may not be imposed by any state (15 U.S.C. § 1681t(b)).

The Need for Preemption Against Inconsistent State Sweepstakes Regulatory Statutes

For the very reason that the FTC with Congressional authority preempted inconsistent disclosure or labeling language in the Mail Order Rule, without preempting state enforcement authority, the same partial preemption should be added to S.335. It is equally important that in the area of sweepstakes, the states be permitted to prosecute fraudulent operators utilizing their state consumer protection statutes, but not be permitted to promulgate different or inconsistent sweepstakes labeling or disclosure laws. The states do not need new but different sweepstakes disclosure rules to protect

their citizens from fraudulent operators. Several states have already brought enforcement proceedings against large sweepstakes operators and there are coordinated voluntary compliance agreements with two major operators that over thirty states have signed. The NAAG Subcommittee on Sweepstakes and Prize Promotion has not been impeded by lack of adequate state consumer protection laws. Indeed, in its letter dated April 13, 1999 to Senator Collins concerning S.335, NAAG took the position that S.335 should not preempt the states' right to proceed against violators utilizing existing state statutes: "Many states have consumer protection laws in this area that are more stringent than your bill, and we believe the states should retain the ability to effectively enforce these laws." NAAG did not request authority to pass more state sweepstakes disclosure laws and indeed at least implied that the consumer protection laws currently in existence were sufficient. Indeed, at the Indianapolis NAAG hearings, A.G. James E. Doyle of Wisconsin, who has initiated a lawsuit against a major sweepstakes operator, agreed that no new state laws were needed: "...I agree with you.... I don't think we need a lot of regulations.... We have laws about this stuff [i.e. misleading advertising]...." (A.G. James E. Doyle colloquy; Indianapolis Sweepstakes Hearings Transcript at p.46, Feb. 24, 1999) A preemption provision modeled on the Mail Order Rule would preserve the states' enforcement authority, but prevent new inconsistent labeling laws that would be unworkable and impede interstate commerce.

The need for preemption is real. There are numerous bills pending in state legislatures that would at their worst be inconsistent with the disclosure requirements of S.335 and at best be different, cumulative, and extremely cumbersome. Indeed the NAAG Subcommittee on Sweepstakes and Prize Promotion itself has recommended

that all sweepstakes mailing contain a separate "Sweepstakes Fact" insert with bold print notice that:

> "YOU HAVE NOT YET WON
> ENTER FOR FREE
> ENTER AS OFTEN AS YOU LIKE
> BUYING WON'T HELP YOU WIN"

Moreover, there have been bills introduced in a substantial number of state legislatures this year dealing with sweepstakes disclosures, each with its own unique requirement, though all dealing with the same subject matter. For example, legislation in Florida would require explicit warning labels on the envelope and top of the first page of the solicitation (Fla. H.B. #0087), while Connecticut would require the disclosures to be "in the immediate proximity to and at least the same size and type as the description of each prize" (Conn. Dep't of Consumer Protection Reg. § 42.295-1). Other states have introduced legislation containing other variations on the disclosure requirements (e.g. Ore. H.B. #3388, Mich. H.B. #4751 and Washington H.B. #1006), while Missouri has proposed restricting the use of entry envelopes and electronic entry sorting (Mo. H.B. #883) and New Mexico has proposed a complete prohibition against commercial sweepstakes promotions (New Mexico Sen. Bill 296).

The cumulative impact of so much separate federal and state sweepstakes regulatory legislation would be to make it impossible or at least commercially unfeasible for nationwide promoters to consistently comply with all the laws and regulations, thereby seriously impeding interstate commerce. The comment quoted above that: "the costs to manufacturers of complying with differing labeling requirements are literally incalculable" is equally appropriate here. Even if the promoters could realistically comply, the impact of so many different disclosures would be that none could be "easily

found, read and understood" and Prof. Dhar's strong recommendation to "Keep It Simple Stupid" would be totally lost.

MPA recommends preemptive language modeled after the Mail Merchandise Rule that would preempt inconsistent disclosure language, but not preempt the enforcement authority of the states.

RESPONSES OF THE MAGAZINE PUBLISHERS OF AMERICA TO QUESTIONS SUBMITTED FOR THE RECORD OF AUGUST 4, 1999 HEARING U.S. HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON THE POSTAL SERVICE

1. **Question:** The National Federation of Nonprofits testifies that sweepstakes fundraising by nonprofits groups and charities is different from commercial sweepstakes, and that the legislation should exempt nonprofits. For example, they note that the use of sweepstakes by charitable organizations – rather than trying to sell magazines or make a profit – is to bring their mission to the attention of potential donors and raise funds for vital causes. How do you respond?

Answer: First, we note for the record that the Magazine Publishers of America proudly counts among its members both "not-for-profit" and "for-profit" magazine publishers. We support the right of all our members to conduct legitimate sweepstakes as a fun, fair and effective means of bringing our informative and entertaining products to the attention of consumers. We further applaud the valuable contribution that all legitimate not-for-profit organizations make to our country and support their ability to use sweepstakes to raise funds for vital causes.

With regard to differences between nonprofit and commercial sweepstakes promotions, first, nonprofit organizations tend to utilize smaller prizes in their sweepstakes as compared to some of the well-known commercial sweepstakes organizations. Many commercial entities, however, also offer modest prizes in their sweepstakes. Second, the nonprofit organizations correctly point out that requiring a "no purchase necessary" message on nonprofit sweepstakes does not make sense since no product is being offered for sale. That is one reason we have opposed, and continue to oppose, legislative provisions that mandate precise wording of consumer protection disclosures. We have objected to mandated wording requirements on both constitutional and practical grounds. Sweepstakes operators must be allowed to determine the manner in which to best convey the necessary disclosures to potential participants, purchasers, and contributors.

There are several reasons why we believe Federal sweepstakes legislation should apply to all sweepstakes promotions. First, as we testified before the subcommittee, we strongly support a uniform, nationwide standard for sweepstakes promotions rather than a potentially confusing patchwork of state regulations. To avoid conflicting legislation at the state level, the Federal law must be comprehensive in its applicability. This will benefit both sweepstakes operators and consumers, since it will ensure consistent, "clear and conspicuous" disclosures that will be "easy to read, find, and understand."

Second, all legitimate sweepstakes operators will benefit from Federal legislation that helps the Postal Service stop fraud and abuse. At the National Association of Attorneys General hearing in Indianapolis in February, numerous examples of fraudulent

sweepstakes were presented from purported nonprofit organizations, some with very similar names to legitimate nonprofit entities. It could compromise the Postal Service's ability to enforce the statute if promoters with names suggesting that they are charities or non-profits would have a presumptive exemption subject to the Postal Service proving otherwise.

2. **Question:** The AARP, among others, has recommended amendments to the House legislation that provide definition and guidelines to games of skill and provide stiff remunerative penalties for noncompliance. AARP contends that the most direct means of eliminating fraud is to take the profit out of it. How do you respond to this suggestion? Do you believe a penalty structure similar to the one that the Senate adopted would serve as a deterrent to fraud?

Answer: MPA supports vigorous enforcement actions against and prosecution of fraudulent operators, both those engaged in sweepstakes and games of skill. Fraudulent operators undermine the effectiveness of legitimate operators, casting a pall over the entire industry and destroying consumer confidence. We have been supportive of the Postal Service's efforts to improve its ability to conduct enforcement activities, through legislative provisions providing nationwide stop-order authority and civil penalties. While we believe the civil penalties included in the Senate legislation are extremely large, we chose not to oppose those penalties during the course of the Senate's deliberations. We would not oppose reasonable civil penalties in sweepstakes legislation pending before the House. We doubt, however, that heavy fines will serve as a major deterrent for most fraudulent operators, as they tend to be quite elusive upon being prosecuted, or, judgment-proof.

3. **Question:** In its testimony, AARP endorses the requirement that disclaimer language be printed in at least 16-point type. In what ways would this requirement impact the layout of the materials in sweepstakes mailings? Do you believe it is necessary to write such a detailed requirement into law or might such a need be better addressed through regulation?

Answer: Sixteen point type would be unworkable for most sweepstakes mailings because disclaimers of that size would overwhelm the entry order forms which are typically postcard size. Moreover, MPA is strongly opposed to legislative requirements that mandate type size or any other requirements that dictate in express terms the wording, type size or style, or placement of sweepstakes disclosures. In addition to our comments before the Subcommittee, we submitted a paper to the Subcommittee on August 31 that provides further background and analysis on two aspects of consumer disclosures: (1) the evolution and meaning of the phrase "clear and conspicuous" in the context of consumer disclosures, and potential problems from the simultaneous use of the term "prominent" in the Senate legislation; and (2) constitutional restrictions on excessive disclosure requirements. We request that our memorandum on the "clear and conspicuous" standard as applied to consumer disclosures be included in the record of the August 4 hearing.

As we state in our memorandum, disclosures designed to prevent deception cannot so overwhelm the promotion as to frighten the recipient and destroy the promotion. The promoter must be given fair latitude to draft effective copy consistent with its nondeception obligation. The Federal Trade Commission, in promulgating the "clear and conspicuous" standard for measuring effective communication, intended to balance the needs of consumers with the ability of promoters and their copywriters to utilize creative leeway in drafting effective promotional language which at the same time is nondeceptive. Mandating type size is more onerous than necessary to inform the consuming public.

4. **Question:** Please provide for the record a copy of the memorandum (to which you referred at our August 4, 1999 hearing) from the Freedom to Advertise Coalition regarding the First Amendment implications of mandating size and placement requirements.

Answer: The comments of the Freedom to Advertise Coalition, as submitted to the Senate Permanent Subcommittee on Investigations during its March hearings, were provided to the Subcommittee under separate cover on August 31, 1999. The comments accompanied a separate paper prepared by MPA that also addresses constitutional restrictions on excessive disclosure requirements, including the use of mandated words or type size.

SUPPLEMENTAL QUESTIONS
FROM THE U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE POSTAL SERVICE

1. **Question:** On page three of your testimony you urge our subcommittee to "enact legislation that correctly mandates use of the universally accepted "clear and conspicuous" standard for consumer disclosures." How can we in Congress be assured that this is sufficient and will actually help consumers? Will this avoid the "tiny, fine print" issue? Please explain.

Answer: In addition to our testimony before the Subcommittee, we submitted a memorandum on August 31 addressing the "clear and conspicuous" standard as applied to consumer disclosures. We have requested that this memorandum be included in the record of the August 4 hearing. As discussed in our memorandum, recognized jurisprudence on this subject teaches that the phrase "clearly and conspicuously" is a legally recognized standard of effective communication. The ultimate test is whether the disclosure is effectively communicated to consumers so that it is displayed in a manner that is readily noticeable, readable and/or audible (depending upon the medium) and understandable to the audience to whom it is disseminated. The clear and conspicuous standard is intended to be an effective but flexible criteria to insure that consumers, acting reasonably, have the information necessary to act prudently, while at the same time giving promoters creative leeway in presenting the required information. Assuming House approval of legislation incorporating the clear and conspicuous standard in conjunction with civil penalties, disclosures that are not noticeable, readable, or understandable will be punishable by substantial penalties.

We urge this subcommittee not to depart from a standard that, over a period of more than 20 years, has been developed by government agencies and interpreted by the courts, and has amassed a rich body of precedent and clearly understood and uniformly applied meaning.

2. **Question:** I note in your testimony that you support allowing sweepstakes to opt out. What are your thoughts on the private right of action provision contained in the Telephone Consumer Protection Act of 1991? Should sweepstakes legislation contain a similar provision?

Answer: As stated in our testimony, MPA strongly supports providing choice to our subscribers and customers. We support the provision in the Senate sweepstakes legislation, S. 335 as passed, requiring sweepstakes promoters to allow consumers an opportunity to opt-out of receiving future sweepstakes promotions from individual companies. We did not support an earlier proposal to require the establishment of a centrally administered system as we firmly believe this to be unworkable and ultimately would not benefit the consumers. We would direct your attention to the extremely large penalty of $10,000 per violation if consumers selecting to opt-out are not removed from the promoter's mailing lists. We believe such penalties

would serve as a more than adequate deterrent to violations of opt-out. We believe that the addition of a private right of action is not necessary to ensure promoter's compliance with opt-out elections. We also note that the Senate legislation takes into account the promoter's best efforts and does not impose a penalty for inadvertent violations.

Furthermore, we are concerned that consumers may not understand the nature of promotion mailing practices and might believe, innocently but improperly, that if they receive a mailing after 35 days from sending their opt-out notice that a violation has occurred. That could lead to inappropriate lawsuits. The Senate legislation correctly imposes a tight deadline on promoters to remove opt-out names from lists used to select sweepstakes mailings but promoters would not have to recall lists that have already been selected and sent on for mailing. Many suppliers assist sweepstakes operators in preparing mailings and it would be impossible for promoters to locate and recall any names that have already been released for mailing. In addition, recipients' actual damages would be nominal and such claims would improperly burden the courts; a higher fixed minimum damage figure might be punitive and create constitutional issues.

RESPONSES OF THE DIRECT MARKETING ASSOCIATION
QUESTIONS SUBMITTED FOR THE RECORD
AUGUST 4, 1999 HEARING
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEE ON THE POSTAL SERVICE

1. The national Federation of Nonprofits testifies that sweepstakes fundraising by nonprofit groups and charities is different from commercial sweepstakes, and that the legislation should exempt nonprofits. For example, they not that the use of sweepstakes by charitable organizations--rather than trying to sell magazines or make a profit--is to bring their mission to the attention of potential donors and raise funds for vital causes. How do you respond?

1A. The Direct marketing Association (DMA) has members both for-profit and nonprofit. Sweepstakes promotions have proven valuable to both. The DMA is looking for the Congress to establish national standards that will help avoid confusion for all recipients. With that in mind, the DMA believes that a national standard should apply to all. In that way, potential confusion caused by having only some but not all sweepstakes promotions following a national standard will be avoided.

Moreover, the bill also has significant anti-fraud provisions and applications. Those anti-fraud activities should apply to all mailers since it will enhance the confidence of American consumers in promotions through the mails--whether from nonprofit organizations or from for-profit organizations.

2. The AARP, among others, has recommended amendments to the house legislation that provide definition and guidelines to games of skill and provide stiff remunerative penalties for noncompliance. AARP contends that the most direct means of eliminating fraud is to take the profit out of it. How do you respond to this suggestion? Do you believe a penalty structure similar to the one that the Senate adopted would serve as a deterrent to fraud?

2A. Heavy fines do serve as a deterrent. However, due to the technical nature of some of the provisions in the bill, the fine seems excessive for a technical violation. We did and do agree to support the Senate's provisions for fines and believe that the same structure should apply to both sweepstakes and games of skill. Fraudulent operators, unfortunately, when caught usually have no assets from which fines may be collected.

3. In its testimony, AARP endorses the requirement that disclaimer language be printed in at least 16 point type. In what ways would this requirement impact the layout of the materials in sweepstakes mailings? Do you believe it is necessary to write such a detailed requirement into law or might such a need be better addressed through regulation?

3A. Requiring specific type size would be unmanageable for sweepstakes mailers. The required disclosures would make order forms, for example, unusable. The DMA believes that type size proscriptions raise First Amendment concerns. As stated in our oral testimony, we urge the Subcommittee to avoid any First Amendment problems so that national standards can be established and implemented quickly and without court review. We believe that the well established doctrine for "clear and conspicuous" disclosures provides adequate protections for consumers.

RESPONSES OF THE DIRECT MARKETING ASSOCIATION TO SUPPLEMENTAL QUESTIONS FROM THE SUBCOMMITTEE ON THE POSTAL SERVICE

1. Your testimony urges our subcommittee to adopt the clear and conspicuous language standard for disclosures. How can we in Congress be assured that this is sufficient and will actually help consumers? Will this avoid the "tiny, fine print" issue? Please explain.

   1A. Clear and conspicuous doctrine requires that a disclosure be displayed in a manner that is readily noticeable and readable to the audience to whom it is disseminated. The requirement that a noticeable disclosure be placed on the order form will ensure that consumers will see it. This standard has been in place for over 20 years and we believe it should not be abandoned at this time. There are significant penalties for failure to have clear and conspicuous disclosures.

2. I note that you support allowing sweepstakes to customers to opt out. What are your thoughts on the private right of action provision contained in the Telephone Consumer Protection Act of 1991? Should sweepstakes legislation contain a similar provision?

   2A. The DMA strongly supports choice for consumers to opt out of mailing lists. In fact, it is part of the DMA's Privacy Promise which is **required** of all DMA members. We believe that the bill contains adequate opt out provisions with a $10,000 fine for violation. That is adequate. However, we do not oppose the individual right of action in small claims court.

NCL 100 YEARS CONSUMER ADVOCACY National Consumers LEAGUE

NATIONAL CONSUMERS LEAGUE

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September 21, 1999

The Honorable John M. McHugh, Chairman
Subcommittee on the Postal Service
Committee on Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Chairman McHugh:

In regard to our September 17 letter providing answers to questions about sweepstakes mailings, we wish to correct mistake on the third page in reference to a specific House bill. It should have been H.R. 2678, not 2687.

Thank you for noting this correction.

Sincerely yours,

Susan Grant, Vice President for Public Policy
National Consumers League

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Board of Directors

September 17, 1999

The Honorable John M. McHugh, Chairman
Subcommittee on the Postal Service
Committee on Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Chairman McHugh:

I am responding to your August 30 letter to Sara Cooper which posed some questions to supplement your August 4 hearing concerning fraudulent and deceptive sweepstakes mailings. We appreciate the opportunity to offer more information. Our answers to the first set of questions are as follows:

1. The statistics that we offered in our August 4 testimony are based on individual consumer complaints made to our National Fraud Information Center hotline. Those complaints are about telemarketing fraud; we do not have a category for mail fraud. While in 56% of telemarketing fraud reports made to the NFIC during the first six months of 1999, the initial contact by the company to the consumer was via the mail, in the specific subcategory of telemarketing sweepstakes/prize offers, the percentage is even greater -- 70.7% of the initial contacts were by mail.

In incidents of Internet fraud reported to our companion program, the Internet Fraud Watch, initial contact by mail is much lower. For the same time period, it represented only .2% of the Internet fraud complaints we received.

2. We do not feel that it is necessary to create another national database of complaint information. As you know, the Federal Trade Commission already maintains a database for law enforcement agencies that covers a broad range of subject areas, including deceptive prize and sweepstakes offers. Our fraud programs operate nationally and contribute to the FTC database weekly. A growing number of other organizations such as the Better Business Bureau, Project PhoneBusters in Canada, also supply information. To replace all these programs with one would be a huge and very costly undertaking. The cooperative relationships that currently exist work very well. At the same time, our individuality enables us to function differently; for instance, NCL is less constrained that the FTC in public use of our statistical data.

3. As a nonprofit organization, the National Consumers League appreciates the benefits of our special status. However, we believe that it is our obligation to be as honest and truthful in our solicitations as for-profit entities should be. The sweepstakes solicitations we have seen from nonprofit organizations are very similar to those used by for-profit companies and raise the same concerns. The issue is not whether the promotion is for a worthy cause or a good product. The issue is whether the mailings have the capacity to mislead consumers about their chances of winning and what it takes to win. Nonprofits and charities should be treated the same as for-profit companies in any requirements concerning sweepstakes solicitations.

4. We have learned that in consumer education, the more straightforward the message, the more effective its impact will be. That is why we began to use a new anti-telemarketing fraud message for older consumers, "fraudulent telemarketers are criminals," to replace the old "if it seems too good to be true, it probably is." The problem with "no purchase is necessary" is that it is not strong enough by itself -- people may think that a purchase is still helpful even though it may not be required. A stronger message such as "It's illegal to require you to pay anything to enter," coupled with another message that "purchasing something does not improve your chances of winning in any way," would probably be more effective in changing consumer behavior.

In regard to the second set of questions, we offer these answers:

1. When we spoke of respected companies, we meant legitimate companies that are household names and use sweepstakes solicitations to promote sales of products or services, as opposed to fraudulent boiler room operations whose sweepstakes solicitations are designed simply to rob consumers of their money. We are reluctant to single out specific companies for fear of leaving out others who may merit similar criticism. Publishers Clearing House has been used as an example because the company has been the focus of recent multistate legal action. We believe that decisive action by Congress to set guidelines for sweepstakes mailings will help legitimate companies to ensure that their solicitations do not deceive or mislead consumers.

2. As we noted in our August 4 testimony, sweepstakes mailings are often the first salvo in fraudulent telemarketing schemes when consumers receive notices announcing that they are winners and instructing them to call to find out how to claim their awards. These con artists design their mailings to look very similar to those that are used by legitimate companies. Whether the consumer responds by phone or by mail is not the point, however. The point is that the mailings may deceive them into believing that they have won something when they have not.

3. We believe that it is vital to include a private right of action in sweepstakes legislation, as there is in the Telephone Consumer Protection Act of 1991. Individual consumers and legal counsel acting on behalf of groups of plaintiffs have been very effective in helping to enforce consumers' rights under the 1991 law and curb telemarketing abuses. One Maryland woman, Barbara Joyce, has reduced the number of unwanted telemarketing calls she receives to a trickle by hitting violators squarely where it hurts -- in the wallet. She has collected nearly $7000 in settlements and judgements to date. Consumers should be able to take the same action to stop unwanted sweepstakes solicitations.

We believe that the provisions of H.R. 2687, which would require sweepstakes mailers to remove consumers from their lists in the same way that the Telephone Consumer Protection Act requires telemarketers to honor consumers' "do not call" requests, should be included in any sweepstakes legislation that is ultimately approved in the House. While the bill does not address a private right of action, we feel that it would be in the public interest if both consumers and government agencies acting on behalf of the public should be able to enforce compliance with such requirements.

4. To make the public more aware of the serious problems associated with deceptive sweepstakes, government, law enforcement, legitimate sweepstakes solicitors and consumer organizations must work together. Information about enforcement actions must be coupled with information about how consumers can tell the difference between legitimate and deceptive or fraudulent sweepstakes solicitations. This requires a bright line that consumers can use -- if a mailing does not clearly provide the required disclosures, it's a scam. And those who use sweepstakes solicitations, whether nonprofit or for-profit, must also work to educate consumers.

Thank you for asking for our continued input on this important issue. Please do not hesitate to contact me at (202) 835-3323 if you have any further questions.

Sincerely yours,

Susan Grant, Vice President for Public Policy
National Consumers League

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Mr. MCHUGH. 3-plus hours with one 5-minute break is enough for anyone. You have more than served your country prominently and adequately today. We deeply appreciate that.

So, with the thanks of everyone and the promise of continuing to work on this issue, the meeting is adjourned.

[Whereupon, at 4:15 p.m., the hearing adjourned.]

[Additional information submitted for the hearing record follows:]

OFFICE OF INSPECTOR GENERAL

Written Testimony
Submitted by
Karla W. Corcoran, Inspector General
United States Postal Service
to the
Subcommittee on the Postal Service
Committee on Government Reform
August 4, 1999

Chairman McHugh and distinguished Members of the Subcommittee, the Office of Inspector General of the United States Postal Service is pleased to submit this written testimony regarding the necessity of amending chapter 30 of title 39, United States Code, to combat the mailing of deceptive material relating to games of chance. We share the concern of Congress and the Postal Service about protecting the public from deceptive mailing practices, and we support this legislation. Deceptive mailers should not be able to use the Postal Service to prey upon the public.

We have followed this legislation as part of our oversight responsibility of the Postal Inspection Service and commented on it in our most recent Semiannual Report to Congress. The Office of Inspector General is pleased to share with the Subcommittee our oversight perspective and law enforcement experience in order to provide you with independent and objective information to assist you in making decisions regarding this legislation. We currently do not see this proposed legislation as conflicting with our mission.

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As part of this legislation, the Postal Service will be granted subpoena authority. We support this proposal as long as the Postal Service develops safeguards to ensure its judicious use. This subpoena authority will be the main focus of our testimony.

If this legislation is enacted as proposed, it would require the Postal Service to promulgate regulations within 120 days establishing procedures for the issuance of subpoenas. To ensure the integrity of the subpoena process, we believe it would be important for the Postal Service to develop procedures requiring that:

- a specific case be opened before a subpoena is requested;
- appropriate supervisory and legal review of a subpoena request is performed;
- delegation of subpoena approval authority is limited to high-level officials; and
- periodic reports on subpoena activity are required.

Overall, the deceptive mailing legislation is designed to protect consumers from deceptive mailings relating to games of chance. The specific proposal to grant subpoena authority, however, covers all of the following nonmailable matters, many of which do not appear to involve the mailing of deceptive material relating to games of chance:

- nonmailable motor vehicle master keys;
- nonmailable locksmithing devices;
- mail bearing a fictitious name or address;
- delivery of mail to persons not residents of the place of address;
- false representations;
- lotteries;

- unlawful matter;
- pandering advertisements;
- unordered merchandise;
- sexually oriented advertisements;
- nonmailable plants; and
- nonmailable plant pests and injurious animals.

While we support giving the Postal Service the tools necessary to prevent deceptive mailings, we note, however, that not limiting the scope of subpoena authority to deceptive mailings could have the unintended consequence of diverting Postal Service attention away from deceptive mailings to areas unrelated to games of chance.

We benchmarked with other federal criminal law enforcement agencies that have subpoena authority in non-criminal cases. Our research disclosed that Congress has authorized federal criminal law enforcement agencies to issue administrative subpoenas for use in civil investigations. For example, the Federal Bureau of Investigation and the Drug Enforcement Administration have limited authority to issue administrative subpoenas for use in civil or criminal investigations relating to controlled substances. Others, such as Offices of Inspectors General, have authority to issue administrative subpoenas in civil cases, as well as in criminal investigations.

The Postal Inspection Service, like other federal criminal law enforcement agencies, uses grand jury subpoenas for criminal investigations. Grand jury subpoenas are not appropriate for conducting deceptive mailings investigations. The Postal Inspection Service uses Inspector General subpoenas for investigations of fraud, waste, and abuse against the Postal Service. In a deceptive mailing case, it would not be appropriate for the Office of Inspector

General to issue an Inspector General subpoena for the Postal Inspection Service because investigations of deceptive mailings usually do not involve a fraud against the Postal Service.

Because other subpoenas used by the Postal Inspection Service are not appropriate for investigations into deceptive mailings, we support the legislative proposal to give the Postal Service subpoena authority in this area. To assist the Subcommittee, we would like to share the procedures we use to ensure accountability when issuing an Inspector General subpoena to our staff. We: (1) open a specific case before requesting a subpoena; (2) ensure review by an Assistant Inspector General and the General Counsel to the Inspector General; (3) maintain subpoena approval authority with the Inspector General or an Assistant Inspector General; and (4) report periodically on subpoena activity to the Postal Service Governors and to Congress in our semiannual report.

In conclusion, the Office of Inspector General supports the legislative proposal giving subpoena authority to the Postal Service because:

- we do not presently see this proposed legislation as conflicting with the missions of the Postal Inspection Service and the Office of Inspector General;
- previously, Congress has authorized other federal criminal law enforcement agencies to issue administrative subpoenas for use in civil investigations; and
- other subpoenas used by the Postal Inspection Service are not appropriate for most investigations into deceptive mailings.

We recommend Congress consider focusing the scope of the proposed subpoena authority on only deceptive mailings involving games of chance. Also, to ensure

the integrity of the subpoena process, we believe it will be important for the Postal Service to develop subpoena procedures requiring that, at a minimum, they:

- identify a subject of investigation and open a specific case on that subject prior to requesting a subpoena;
- review subpoena requests for legal and investigative sufficiency at the headquarters level;
- maintain subpoena approval authority with Postal Service officers or their direct reports; and
- report periodically to appropriate oversight officials on subpoena activity.

These steps, which in our opinion will enhance accountability, should help ensure that the Postal Service judiciously exercises its subpoena authority.

We are committed to working with the Postal Service and the Postal Inspection Service to better protect the public. If the proposed legislation is enacted, the Office of Inspector General will monitor its implementation and keep the Subcommittee fully and currently informed.

We thank the Subcommittee for the opportunity to express our views and look forward to continuing to work with you in the future.

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Order Code RS20292
August 4, 1999

CRS Report for Congress
Congressional Research Service • The Library of Congress

Sweepstakes and Skill Contests: A Growing Marketing Industry in the United States

Bernevia McCalip
Analyst in American National Government
Government and Finance Division

Summary

In a competitive, open market system, advertising and direct marketing practices play an important role for both buyers and sellers of products and/or services, and serve as major engines of economic activity generally. Consequently, the marketing industry in the United States has grown continuously over the years, developing into a professional field based on market research, incentives, rewards, and human psychology. In addition to the usual advertising segment of the marketing industry, two tools—skill contests and sweepstakes—have come into increased prominence in the United States over the past three decades. Skill contests require that the consumer use knowledge effectively in solving riddles, word puzzles, or other tests in order to win the prize. On the other hand, in order to be declared a winner in a sweepstakes, the participants rely solely on chance and, in most cases, no purchase is required. Because entry forms for both skill contests and sweepstakes are distributed primarily through the mail, the U.S. Postal Service (USPS) is at the heart of the industry. Although the industry's marketing techniques are largely regulated by state laws, some federal regulatory jurisdiction, although indirect, is also exercised by the USPS and the Federal Trade Commission (FTC) through current provisions applicable to lotteries, false representations, and unfair trade practices. With the rapid growth of sweepstakes and skill contests as marketing techniques and the concomitant accumulation of complaints made by consumers regarding the harmful effects these practices have on unwary groups, skill contests, and particularly sweepstakes and the companies that run them have come under increased scrutiny both at the state level and in Congress. Congressional action has already been taken in the Senate. On July 1, 1999, the Committee on Governmental Affairs favorably reported S. 355, the Deceptive Mail Prevention and Enforcement Act. In the House, several bills have been introduced addressing this issue, and hearings are scheduled by the Committee on Government Reform, Subcommittee on Postal Service, on August 4, 1999. Updating of this report will occur as merited by legislative developments.

CRS Reports are prepared for Members and committees of Congress

The Sweepstakes Market

Sweepstakes mailings have been used by the direct marketing industry for over three decades, primarily as sales enhancement tools for an assortment of products, but also as a way to raise money or promote services for various causes. While many sweepstakes firms exist and operate in today's market, four major firms—Publishers Clearing House, Reader's Digest Association, Inc., Time, Inc., and American Family Enterprises—dominate the field, sending out hundreds of millions of mailings each year. Although promotions can involve contests of skill or outright solicitations, these four major direct marketing firms have as their main goal the promotion and sale of hundreds of different types of magazines and products through the lure of high prize money sweepstakes.

The extent of the sweepstakes market is vast. According to the Magazine Publishers of America, about $7 billion a year is spent on magazine subscriptions in the United States alone, with about $850,000,000 (or 12%) of this amount generated by sweepstakes promotions. The direct marketing industry views these types of mailings as legitimate marketing devices that serve a useful purpose for their commercial publishing clients and for the broad marketing audience.

Deceptive Practices in Sweepstakes

Although many sweepstakes are fair and legitimate promotions, some may deceive or defraud consumers into sending money or making purchases.[1] Sophisticated marketing techniques allow marketers to target consumers who respond to the mailings or place orders for products. These "preferred customers" receive numerous additional mailings, a practice known as "reloading." Such mailings generally warrant more aggressive marketing techniques, such as devices to make the mailing seem personalized and unique, sometimes implying that if purchases are not made, the customer may lose his or her "preferred" status.

In their own defense, sweepstakes companies contend that by offering consumers an opportunity to participate in drawings with large monetary prizes, consumers have a great incentive to make purchases, whether or not purchases are required as a condition of winning a prize. Consequently, the companies conduct extensive market research to determine the acceptability of their mailings, the size of the general audience they address, and, finally, the development of specialized lists used for targeted, more personalized mailings. In most cases, the targeted, personalized mailings use market research information applicable to the targeted group, primarily to have the consumers infer that their purchasing patterns are linked to the receipt of sweepstakes mailings. Claiming that these marketing practices have been traditionally used in the direct marketing sector, sweepstakes companies deny that the complaints generated are because of deceptive, misleading, or fraudulent actions on their part. Nevertheless, they do admit that a small portion of their consumer audience "misunderstands" the sweepstakes literature. The

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The Direct Mail Marketing Association, a trade group that includes in its membership companies who use sweepstakes campaigns as their primary marketing practice, contends that these promotions are not inherently deceptive and that consumers who spend excessively large sums of money on such promotions are "unstable."

companies claim that they have made considerable effort to respond to this basis for what they term unwarranted complaints.[2]

Conversely, state, federal, and other investigators claim that, by making strong implications, and in some cases direct statements, that a purchase or subscription would enhance the consumer's chance of winning the sweepstakes prize, sweepstakes companies border on, or even cross over to, presenting misleading information. Investigators also maintain that sweepstakes companies often use misleading or deceptive forms in their mailings, thereby increasing the need for formal regulation. For example, facsimile checks sent in promotional mailings, usually in window envelopes designed to look like government mail, motivate the addressee at least to open the envelope.

Alleged deceptive practices of the sweepstakes industry have generated thousands of consumer complaints to the FTC, state attorneys general, the USPS, Members of Congress, and other organizations, such as the National Consumers League's Fraud Information Center and the American Association of Retired Persons (AARP). Many respondents to sweepstakes offerings are elderly, retired, and, frequently, widowed individuals, who either may have difficulty reading the fine print or are more trusting of items received in the mail. In a recent AARP commissioned survey, it was found that 40% of older Americans respond to sweepstakes solicitations and, of those surveyed, 23% believed that purchasing merchandise would increase their chances of winning.

A 1998 General Accounting Office (GAO) report on issues relating to sweepstakes found that there is a lack of comprehensive data identifying the extent of consumer's problems with mailed sweepstakes material. According to the report, some consumers feared that, if they complained, their chances of future sweepstakes winnings would be diminished. In addition, GAO noted, in many instances, elderly consumers also feared losing their financial independence if family members learned that the seniors had reported negative experiences with mailed sweepstakes material.[3]

Federal Regulation of Sweepstakes and Skill Contests

Sweepstakes and skill contests are largely regulated by state law. To date, 27 states have statutes regulating sweepstakes in some form. Some state regulations require sweepstakes promoters to indicate and/or include in their mailings the odds of winning, the actual number of and values of prizes to be awarded, a clear presentation of rules, and a winners list; and to limit the use of simulated checks and certain terms that wrongfully imply that the particular consumer is in a select group.

At the federal level, there are no laws or regulations enforced by the USPS which directly regulate the promotion of sweepstakes and skill contests. Authority for civil enforcement actions is codified at 39 U.S.C. 3005. Sweepstakes that obtain money through the mails by means of false representations violate this provision. In addition,

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[2]See U.S. Congress, Senate Committee on Governmental Affairs, Subcommittee on International Security, Proliferation, and Federal Services, *Use of Mass Mail to Defraud Consumers*, hearings, 105th Cong., 2nd sess., Sept. 1, 1998 (Washington: GPO, 1998), pp. 82-88.

[3]U.S. General Accounting Office, *Proposed Legislation: Issues Related to Honesty in Sweepstakes Act of 1998 (S. 2141)*. GAO Report GAO/T/GGD-98-198 (Washington: Sept. 1998), pp. 9-10.

deceptive mailings can be prosecuted under the federal mail fraud provision, 18 U.S.C. 1341. The two elements for a violation of this statute are (1) formation of a scheme with the intent to defraud, and (2) use of the mails in furtherance of that scheme.[4]

The FTC also has authority to take action against unfair or deceptive practices through the use of measurement standards to determine whether a practice is, indeed, deceptive. In accordance with the FTC's measured standards, there must be a representation, omission, or practice that is likely to mislead the consumer. The FTC evaluates the relevant misrepresentation statement from the viewpoint of a consumer acting reasonably under the circumstances.

Congressional Activity and the Concept of Express and Implied Claims or Representations

Investigations into deceptive and fraudulent practices of sweepstakes companies have indicated that such practices are used by some sweepstakes companies to obtain money from respondents or, more likely, to motivate people to make excessive or unnecessary purchases. The legislative activity now underway in Congress involves categorizing as "unmailable" any matter that includes such practices and prohibiting any practices which mislead consumers, especially groups of consumers most vulnerable to these enticements.

The Congressional Issue

At issue in Congress is the fine line between "legitimate marketing devices" and "deceptive, misleading, and fraudulent mailings." Although sweepstakes companies contend that consumers are aware of the chances of winning large sweepstakes prizes and that they understand the conditions of the "draw," complaints about their misleading statements and conditions have, nevertheless, abounded. Bombarded by consumer complaints, consumer groups and Members in both houses of Congress have examined, or plan to examine, the alleged deceptive practices of sweepstakes companies. Proposed legislative remedies have been introduced in the House and Senate seeking to regulate specific operations of sweepstakes. To date, seven such bills have been introduced, three in the House and four in the Senate. These proposals are summarized at the end of this report.

Deceptive practices and techniques in the sweepstakes marketing system were found to be extensive during hearings held on September 1, 1998, by the Senate Governmental Affairs Subcommittee on International Security, Proliferation, and Federal Services.[5] Additional hearings on deceptive mailings and sweepstakes promotions were held by the Senate Governmental Affairs Permanent Subcommittee on Investigations on March 8 and 9, 1999.[6] Testimony presented during the three days of hearings contributed significantly

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[4]See U.S. Congress, Senate Committee on Governmental Affairs, *Deceptive Mail Prevention and Enforcement Act*, 106th Cong., 1st sess., S. Rept. 106-102 (Washington: GPO, 1999), pp. 5-6.

[5]Senate Committee on Governmental Affairs, *Use of Mass Mail to Defraud Consumers*.

[6]See U.S. Congress, Senate Committee on Governmental Affairs, *Deceptive Mailings and Sweepstakes Promotions*, hearings, 106th Cong., 1st sess., Mar. 8-9, 1999 (Washington: GPO,

(continued...)

to the seven legislative proposals introduced to date dealing with such practices. The practices cited in testimony include:

- Misleading statements suggesting that an individual has already won a major sweepstakes prize, subject only to the purchase of a product or service;
- Suggestions made that the purchase of a product is necessary for, or will increase the chances of, winning in sweepstakes contests;
- Encouraging unnecessary purchases by individuals in the hope of winning a prize;
- Implying that different promotions involve different sweepstakes when, in fact, only one sweepstake is involved;
- Targeting customers who make purchases with repeated mailings, thereby encouraging excessive and unneeded purchases;
- Misleading statements causing the recipient to feel he/she is guaranteed a large cash prize;
- Requesting purchase of a product to enhance possibilities for winning the cash prize;
- Using envelope colors and design, symbols, and statements to create the impression of official government correspondence;
- Offering to sell information that is provided free by the federal government or enticing a purchase by falsely implying a cut in federal benefits; and
- Including facsimile checks primarily as an enticement to respond to appeals.

Summary of Sweepstakes Legislation 106th Congress

- January 6, 1999 - H.R. 170, Honesty in Sweepstakes Act of 1999 - A bill to require certain notices in any mailing using a game of chance for the promotion of a product or service, and for other purposes, introduced by Mr. LoBiondo, *et al.* (R-NJ).
- January 6, 1999 - H.R. 237, a bill to amend title 39, United States Code, to require certain notices in any mailing using a game of chance for the promotion of a product or service, and for other purposes, introduced by Mr. Rogan (R-CA).

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[6](...continued)
1999, in publication).

- February 4, 1999 - H.R. 612, a bill to protect the public, especially seniors, against telemarketing fraud, including fraud over the Internet, and to authorize an educational campaign to improve senior citizens' ability to protect themselves against telemarketing fraud, introduced by Mr. Weygand, *et al.* (D-RI).

- January 22, 1999 - S. 301, Honesty in Sweepstakes Act of 1999 - A bill to amend title 39, United States Code, relating to mailability, false representations, civil penalties, and for other purposes. Introduced by Mr. Campbell (R-CO).

- February 3, 1999 - S. 335, Deceptive Mail Prevention and Enforcement Act - A bill to amend chapter 30 of title 39, United States Code, to provide for the nonmailability of certain deceptive matter relating to games of chance, administrative procedures, orders, and civil penalties relating to such matter, and for other purposes. Introduced by Ms. Collins (R-ME). Reported to the Senate July 1, 1999 (Senate Report 106-102).

- February 3, 1999 - S. 336, Deceptive Games of Chance Mailings Elimination Act of 1999 - A bill to curb deceptive and misleading games of chance mailings, to provide federal agencies with additional investigative tools to police such mailings, to establish additional penalties for such mailings, and for other purposes. Introduced by Mr. Levin (D-MI).

- May 6, 1999 - S. 975, Sweepstakes Toll-Free Option Protection Act of 1999 - A bill to amend chapter 30 of title 39, United States Code, to provide for a uniform notification system under which individuals may elect not to receive mailings relating to skill contests or sweepstakes, and for other purposes. Introduced by Mr. Edwards (D-NC).

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August 24, 1999

Honorable John McHugh
Chairman
Subcommittee on Postal Service
Committee on Government Reform
2441 Rayburn House Office Building
Washington, DC 20515-3224

Dear Chairman McHugh:

On behalf of the membership of the American Advertising Federation, I am pleased to write in support of legislation giving the Postal Service greater tools to combat fraudulent sweepstakes promotions.

The American Advertising Federation is the only national association that represents all aspects of the advertising industry, advertisers, their agencies and the media. AAF also represents over 50,000 individual members in over 200 local advertising federations and students on nearly 250 college campuses. Many of our members responsibly use sweepstakes as promotional tools.

Sweepstakes promotions have been used for years as an effective way for companies to heighten consumer interest in product offers. Unfortunately, a small number of dishonest operators have used sweepstakes-like schemes to defraud consumers and undermine confidence in legitimate sweepstakes offers.

In order to protect consumers and rebuild confidence in sweepstakes as a marketing tool, we would support legislation to provide additional consumer protection while balancing the needs of legitimate businesses. With some minor changes, we believe S. 335 is an appropriate vehicle.

S. 335 would grant increased authority for the Postal Service to issue subpoenas for information, after providing for due process, and provide for stop mail orders issued in one United States District Court to be enforceable in all Districts in the United States.

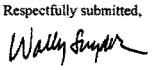
In addition, S. 335 would create a national standard for effective consumer disclosures while avoiding mandated speech requirements that could create serious First Amendment problems. AAF must respectfully oppose HR 170 and 237. By requiring specific language, placement and size, these well meaning bills would run afoul of First Amendment protections for commercial speech.

AAF supports the adoption of the well-established and understood "clear and conspicuous" standard for disclosures. This standard has been used by the Federal Trade Commission and Courts for many years, and a comprehensive yet flexible meaning has emerged. Unfortunately, S. 335 was amended to additionally require that disclosures be "prominently" displayed. We believe this is an unnecessary and confusing addition. Clear and conspicuous under the FTC includes the term prominent. Adding the term prominent to the legislation does not add anything to the bill. However, it would create confusion among marketers and enforcers of the law as to why the additional requirement was added.

Finally, the AAF urges the Congress to create a national standard for sweepstakes mailings and preempt inconsistent state disclosure requirements. An inconsistent and irreconcilable patchwork of state laws would make compliance impossible for national marketers and would undermine the clarity and consistency sought by the Congress.

We appreciate your work on this important issue and look forward to working with you on a solution that meets the needs of consumers and business alike.

Respectfully submitted,



cc: Honorable Mark Sanford
Honorable Benjamin Gilman
Honorable Steve LaTourette
Honorable Chaka Fattah
Honorable Major R. Owens
Honorable Danny Davis

Statement of

Publishers Clearing House

before the

Subcommittee on the Postal Service

Committee on Government Reform

U.S. House of Representatives

August 4, 1999

* * * * *

Thank you, Mr. Chairman and Members of the Subcommittee. We at Publishers Clearing House ("PCH") greatly appreciate the opportunity to present our views on proposed legislation to amend title 39, United States Code, concerning sweepstakes mailings.

Before commenting on the legislation pending before you, we would like to provide the Subcommittee with some background about our company. Publishers Clearing House is a direct marketer of magazine subscriptions and consumer products that utilizes a free-by-mail promotional sweepstakes to draw attention to its mailings and offers. Our mailings are sent to consumers throughout the United States and Canada and our product offerings include magazine subscription offers, home entertainment products (principally books, audio and video), housewares, horticultural products, gift foods, collectible figurines, coins, jewelry, sports memorabilia, stationery, and household cleaning products.

Publishers Clearing House was founded by Harold and LuEsther Mertz and their daughter Joyce Mertz-Gilmore in 1953. Our business was established to provide a cooperative or "car pool" for by-mail magazine subscription solicitations, allowing offers for many titles to be carried in a single mailing envelope rather than in many separate mailings. Today, PCH is the largest multi-magazine subscription agency in the world. We guarantee the best deal on magazines authorized by publishers for new subscriptions offered to the general public and, as a valuable source of new subscribers to the over 350 magazines we serve, Publishers Clearing House provides a steady flow of new readers to the foremost publications in the United States and Canada.

In 1967, Publishers Clearing House adopted a promotional sweepstakes as a method to draw attention to our mailings and product offers. Since then, we have awarded over $137 million in prizes to thousands of winners all over the United States and Canada. No purchase is ever necessary to enter and win a Publishers Clearing House sweepstakes. Of the 30 people who have won a prize of $1 million or more, 23 won with an entry that was not accompanied by an order.

Publishers Clearing House currently operates as a limited partnership under New York law and, as a result of the philanthropic generosity of our founders, over 40% of our profits go directly to charitable and other worthwhile causes. Included among our non-profit beneficiaries are: the New York Botanical Garden, the Central Park Conservancy, St. Francis Hospital, Lincoln Center, the New York Shakespeare Festival, Swarthmore College and the Alzheimer's Disease & Related Disorders Association. Publishers Clearing House employs over 900 people

full-time. Our principal place of business is located at 382 Channel Drive, Port Washington, New York 11050. We maintain additional offices and production facilities at 101 Winners Circle, Port Washington, New York 11050 and at 6901 Jericho Turnpike, Syosset, New York 11791.

We are proud of the fact that Publishers Clearing House has been a leader in consumer education and protection programs for our industry. While our research demonstrates that the overwhelming majority of our customers fully understand our promotions, we are also mindful that there is a small minority of individuals that do not understand the "No Purchase Is Necessary" message. Unfortunately, this is true no matter how much education or how many explanations they receive from us or anyone else -- even from their families and their closest friends.

Consequently, we have developed a practical and effective consumer protection program that's unique in the industry. Specifically, we have found a way to reach out and contact high activity customers individually and assess their suitability for continued receipt of our sweepstakes promotional material. We call it the "High Activity Identification and Suppress Program" and it has become an important and integral part of our already existing consumer education and assistance program known as "Project SweepSmarts." We started this effort more than a year and a half ago and, as a result of these contacts, we have already removed thousands of names from our active mailing lists and blocked all future orders from these persons forever.

That's not all we have done or are doing. Over five years ago, under this "Project SweepSmarts" program, we were the first sweepstakes marketer to begin sending

non-promotional letters to active customers to remind them that no purchase is ever necessary to enter and win in a Publishers Clearing House sweepstakes. Last year we sent out over 125,000 of these letters. We also maintain a toll-free SweepSmarts Hotline, where trained customer service personnel answer questions and respond to concerns about our mailings. In addition, PCH maintains a special "Sweepstakes Assistance Line" at 1(800)563-4724, which is available to family members or friends who may need help or assistance about a loved one who they believe may be responding inappropriately to the promotions they are receiving.

At PCH, we want our sweepstakes to be fun. But, at the same time, we also want to provide consumers with the information necessary to understand our mailings and programs. So, as part of this on-going educational effort, Publishers Clearing House has voluntarily announced a number of improvements to our mailings and programs. Effective immediately we are:

- Publishing the numerical odds of winning in the rules;
- Including "No Purchase Necessary" messages on the front of order/entry forms and on outer envelopes;
- Adding the following notice to our rules -- "Every entry you send in, with or without an order, has an equal chance of winning";
- Making the instructions for how to enter without ordering easier to find and understand;
- Increasing the exposure of our toll-free number to make it easier for consumers to contact us; and
- Reducing the number of mailings an individual can receive.

Beyond this, we intend to do more. Starting this Fall, PCH will voluntarily incorporate in its mailings the "Sweepstakes Fact" messages recommended in the Report of the National Association of Attorneys General Subcommittee on Sweepstakes and Prize Promotion, which includes the following messages:

- You Have Not Yet Won.
- Enter for Free.
- Enter as Often as You Like.
- Buying Won't Help You Win.

We also welcome the opportunity to work with Congress in an effort to design a new federal law establishing fair and workable national standards for sweepstakes mailings. Over the last year, we have worked closely with Senator Collins, Senator Levin, Senator Thompson, Senator Cochran, Senator Edwards and their staffs in an effort to help fashion legislation that would address the needs of consumers. As part of this cooperative effort, we have supported amendments to the mailability standards in title 39 that will: (1) better explain our mailings and programs to consumers; and (2) enhance the ability of the Postal Service to identify and punish genuinely fraudulent sweepstakes operators, whose deceptive scams prey on the elderly and other vulnerable persons in our society.

Overall, we believe that the legislation passed by the Senate on August 2-- known as the "Deceptive Mail Prevention and Enforcement Act" (S. 335) -- takes the correct approach. Publishers Clearing House fully supports the principal goals of S. 335: (1) establishing national

standards for sweepstakes mailings and skill contests; (2) strengthening the law on "government look-alike" mailings and facsimile checks; (3) requiring sweepstakes companies to individually establish notification systems, where consumers may request the removal of their names from a particular company's mailing list; and (4) enhancing the ability of the Postal Service to identify and punish fraudulent mailings.

As the House of Representatives begins its deliberations, we encourage the Subcommittee on the Postal Service to adopt the overall conceptual and structural approach taken by the Senate. Unlike the bills introduced in the House by Congressman LoBiondo (H.R. 170) and Congressman Rogan (H.R. 237), the Senate-passed bill does not mandate specific advertising copy, type size or placement requirements. By avoiding a proscriptive "one size fits all" approach, the Senate bill avoids unnecessarily restrictive regulation of content and, thus, avoids potential First Amendment problems. Everyone involved in this process -- Congress, the Postal Service, the Federal Trade Commission, consumer groups, the publishing industry and the direct mail companies -- agree that sweepstakes are a legitimate method of doing business and that these sweepstakes mailings involve commercial free speech protected by the First Amendment. Thus, any governmental regulation of the content involved must be the least restrictive necessary to achieve the intended policy goal.

While we support the overall approach taken in S. 335, we nevertheless have some remaining concerns about specific provisions contained in the Senate-passed bill and would like to share those concerns with the Postal Service Subcommittee as you begin to develop your

version of the legislation. Most of these concerns stem from changes made in S. 335 as a result of a Manager's Amendment adopted during the Senate Floor consideration of the bill.

First, the Manager's Amendment added a definition of the term "clearly and conspicuously displayed." The phrase is taken from a 1983 policy statement issued by the Federal Trade Commission on deceptive advertising and is based upon language that is contained in the Uniform Commercial Code ("UCC"). A leading case interpreting this language is Channel vs. Citicorp National Services, Inc., 89 Fed. 3d. 379 (7th Cir., 1996). There, Judge Easterbrook writing for the Seventh Circuit Court of Appeals noted the fact that the words "clear and conspicuous" are "staples of commercial law" found in the Uniform Commercial Code. In particular, the Court took note of the definition of the term "conspicuous" in the UCC, which states that the words are to be written and displayed in a manner so that "a reasonable person against whom it is to operate ought to have noticed it." UCC 1-201(10). That is, the relevant words are written and displayed so that the average person would be placed on reasonable notice and would be likely to understand its meaning.

Unfortunately, the Senate did not incorporate this reasonable person standard into the language defining "clearly and conspicuously displayed." We urge that you amend the definition to make it clear that the traditional reasonable person standard will be applicable and used by the Postal Service and the Courts when determining what is required by the new law. Further, it should be clarified that "reasonableness" will be determined based upon the perspective of the group to whom a mailing is principally directed. A direct marketer should not be held to an

artificially elevated level of responsibility simply because the overall recipient audience may include some minors, some senior citizens, or some other potentially vulnerable individuals.

In addition, the Manager's Amendment added the words "prominently discloses" in two different places in the bill. Specifically, it is added to the language requiring that sweepstakes mailings include language that "no purchase is necessary" to enter and that a "purchase will not improve an individual's chances of winning." See: section 3 of S. 335, adding a proposed new subsection (k) to 39 U.S.C. 3001, i.e. (k)(3)(A)(ii)(I); (II). In both subparagraphs, these statements must be "prominently" disclosed "in the mailing, in the rules, and on the order or entry form." Elsewhere in the bill, it is already required that such statements must be "clearly and conspicuously displayed." See: section 3, containing the proposed new 39 U.S.C. 3001(k)(5). We believe the use of the undefined term "prominently discloses" in addition to the defined term "clearly and conspicuously displayed " can only add confusion as to exactly what the statute requires. While the two terms could be interpreted to have identical meanings -- why use two different terms to achieve the same result? This confusion will certainly generate unnecessary litigation; we are concerned that a court is far more likely to interpret the use of two different terms in the same statute to mean that Congress intended different standards and different requirements.

As noted earlier, the term "clearly and conspicuously displayed" has a history of regulatory and judicial interpretation and is a defined term in the bill. The term "prominently discloses" lacks such a history and is not defined in the bill. Its inclusion would therefore inject an serious element of uncertainty and ambiguity into the law. We strongly urge your

Subcommittee to adopt a single uniform standard -- the "clear and conspicuous" standard with its historic interpretation -- and delete the two superfluous references to "prominently discloses."

The Manager's Amendment also made some revisions in section 8 of the bill, which would establish a notification system that will enable consumers to remove their names from sweepstakes or skill contest mailing lists. On the positive side, the Manager's Amendment did remove the requirement from section 8 that there be a single, centralized notification system operated by the private sector. That approach, while seemingly logical, raised serious privacy and antitrust concerns. It was also unclear how such a system was to be financed. The amended section 8 allows each company to establish and operate its own notification system -- making each company individually accountable and responsible for the effective operation of the new system.

Nevertheless, section 8 still needs further clarification. Subsection 8(d)(1) states that "(A)n individual (or other duly authorized person) may elect to exclude the name and address of that individual" from all the lists maintained by the sweepstakes or skill contest company by submitting a removal request to that effect. However, the bill fails to specify who qualifies as the "other duly authorized person." The meaning of the phrase "other duly authorized person" should either be defined or clarified in the statutory language -- similar to the language contained in section 3 of the bill (new subsection 3001(l)(1)) -- i.e., someone who is legally authorized to act on behalf of the individual, i.e., a conservator, guardian, or an individual with a power-of-attorney. This is important because decisions of this nature may not always be welcomed by the

individual in question, and it is important to assure that anyone authorized by this bill to make such a decision have full legal power to act for such individuals.

We also suggest that subsection 8(d)(2) be amended so as to make it clear that removal of an individual's name and address is prospective in nature. That is, an individual or the individual's duly authorized representative is requesting that they be removed from all lists of names and addresses used by a particular marketer to "select recipients" of future sweepstakes or skill contest mailings -- e.g., mailings of new promotions not yet underway. A direct marketer should not be held responsible for mailings that an individual may receive after providing a removal request, if a particular promotion is already underway and it is not logistically possible for the company to stop future mailings that are part of that existing promotion. Subsection 8(d)(2) also requires removal of a name and address "(N)ot later than 35 calendar days" after receipt of a removal request. This short time frame will place a considerable burden on affected companies and a somewhat longer time period would be more reasonable. We suggest 45 business days.

Publishers Clearing House supports the requirement in section 3 of the Senate bill, that the "no purchase necessary" statement and the statement that "a purchase will not improve an individual's chances of winning with such entry" be prominently disclosed. However, we believe that it is unduly burdensome and potentially confusing to proscribe that these disclaimers be disclosed six different times. We suggest that changing the language from "discloses in the mailing, in the rules, **and** on the order or entry form" to "discloses in the mailing, in the rules, **or** on the order or entry form" in both subparagraphs. See: proposed 39 U.S.C.

3001(k)(3)(A)(ii)(I) and 39 U.S.C. 3001(k)(3)(A)(ii)(II). This will allow for clear and sufficient disclosure that is not redundant.

We also recommend that the new enforcement authority granted to the U.S. Postal Service under this legislation be made fully subject to the due process requirements contained in the Administrative Procedure Act ("APA"). 5 U.S.C. 551-559; 701-706. We recognize that existing law already requires the Postal Service to provide affected persons with notice and an opportunity to comment on proposed regulations concerning the nonmailability of matter. 39 U.S.C. 3001(j). However, this legislation would provide the Postal Service with broad new enforcement authority to regulate sweepstakes and skill contests, to issue administrative subpoenas and to oversee the establishment and implementation of notification requirements. We see no harm in making it explicitly clear in the statute and its legislative history that the due process protections in the APA fully apply to the new authorities granted under this legislation. So, before any rules or regulations implementing the various provisions of this Act can go into effect, affected parties will be given reasonable notice of the proposed regulations and will be provided with a fair opportunity to comment before they become final. Those new regulations should also be subject to the APA judicial review standard contained in section 706 of title 5.

We would also ask that your Subcommittee carefully consider the issue of federal preemption. These proposed changes in the Postal Code would establish national standards, regulating certain types of advertising throughout the United States. By definition, the Postal Service is a national system and virtually every entity using direct mail sweepstakes is doing so in interstate commerce. We believe that Congress should consider whether or not it is not fair to

require companies who are fully complying with the new national mailability standards, to also have to comply with potentially 51 other sets of laws regulating the exact same behavior. In fact, even the National Association of Attorneys General -- representing the State Attorneys General -- recently recommended uniform national standards analogous to those contained in S. 335. At the very least, the Postal Service Subcommittee should consider pre-empting provisions of state law which deal with the same subject matter or activity regulated by this legislation.

In conclusion, Publishers Clearing House stands ready to work with your Subcommittee to bring about the enactment of a fair ~~and workable~~ law which will provide new and uniform standards for sweepstakes advertising. We believe that the Senate-passed bill is a step in the right direction and applaud its non-proscriptive generic approach to the regulation of sweepstakes and skill contests. However, we urge the House Subcommittee on the Postal Service to take a close look at some of the provisions contained in S. 335, as well as the legislative history surrounding the Senate Manager's Amendment. We look forward to working with this Subcommittee toward developing legislation which will provide consumers with the information they need to make intelligent judgments about sweepstakes mailings and yet, at the same time, will not harm those legitimate businesses that depend on long-term customer goodwill and are willing to fully comply with the new national standards.

Thank you.

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