September 30, 2011

The House and Senate are in recess.

In This Edition…

Federal Affairs

- House Commerce Subcommittee to Hold COPPA Hearing Next Week (10/5)
- FTC Announces Settlement with Major Retailer over Deceptive Advertising Practices
- Lawmakers Ask FTC to Investigate "Supercookies" That DMA Guidelines Already Prohibit
- Senators Ask OnStar to Change Privacy Policy – DMA Members Don't Use Such Practices
- DMA Submits Comments to EPA on Paper Recycling Metrics
- PMG Gives Breaking News to DMA Members During "Postal Perspectives" Webinar
- Next on Tap for "Postal Perspectives": Rep. Issa Talks Postal Reform – Register Today! (10/13)
- Senator McCain Introduces Companion to Issa-Ross' Postal Reform Act in Senate
- House OGR Committee to Markup Postal Reform Act (H.R. 2309) Next Week (10/4)
- CR Provision Would Give USPS a Reprieve in $5.5 Billion Payment…Until November 18
- Take DMAAction: Take the Shackles Off of USPS and Save Mailers' Jobs!
- Senate Confirms Acton and Taub as PRC Commissioners
- Become a DMA Compliance Officer in One Easy Step
- Mark Your Calendar! DMA Announces Stellar Line-Up of Advocacy Webinars

State Affairs

- Michigan Introduces Controlled Group/Affiliate Nexus Bills

Federal Affairs

House Commerce Subcommittee to Hold COPPA Hearing Next Week (10/5)

The Subcommittee on Commerce, Manufacturing, and Trade has scheduled a hearing next Wednesday, October 5, entitled, "Protecting Children's Privacy in an Electronic World." Witnesses have not yet been formally announced, but DMA has learned that the following will testify:

- Stephen Balkam, Family Online Safety Institute (FOSI)
- Professor Kathryn Montgomery, American University
- Hemanshu Nigam, SSP Blue

- Morgan Reed, Alliance for Competitive Technology (ACT)
- Jim Steyer, Common Sense Media

The hearing will begin at 9:00 a.m. in Room 2123 of the Rayburn House Office Building. For more information, please visit the House Energy and Commerce Committee website, or contact Rachel Thomas, DMA's vice president of government affairs.

Back to top

FTC Announces Settlement with Major Retailer over Deceptive Advertising Practices

On Wednesday, the Federal Trade Commission (FTC) announced that shoe manufacturer Reebok International Ltd. will pay $25 million in customer refunds to resolve charges that the company engaged in deceptive advertising.

According to the FTC complaint, Reebok claimed that its EasyTone and RunTone shoes would provide extra tone and strength to leg and buttock muscles. Under the settlement, Reebok is barred from:

- making claims that toning shoes and other toning apparel are effective in strengthening muscles, or that using the footwear will result in a specific percentage or amount of muscle toning or strengthening, unless the claims are true and backed by scientific evidence;
- making any health or fitness-related efficacy claims for toning shoes and other toning apparel unless the claims are true and backed by scientific evidence; and
- misrepresenting any tests, studies, or research results regarding toning shoes and other toning apparel.

Reebok will pay $25 million as part of the settlement agreement. The funds will be made available for consumer refunds either directly from the FTC or through a court-approved class action lawsuit. Consumers who bought Reebok toning shoes or toning apparel can submit a claim here.

"The FTC wants national advertisers to understand that they must exercise some responsibility and ensure that their claims for fitness gear are supported by sound science," said David Vladeck, Director of the FTC's Bureau of Consumer Protection.

The FTC has also created a website entitled, "*How's that Work-out Working Out? Tips on Buying Fitness Gear*," to help consumers evaluate advertising claims for work-out gear and exercise equipment.

For more information, please visit FTC.gov/Reebok or contact Rachel Thomas, DMA's vice president of government affairs.

Back to top

Lawmakers Ask FTC to Investigate "Supercookies" That DMA Guidelines Already Prohibit

On Monday, Representatives Ed Markey (D-MA) and Joe Barton (R-TX), co-chairs of the Congressional Bi-Partisan Privacy Caucus, sent a letter to Jon Liebowitz, Chairman of the Federal Trade Commission (FTC), asking that the FTC investigate the use of "supercookies."

Markey and Barton wrote that "supercookies differ from regular cookies because, unlike regular cookies, consumers are not aware these files are hidden on their web browser, and they cannot be deleted. Supercookies are also different because they have the ability to re-create a user's profile even after the deletion of regular cookies." The letter also notes that the Representatives learned about the existence of supercookies from an August 2011 Wall Street Journal article.

The letter suggests that usage of supercookies would fall within the FTC's Section 5 authority to protect consumers against "unfair or deceptive acts or practices" because it "takes away consumer control over

[consumer's] own personal information, presents a greater opportunity for the misuse of personal information, and provides another way for consumers to be tracked online."

DMA's *Guidelines for Ethical Business Practice*, and the *Self-Regulatory Principles for Online Behavioral Advertising* adopted by the advertising marketing industry in 2009, both require that companies honor the requests of consumers who seek to opt-out of the collection and use of data for online behavioral targeting.

This is a good time to review the *Guidelines* and *Principles* to ensure that their practices are in full compliance. Information regarding DMA's self-regulatory enforcement of the *Guidelines* is available on the DMA Responsibility website.

For more information, please contact Rachel Thomas, DMA's vice president of government affairs, or Senny Boone, DMA's senior vice president of corporate & social responsibility.

Back to top

Senators Ask OnStar to Change Privacy Policy – DMA Members Don't Use Such Practices

Earlier this year, Senators Al Franken (D-MN) and Chris Coons (D-DE) sent a letter to OnStar expressing concern with the company's announcement that it would continue to track the GPS locations of its customers' vehicles even if those customers have affirmatively ended their contractual plans with OnStar. In its announcement, the company informed its current and former subscribers that it reserves the right to track their locations "for any purpose, at any time." This week, Senator Chuck Schumer (D-NY) joined Senators Franken and Coons in praising OnStar for reversing its decision to track people even after their subscriptions had been cancelled.

DMA member organizations should note that Article #58 of DMA's *Guidelines for Ethical Business Practice* already prohibit the kind of marketing practices that have come under scrutiny in the Senate. This is a good time to review the *Guidelines* and ensure that their practices are in full compliance. Information regarding DMA's self-regulatory enforcement of the *Guidelines* is available on the DMA Responsibility website.

For more information, please contact Rachel Thomas, DMA's vice president of government affairs, or Senny Boone, DMA's senior vice president of corporate & social responsibility.

Back to top

DMA Submits Comments to EPA on Paper Recycling Metrics

On September 29, DMA filed comments to the Environmental Protection Agency (EPA) on the future of the municipal Solid Waste Characterization Report. The Report, in part, measures the amount of paper in pounds used for Standard Mail and Magazines, the amount of paper in pounds recovered through recycling and the percentage of recovery for Standard Mail and Magazines. This data is an important tool for DMA to measure its progress in lessening the environmental footprint of direct marketing. The recovery figures help DMA encourage members "to educate consumers that mail may be recycled and that paper is a renewable resource." Therefore, DMA urged the EPA to continue collecting that data. "We are aware of the difficulty of measuring mail recovery particularly with the advent of single-stream recycling, which has increased the recovery of solid waste in the United States." Moreover, DMA asked the EPA to adjust its baseline data for paper use in mail to account for paper used to increase or draw down inventories.

For more information, please contact Jerry Cerasale, DMA's senior vice president of government affairs.

Back to top

PMG Gives Breaking News to DMA Members During "Postal Perspectives" Webinar

On Tuesday, during the first webinar in DMA's "Postal Perspectives" Series, Postmaster General (PMG) Patrick Donahoe disclosed that a reprieve was in the works to delay the required year end payment of $5.5 billion to pre-fund retiree health insurance until November 18. This would keep the U.S. Postal Service (USPS) out of technical default and provide addition time for Congress to consider a more permanent fix.

On another matter of concern to the business mailing community, the PMG said that while USPS would be asking the Postal Regulatory Commission (PRC) to extend the time for its reply in the exigency remand case until November 18, the rate increases planned for January 2012 would be limited in accordance with the existing CPI rate cap restrictions.

The PMG also discussed in detail USPS' current financial situation. He noted that optimization of its retail and operations networks – as well as right-sizing its workforce – are all critical to achieving long-term stability. With volume continuing to decline from its 2006 high of 213 billion pieces to approximately 165 billion in 2011, Donahoe argued the importance of other initiatives – including a move to five-day delivery – to reduce costs and capacity to match a declining workload. He said that mail volume is now projected to be as low as 135 billion pieces in 2020 – that is 15 billion pieces below USPS' March 2010 projection.

DMA members asked the PMG many questions, including several concerning the impact on mailers of dropping Saturday delivery. Donahoe said that if Congress authorizes less than six-day per week delivery, mailers would be given six months to adjust their production and mailing schedules before any change was implemented. In responding to a related question, he said that he did not envision cutting delivery service further and certainly not to three times per week.

When asked about Section 403 of the Postal Reform Act (H.R. 2309 / S.1625), which would cut the discount currently available to nonprofit mailers, Donohoe said that the idea did not originate with USPS. He added that nonprofit mailers had adopted mail-piece design changes in the past few years that that had made nonprofit mail less costly to process.

For more information, please contact Jerry Cerasale, DMA's senior vice president of government affairs.

Back to top

Next on Tap for "Postal Perspectives": Rep. Issa Talks Postal Reform – Register Today! (10/13)

DMA's Postal Perspectives Webinar Series is focused on the tough decisions and significant changes that must be made to improve the fiscal health of the USPS. These informal conversations with the policymakers at the center of the postal debate will give you the opportunity to hear exactly what the experts are thinking about the future of USPS.

Following our inaugural session with Postmaster General Patrick Donahoe, we're now turning our attention to Congress. Upcoming sessions will feature:

- **Darrell Issa**, Chairman, House Oversight & Government Reform Committee
  Oct 13, 2011 from 3:00 pm - 4:00 pm ET

- **John Kilvington**, Democratic Director, Senate Postal Subcommittee
  Oct 31, 2011 from 2:00 pm - 3:00 pm ET

- **Brendan Shields**, Republican Director, Senate Postal Subcommittee
  (Invited) Dec, 2011 – Date TBA

Register today for the Postal Perspectives Series! For more information, please contact Jerry Cerasale, DMA's senior vice president of government affairs.

Back to top

Senator McCain Introduces Companion to Issa-Ross' Postal Reform Act in Senate

On September 23, Senator John McCain (R-AZ) introduced a bill, S. 1625, which would allow the Postal Service (USPS) to eliminate Saturday mail deliveries and sell advertising space at post offices and on mail trucks. The bill would require postal workers to pay more toward retirement and health-care benefits and would establish a financial control board to renovate postal finances if USPS defaults on its retiree health payment on September 30 (or a future date if Congress extends the USPS payment schedule). S. 1625 is a companion bill to the Issa-Ross bill, H.R. 2309, in the House of Representatives. However, unlike H.R. 2309, McCain's bill would not allow USPS to raise its federal borrowing authority by $10 billion. S. 1625 is now the third major postal reform bill in the Senate along with the legislation of Senators Carper (D-DE) and Collins (R-ME).

Back to top

House OGR Committee to Markup Postal Reform Act (H.R. 2309) Next Week (10/4)

The House Oversight and Government Reform (OGR) Committee is expected to markup the Postal Reform Act (H.R. 2309) next week. H.R. 2309 was introduced by Representative Darrell Issa (R-CA), chairman of the OGR Committee, and Representative Dennis A. Ross (R-FL). The bill was passed out of the Postal Subcommittee after several hours of heated debate on September 21.

The markup has not yet been noticed, but DMA has learned that the Committee will hold the markup on Tuesday, October 4.

For more information, please contact Jerry Cerasale, DMA's senior vice president of government affairs.

Back to top

CR Provision Would Give USPS a Reprieve in $5.5 Billion Payment…Until November 18

After resolving a disagreement between the House and the Senate over providing additional funds for FEMA's disaster relief efforts, the Senate approved a Continuing Resolution (CR) on Monday that attempts to avoid a government shutdown. In addition to keeping the federal government open, it provides short-term relief for the U.S. Postal Service (USPS).

Section 124 of the CR bill (H.R. 2608), includes a provision that changes the date on which USPS is required to make its FY2011 payment of $5.5 billion to pre-fund retiree health insurance benefits. That provision amends the prefunding schedule in section 8909a of title 5 of U.S. Code. USPS, which previously announced that it would be unable to meet its September 30 obligation, will now have until November 18 to make the required payment, if the bill passes the House as well.

The expectation is the delay will afford Congress additional time to craft an agreement modifying the pre-funding requirement and addressing the many other issues being consider by the House and Senate authorizing committees. The Senate-approved bill is scheduled for consideration by the House next week.

For more information, please contact Jerry Cerasale, DMA's senior vice president of government affairs.

Back to top

Take DMAAction: Take the Shackles Off of USPS and Save Mailers' Jobs!

It's not news to anyone that the U.S. Postal Service is in trouble. But this dire situation has just gotten desperate. At the end of this month, the U.S. Postal Service (USPS) will default on a $5.6 billion payment to the U.S. Government to cover its postal retiree health benefits. Even with that default, USPS will run out of money — and be unable to deliver the U.S. Mail — by August 2012...unless Congress steps in to help.

For the $1.1 trillion postal industry and its 8.4 million employees, keeping the Mail moving is critical. Without it, many businesses may be in danger — faced with a struggle to survive at a time when our economy needs more jobs, not less. This is not the time to lose American jobs.

The only way to ensure that the Mail remains a viable marketing channel is for Congress to remove USPS' shackles and let it operate as a real business. The Postmaster General has lots of ideas about how to put USPS on the right track while keeping the Mail affordable for your business. All he needs is the authority to make those changes.

Join DMA in asking Congress to grant that request! Take DMAAction today. Tell your Senators and Representatives to save USPS and the mailing industry that relies on it. Ask them to support legislation that gives the Postmaster General the specific authority he needs.

> **1.) Write to your Members of Congress.** With our easy-to-use DMAAction Grassroots Tool you can send letters to your Representatives and Senators in just a few quick clicks!
>
> **2.) Ask your employees, vendors and customers to do the same.** All they need to do is visit our DMAAction website and click on "Take DMAAction" to contact their own Members of Congress.

Please don't delay. Take DMAAction today! For more information, please contact Jerry Cerasale, DMA's senior vice president of government affairs.

Back to top

Senate Confirms Acton and Taub as PRC Commissioners

On Monday, the U.S. Senate confirmed the nominations of Mark Acton, of Kentucky, and Robert Taub, of New York, as Commissioners on the Postal Regulatory Commission, for a term expiring Oct. 14, 2016.

As both Taub an Acton are Republicans, the PRC will maintain its current Republican majority if both are confirmed. Full Senate confirmation of both nominees is expected shortly.

For more information, please contact Jerry Cerasale, DMA's senior vice president of government affairs.

Back to top

Become a DMA Compliance Officer in One Easy Step

Who is responsible for ethics/compliance and environmental affairs in your organization?

The DMA's Corporate & Social Responsibility (CSR) department oversees a wide range of ethical and privacy guidelines, compliance initiatives and environmental best practices for the direct marketing community. Regulatory issues are constantly evolving. We need to communicate with you in a direct and timely fashion regarding cutting edge developments in self-regulation and other critical compliance issues affecting your company and your bottom line.

Please complete the CSR Compliance Network Sign-Up Form by clicking here, designating the appropriate individual(s) at your company to serve as our key contact point(s) for ethics, privacy,

compliance and environmental issues. In lieu of completing this form, you may also send an email with the contact information of the appropriate individuals to ethics@the-dma.org.

For more information, please contact Senny Boone, DMA's senior vice president of corporate and social responsibility.

Back to top

Mark Your Calendar! DMA Announces Stellar Line-Up of Advocacy Webinars

DMA's Washington Team has put together an incredible line-up of webinars to help DMA members stay on top of the policy and compliance issues that matter most to your organizations.

Legislative & Regulatory Update Webinar Series – Join members from DMA's Government Affairs team along with experts from our member community as we review the key regulatory and legislative issues facing marketers. Learn about the most important issues and how they may impact your business, and how DMA is looking out for your best interests. All sessions are scheduled for 2:00 pm ET. Learn more!

- November 15 **The Changing Privacy and Data Security Landscape**
- January 17 **New Year, New Issues: 2012 Congressional Outlook**
- March 20 **Updates in Self-Regulation**
- May 15 **Nonprofit Policy: Legislative and Regulatory Threats**
- July 17 **State Legislative Update**
- September 18 **Postal Reform: What Does the Future Hold for USPS?**

Ethics and Compliance Update Webinar Series – The self-regulatory program of the DMA is an essential component of member offerings—members need to be in compliance or face onerous regulation that will stifle marketing and fundraising. These monthly webcasts with a focus on member compliance are all scheduled for 2:00 pm ET. Learn more and register today!

- October 11 **New DMA Ethical Guidelines Changes in 2011**
- November 8 **HIPPA: Using Health Information Responsibly**
- December 13 **COPPA: Protecting Children**
- January 10 **Personal Information Collection & Use Reminders**
- February 14 **Environmental Best Practices & DMA Initiatives**
- March 13 **Online Marketing: OBA & General Online Advertising**
- April 10 **Data Security: Protecting Information in Your Care**
- May 8 **DMA's International Safe Harbor Program**
- June 12 **Telemarketing & Mobile Marketing Guideposts**
- July 10 **Consumer Preferences, Mail Suppression & DMAchoice**
- August 14 **DMA Ethical Guidelines**

For more information on any of these sessions, please contact Rachel Thomas, DMA's vice president of government affairs.

Back to top

State Affairs

Michigan Introduces Controlled Group/Affiliate Nexus Bills

Late last week, two controlled group/affiliate nexus bills were introduced in the Michigan House – HB 5004 and HB 5005. The two bills are identical except that they change two different sections of code, the general sales tax code and the use tax code.

The bills redefine "engaged in business" in the state to include a corporate sibling company that works in concert with its remote seller sibling company to sell, deliver, promote, support or maintain the remote sellers' tangible personal property sold to customers in the state. They also include language that defines affiliate marketer programs to also be included under "engaged in business." The affiliate language is similar to that enacted in other states and includes a rebuttable presumption provision so that an affiliate can demonstrate that no solicitation occurred by the affiliate on behalf of the seller.

Both bills have been referred to the House Tax Policy Committee and the chair of the committee has signed on to both bills as a co-sponsor.

For more information, please contact Ron Barnes, DMA's vice president of state affairs.

Back to top

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