

## REGULATORY UPDATE

### FTC Clarifies Commercial E-Mail Rules

NADA reports that the FTC recently provided two favorable clarifications on CAN-SPAM Act issues that NADA presented to the agency in 2004. The first involves whether scheduled maintenance notifications are considered “commercial” messages (and thus subject to the Act’s disclosure requirements and other restrictions) or “transactional or relationship” messages (which are subject only to the Act’s prohibition on false or misleading transmission information). The second involves whether a commercial e-mail may be sent in response to a request for information from a customer who previously opted-out of receiving commercial e-mails from the sender.

#### Scheduled Maintenance Notifications

The FTC stated its opinion that dealer e-mails that notify a customer of scheduled maintenance are “transactional or relationship” messages, provided the dealer can establish that the

scheduled maintenance is “designed to ensure the safe operation” of the vehicle. It states:

... NADA requested that the Commission opine that scheduled maintenance notifications be considered safety or security information covered by this definition. To the extent that scheduled maintenance is designed to ensure safe operation of a product, the Commission believes that reminders of this nature would be considered safety information under the “transactional or relation-

ship” partial exemption from CAN-SPAM’s requirements. Scheduled maintenance that is not necessary for safe operation of a product, however, would not satisfy this “transactional and relationship” category....

#### Responses to Customer Requests for Information

With regard to a consumer who has opted-out of receiving future commercial e-mails from a business and then subsequently requests information from it, the FTC stated its belief that the business may e-mail the

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## MEMBER SERVICES

### Sign Up by June 30 for Fall Flu Shots



Just as we begin to enjoy the wonders of summer it’s tough to even think about the ugly reality of flu season this fall. But now is the time to plan for the inevitable, according to Norvar Health Services, WANADA’s selected medical contractor and flu shot provider.

Norvar notes that due to the contamination of half of the influenza vaccine supply last year, the Centers for Disease Control (CDC) halted all “employer mass immunization programs” and instituted a “high risk prioritization” policy for the remaining vaccine. As a result, Norvar was only able to accommodate 80% of WANADA’s early registrants with on-site flu shot programs before the CDC restrictions were imposed.

Two years ago, an influenza epidemic exhausted the entire supply of available flu vaccine.

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## Flu Shots

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WANADA has coordinated a very successful flu shot program for our members that allowed all dealer organizations who registered early to have an on-site flu shot program. Unfortunately, many dealerships that inquired late and wanted an on-site flu shot program could not be accommodated due to the limited supply of vaccine.

We understand the need for dealers to protect their employees to avoid significant employee sick leave and resultant cost and lost sales. The flu kills over 40,000 Americans every year and the average employee who catches the flu is out from work approximately 4 days. The flu is very contagious and is spread by contact as well as airborne inhalation.

WANADA has negotiated with Norvar Health Services to conduct on-site flu immunization programs and order enough flu vaccine to ensure ample supplies will be on hand for early registrants next flu season at a guaranteed price per shot.

This year's vaccine contains three (3) strains of flu: 1) A/New Caledonia, 2) A/California, and 3) B/Shanghai. The composition of the influenza vaccine changes yearly based on what the CDC believes will be the most prevalent strains in the US. This past year, over 50% of the reported influenza cases were the A/California strain, which was not included in last year's influenza vaccine.

As part of our agreement

with Norvar, **dealerships must indicate their desire to participate in next year's flu program and sign up by June 30, 2005** in order to receive immunizations at the guaranteed price per shot. A minimum of twenty (20) participants per location is required to schedule an on-site flu shot program.

After June 30, 2005, the price and availability will be subject to change based on the availability and price of flu vaccine to Norvar Health Services from the flu manufacturers (there are only 2 FDA approved manufacturers).

Please complete the form enclosed with this WANADA Bulletin and fax it back to the attention of Martha Kowalski, WANADA Employee Benefits Program, Fax: (202) 237-7779. A representative from Norvar Health Services will then contact your designated point of contact about this coming fall's flu shot program.

## REGULATORY UPDATE

### E-mail Rules

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information to the consumer since the consumer's subsequent request constitutes "affirmative consent" to receive it. The CAN-SPAM Act specifically permits commercial e-mails to be sent to persons who have provided "affirmative consent" to receive the messages, provided they contain the required opt-out mechanism.

The FTC clarified these and other issues in a Notice of Proposed Rulemaking, which is available at: <http://a257.g.akamaitech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2005/pdf/05-9353.pdf>.

NADA will disseminate additional information (including any changes to these interpretations) when the FTC issues its final rule in this proceeding.

## U.S. Model Proliferation Continues

It's no wonder consumers are confused by the number of new model vehicles available in the U.S. – now numbering 253 in the first quarter of 2005, according to the Power Information Network (PIN). That's up 41, or 19 percent, from five years ago.

The J.D. Power and Associates affiliate said the model proliferation includes an 18 percent increase to 103 models in the \$20,000 to \$30,000 range, 33 of which are sport-utility vehicles. The number of models priced at \$50,000 or above has almost doubled, "reflecting the diversification of the luxury brands to include an array of sport utilities," company executives said. The only price categories with a decline in models are those below \$20,000, which PIN said is due in part to the rise in overall new vehicle prices. It also suggests there are continued opportunities at this end of the market for low-cost producers such as those in Korea and China.

**NEWS NOTES****Highway Bill Includes “Stars on Cars” Provision**

In addition to billions of dollars in funding for road construction and mass-transit, the \$295 billion highway bill recently passed by the Senate yesterday includes a “Stars on Cars” provision requiring automakers to start printing crash-test data on the stickers of all new cars. Under the proposed rule, introduced by Sen. Mike DeWine (R-OH), the NHTSA’s “star” crash-safety and rollover ratings would be added to the familiar new-car window sticker that currently lists price, fuel efficiency and other details about the vehicle, according to The Wall Street Journal.

Consumer groups strongly support “Stars on Cars.” Automakers are taking no public position on the proposal.

Should the bill pass into law, however, The Journal says “lobbyists for the auto industry are expected to work hard to influence the final look of the sticker. In particular, industry officials worry about overloading buyers with too much data and have suggested that some information is best kept on the Internet instead of on window stickers.”

The fate of “Stars on Cars” is now up to a House-Senate conference committee. The conference panel will also decide on a number of other auto-related safety measures supported by the Senate but not favored by the House. They include regulations to toughen vehicle roof strength, enhance vehicle stability during a rollover and prevent ejection; new studies on backover accidents and other crashes that happen at homes and off highways; and the phase-out of “rocker” power-window switches.

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**Thieves Stealing VINs**

“The thieves are stealing identification numbers of luxury cars and sport-utility vehicles to put them on stolen automobiles, in effect laundering the hot cars so they won’t be easily traced,” according to a report in USA Today. Ivan Blackman of the National Insurance Crime Bureau claims that nearly 600 vehicles with the duplicated VIN numbers have been discovered and seized. Blackman told USA Today there have been at least 10 arrests since January in connection with VIN thievery.

Many cars with altered VINs are sold to other criminals. But unsuspecting auto auction houses, car dealers and consumers also have been duped, according to the report. With the help of VIN identity theft, car theft has morphed “from a street crime into a white-collar crime,” says State Farm insurance agent Dennis Schulkins. “Thieves are trolling through mall parking lots, car dealer showrooms and Internet auction sites in search of identification numbers belonging to cars that are similar in make, model and year to recently stolen vehicles,” USA Today said.

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**Online Searches for Fuel Efficiency Climb 156%**

Auto Remarketing Today reports that an analysis based on ComScore Media Metrix Search data found that nearly 700,000 Americans searched online for fuel-efficiency related terms in March. These consumers conducted more than 1.5 million searches for terms such as gas prices, hybrid cars, Toyota Prius and gas mileage. The number of consumers searching for fuel-efficiency terms grew by 112 percent from February to March. Although hybrids represent a small segment in the overall market (88,000 hybrids sold in 2004, according to J.D. Power and Associates), ComScore’s data found that 300,000 Americans submitted hybrid-related search terms in March.

Despite the increase in online searches for fuel-efficiency terms, consumer interest in sport-utility vehicles has remained steady. ComScore discovered that more than 1 million Americans conducted 2.5 million SUV-related searches in March. “We’ve consistently found that online search activity describes the dynamics of consumer demand, especially for high consideration products such as automobiles,” said James Lamberti, vice president of ComScore Networks, a research firm in Reston, VA.

**SAVE THE DATE!****64<sup>th</sup> Washington Soap Box Derby, Saturday, June 18**

Mark your calendar for Saturday, June 18: the 64th running of the Greater Washington Soap Box Derby. Come and root for your favorites among 50 or more kids, 8 to 17 years old, who will compete head-to-head in their hand-built, gravity-powered, brightly decorated racers. They will make their run down a quarter mile course on Constitution Avenue, a course described by USA Today as one of the ten best Soap Box Derby courses in the country and one that runs via an Act of Congress.

As the proud *lead* sponsor of this all-American event since the early 90s, WANADA encourages its members and friends to join the patrons and participants in cheering on these enterprising young go-cart racers. Dudley Dworken of Curtis Chevrolet-Kia is sponsoring a car this year. Count on fierce competition in all three classes – stock, super stock and masters – and family fun for all in the ultimate great American tradition.

In addition to WANADA, sponsors include Canon, Case Design/Remodeling and Pepsi. For more information about the race or sponsorships, visit the website, [www.dcoapboxderby.org](http://www.dcoapboxderby.org), or contact Tom Mann at WANADA, (202) 237-7200.



**WANADA was one of the sponsors of the Greater Washington Soap Box Derby float in the recent Memorial Day parade.**

**New, Faster IRS 8300 E-mail Address**

The Internal Revenue Service has a new, faster e-mail address for questions related to the preparation of Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business. You can now e-mail questions directly to the IRS Detroit computing center at [8300QUESTIONS@IRS.GOV](mailto:8300QUESTIONS@IRS.GOV). Questions relating to the preparation of form 8300 will be answered via email. Questions relating to interpretive guidance of the bank secrecy act regulations will receive an immediate response giving the name and contact information of the employee assigned to answer your inquiry. This new e-mail system can also be used to provide feedback on the service that IRS provides you. However, this system may *not* be used to file the form 8300.

**Staying Ahead...**

*"Give me the luxuries of life and I will willingly do without the necessities."*

—Frank Lloyd Wright

**Enclosure**

WANADA Dealer Employee On-Site Flu Shot Program FAX Back Registration Form