

# THE WANADA BULLETIN

NEWS AND INFORMATION FOR AND ABOUT FRANCHISED NEW CAR DEALERS IN THE WASHINGTON AREA

WANADA Bulletin # 33-03

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## REGULATORY ALERT!

### New Fax Rules Take Effect August 25

*Dealers Must Get Written Consent or Face Big Fines, Law Suits*

As reported in the WANADA Bulletin, August 4, 2003, the Federal Trade Commission (FTC) recently revised its Telephone Consumer Protection Act (TCPA) rules about sending unsolicited fax advertisements. Effective August 25, 2003, the FTC will no longer recognize an *established business relationship* exception to the prohibition.

Instead, **senders of fax advertisements must obtain the recipient's written prior express permission before the transmission occurs.**

Recipients of unsolicited fax advertising can sue the sender and receive an award of \$500 per violation, which may be tripled in the event there is a finding that the violation was a willful or knowing violation of the law. "Senders have been subjected to class action lawsuits claiming



millions, and even billions, of dollars for alleged violations of the TCPA. Sending unsolicited fax advertising can lead to very expensive problems," warns WANADA kindred member attorney Michael Charapp of Charapp, Deese & Weiss, LLP.

Charapp points out that the new rule pertains to *all* unsolicited fax advertising of commercial material and, "unfortunately, goes beyond faxes that are generally considered advertising." The rule defines an "unsolicited advertisement" as "any material advertising the commercial

availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission."

This definition is broad enough to pick up much of a dealership's day-to-day fax activity such as a fax in response to a telephone request for a price quote, information about a vehicle or a service estimate.

"Even when a customer visits or calls and requests information a **dealer cannot fax the requested information without the customer's prior signed consent,**" says Charapp.

"Clearly, dealers who regularly fax information to their customers or prospective customers must change

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#### **Notice:**

### **WANADA Needs Your Fax Consent As Well**

The changes in the Telephone Consumer Protection Act's new telemarketing restrictions apply to trade associations as well as to dealers and other senders of fax "advertisements." All business and not-for-profit entities are required to obtain written authorization before sending a fax transmission that contains an unsolicited advertisement.

**Therefore, in order to receive faxes from WANADA after August 25, 2003, members must return the fax-back form enclosed with this WANADA Bulletin. For more information, contact Trish Frisbee at WANADA, (202) 237-7200.**

## New Fax Rule

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the way they do business,” he adds. “One way is to change from fax communications to e-mail communications, which are not governed by the new rule. However, recognizing the present limitations of e-mail and that one day there may very well be regulation of e-mails, dealers would be better advised to actually get signed consents from customers with whom they may want to communicate by facsimile.”

Dealers may also want to change their credit applications or customer statements, repair orders, night drop envelopes, parts order forms and web pages to include a fax consent form. The form should contain a block or line for the customer to provide a fax number. The following language may be used above the customer’s signature: *“By providing the fax number above, the undersigned agrees to receive facsimile communications and/or advertisements from the dealer.”*

In addition, after August 25, a dealer *may not* fax a form to a customer seeking the consent to send future faxes; presume consent from the fact that a customer has contacted it about a vehicle, parts, bodywork or mechanical service; or use a “negative option” which is a statement that the recipient will continue to receive advertisements unless the recipient specifically opts out of the sender’s fax list.

Any fax sent with the signed consent of the recipient must identify in a bar along the top or bottom the sender’s name, the date and time the advertisement is sent, and the telephone number of the sending fax machine.

The new rule establishes the standard for civil actions under the TCPA, actions that have become a major problem for businesses, including dealers, who are increasingly targeted by class action

suits.

The TCPA is enforced by the FCC with potential civil penalties of up to \$11,000 per violation. It may also be enforced by private actions in which a court can award a plaintiff \$500 per alleged violation or up to \$1,500 per alleged violation if the violation is found to be willful or knowing, with the potential for damages into the millions of dollars in class action litigation.

Charapp adds, “While the effective date for all sections of the new regulation is somewhat unclear, given the August 25 effective date for at least some of the requirements, dealers are well advised to start complying with the new requirements by that date because of the private actions that may be filed to enforce the law.”

NADA currently is preparing *A Dealer Guide to Federal Telemarketing Restrictions* to explain the myriad of federal telemarketing rules, exceptions and implementation dates that apply to dealers. Immediate information on

the existing and revised restrictions is available on the web sites of the FCC ([http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-03-153A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-03-153A1.pdf)) and the FTC ([www.ftc.gov/bcp/online/pubs/buspubs/calling.pdf](http://www.ftc.gov/bcp/online/pubs/buspubs/calling.pdf)).

WANADA is also one of 700 organizations that have joined a grassroots effort headed by the American Society of Association Executives (ASAE) seeking a stay and emergency clarification of the FCC’s new regulations on unsolicited faxes. ASAE is optimistic the FTC will grant a stay, but advises all member associations to prepare to comply with the new rules. Stay tuned.

## Violations of TCPA Can Be Staggering

Patrick Kavanaugh of Hamilton and Hamilton, counsel to WANADA, cautions dealers as to the potentially staggering consequences which can flow from violations of the TCPA.

Recently, a large D.C. law firm was awarded \$2,288,000 as a result of a lawsuit it brought under the Act. The law firm was the recipient of numerous faxes from a company in the business of sending mass fax advertisements on behalf of paying clients. In addition to the corporate sender of the faxes, two of its officers and three of the company’s corporate clients on whose behalf the ads were being sent were also found liable.

Kavanaugh warns that as consumers and attorneys become familiar with the potential substantial awards available, many more lawsuits can be expected against those who violate the strict statutory requirements of the Act.

**NEWS NOTES:****Asbestos Proposal Should Not Affect Used Vehicles**

NADA's legislative office has been working closely with senate staff to ensure that proposals concerning asbestos do not harm franchised dealers. Congress is considering an asbestos bill that would create a \$153 billion privately funded national trust to compensate people who've been exposed to asbestos and eliminate tort as a remedy. The bill, approved by the Senate Judiciary Committee, also would ban asbestos in consumer products. (An appeals court overturned most of a 1989 EPA regulation to ban asbestos products.)

Though the amount of asbestos in automotive products has been drastically reduced, millions of cars on the road still have asbestos brake linings. As a result of NADA's efforts, the Senate Judiciary Committee recently revised the legislation to clarify that the ban would not affect used cars that still contain asbestos brake linings or other asbestos parts. NADA says it will continue to work on outstanding issues as the measure proceeds to the floor of the U.S. Senate.

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**"Used Oil" Includes Used Oil/Hazardous Waste Mixture**

EPA recently amended its used-oil rules to clarify that mixtures of used oil and hazardous waste from conditionally exempt small quantity generators (CESQGs)—those that generate less than 100 kg (220 lb.) of hazardous waste per month—may be managed as used oil, if bound for on-site or off-site recycling.

NADA estimates that at least half of all dealerships use CESQGs. Despite EPA's clarification, NADA does not recommend that dealerships mix hazardous wastes into their used oil; mixing may affect the oil's marketability as well as its ability to burn in an on-site space heater. For more info, see *A Dealer Guide to the Federal Hazardous Waste Law*, available from [www.nada.org/mecatalog](http://www.nada.org/mecatalog) (item L15-M).

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**AIADA Launches "Driving Change" Grassroots Campaign**

AIADA recently announced the launch of the "Driving Change" campaign – a national grassroots program focused on increasing the involvement of AIADA dealer members in its lobbying efforts. The association named Marc A. Ross, a specialist in grassroots and field operations, to head the campaign. A multi-tiered effort, the first phase of the program will seek to build relationships of international nameplate dealers with their members of Congress.

To launch the program, AIADA members have been asked to respond to a nationwide invitation to have their member of Congress visit their dealership to learn firsthand issues of concern for the international nameplate community. For more information, contact AIADA's Grassroots and Field Operations Office at 1-800-GO-AIADA.

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**Are You Still Missing Out on the Hot New WANADA e-Bulletin?****Give us Your Contacts Today!**

WANADA members and friends who gave us their e-mail addresses and contacts are now receiving the new weekly *WANADA e-Bulletin*. This cost-free member benefit features major headline news and announcements from WANADA as well as timely and valuable business and tax articles.

So, if you haven't done so already, please fax back the WANADA Dealership Contact Form enclosed with this WANADA Bulletin, or log on to: [www.wanada.org/contact](http://www.wanada.org/contact). WANADA also needs this contact information to alert dealers about breaking news and announcements and to target specific dealership managers for seminar and workshop opportunities that are relevant to them.

For more information, contact Isabel Garcia or Nick Champeau at WANADA, (202) 237-7200, or e-mail: [ig@wanada.org](mailto:ig@wanada.org).

**FOOTNOTES:****General Tommy Franks to Address NADA Convention**

Following in the footsteps of famous retired generals Norman Schwarzkopf and Colin Powell, General Tommy R. Franks, recently retired commander-in-chief of the U.S. Central Command, will address NADA's Annual Convention and Exposition, in Las Vegas, January 31-February 3, 2004. The four-star general will provide his views on world events at the convention's General Session, on Monday, February 2.

"General Franks has devoted his life to defending our freedom and way of life, and we're honored that he will join us at our most important event of the year to share his unique insights into global issues," said Alan Starling, NADA chairman.

As commander of coalition forces in the war with Iraq, Gen. Franks developed and executed a highly effective military operation to oust Saddam Hussein from power. In addition, he has coordinated operations in 20 other nations during his career, including the war on terrorism in Afghanistan. Among his military commendations are four Legion of Merit medals, three Bronze Stars and three Purple Hearts.



General Tommy Franks

**NADA Convention Alert: Three Hotels Sold Out Already; Register Now!** The Bellagio, Caesars Palace and the Paris Las Vegas hotels are *sold out* for NADA's 2004 Convention and Exposition. Online and mailed registrations close December 19. Those registering after that date must do so on-site. Visit [www.nada.org/convention](http://www.nada.org/convention) to register online.

**AC Service Reminder**

NADA reminds dealers that technicians who repair or service vehicle air conditioners must:

- use approved recover/recycle equipment registered with the Environmental Protection Agency;
- be trained and certified by an approved program;
- have proof of certification on-site and
- use approved refrigerants per EPA Clean Air Act regulations.

Visit [www.epa.gov/ozone/title6/609](http://www.epa.gov/ozone/title6/609) for more info or order NADA's *A Dealer Guide to the EPA Mobile Air Conditioning Coolant Recycling Regulation* from [www.nada.org/mecatalog](http://www.nada.org/mecatalog) or 800-252-6232, Ext. 2.

**DentaQuest Network Continues to Expand**

WANADA's dental plan carrier, DentaQuest, is continuing to grow their dental provider network. DentaQuest added 49 dentists to their network during the month of July 2003. This is particularly impressive considering a major competitor just announced that they are being forced to shut down their provider network in the Metropolitan Washington Area.

If WANADA can help your dealership, please contact John O'Donnell at (202) 237-7200.

**Staying Ahead...**

*Tis better to be silent and be thought a fool, than to speak and remove all doubt.*

—Abraham Lincoln

**Enclosures:**

- WANADA FAX Consent Form
- WANADA Key Person Contact Form
- Universal Underwriters Prevention Loss Series *Statute and Title Errors & Omissions*

# Time Sensitive Material!

## FAX CONSENT FORM

### Response Deadline: August 25th, 2003

The Telephone Consumer Protection Act's new telemarketing restrictions require all business and not-for-profit entities to obtain written authorization before sending a fax transmission that contains an unsolicited message, information or an advertisement. WANADA is using this form to obtain such permission. ***Without this permission, WANADA will be prevented by federal law from communicating with you and your organization with member correspondence by FAX.*** Please act ***promptly!*** Check below and fax back to WANADA at (202) 237-9090 or mail to: 5301 Wisconsin Ave. N.W. Suite 210 Washington DC 20015.

\_\_\_\_\_ **My business consents to receive faxed materials from WANADA until further written notice to WANADA**

Name: \_\_\_\_\_

Business: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Fax #: \_\_\_\_\_ Phone #: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

I understand that by providing my mailing address, e-mail address, telephone number and fax number, I agree to receive communications sent by or on behalf of WANADA and its affiliates via regular mail, e-mail, telephone, and/or fax.

Authorized by: \_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

Title: \_\_\_\_\_

Date: \_\_\_\_\_

WASHINGTON AREA NEW AUTOMOBILE DEALERS ASSOCIATION