

February 8, 1995

Anne Bingaman
Assistant Attorney General
Antitrust Division
Department of Justice
Room 3109
10th Street & Constitution Avenue
Washington, D.C. 20530

Re: U.S. Postal Service/Rebate Fraud

Dear Ms. Bingaman:

Following up on a conversation late last year between Barry Grossman of your office and Jeff Kahn of the Cincinnati office of the U.S. Postal Inspection Service, I am writing on behalf of the Promotion Marketing Association of America (PMAA) to request a business review letter from the Antitrust Division of the Department of Justice pursuant to 28 C.F.R. §50.6.

The PMAA is an association of major manufacturing and consumer product and service companies, as well as promotion agencies, and fulfillment concerns representing a broad spectrum of the promotion marketing industry. One of the primary concerns of the membership is the escalating rise in rebate "mail-in-offer" fraud.

Manufacturers of consumer products offers rebates and premiums as a sales incentive and method to generate brand loyalty. Rebates are not only an effective promotional tool, they also encourage and promote competition in the marketplace.

Each year, millions of dollars are lost by manufacturers from fraudulent mail-in submissions. It is estimated by the industry that there are 100,000 - 200,000 violators who prey on the promotion industry.

Recent trade publications have represented the losses from mail-in offer fraud to be in excess of \$500 million dollars a year.

Rebates or mail-in-offer redemption works in the following way:

Manufacturers of consumer products offer rebates or refunds to consumers. A rebate offer requires that the consumer who is requesting the rebate has actually purchased the product. In exchange, the manufacturer agrees to refund a portion of the purchase or to provide a free product or other incentive.

Manufacturers issue rebate certificates or rebate forms that set forth the requirements for a consumer to qualify for a rebate.

Rebate fraud occurs whenever a person submits a claim for a rebate on a product which that person did not actually purchase. The person or entity submitting a fraudulent claim for a rebate uses false, counterfeit, stolen or purchased proofs-of-purchase. Many individuals involved in rebate fraud own cash registers or computers which produce phony sales receipts. In an attempt to avoid detection by manufacturers, individuals who submit fraudulent rebate requests use aliases and multiple addresses. They also submit multiple product claims to numerous manufacturers throughout the United States.

Individual manufacturers are hindered in their efforts to investigate fraud since it is difficult for one manufacturer to convince law enforcement officials to aggressively pursue rebate fraud on a case by case basis given the huge number of instances of fraud involved.

The PMAA is concerned that rebate fraud cannot be controlled without a coordinated, cooperative effort between the manufacturing industry as a whole and appropriate law enforcement authorities. The coordination required can only be provided by consolidating information about incidents of suspected rebate fraud. Individual manufacturers would contribute information to a centralized repository and the information compiled would be made available to law enforcement agencies.

The U.S. Postal service, along with members of the promotion industry and the leadership of the PMAA, have formulated the conceptual framework for a proposed "Central File System (CFS)." However, plans for the proposed system cannot go forward until the Antitrust Division announces its present enforcement intentions with respect to the proposed plan. The individual manufacturers need to know whether their participation presents any antitrust problems which might be of concern to the Department of Justice.

The CFS would be operated by the PMAA as a completely independent entity. The CFS will compile, solicit and release information about rebate submissions as more fully explained below. The primary purpose of the center is to identify potential abusers and the extent of the alleged abuse; build a file of possible offenders with the express intent to stop them from their activity; and to provide information to the appropriate law enforcement agencies who will use the information to take appropriate action to stop the abuse.

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During the fulfillment process, the fulfillment company will identify potential fraudulent claims. Once identified, the fulfillment company will key these records into an electronic file to be transmitted to the PMAA Central File. Once the pre-screened information has been compiled and formatted at each fulfillment company, the PMAA will aggregate and process the data in order to achieve the following goals:

Upon request, provide law enforcement with an accurate list of potentially fraudulent claimants that may warrant further inquiry or action by such law enforcement officials;

Report timely and significant progress and data to key stakeholders.

The only information actually shared by the individual manufacturers will be data compiled by the CFS concerning particular rebaters abusing the system.

NO COMPETITIVELY SIGNIFICANT INFORMATION WILL BE GENERATED OR SHARED BY ANY PARTICIPATING MANUFACTURER OR PMAA. THE CENTER WILL NOT COMPILE INFORMATION WHICH RELATES TO A MANUFACTURER'S SALES ACTIVITIES. There will be no interaction among competing rebate issuers. There will be no discussion or agreements, either express or implied, between the manufacturers who subscribe to the center's services. Each individual manufacturer will remain free to act or not to act as it deems appropriate.

The express purpose is simply to stem the losses by manufacturers. In conclusion, the CFS will enhance security in the promotion industry by preventing the perpetration of fraud and to significantly reduce and prevent losses.

Sincerely,



Elizabeth Dubbs
General Counsel