



DEPARTMENT OF JUSTICE

Antitrust Division

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Harvey I. Lapin, Esq.
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Dear Mr. Lapin:

This letter responds to your request for the issuance of a business review letter pursuant to the Department of Justice's Business Review Procedure, 28 C.F.R. § 50.6. You have requested a statement of the Antitrust Division's current enforcement intentions with respect to a proposal by your client, the Association of Fund-Raising Distributors and Suppliers ("AFRDS"), to establish uniform product ordering formats for products sold to non-profit organizations for resale in their fund-raising activities.

According to your representations, the product fund-raising industry is made up of various entities involved in providing products and services sold by charitable, educational and other not-for-profit organizations as part of their fund-raising activities. The product fund-raising industry is comprised of supplier and distributor companies. There are approximately 1,500 distributor companies operating in the U.S. These companies sell products and services to schools, school-related groups like Parent Teacher Associations ("PTAs"), and other not-for-profit organizations for resale in their fund-raising drives. Supplier companies are manufacturers, publishers and importers of goods that supply products to distributor companies. There are thousands of products used in these programs. Among the most popular are: candies, gift-wrap and other paper products, magazine subscriptions, baked goods, processed cheese and meat products, gifts and novelties.

You indicate that product fund-raising programs usually are structured as follows: 1) suppliers supply products to distributors; 2) distributors either take title to the products or act as an independent sales agent for the suppliers; 3) the products are sold to non-

profit organizations who re-sell the items to the general public (most sales to the public are recorded on a generic order form using product identification numbers or codes); the forms are completed by the non-profit group volunteers and returned to the distributor, or in some cases the supplier, who handles processing and fulfillment; 4) the non-profit organization pays for the merchandise and retains the balance of the gross proceeds for its charitable purposes.

Most distributor and supplier companies inventory products and process product orders using numeric product codes established by the supplier. Some suppliers offer hundreds of products, each with a separate code. These codes vary from company to company and frequently the numbers overlap, causing confusion for the distributor companies and subsequent delivery errors. To avoid potential difficulties, some distributors restrict themselves to certain products or suppliers, which has the effect of restricting the options they can offer to non-profit customers. As a practical matter, suppliers cannot modify their codes to meet the different needs of dozens, or even hundreds, of distributor customers.

AFRDS is the product fund-raising industry's only trade association. It represents some 650 U.S. and Canadian supplier and distributor companies in the product fund-raising industry. Its members generate an estimated 80 percent of the industry's gross annual sales of \$3.9 billion.

AFRDS wishes to establish a program that will reduce ordering errors and make it easier and more efficient for distributors to deal with a greater number of suppliers. It proposes to establish specific code parameters and formatting. A possible outcome would be an eight-digit numeric code with the first three identifying the supplier company, and the remaining five digits identifying the specific product item. AFRDS would be responsible for assigning a series of numbers to supplier companies. Its program would not discriminate between members and non-member suppliers. It would be conducted to a large extent through use of the Internet to facilitate the communication and exchange of this information between all industry suppliers and distributors. The series of numbers assigned to supplier companies would be public information, posted on the AFRDS web site (www.afrds.org). Such listings will include the name of the company and possibly a brief description about the company. All distributors, without regard to membership in AFRDS, will be able to access this information. It is AFRDS's intention to make its Product Coding System available to every company and person in the industry. Supplier companies would still be responsible for applying specific codes to individual product items and for making the information available to their own customers through normal channels.

In order to avoid reducing competition in any way, AFRDS will not allow pricing or any other competitively sensitive information to be discussed or disseminated as part of its program. As a result, you assert that its proposed conduct will not have any adverse effect on competition. Instead, you claim that the establishment of uniform supplier format codes will have several procompetitive effects. The reduction of ordering errors

will benefit both consumers and the non-profit organization that sell to them. Moreover, the reduction of confusion will allow distributors to have a wider choice of suppliers and thus more competitive options.

Based on the information and assurances that you have provided us, the Department of Justice has no current intention to institute antitrust enforcement action against AFRDS's proposed conduct. The fact that the information to be exchanged in developing and implementing the uniform supplier format program will not contain pricing or other competitively sensitive information significantly reduces the risk that the program will diminish rivalry. The fact that access to the program will be open to all suppliers and distributors and that its utilization will be voluntary makes it unlikely that the program will unduly favor any single supplier or group of suppliers. Moreover, if, in fact, the existence of a uniform supplier code will reduce ordering error or enable distributors to deal with a larger number of suppliers such benefits could redound to the advantage of consumers and thus be procompetitive.

This letter expresses the Department's current enforcement intention. In accordance with our normal practices, the Department reserves the right to bring any enforcement action in the future if the actual operation of any aspect of the proposed supplier code program proves to be anticompetitive in purpose or effect.

This statement is made in accordance with the Department's Business Review Procedure 28 C.F.R. § 50.6. Pursuant to its terms, your business review request and this letter will be made publicly available immediately, and any supporting data will be made publicly available within 30 days of the date of this letter, unless you request that part of the material be withheld in accordance with Paragraph 10(c) of the Business Review Procedure.

Sincerely,

/s/

Charles A. James
Assistant Attorney General