



DEPARTMENT OF JUSTICE  
Antitrust Division

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Assistant Attorney General

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July 18, 1995

Elizabeth Dubbs, Esquire  
General Counsel  
Promotion Marketing Association  
of America  
257 Park Avenue South  
New York, New York 10010

Dear Ms. Dubbs:

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 under which the Promotion Marketing Association of America ("PMAA") would receive, aggregate and distribute information relating to rebate fraud in order to facilitate effective law enforcement against such conduct.

PMAA is an association of consumer product and services manufacturers, promotion agencies and other concerns active in the promotion marketing industry. Its members wish to take cooperative action to facilitate effective law enforcement efforts against rebate "mail-in-offer" fraud; conduct whose cost to rebate offerors has been estimated to be some \$500 million a year.

Manufacturers of consumer products on occasion offer rebates to customers who mail in coupons or other proof of purchase. Rebate offers typically are expressly conditioned to require that the person requesting the rebate have actually purchased the product being promoted. In industry parlance, rebate "mail-in-offer" fraud occurs when

the person submitting the rebate claim did not purchase the product. The major sources of such fraud involves false, counterfeit, stolen or purchased "proofs of purchase." Some large scale perpetrators own cash registers or computers that produce phony sales receipts. Individuals who submit fraudulent rebate requests may use aliases and multiple addresses. They often submit multiple rebate claims to numerous manufacturers.

PMAA asserts that it is difficult for individual manufacturers to convince law enforcement officials to pursue rebate fraud because of the large number of such cases. To overcome the reluctance of law enforcement officials to devote their limited resources to rebate fraud, PMAA, after consulting with the U.S. Postal Service, is proposing to establish a centralized data base, to which participating firms could report evidence of suspected fraud. Participating firms would identify potential fraudulent claims and key those records into an electronic file and transmit them to the PMAA operated Central File System ("Central File System or CFS"). The data base manager would collect the evidence and report its findings to law enforcement officials, and in aggregated form to its members.

In order to prevent the proposed information exchange from having any anticompetitive effect, PMAA will impose a number of limitations on the information exchange. The only information shared by the participating firms will be data compiled by the CFS concerning individual abusers. The CFS will only provide its members with aggregated information about abuse and abusers. You have assured us that "there will be no discussion or agreements, either expressed or implied, between the manufacturers who subscribe to the . . . [CFS's] services. Each individual manufacturer will remain free to act or not to act as it deems appropriate." In addition, PMAA has assured us that the CFS will not compile any information that relates to any manufacturer's sales activities, and that more generally, "no competitively significant information will be generated or shared by an participating manufacturer or PMAA."

Based on the information and assurances that PMAA has provided to us, the Department has no current intention to challenge the information exchange that PMAA contemplates. To the extent that the information exchanged is limited in accord with the statements and commitments in the materials submitted to the Department, the information exchanged should not engender any anticompetitive effect. The limited nature of the proposed cooperation--no discussion of pricing or other sales related conduct and no cooperative utilization of the aggregated information--should preclude any risk of concerted pricing or collective refusals to deal.

It is possible that the proposed information sharing will have procompetitive effects. To the extent that it reduces the costs to manufacturers of stolen or counterfeit

rebate certificates, PMAA's proposal may reduce prices and expand output to the benefit of consumers.

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 information exchange proves to be anticompetitive in any 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/

Anne K. Bingaman  
Assistant Attorney General