



## DEPARTMENT OF JUSTICE

Antitrust Division

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Acting Assistant Attorney General

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Claire Rosenzweig, CAE  
Executive Director  
Promotion Marketing Association, Inc.  
257 Park Avenue South, # 1102  
New York, New York 10010-7304

Dear Ms. Rosenzweig:

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 ("PMA") would receive, aggregate, and distribute information relating to mail-order fraud in order to facilitate effective law enforcement against such conduct.

PMA is an association of consumer product and services manufacturers, and providers, promotion agencies and other concerns active in the promotion marketing industry. In 1995, some of its members initiated an information exchange to facilitate effective law enforcement efforts against rebate fraud. See Business Review letter dated July 18, 1995. At this time, PMA proposes to expand its existing information exchange program in order to reduce mail-order fraud, conduct whose cost to mail-order manufacturers has been estimated to be some \$500 million a year. Although the methods used vary, the essence of mail-order fraud is that the perpetrators fail to pay for merchandise actually received through the mail; they falsely claim that the merchandise was not received. In some cases, the perpetrators use aliases and multiple addresses.

PMA asserts that it is difficult for individual manufacturers to convince law enforcement officials to pursue mail-order fraud because of the large number of such cases, some of which involve relatively small losses. Often those involved in the fraud target several businesses one time each, making fraud detection more difficult. To overcome the reluctance of law enforcement officials to devote their limited resources to difficult to detect and seemingly isolated small-value cases of mail-order fraud, PMA is proposing to expand its anti-fraud data base, to which

participating firms could report evidence of suspected fraud. Participating mail-order firms would identify potential fraudulent claims, key those records into an electronic file, and transmit them to the PMA-operated central data base. 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 among the mail-order firms that use it, PMA will impose a number of limitations on the information exchange. The only information shared by the participating firms will be data compiled by the central data base concerning individual abusers. The PMA will only provide its members with aggregated information about abuse and abusers. You have assured us that “there will be no discussion or agreements expressed or implied, between the companies who subscribe to the . . . services. Each individual business will remain free to act or not act as it deems appropriate.” In addition, PMA has assured us that it will not compile information that relates to a company’s sales activities,” and that more generally, “no competitively significant information will be generated or shared by any participating mail-order manufacturer, Promotion Industry representative, or PMA.”

Based on the information and assurances that PMA has provided to us, the Department has no current intention to challenge the expanded information exchange that PMA 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 have 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 fraud costs to mail-order manufacturers, PMA’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/

John M. Nannes  
Acting Assistant Attorney General