

## **Guidelines on Relations with Subscription Agents**

In 1998, Magazine Publishers of America, Inc. (MPA) issued a series of voluntary Guidelines on Relations with Subscription Agents. These Guidelines have been amended as of April 2004 and again in March 2005. The Guidelines are the result of intensive discussions among publishers, a broad range of subscription agents, fulfillment houses and the Federal Trade Commission, and are intended to curb deceptive and abusive practices when consumers are offered magazine subscriptions.

The Guidelines require agents to follow the FTC Telemarketing Rule, the Can Spam Act and all other federal, state and local consumer protection laws when selling magazine subscriptions to consumers. They also require agents to identify and individual publishers to approve the selling and clearing agents engaged in securing subscription orders for individual Publishers titles. In addition, the Guidelines require that all subscriptions orders be coded to identify the selling agent and all intermediate clearing agents. The Guidelines contemplate that fulfillment houses will pre-screen all orders and reject orders obtained or processed by agents not on an individual Publishers approved list.

The Guidelines are designed to enable individual publishers to better monitor the conduct of their agents and the selling plans they are authorized to use, and to promote identification of selling agents to resolve any complaints. The Federal Trade Commissions Bureau of Competition staff reviewed a substantial portion of the Guidelines and issued a written advisory opinion on April 6, 1998 regarding them. A copy of this letter is kept on file at MPA offices. The Board of Directors of MPA unanimously endorsed the 1998 Guidelines and urged all publishers, including non-members, to give the Guidelines their strongest possible consideration.

## **Guidelines on Relations with Subscription Agents**

The following guidelines are recommended by MPA for adoption by member and non-member magazine publishers and by all authorized subscription Agents (including Agents using direct mail or electronic solicitation, field selling agents, school plan or other face-to-face selling agents and telemarketing agents - whether soliciting cash or paid during service subscription orders). Capitalized terms used in the Guidelines appear at paragraph 5.

### **1. METHODS OF SELLING.**

**(a) Written Agreements.** Individual Publishers should enter into written agreements with their authorized subscription Agents. The agreements should provide that the Publishers Agents will comply with these Guidelines, all applicable federal, state and local laws and regulations and the rules and requirements of any auditor designated by an individual Publisher.

**(b) Documentation.** In the agreements contemplated by Section 1(a) of these Guidelines, Agents should affirm that they will retain documentation sufficient to verify the order and payment of all subscriptions processed or cleared on behalf of individual Publishers.

(i) For orders, such documentation should include: a completed order card for direct mail offers; a pricing sheet, order confirmation and telemarketing sales script for telephone orders; a screen print or valid web address for internet offers; and a purchase invoice or bill for sponsored sales.

(ii) For payment, such documentation should include: cancelled checks and credit card receipts or independent third-party verification that payment has been processed for each subscription. Such independent third party verification may include, but is not necessarily limited to: bank confirmation of deposits, bank confirmation of credit card transactions, third party payment processor verification of credit card transactions, bank lock box reports and daily batch summary reports.

(iii) The documentation requirements specified in Paragraphs 1(b)(i) and 1(b)(ii) are not exhaustive. Individual Publishers may from time to time amend their documentation requirements by providing notice

to Agents. Under no circumstances, however, should documents generated solely by Agents satisfy the recommended requirements of this Paragraph.

**(c) Sales Practices.** In the agreements contemplated by Section 1(a) of these Guidelines, Agents should affirm that they will prevent the use of false or deceptive selling methods to solicit magazine subscription orders and that they will undertake to insure that all solicitations conducted by them by direct mail, electronic solicitation or through their Salespersons are carried out in accordance with all applicable laws and regulations. Agents should also affirm that they will diligently monitor the activities of their Salespersons (excluding Salespersons who submit subscription orders to Subagents and Third Parties if these monitoring responsibilities have been delegated to those Subagents and Third Parties). In addition, Agents should contractually agree with individual Publishers to take reasonable steps to ensure that their Salespersons will:

- (i) promptly and truthfully disclose to consumers the name of the seller and the purpose of the contact;
- (ii) use sales scripts presentations and written materials that clearly and truthfully disclose all material terms of the subscription offer including the publications being offered or ordered, their frequency and duration, the cost (including any extra charges) to the consumer, the payment terms, and if required by law, the sellers' cancellation and refund policies;
- (iii) make consumer contacts only during legal hours;
- (iv) disclose to consumers that any promotional contest or prize being offered requires no purchase to qualify and otherwise refrain from misrepresenting any material aspect of any prize promotion;
- (v) provide written confirmations to consumers who place subscription orders with Salespersons, advising consumers of the material terms of the orders including to the extent required by law, notice of the consumers' cancellation rights, if any (Salespersons may be relieved of this obligation if the Agents themselves provide such written confirmations);
- (vi) refrain from characterizing themselves as agents or representatives of individual Publishers, unless expressly authorized to do so by the publisher;
- (vii) refrain from falsely representing that a publication is being offered free or at a bargain price below what is commonly available to the general public because the Publisher is building circulation, or because the advertisers are paying for the publication, or falsely representing the nature of any other savings to the consumer;
- (viii) refrain from falsely representing the purpose of their solicitation as a market survey, or from using market survey procedures for the purpose of identifying existing subscribers of the publications for use during future solicitations;
- (ix) refrain from falsely representing that the Salesperson or seller has any affiliation with or is endorsed by any charitable, governmental, police, civic or similar organization;
- (x) refrain from making any false representation to obtain consumers' credit information or credit or bank account numbers, for the purpose of charging consumers' credit or bank accounts, without the consumers' express authorization.

**(d) Supervision of Field Salespersons.** Agents should also contractually agree with Publishers that they will take reasonable steps to ensure that any Field Salespersons involved in soliciting subscription orders on behalf of their Publisher clients will comply with these Guidelines by carrying out at least the following:

- (i) Conducting employment reference and background checks on each Field Salesperson involved in soliciting subscription orders on behalf of a Publisher client. Such checks must be sufficient to allow a

reasonable person to determine whether any Field Salesperson has a history of inappropriate behavior that could create a risk of harm to prospective customers, other sales personnel or the general public.

(ii) Conducting training programs for each new Field Salesperson that include an oral description of these Guidelines, and all applicable laws and regulations and interpretative written materials describing in summary form the applicable parts of these Guidelines and all applicable rules and regulations, and approved sales scripts to be used by Field Salespersons; and

(iii) On a reasonable sample basis, verifying orders submitted by Field Salespersons through separate communications with the consumer by other employees or independent representatives of the Agents to determine that the orders are genuine and were obtained in accordance with these Guidelines and any other publisher requirements.

(iv) Agents may delegate their responsibilities under Paragraphs 1(d)(i) and 1(d)(ii) to Sub-Agents and Third-Parties, provided that Agents retain responsibility for insuring compliance with the requirements specified therein.

**(e) Supervision of Telemarketing Salespersons.** Agents should take reasonable steps to ensure that Telemarketers who solicit subscription orders on behalf of their Publisher clients comply with these Guidelines by carrying out at least the following:

(i) Conducting Telemarketer training programs comparable (for Telemarketers) to those set forth in Paragraph 1(d)(ii);

(ii) Providing mandatory sales scripts to all Telemarketers which have been approved by the Agents and which comply with these Guidelines;

(iii) Routinely observing or monitoring all Telemarketers who make calls from the Agents' premises to insure compliance; and

(iv) On a reasonable sample basis, verifying orders submitted by Telemarketers, through the use of taped conversations with the consumer by other employees or independent representatives of the Agents, to insure that the orders are genuine and were obtained in accordance with these Guidelines.

## **2. THE USE OF SUBAGENTS.**

**(a) Subagent Agreements.** Agents should not accept for processing or clearing subscription orders from any Subagent unless:

(i) The Subagent is on a list of Subagents and Third Parties approved by the Agent and submitted to the individual Publisher by the Agent;

(ii) The Agent has entered into a written subagent agreement with the Subagent. The subagent agreement should contain a commitment by the Subagent that it is familiar with these Guidelines (and all applicable telemarketing or direct marketing laws and regulations) and will comply with them. The responsibilities of the Agent under these Guidelines may be delegated to the Subagent with respect to its direct sales or its Salespersons, provided that the Subagent accepts those responsibilities and the authorizing Agent retains responsibility for insuring that the Subagent fulfills them; and

(iii) Agent acknowledges that each individual Publisher has the right to disapprove of any Subagent or Third Party on the Agents approved list of Subagents and Third Parties, and that Agent will thereupon discontinue submitting orders to the Publisher that have been solicited or processed by the disapproved Subagent or Third Party, and will remove that Subagent or Third Party from the individual Publishers approved list.

**(b) Subagent Coding.** All subscription orders submitted by Agents to Publishers for fulfillment should be coded to identify the Agent, and all Subagents and Third Parties who have solicited or processed or cleared the orders. An individual Publisher may require its Agents to provide the federal identification number or social security number of every Subagent or Third Party that appears on the list of Subagents and Third Parties submitted to the Publisher. Individual Publishers (or their fulfillment agents) may reject orders procured or processed or cleared by Subagents or Third Parties that are not on the list of Subagents and Third Parties submitted to the Publisher. Publishers unilaterally and independently will have the option to terminate Agents who submit orders with invalid codes, or orders procured or cleared by Subagents or Third Parties not on the individual Publishers approved list.

**(c) Subagent Due Diligence.** Agents should not enter into a subagent agreement with any Subagent unless the Agents have conducted a reasonable due diligence investigation of the Subagent sufficient to satisfy the Agents that the Subagent is capable and willing to comply with these Guidelines. The due diligence may include, or at an individual Publishers insistence must include, a physical inspection of the appointed Subagents' premises by the Agent or their authorized representative.

**(d) Subagent Inspections.** Agents should acquire the right to periodically inspect their Subagents' premises, sales materials and records, scripts and tape recordings of consumer communications, if any, to verify the Subagents' compliance with these Guidelines. Agents or their authorized representatives should periodically, on a reasonable sample basis, carry out such inspections on their own initiative or as may be required by individual Publishers.

**(e) Third Party Subagency Agreements.** Agents should only authorize their Subagents to enter into additional subagent agreements with one or more Third Parties only if the Third Parties are identified and included on the list submitted to the Publisher by the Agent for the individual Publishers approval, and provided that the Subagents have agreed to fulfill the obligations of the Agents provided for in this Paragraph 2 with respect to the Third Parties before adding them to the list. Agents may permit Third Parties appearing on the list to enter into additional subagent agreements with additional Third Parties provided that the additional Third Parties are identified and are included on the list submitted to the individual Publisher by the Agent, and provided that the Third Parties have fulfilled the obligations of the Agents provided for in this Paragraph 2 with respect to the additional Third Parties before adding them to the list. The responsibilities of an Agent under these Guidelines (and their Subagents under Paragraph 2(a)(ii)) may be delegated to Third Parties with respect to their direct sales or Salespersons who submit subscription orders to them: (i) provided that the Third Parties accept these responsibilities, and (ii) provided that the Subagents or Third Parties authorizing the Third Parties or additional Third Parties, retain responsibility for insuring that the Third Parties fulfill these delegated responsibilities, and (iii) provided further that the Agent includes the Third Parties on the list of Subagents and Third Parties submitted to the individual Publisher for approval and retains responsibility for insuring that all the Third Parties appearing on its list fulfill these delegated responsibilities.

**(f) Electronic Solicitation.** Any individual or entity that solicits subscription orders directly from consumers electronically or over the Internet shall be deemed an Agent, Subagent or Third Party (depending upon whether the orders are cleared directly with Publishers or through Agents, Subagents or Third Parties) and not a Salesperson as to such orders.

### **3. CONSUMER COMPLAINTS.**

**(a) Investigation of Complaints.** Agents should investigate all consumer complaints to determine their validity, whether originating directly from the consumer or through an individual Publisher, a governmental or civic agency or similar organization. Agents should take all reasonable steps to expeditiously rectify all valid complaints relating to subscription order solicitation.

**(b) Termination of Violators.** Agents should seriously consider terminating any Field Salesperson, Telemarketer, Sub-Agent or Third Party that submits subscription orders that reasonably suggest a

pattern of valid consumer complaints. Where appropriate Agents should consider providing notice and an opportunity to cure to any party prior to implementing any termination.

**(c) Record Keeping.** Agents should keep a record of all complaints organized by Subagent and Third Party for two years and make records of complaints available to a Publisher upon request.

#### **4. GENERAL.**

These Guidelines relate to subscription orders obtained from subscribers located in the United States and Canada, without regard to the location of the Agents, Subagents, Third Parties, Salespersons or Telemarketers that procured or processed or cleared the order.

#### **5. DEFINITIONS.**

The following terms are used in these Guidelines:

"Publisher" refers to an entity that produces magazines for sale by subscription.

"Agent" refers to an individual or entity authorized by a publisher to process or clear subscription orders to the publishers fulfillment house. Agents may also sell subscription orders by direct mail, electronic solicitation or by using their own Salespersons if authorized by the Publisher. Agents are in fact independent contractors notwithstanding the term agent.

"Subagent" refers to an individual or entity (including individuals doing business as proprietorships) that have been authorized by an Agent to sell subscription orders by direct mail, electronic solicitation or by using their own Salespersons, or to process or clear subscription orders to the Agent that authorized them.

"Third Party" refers to an individual or entity (including individuals doing business as proprietorships) that has been directly authorized by a Subagent or another authorized Third Party to sell subscriptions by direct mail, electronic solicitation or by using their own Salespersons, or to process or clear subscription orders to the Subagent or Third Party that authorized them.

"Salesperson" refers to individuals that are employed by or authorized (as independent contractors) by an Agent, Subagent or Third Party to solicit magazine subscription orders directly from consumers. A Salesperson does not process and clear subscription orders for any other Salesperson (which distinguishes them from Subagents or Third Parties).

"Field Salesperson" is a Salesperson who solicits subscription orders directly from consumers face to face.

"Telemarketer" is a Salesperson who solicits subscription orders directly from consumers by telephone.