



Royal Institute for Deaf and Blind Children

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11 November 2005

The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
Via Facsimile: 02 6243 1211
(3 Pages inclusive)

Dear Sir,

Re: Conference in relation to Australian Direct Marketing Association
draft determination – 14 November 2005.

I have already registered for this conference and would like to submit the
following comment for distribution at the conference and inclusion as part of
the conference record.

I have also forwarded this comment via email to adjudication@acc.gov.au.

Thank you for your assistance.

Yours Faithfully,

Frank Antonini
Manager Call Centre Fundraising

11 November 2005



Royal Institute for Deaf and Blind Children

Representative: Frank Antonini
Title: Manager Call Centre Fundraising

Comment relating to:

ADMA Direct Marketing Code of Practice
(September 2005 Draft)
Section D, 20 – Permitted Calling Times

The Royal Institute for Deaf and Blind Children

The Royal Institute for Deaf and Blind Children (RIDBC) is Australia's Major independent special educator and also operates an outbound call centre engaged in charitable fundraising generating net proceeds in excess of \$2mill per annum. The funds raised provide services to children with significant vision or hearing impairment and also children with additional disabilities. RIDBC relies heavily on its fundraising activities as Governments simply do not provide sufficient financial support.

The call centre currently operates from 9:00am to 9:00pm on weekdays which is in accordance with the permitted calling hours of the ADMA Code of Practice 2001 and the Ministerial Council on Consumer Affairs Direct Marketing Model Code of Practice (September 2003). We believe that any reduction in the trading hours will significantly impact our ability to continue to provide the range of services to Deaf children and Blind Children.

In evaluating the public benefit associated with the proposed new ADMA Code, we would ask that the ACCC account for the diminished level of social programs that will inevitably flow from any decreased access to direct marketing opportunities by the charitable sector.

ADMA Code of Practice - Section D, 20 – Permitted Calling Times

RIDBC is highly supportive of the proposed ADMA Code of Practice with the exception of Section D. Fair Conduct Relevant to Telemarketing clause 20 - Permitted calling times. We believe this clause to be discriminatory against charitable fundraisers operating in NSW and ambiguous in its impact on charities operating elsewhere.

The current ADMA code (2001) permits calls between the hours of 8am and 9pm. The draft code specifies that consumers are not to be called before 9am or after 8pm daily and not at all on Sundays and specified public holidays. We understand that this decision was made in order to reflect the recent changes in the Fair Trading Laws in NSW and Victoria.

The Fair Trading (General) Amendment (Direct Commerce) Regulation 2004 – [Schedule 1 Amendment Part 4A – 88B (1) (c)] provides an exclusion of “a contract arising out of the conduct of a fundraising appeal within the meaning of the Charitable Fundraising Act 1991”.

The wording “unless permitted by Federal or State Legislation” has been included by ADMA in clause 20 to recognise exemptions such as those that relate to fundraising appeals and we recognise ADMA's intent. However, in NSW fundraising activities are regulated by the NSW Charitable Fundraising Act and its Regulations. In turn, the

NSW Charitable Fundraising Regulations 2003 require that organizations in NSW, fundraising through telemarketing must comply with the ADMA Code of Practice as it relates to Telemarketing. For NSW charities, we believe this effectively eliminates the exemptions provided by the NSW and Victorian Acts and ambiguously provide for in the proposed ADMA Code.

The effect of this is such that the ADMA code provides a competitive disadvantage for NSW based charities as compared to charities in other states.

In its introduction to this consultative process, under the heading "Assessment of public benefit and anti competitive detriment", the ACCC observes that,

- the loss of/or inability to obtain ADMA membership is unlikely to significantly impede a direct marketer's ability to enter the market or compete within the industry;

and later

- it is not likely that burdens placed on organizations to comply with the ADMA Code would result in any anti-competitive detriment.

On both points noted we believe these observations to be incorrect. NSW based charitable organizations using telemarketing for fundraising appeals would be significantly impeded as opposed to their competition in other states, a disadvantage that was not existent or envisaged at the time the NSW Charitable Regulations were framed.

Recommendation

We would submit that ADMA should adopt the wording from the Ministerial Council on Consumer Affairs "A model Code of Practice" dated September 2003 part 4 clause "63 permissible hours of calling" accompanied by the phrase "except when legislation provides for reduced calling hours as per below:

"Without a consumer's consent, a telemarketer shall not make an outbound telephone or Automatic Calling Equipment call to contact a consumer before 8 am or after 9 pm local time at the consumer's location or on Sundays and the following public holidays:

- New Year's Day;
- Australia Day;
- Good Friday;
- Easter Monday;
- Anzac Day;
- Christmas Day; and
- 26 December (Boxing Day)

Except where legislation provides for reduced calling hours"

Frank Antonini
Manager Call Centre Fundraising