

COMMITTEE AMENDMENT

[STAFF WORKING DRAFT]

June 17, 2003

Purpose: To make businesses knowingly promoted through electronic mail with false or misleading transmission information subject to Federal Trade Commission Act penalties and enforcement remedies.

**IN THE COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION—108TH Cong., 1ST Sess.**

S. 877, 108TH Congress, 1ST Session

JUNE 17, 2003

INTENDED to be proposed by Mr. McCAIN

Viz:

1 At the appropriate place, insert the following:

2 **SEC. ——. BUSINESSES KNOWINGLY PROMOTED BY ELEC-**
3 **TRONIC MAIL WITH FALSE OR MISLEADING**
4 **TRANSMISSION INFORMATION.**

5 (a) IN GENERAL.—It is unlawful for a person to pro-
6 mote, or allow the promotion of, that person's trade or
7 business, or goods, products, property, or services sold, of-
8 fered for sale, leased or offered for lease, or otherwise
9 made available through that trade or business, in a com-
10 mercial electronic mail message the transmission of which
11 is in violation of section 5(a)(1) if that person—

1 (1) knows, or should have known in ordinary
2 course of that person's trade or business, that the
3 goods, products, property, or services sold, offered
4 for sale, leased or offered for lease, or otherwise
5 made available through that trade or business were
6 being promoted in such a message;

7 (2) received or expected to receive an economic
8 benefit from such promotion; and

9 (3) took no reasonable action—

10 (A) to prevent the transmission; or

11 (B) to detect the transmission and report
12 it to the Commission.

13 (b) LIMITED ENFORCEMENT AGAINST THIRD PAR-
14 TIES.—

15 (1) IN GENERAL.—Except as provided in para-
16 graph (2), a person (hereinafter referred to as the
17 “third party”) that provides goods, products, prop-
18 erty, or services to another person that violates sub-
19 section (a) shall not be held liable for such violation.

20 (2) EXCEPTION.—Liability for a violation of
21 subsection (a) shall be imputed to a third party that
22 provides goods, products, property, or services to an-
23 other person that violates subsection (a) if that third
24 party—

1 (A) owns, or has a greater than 50 percent
2 ownership or economic interest in, the trade or
3 business of the person that violated subsection
4 (a); or

5 (B)(i) has actual knowledge that goods,
6 products, property, or services are promoted in
7 a commercial electronic mail message the trans-
8 mission of which is in violation of section
9 5(a)(1); and

10 (ii) receives, or expects to receive, an eco-
11 nomic benefit from such promotion.

12 (c) EXCLUSIVE ENFORCEMENT BY FTC.—Sub-
13 sections (e) and (f) of section 6 do not apply to violations
14 of this section.

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