

MARKETING *Benchmarks*

Price breaks to “niche” customers not always a no-no

Congress passed the Robinson-Patman Act in the heady days of the New Deal in 1936. Generally, it requires sellers to offer all comers the same openly published price.

Not always aggressively enforced, depending on which party holds power in Washington, Robinson-Patman is a sword of Damocles that dangles unpredictably over the head of every marketer — especially direct mailers who use customer behavioral data to make offers more profitably attractive to market niches.

Besides the feds, states are getting into the act. For example, a bill is being considered in New York that would make it a crime for marketers to use information about individual consumers for advertising purposes. If the bill becomes law, other states almost surely will adopt similar measures.

For example: An offer from Alaska Airlines

You may receive direct-response advertising from Alaska Airlines that offers you a \$200 round trip to Hawaii, though your next-door neighbor would pay \$400 for the same flights, writes Associate Professor Anita Ramasastry of the University of Washington Law School.

Advances in information technology makes such targeted advertising — based on the individual’s Web traffic, purchase history, location, price sensitivity and other data — possible. Its high return on investment makes its use virtually inevitable. But legal?

Under the law, Alaska Airlines must offer all customers, potential and existing, the lowest “published” fares, Ms. Ramasastry states. However, she adds, airlines (and other advertisers) can legally offer special deals to selected individuals, if such offers are not “published.”

The courts have ruled that direct-response advertising through direct mail and the Internet is not a “publication,” she notes.

To stay on the right side of the law, she cautions, Alaska Airlines will need to monitor its direct mailings, Web site, and all offers — published and non-published — to make sure that all its price statements are true in the light of the claims it makes in its targeted ads.

Offering different prices to different customers is legal — unless...

— Attorney Anita Ramasastry

As long as consumers are clear about what is happening when they receive a targeted marketing message from an advertiser, and have a chance to opt out of receiving similar messages, she concludes, targeted advertising may be kosher.

The FTC has made several proposals regarding targeted marketing. Among them:

- When data are collected for use in behavioral advertising, the advertiser should provide a clear, concise statement of that fact, plus an easy way for the individual to opt out of the process.
- Every company that collects behavioral data should provide reasonable security for that information.
- The individual must consent specifically to the collection of sensitive information about him or her.

Comment: The Castle Press does not offer legal counsel. If you are concerned about the legality of your own database-aimed advertising, consult your attorney.



The Castle Press

1222 North Fair Oaks Ave
Pasadena, CA 91103
626-798-0858
www.castlepress.com

1007 Broxton Avenue, Suite 212
Los Angeles, CA 90024
310-824-5201
cpwest@castlepress.com

The Castle Press

has provided excellent printing and marketing solutions to direct-mail advertisers for more than 70 years. To learn at no cost or obligation how it could help you maximize profits, please phone, or email: info@castlepress.com