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Int. No. 854

By Council Members Berman, Carrion, Freed, Henry, Marshall, Fiala and Oddo; also Council Members Koslowitz, McCaffrey, Nelson, Rivera and Spigner

A Local Law to amend the administrative code of the city of New York, in relation to the regulation of unsolicited electronic mail advertisements.

Be it enacted by the Council as follows:

Section 1. Chapter four of title twenty of the administrative code of the city of New York is amended by adding a new subchapter 11 to read as follows:

SUBCHAPTER 11

UNSOLICITED ELECTRONIC MAIL ADVERTISEMENTS

§20-759 a. **Definitions.** For purposes of this section:

(1) “Electronic mail advertisement” means any electronic mail message, the principal purpose of which is to encourage the purchase, rental, lease or gift offer of, or investment in, property, goods or services, or an offer for the extension of credit, which is transmitted to the recipient;

(2) “Established business relationship” means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a consumer, with or without the exchange of any consideration, on the basis of an inquiry, application, or transaction by the consumer regarding products or services offered by such person, which relationship has not been terminated by either party prior to the sending of an electronic mail advertisement;

(3) “Person” means any individual, firm, company, partnership, corporation, association or other entity;

(4) “Unsolicited electronic mail advertisement” shall mean an electronic mail advertisement that (i) is addressed to a recipient with whom the sender does not have an established business relationship or personal relationship; and (ii) is not sent at the request or with the express consent of the recipient.

b. Transmission of unsolicited electronic mail advertisements. It shall be unlawful for any person to transmit an unsolicited electronic mail advertisement unless the electronic mail advertisement clearly and conspicuously provides on the initial screen or page of such advertisement visible to the recipient upon the receipt or opening of such advertisement, the following information;

(1) The initial sender’s legal name;

(2) The initial sender’s complete street address;

(3) A notice that the recipient may elect not to receive any further unsolicited electronic mail advertising from such sender and a provision for the means of so notifying such sender by the performance of a simple computer function such as hitting an indicated key or clicking on an indicated icon or symbol on the initial screen or page of such advertisement, or on the notice itself.

c. Prohibition against further unsolicited electronic mail advertisements. No person shall transmit any unsolicited electronic mail advertisement to a recipient who has notified the sender pursuant to the provisions of subdivision (b) hereof that he or she elects not to receive any further unsolicited electronic mail advertising from such sender. The requirements of subdivision b and of this subdivision shall not apply to the transmission of electronic mail advertisements by a telecommunications utility or internet service provider, or other person who provides the ability to send or receive electronic mail as an intermediary, to the extent that such utility or service provider is only carrying the transmission of another person over its network or communication lines.

d. Penalties. Any person who violates the provisions of this section shall be subject to a civil penalty not to exceed five hundred dollars for each unsolicited electronic advertisement transmitted to a recipient.

e. Civil Actions. Any person who has received an unsolicited electronic mail advertisement in violation of the provisions of

this section may enforce its provisions by means of a civil action to recover the actual damages as determined by a jury, or a court sitting without a jury, but in no case less than two hundred fifty dollars.

§2. This local law shall take effect ninety days from its enactment.