

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
INTERNET BUREAU

IN THE MATTER OF:

DATRAN MEDIA, LLC

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of Article 22-A of the New York General Business Law (GBL), and Section 63(12) of the Executive Law, Eliot Spitzer, Attorney General of the State of New York, has made an inquiry into certain business practices of Datran Media, LLC ("Datran"). Based upon that inquiry, the Attorney General concludes as follows:

**DEFINITIONS**

1. As used herein, personally identifiable information, or "PII," shall mean information from or about an individual containing or reflecting (a) a first and last name, (b) a home or other physical address, (c) an email address, (d) a telephone number, or (e) any information from or about an individual that is combined with any of the above, or any list containing any of the above.
2. "Privacy policy" shall mean any statements or promises designated by a web site as a "privacy policy." "Privacy statement" shall mean any other statement, representation, promise, or description, regarding the type or level of privacy accorded to information collected through or by a web site, or regarding whether, how, or with which parties such information will or may be shared.

## FINDINGS OF ATTORNEY GENERAL

3. Datran Media is an email and database marketing company formed on November 26, 2001, under the laws of the state of New Jersey, having its principal place of business at 1995 Broadway, New York, NY 10023.

4. Datran's primary business practice involves sending emails to consumers, promoting the products and services of various of its advertising clients. The email recipients are generally on marketing lists containing PII that Datran has obtained from other entities ("list providers"). These list providers, in turn, have gathered these marketing lists through a variety of means, including by collecting PII from users visiting their web sites. Datran generally pays to these list providers a portion of the revenues it receives from its advertising clients, based on the success rate of its email campaigns.

5. The Office of the Attorney General has conducted an investigation into the provenance of certain of the marketing lists that Datran has used when sending emails. This investigation revealed that on numerous instances between January 2003 and April 2005, Datran obtained PII from list providers who, on their own web sites, had promised consumers they would not sell, rent, and/or otherwise share such information with third parties such as Datran.<sup>1</sup> In a number of cases, Datran knew prior to acquiring such information that the list provider had made such promises to consumers; yet, Datran used such information, and sent millions of emails to such consumers.

6. For instance, in one transaction in 2004, Datran obtained approximately

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<sup>1</sup> Due to the spoliation of electronic evidence, and the unavailability of all relevant, prior website screen shots, extensive investigation has not revealed precisely how many list provider policy policies were violated in this way.

7,200,000 consumer records (the largest such marketing list), consisting of emails, names, addresses, and/or telephone numbers, from the list provider Gratis Network, LLC ("Gratis").<sup>2</sup> Prior to signing the underlying agreement with Gratis, Datran discovered that Gratis had promised on its own web site, including in its privacy policy, that it would not give out, sell, lend, rent, or provide to any third party the email addresses it had collected. Datran proceeded with this transaction and acquired this PII. Thereafter, Datran sent millions of emails to these consumers.

7. Since approximately December 2002, Datran has represented on its web site that recipients of its email campaigns "have all requested to receive information about products and services from companies like yours." As the above findings indicate, this statement was inaccurate as to several million users in its database.

#### **Statutory Violations**

8. The Attorney General finds that the practices described in paragraphs 5 through 7 violated New York General Business Law §349 and New York Executive Law § 63(12).

9. **IT NOW APPEARS** that Datran is willing to enter into this Assurance of Discontinuance, without admitting or denying any violation of law. The Attorney General is willing to accept the terms of this Assurance of Discontinuance pursuant to Executive Law § 63(15) in lieu of commencing a statutory special proceeding.

#### **AGREEMENT**

**IT IS HEREBY UNDERSTOOD AND AGREED** by and between Datran and the

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<sup>2</sup> Gratis is not a party to this agreement, and its rights and obligations are in no way affected by the terms herein.

Attorney General that:

10. This Assurance of Discontinuance (hereinafter "Assurance") shall apply to Datran, its principals, directors, officers, shareholders, employees, representatives, agents, assigns, successors, or other business entities whose acts, practices or policies it directs, formulates or controls.

11. On or before the execution date of this Assurance, Datran will deliver to the Attorney General an affidavit executed by an officer confirming that it no longer is in possession of the marketing lists, or information contained in the marketing lists, that were (or may have been) obtained in the transactions described in paragraph 5.

12. Datran shall not purchase, acquire, license, manage or use any PII unless it first:
- (A) Independently reviews all applicable privacy policies or other privacy statements governing the PII, and in place at the time the PII was collected from consumers;
  - (B) Independently confirms that such applicable privacy policies or privacy statements explicitly revealed to consumers that the information collected would or might be shared, or, in the absence of such explicit terms, confirms through first-hand investigation that such consumers affirmatively opted in to permit such sharing; and
  - (C) Retains for five years a copy of all such privacy policies and privacy statements, and the dates and full URLs on which they remained posted, and makes them available for inspection upon written request by the Attorney General.

13. A written warrantee or representation from the list provider or web site operator in question (e.g., regarding the manner in which the marketing list was compiled or collected) is not sufficient on its own to fulfill Datran's obligation to comply with, the above requirements.

14. Should Datran learn that any marketing lists or PII in its possession was collected (whether by a licensor, list seller, web site operator or other party) contrary to material representations contained in privacy policies or statements made to consumers (such as representations regarding whether, how, or with whom PII is shared), it shall (a) immediately cease using those lists for any commercial purpose, (b) within five days apprise the Office of the Attorney General of such instance, and (c) should the Office of the Attorney General so request, destroy all data, or copies of such data, in its possession.

15. Datran shall within 10 days of execution of this agreement designate a "Chief Privacy Officer" or other employee whose duties include compliance with the terms herein.

16. Datran shall, upon execution of this agreement, pay to the State of New York, by certified check, \$1,100,000: \$750,000 as penalties, \$300,000 as disgorgement, and \$50,000 as investigatory costs.

17. Datran shall cooperate with any further requests made by the Office of the Attorney General, with respect to any practices, documents, or information relating to itself or any third party.

18. Nothing contained in this Assurance shall be construed to alter or enhance any existing legal rights of any consumer or to deprive any person or entity of any existing private right under the law.

19. Nothing contained herein shall be construed as relieving Datran of the obligation

to comply with all state and federal laws, regulations or rules, nor shall any of the provisions of this Assurance be deemed permission to engage in any act or practice prohibited by such law, regulation or rule.

20. The acceptance of this Assurance by the Office of the Attorney General shall not be deemed approval of any of Datran's business practices, and Datran shall make no representation to the contrary.

21. This Assurance is contingent on and relies on the truthfulness and accuracy of all representations made by Datran herein and during this investigation. This Assurance settles any claims the Office of the Attorney General has regarding the lists referred to in ¶¶ 5, 6 and 11, herein.

22. Any violation of the terms of this Assurance shall constitute *prima facie* evidence of violation of the applicable law in any civil action or proceeding thereafter commenced against Datran by the Office of the Attorney General.

23. All notices or other communications sent by Datran hereunder shall be sent by trackable, overnight delivery, and addressed to:

Office of the New York Attorney General  
Chief, Internet Bureau  
120 Broadway  
New York, NY 10271

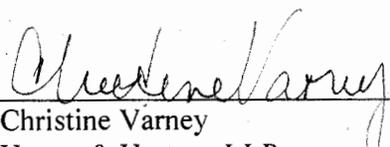
WHEREFORE, the following signatures are affixed hereto this 6 day of <sup>March</sup> February, <sup>etc</sup>

2006 (the "execution date").

DATRAN MEDIA, LLC

By:

  
Jeffrey Goldstein  
Vice President and General Counsel  
An officer authorized by Datran Media LLC  
to enter into the herein agreement

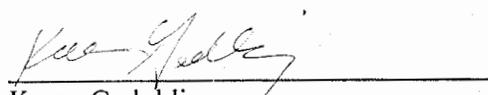
  
Christine Varney  
Hogan & Hartson LLP  
Counsel for Datran Media, Inc.  
Columbia Square  
555 Thirteenth St., NW  
Washington, DC 20004  
(202) 637-5600

Attorney General of the  
State of New York  
120 Broadway  
New York, New York 10271-0332  
(212) 416-8433

By:

  
Kenneth M. Dreifach  
Assistant Attorney General In Charge  
INTERNET BUREAU

By:

  
Karen Geduldig  
Assistant Attorney General  
INTERNET BUREAU

ELIOT SPITZER