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MEMORANDUM

January 12, 2005

To Our Clients and Friends

Re: CAN-SPAM Act: Delay of Effective Date
of FTC Rule Defining Commercial E-Mail

On December 16, 2004, the Federal Trade Commission (“FTC”) adopted a final rule as to what constitutes the primary purpose of an e-mail message for purposes of defining a commercial e-mail message under the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (the “CAN-SPAM Act”). The CAN-SPAM Act provides that a “commercial e-mail message” is an electronic mail message, the primary purpose of which is the commercial advertisement or promotion of a commercial product or service, including content on an Internet website operated for a commercial purpose.

The FTC’s final rule was to become effective February 18, 2005. The Office of Management and Budget has now determined that the FTC’s rule constitutes a major rule under the Small Business Regulatory Enforcement Fairness Act, which requires that a major rule cannot take effect for at least 60 days. As a result, the FTC has delayed the effective date for the final CAN-SPAM Act rule until March 28, 2005.

A copy of our December 16th memorandum describing the FTC’s final rule can be found on our web site at http://www.schwartzandballen.com/whats_new.html.

If you have any questions, please call Gilbert Schwartz, Robert Ballen or Tom Fox at (202) 776-0700.