

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Rules and Regulations Implementing the	)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991	)	
	)	
Junk Fax Prevention Act of 2005	)	CG Docket No. 05-338
	)	

**PETITION FOR DECLARATORY RULING OF HENRY SCHEIN, INC.**

June 19, 2015

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## EXECUTIVE SUMMARY

Henry Schein respectfully requests a declaration that the following opt-out language, which was used on its fax advertisements before September 2014, complies with Section 64.1200(a)(4)(iii) of the Commission's rules implementing the Telephone Consumer Protection Act of 1991 ("TCPA") and the Junk Fax Prevention Act of 2005:

**To continue to receive valuable information and offers from Henry Schein, no action on your part is required.** Under Federal and State law, you have the right to have your fax number placed on our Do Not Fax List. If you choose to be placed on our Do Not Fax list, you may not be eligible for certain product discounts and other special offers that are only available through our fax promotions.

To be placed on our fax advertising Do Not Fax List, please check the box, fully complete the required information below, and fax this request to our fax advertising 24 hour toll-free fax number:

1.800.824.1347

Name: \_\_\_\_\_ Account# \_\_\_\_\_ Fax # \_\_\_\_\_

You may also request to be placed on our Do Not Fax List by calling us 24 hours a day at 1.800.795.2285, or writing to us at: Henry Schein, Inc., Fax Desk MR E-115, 135 Duryea Road, Melville, N.Y. 11747.

Please allow 3--4 weeks for us to update our records.

Section 64.1200(a)(4)(iii) does not provide "magic words" to be recited to achieve compliance. Indeed, where the Commission has desired that regulatees use specific, prescribed language to communicate with the public regarding regulatory obligations, it has provided such language in its rules. Section 64.1200(a)(4)(iii) contains no such language. As explained herein, the opt-out notice used by Henry Schein meets all of the requirements of the Commission's rules. The notice: (1) was clear and conspicuous; (2) communicated that the recipient could request the sender to send no future advertisements and that compliance was mandated by law within a timeframe less than 30 days; (3) set out the requirements for an effective opt-out request; and, (4) included the requisite contact information, which permitted individuals or businesses to make an opt-out request 24 hours a day, 7 days a week. Henry Schein's customers understood their opt-out rights and how they might be exercised. Accordingly, the Commission should declare that Henry's Schein's fax opt-out language is compliant.

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Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991	)	CG Docket No. 02-278
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Junk Fax Prevention Act of 2005	)	CG Docket No. 05-338
	)	

**PETITION FOR DECLARATORY RULING OF HENRY SCHEIN, INC.**

Pursuant to Section 1.2 of the rules of the Federal Communications Commission (“FCC” or “Commission”),<sup>1</sup> Henry Schein, Inc. (“Henry Schein”) respectfully requests that the Commission declare that the following opt-out language used in its facsimile (“fax”) advertisements prior to September 2014, satisfies Sections 64.1200(a)(4)(iii)<sup>2</sup> of the Commission’s rules:<sup>3</sup>

**To continue to receive valuable information and offers from Henry Schein, no action on your part is required.** Under Federal and State law, you have the right to have your fax number placed on our Do Not Fax List. If you choose to be placed on our Do Not Fax list, you may not be eligible for certain product discounts and other special offers that are only available through our fax promotions.

To be placed on our fax advertising Do Not Fax List, please check the box, fully complete the required information below, and fax this request to our fax advertising 24 hour toll-free fax number:

1.800.824.1347

Name: \_\_\_\_\_ Account# \_\_\_\_\_ Fax # \_\_\_\_\_

You may also request to be placed on our Do Not Fax List by calling us 24 hours a day at 1.800.795.2285, or writing to us at: Henry Schein, Inc., Fax Desk MR E-115, 135 Duryea Road, Melville, N.Y. 11747.

Please allow 3--4 weeks for us to update our records.

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<sup>1</sup> 47 C.F.R. § 1.2.

<sup>2</sup> 47 C.F.R. § 64.1200(a)(4)(iii).

<sup>3</sup> Henry Schein separately has requested a retroactive waiver of 47 C.F.R. § 64.1200(a)(4)(iv) as applied to fax advertisements sent before April 30, 2015, to recipients that had provided prior express invitation or permission. *See* Petition of Henry Schein, Inc. for Retroactive Waiver of 47 C.F.R. § 64.1200(a)(4)(iv), CG Docket Nos. 02-278, 05-338 (filed December 17, 2014). By filing this Petition for Declaratory Ruling, Henry Schein does not seek to modify or rescind that Petition for Waiver, although the relief requested in this Petition would apply to some or all of the fax advertisements at issue in the earlier Petition.

The Commission was clear in the 2006 *Junk Fax Order* that it was not prescribing the exact wording of fax opt-out notices.<sup>4</sup> The opt-out language used in Henry Schein’s fax advertisements communicated to recipients all the information required under the Commission’s rules and should be declared compliant.

## I. INTRODUCTION

Henry Schein is a provider of health care products and services to office-based dental, animal health, and medical practitioners. In 2015, Henry Schein was recognized on the FORTUNE® “World’s Most Admired Companies” list<sup>5</sup> and on Ethisphere’s list of the World’s Most Ethical Companies.<sup>6</sup> Henry Schein offers a comprehensive selection of products and services, including value-added solutions for operating efficient practices and delivering high-quality care.

As one part of its sales effort, Henry Schein sends fax advertisements to customers’ offices containing an order form and special offers on products Henry Schein believes would be of interest to the recipient based on the nature of the recipient’s practice. An example of one of

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<sup>4</sup> Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Junk Fax Prevention Act of 2005, CG Docket Nos. 02-278, 05-338, *Report and Order and Third Order on Reconsideration*, 21 FCC Rcd 3787, 3801 ¶ 25 (2006) (“*Junk Fax Order*”).

<sup>5</sup> Fortune, *World’s Most Admired Companies 2015*, <http://fortune.com/worlds-most-admired-companies/> (last visited June 19, 2015); see also Fortune, *World’s Most Admired Companies 2014*, <http://fortune.com/worlds-most-admired-companies/2014/> (last visited June 19, 2015).

<sup>6</sup> Ethisphere, *World’s Most Ethical Companies – Honorees*, <http://ethisphere.com/worlds-most-ethical/wme-honorees/> (last visited June 19, 2015) (recognized from 2012-2015).

these advertisements, dated June 22, 2014, is attached as Exhibit A to this Petition. Each of Henry Schein's fax ads includes an opt-out notice, the language of which was tailored to conform to the Commission's rules. During the relevant time, the opt-out notice read:

**To continue to receive valuable information and offers from Henry Schein, no action on your part is required.** Under Federal and State law, you have the right to have your fax number placed on our Do Not Fax List. If you choose to be placed on our Do Not Fax list, you may not be eligible for certain product discounts and other special offers that are only available through our fax promotions.

To be placed on our fax advertising Do Not Fax List, please check the box, fully complete the required information below, and fax this request to our fax advertising 24 hour toll-free fax number:

1.800.824.1347

Name: \_\_\_\_\_ Account# \_\_\_\_\_ Fax # \_\_\_\_\_

You may also request to be placed on our Do Not Fax List by calling us 24 hours a day at 1.800.795.2285, or writing to us at: Henry Schein, Inc., Fax Desk MR E-115, 135 Duryea Road, Melville, N.Y. 11747.

Please allow 3--4 weeks for us to update our records.

The notice often would have the account number and telephone number associated with the recipient fax machine pre-printed on the advertisement, for the convenience of the recipient. This opt-out language was included at the bottom of the page, set off by a bolded first sentence on its own line, and took up more than 12 percent of the total vertical area of the printed portion of the page. Henry Schein complied with opt-out requests within the time period required by statute and the Commission's rules.

## **II. THE COMMISSION SHOULD DETERMINE THAT HENRY SCHEIN'S LANGUAGE SATISFIES THE FAX OPT-OUT REQUIREMENT.**

The Commission should declare that the above-referenced opt-out notice satisfies Section 64.1200(a)(4)(iii) of the Commission's rules. The notice in question: (1) is clear and conspicuous; (2) states that the recipient can request the sender to send no future advertisements and that compliance is mandated by law within a reasonable timeframe (not to exceed 30 days); (3) sets out the requirements for an effective opt-out request; and (4) includes the requisite contact information permitting individuals or businesses to make an opt-out request 24 hours a day, 7 days a week.

The purpose of the opt-out requirements is “ensuring that consumers have the necessary information to opt out of future unwanted fax ads, and in ensuring that the fax sender can account for all such requests and process them in a timely manner by making certain the recipient uses the contact information specified by the sender in the opt-out notice.”<sup>7</sup> As the Commission has explained, the opt-out rules operate by ensuring that even recipients that have previously consented to receiving fax ads, “(1) are informed of their right to withdraw that consent, and (2) are provided with a cost-free mechanism by which to opt out of future facsimile advertisements if they decide to exercise that right.”<sup>8</sup>

A determination that opt-out notices such as the one previously used by Henry Schein is proper and does not need to repeat verbatim the text of the Commission’s rules would be consistent both with the intent of the Commission as expressed in the *Junk Fax Order* and with Commission practice elsewhere. In the *Junk Fax Order*, the Commission expressly declined to specify any “magic words” for the opt-out notices, saying that “[w]e are persuaded that rules specifying the font type, size and wording of the notice might interfere with fax senders’ ability to design notices that serve their customers.”<sup>9</sup> Therefore while the Commission made further “determinations about the opt-out notice so that facsimile recipients have the information necessary to avoid future unwanted faxes,” it left the specific wording of notices up to senders.<sup>10</sup> Had the Commission intended for the language of the rule to be repeated exactly in the opt-out

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<sup>7</sup> Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Junk Fax Prevention Act of 2005, CG Docket Nos. 02-278, 05-335, *Order*, 29 FCC Rcd 13998 (2014) (“*Anda Order*”).

<sup>8</sup> See Brief for the Federal Communications Commission as Amicus Curiae Urging Reversal at 14, *Nack v. Walburg*, 715 F.3d 680 (8th Cir. 2013) (No. 11-1460).

<sup>9</sup> *Junk Fax Order*, 21 FCC Rcd at 3801 ¶ 25.

<sup>10</sup> *Id.*

notices, it would have made this requirement explicit as it has done in numerous other rules that use quotations, colons, altered typesetting, or other mechanisms to signal when exact language is required.<sup>11</sup> Where, as here, the Commission dictates the requirements of a notice, but not its specific language, it is left to the party transmitting the notice to ensure the regulatory requirements are satisfied in a manner appropriate for its business.

Importantly, the relief requested by Henry Schein is different from the request rejected in the *Anda Order* by parties asking the Commission to declare that ads that “comply substantially” with section 64.1200(a)(4)(iv) do not violate the Commission’s rules.<sup>12</sup> As the Commission noted, each petition at issue there requested the Commission’s blessing on an opt-out notice that “does not conform with all of the specified requirements” under the rule.<sup>13</sup> Unlike the petitions seeking a ruling that substantial compliance is sufficient, which typically failed to set out the requirements for an effective opt-out or to communicate that compliance with the request is mandated by law,<sup>14</sup> Henry Schein’s opt-out notice contained all the necessary elements of the

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<sup>11</sup> See, e.g., 47 C.F.R. §§ 1.16 (quotations and different font size used for text of declarations); 2.803 (colons, different font size, and clear textual signals used for required notice language); 15.19 (colons, different font size, and images used for labeling requirements); 15.105 (colons and different font size used for text required to be included in device manuals); 15.123(d) (colon and quotation marks used for text required for device owner’s guide); 20.19(f)(2)(i) (colon and different font size used for required HAC disclosure); 63.71 (colon and clear textual signal used for required language in common carrier discontinuance notices).

<sup>12</sup> See *Anda Order*, 29 FCC Rcd at 14012-13 ¶ 33.

<sup>13</sup> *Id.*

<sup>14</sup> Petition of Forest Pharmaceuticals, Inc., for Declaratory Ruling and/or Waiver Regarding Substantial Compliance with Section 64.1200(a)(4)(iii) of the Commission’s Rules and for Declaratory Ruling Regarding the Statutory Basis for the Commission’s Opt-Out Notice Rule with Respect to Faxes Sent with the Recipient’s Prior Express Invitation or Permission at 9, CG Docket No. 05-338 (filed June 27, 2013) (Forest Petition); Petition for Declaratory Ruling and/or Waiver of Gilead Sciences, Inc., and Gilead Palo Alto, Inc., Regarding Substantial Compliance with Section 64.1200(a)(4)(iii) of the Commission’s Rules and for Declaratory Ruling Regarding the Statutory Basis for the Commission’s Opt-Out Notice Rule with Respect to Faxes Sent with

rule.<sup>15</sup> Henry Schein seeks neither to avoid full and absolute compliance with each component of the rule, nor “to collaterally challenge the rule as adopted,”<sup>16</sup> but instead asks that the Commission recognize that its language meets the requirements of the rule.

The purpose of the fax advertisement opt-out requirement is to protect consumers from unwanted solicitations, not to provide a mechanism for plaintiff’s attorneys to use class action litigation to extract massive statutory penalties or settlements from well-intentioned businesses based on trivial deviations from the precise text of the Commission’s rules. The Commission should clarify that where an opt-out notice such as the one used by Henry Schein contains all of the information required by Section 64.120(a)(4)(iii), it complies with that rule (and with Section 64.1200(a)(4)(iv)). As explained further below, the opt-out language previously used by Henry

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the Recipient’s Prior Express Invitation or Permission at 9, CG Docket Nos. 02-278, 05-338 (filed Aug. 9, 2013) (Gilead Petition); Petition of Magna Chek, Inc. for Declaratory Ruling and/or Waiver at 8-9, CG Docket Nos. 02-278, 05-338 (filed March 28, 2014); Petition for Declaratory Ruling and/or Waiver of Masimo Corp. at 8-9, CG Docket Nos. 02-278, 05-338 (filed April 1, 2014) (Masimo Petition); Purdue Pharma Petition for Declaratory Ruling Regarding the Statutory Basis for the Commission’s Opt-Out Notice Rule with Respect to Solicited Faxes ,and/or Regarding Substantial Compliance with Section 64.1200(a)(4)(iii) and (iv) of the Commission’s Rules at 15-16, CG Docket Nos. 02-278, 05-338 (filed Dec. 12, 2013) (Purdue Pharma Petition). The instant request is also substantially different from the fax advertisements that have been penalized for lack of full compliance in the enforcement context, because in those cases, as well, multiple substantive requirements of the opt-out rule were not satisfied. *See, e.g.*, Sabrina Javani D/B/A EZ Business Loans, Notice of Apparent Liability for Forfeiture, EB-TC-12-00000256, 27 FCC Rcd 7921 (2012); Tim Gibbons, Notice of Apparent Liability for Forfeiture, EB-TCD-12-00000234, 27 FCC Rcd 11432 (2012).

<sup>15</sup> For example, the opt-out notice at issue in the Forest Petition included only one sentence that instructed recipients as follows: “To opt out of any future faxes, call 1-888-PEER0321 (1-888-733-7321) or fax us at 1-800-929-8290.” *See* Exhibit 1 to Complaint, *St. Louis Heart Cntr. v. Forest Pharmaceuticals*, No. 4:12-cv-0224 (E.D. Mo., Dec. 3, 2012). The opt-out used by Purdue Pharma similarly included only one line with a phone and fax number and no additional details about procedures, timing, or the legal obligation to honor an opt-out request. *See* Purdue Pharma Petition at 15-16. By contrast, and as described further below, Henry Schein’s petition was conspicuous, detailed, and addressed every required element under the Commission’s rules.

<sup>16</sup> *See Anda Order*, 29 FCC Rcd at 14013 ¶ 33.

Schein satisfies each of these criteria, and should be declared fully compliant with Sections 64.1200(a)(4)(iii) and 64.1200(a)(4)(iv).

**A. Section 64.1200(a)(4)(iii)(A)**

Henry Schein’s opt-out notice satisfies the requirement of Section 64.1200(a)(4)(iii)(A) that the notice be “clear and conspicuous and on the first page of the advertisement.”<sup>17</sup> In adopting the clear and conspicuous requirement the Commission stated that clear and conspicuous “for purposes of the opt-out notice means a notice that would be apparent to a reasonable consumer.”<sup>18</sup> The Commission stated further that the notice should be placed at the top or bottom of the fax and “be distinguishable from the advertising material through, for example, use of bolding, italics, different font, or the like.”<sup>19</sup> The Henry Schein opt-out notice meets these requirements. Henry Schein’s notice was placed at the bottom of the page, began with a bold typeface on its own line, and was distinguished from the other text by paragraph spacing and alignment. Moreover, the nine lines of the notice took up more than 12 percent of the total vertical height of all the printed text on the page, and it was made even more prominent by the blank underscored lines that were included for recipients to use in providing the required opt-out information.

**B. Section 64.1200(a)(4)(iii)(B)**

Section 64.1200(a)(4)(iii)(B) has two requirements: the notice must state that the recipient may make a request to the sender of the advertisement not to send any future advertisements to a fax machine, and it must state that failure to comply with a validly made

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<sup>17</sup> 47 C.F.R § 64.1200(a)(4)(iii)(A).

<sup>18</sup> *Junk Fax Order* ¶ 26.

<sup>19</sup> *Id.*

request is unlawful if not done within 30 days.<sup>20</sup> Though it does not use the exact wording mentioned in the rule, Henry Schein’s notice fully satisfies both of these requirements.

Henry Schein’s opt-out notice states clearly that “[u]nder Federal and State law, you have the right to have your fax number placed on [Henry Schein’s] Do Not Fax list.” This establishes both that the recipient may make an opt-out request, and that compliance with the request is mandated by law. Furthermore, the fact that the sentence specifies that the number is to be placed on Henry Schein’s Do Not Fax list underscores that the obligation is on Henry Schein to ensure that the request is fulfilled. The Henry Schein opt-out notice later states that the recipient should “allow 3-4 weeks” for Henry Schein to update its records. Here, despite not using the exact words of the rule, Henry Schein’s notice actually exceeds the requirement set by the Commission’s rules by communicating a voluntarily shorter compliance timeframe than the 30 day limit prescribed in Section 64.1200(a)(4)(iii).

The text of Section 64.1200(a)(4)(iii) reads that the notice should state that “failure to comply, within 30 days, with such a request meeting the requirements under paragraph (a)(4)(v) of this section is unlawful.”<sup>21</sup> Although the Henry Schein opt-out language does not pair the time limit with the language of legal obligation in the same sentence, the opt-out clearly communicates both the legal mandate to comply with an opt-out and the timeline to be attached to that compliance. It would be unduly formalistic to require usage of the exact words of the rule section here. As discussed above, there are neither quotation marks in this rule section nor any other indication that this specific textual formulation should be required. There is nothing to suggest that parts of this clause of the rule should be read as containing mandatory language,

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<sup>20</sup> 47 C.F.R. § 64.1200(a)(4)(iii)(B).

<sup>21</sup> *Id.*

while other parts of the rule—including even parts of this same subsection—should allow editorial modification.

A reading permitting Henry Schein to express the timeframe in its own words, thereby agreeing to a more rigorous compliance deadline than would otherwise be required under the Commission’s rules, also is consistent with the intent of the Junk Fax Prevention Act. That Act states that compliance should be “within the shortest reasonable time, as determined by the Commission.”<sup>22</sup> Similarly, the *Junk Fax Order* stresses that 30 days is the limit for honoring an opt-out request, but that companies with the capability to honor requests sooner, should do so.<sup>23</sup> The Commission discussed the 30 day limit in the context of being “the shortest reasonable time” for compliance, not as a mandatory aspect of the notice to the recipient. Indeed, Henry Schein has determined that it can honor such requests in as little as 3-4 weeks, and therefore has put this timeframe on its notice. The Commission should not apply the rule so severely as to defeat its will and the will of Congress by preventing Henry Schein from stating a compliance timeframe even shorter than that required by the rule. Indeed, this sort of improvement of the opt-out commitment seems exactly the type of modification the Commission contemplated when it declined to require specific words be included in the notices.<sup>24</sup>

**C. Section 64.1200(a)(4)(iii)(C)**

Henry Schein’s opt-out notice also complied with the Section 64.1200(a)(4)(iii)(C) requirement to “set[] forth the requirements for an opt-out request under paragraph (a)(4)(v) of

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<sup>22</sup> See Junk Fax Prevention Act of 2005 § 2(c), Pub. L. No. 109-21, 119 Stat. 359 (2005).

<sup>23</sup> *Junk Fax Order* ¶¶ 30-32.

<sup>24</sup> *Id.* ¶ 25.

this section.”<sup>25</sup> Paragraph (a)(4)(v) sets out two substantive requirements for an effective opt-out notice: the request must identify the telephone number or numbers of the fax machine(s) to which the request relates,<sup>26</sup> and it must be made to the telephone number, fax number, website address, or email address identified in the sender’s fax advertisement.<sup>27</sup> The paragraph also contains a third clause, explaining that the opt-out request can be nullified by the recipient’s subsequent express invitation or permission to the sender to send advertisements to his or her fax machine.<sup>28</sup>

The Henry Schein opt-out notice fully and clearly sets forth the steps required to make an effective notice. It provides the recipient with fields to complete with the recipient’s name, account number, and the fax number to be placed on the Do Not Fax list. It then instructs the recipient to transmit this information to Henry Schein via a toll-free fax number, or to call a toll-free phone number, or write to Henry Schein. Should a recipient complete these straightforward steps, it will have successfully requested to be removed from future fax advertisements.<sup>29</sup>

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<sup>25</sup> 47 C.F.R. § 64.1200(a)(4)(iii)(C).

<sup>26</sup> *Id.* § 64.1200(a)(4)(v)(A).

<sup>27</sup> *Id.* § 64.1200(a)(4)(v)(B).

<sup>28</sup> *Id.* § 64.1200(a)(4)(v)(C).

<sup>29</sup> Although the Henry Schein opt-out language did not include a reference to the possibility of being included back onto the fax advertisement list if a recipient provides subsequent permission, the Commission should determine that this is not a violation of Section 64.1200(a)(4)(iii)(C). That section does not require Henry Schein to include “all” of the language of paragraph (a)(4)(v), but only the “requirements for an opt-out request.” *Id.* § 64.1200(a)(4)(v)(C). Importantly, clause (C) of paragraph (a)(4)(v) does not pertain to making an effective opt-out request, but rather to cancelling that request, or “opting back in.” The reference to being put back onto the fax advertisement list if one so requests is essentially a corollary or a common sense exception to the opt-out, not an affirmative requirement of a valid opt-out.

**D. Sections 64.1200(a)(4)(iii)(D) and 64.1200(a)(4)(iii)(E)**

The Henry Schein opt-out notice also complied fully with the requirements of Sections 64.1200(a)(4)(iii)(D) and 64.1200(a)(4)(iii)(E) of the Commission’s rules, which address the mechanisms through which recipients may make requests to opt-out from future advertisements.<sup>30</sup> Section 64.1200(a)(4)(iii)(D) requires that there be both a domestic telephone number and fax number to which parties may submit opt-out requests, and that should neither of those numbers be toll-free, there must be a separate cost-free mechanism for parties to use in transmitting the requests.<sup>31</sup> Henry Schein’s opt-out included a toll-free fax number and a toll-free phone number, as well as a physical mailing address, any of which a party could have used use to opt-out from receiving future fax advertisements. Section 64.1200(a)(4)(iii)(E) requires that the telephone number, fax number, and other cost-free mechanisms permit parties to make

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Defining the elements of a valid opt-out request to be limited to the first two clauses of Section 64.1200(a)(4)(v) is also consistent with the Commission’s intent as expressed in the Junk Fax Order. In that Order, the Commission was clear that it construed there to be two substantive requirements for an opt-out notice. The Commission explained that “[i]n accordance with the statutory provisions, we adopt rules requiring that an opt-out request identify the telephone number or numbers of the facsimile machines or machines to which the request relates. In addition, the request must be made using the telephone number, facsimile number, website address or email address provided by the sender in its opt-out notice.” *Junk Fax Order* at ¶ 34. It concludes “[u]nder the new rules, the sender will be prohibited from sending facsimile advertisements to a person that has submitted a request that complies with these requirements.” *Id.* There is no mention in the section of the Junk Fax Order entitled “Request to Opt-Out of Future Unsolicited Advertisements” of the possibility of being added back onto the fax advertisement list. Instead, the discussion about providing subsequent express consent to receive advertisements is contained in a subsequent section about when a sender may resume sending facsimile advertisements, as would be expected. *Id.* ¶ 36.

<sup>30</sup> 47 C.F.R. §§ 64.1200(a)(4)(iii)(D), (E).

<sup>31</sup> *Id.* § 64.1200(a)(4)(iii)(D).

opt-out requests 24 hours a day, 7 days a week.<sup>32</sup> Henry Schein's toll-free fax and telephone numbers were and are available on this schedule.

### III. CONCLUSION

The Commission should declare that the following fax opt-out language, which was used by Henry Schein on its fax advertisements before September 2014, satisfies the requirements of Section 64.1200(a)(4)(iii) of the Commission's rules:

**To continue to receive valuable information and offers from Henry Schein, no action on your part is required.** Under Federal and State law, you have the right to have your fax number placed on our Do Not Fax List. If you choose to be placed on our Do Not Fax list, you may not be eligible for certain product discounts and other special offers that are only available through our fax promotions.

To be placed on our fax advertising Do Not Fax List, please check the box, fully complete the required information below, and fax this request to our fax advertising 24 hour toll-free fax number:

1.800.824.1347

Name: \_\_\_\_\_ Account# \_\_\_\_\_ Fax # \_\_\_\_\_

You may also request to be placed on our Do Not Fax List by calling us 24 hours a day at 1.800.795.2285, or writing to us at: Henry Schein, Inc., Fax Desk MR E-115, 135 Duryea Road, Melville, N.Y. 11747.

Please allow 3--4 weeks for us to update our records.

Such a ruling would clarify that an opt-out notice need not repeat verbatim the language of the rule in order to achieve compliance, as long as it contains all the essential elements of a valid notice under the rules. Henry Schein's language contains all the essential elements of a valid notice under the rules, and its customers understood their opt-out rights and how they might be exercised.

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<sup>32</sup> *Id.* § 64.1200(a)(4)(iii)(E).

Respectfully submitted,

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June 19, 2015

**EXHIBIT A:**

**Example of Henry Schein Facsimile Advertisement**



1-800-PSCHEIN (1-800-772-4346) 8am-9pm, et  
 Fax: 1-800-329-9109 24 Hours  
 www.henryschein.com/obgyn-specials



14MS2065

## OB/GYN Fax Specials

Offer Ends July 3, 2014 -- Mention Promo Code RBT

Item Code	Description	Unit	Sale Price	Order Qty
<b>The 2014 Worry-Free Guarantee Flu Vaccine Program is Available - Call Today!</b>				
114-2518	RediScan Infrared Thermometer	Ea	\$79.99	
840-2661	Welch Allyn SureTemp Thermometer Probe Covers	250/Bx	\$14.49	
566-0227	Welch Allyn ProBP handheld with adult and large adult cuffs	Ea	\$599.99	
153-5897	Sterile Towels Blue (12x6) <b>LIMITED TIME PROMO PRICE</b>	72/Ca	\$179.44	
153-7642	Suction Canister Liners (1000 CC) <b>LIMITED TIME PROMO PRICE</b>	10/Pk	\$14.86	
153-9024	Jackson Pratt Suction 100 CC Silicone Bulb Reservoir <b>LIMITED TIME PROMO PRICE</b>	10/Bx	\$114.99	
768-8954	Drape Under Buttocks W/ Pouch <b>LIMITED TIME PROMO PRICE</b>	20/Ca	\$156.75	
101-3658	Henry Schein Drape 36x48" Exam Sheet, White, Disposable	100/Ca	\$18.79	
100-6428	Henry Schein Drape 40x48" Exam Sheet, Mauve, Disposable	100/Ca	\$23.29	
100-2392	Henry Schein Gown Exam 30x42" White, Disposable	50/Ca	\$24.29	
100-7115	Henry Schein Gown Exam 30x42" Mauve, Disposable	50/Ca	\$26.99	
529-0010	Jaylastic Tape White (2"x5 Yd)	24/Ca	\$38.59	
108-0718	Gauze Non Sterile 12 Ply (4x4)	2000/Ca	\$49.39	
933-0173	Cloth Surgical Tape (2"x10 Yd)	6/Bx	\$9.29	
319-1018	Pillow Positioning Medium 18"x24"	12/Ca	\$59.79	
327-0743	OSOM hCG Pregnancy Test	25/Bx	\$32.99	
327-9522	OSOM hCG Combo Test	25/Bx	\$36.99	
147-2360	MultiStix 10LS Pro Reagent Strips	100/Btl	\$382.99	
147-5913	MultiStix 10SG Reagent Strips	100/Btl	\$45.99	
147-8899	MultiStix 7 Strips	100/Btl	\$40.99	
546-4958	Adacel, 0.5mL, Prefilled Syringe	5/Pk	\$215.49	
558-0110	M-M-R II, SDV w/Diluent .5 mL	10/Pk	\$601.75	
118-1350	HR Pharma Sterile Lubricating Jelly, 4oz Fliptop	12/Pk	\$20.99	
112-6994	<b>NEW!</b> Henry Schein Silver Nitrate Applicator Sticks, 6" Wood <b>WOW!</b>	100/VI	\$26.99	
	<b>WOW!</b>		5@ 24.99	
908-0963	Depo®-Testosterone Inj Vial, 200mg <b>(get the brand @ a generic price!)</b>	10 mL/VI	\$71.99	
196-9429	Kenalog-40® Inj MDV, 40mg/mL <b>WOW!</b>	10 mL/VI	\$63.99	

Due to manufacturer price increases, prices are subject to change without notification. Offer valid on our full array of products, excluding flu vaccine and Synagis®. Upon any request by Medicare, Medicaid, Tricare or other payer, you must report the value of any benefit received from a discount program (e.g., points redemptions, gifts or other special awards).

To continue to receive valuable information and offers from Henry Schein, no action on your part is required. Under Federal and State law, you have the right to have your fax number placed on our Do Not Fax list. If you choose to be placed on our Do Not Fax list, you may not be eligible for certain product discounts and other special offers that are only available through our tax promotions.

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