

December 17, 2013

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Notification of Ex Parte Presentation, CG Docket Nos. 02-278, 05-338

Dear Ms. Dortch:

The undersigned submits this letter to supplement the December 12, 2013 letter regarding the meeting between Staples, Inc. (“Staples”) and its wholly owned subsidiary Quill Corporation (“Quill”), represented by G. Perry Wu of Staples, the undersigned of Gibson, Dunn & Crutcher LLP, and Thomas R. McCarthy of Wiley Rein LLP, and Kris Monteith, Acting Chief of the Consumer & Governmental Affairs Bureau; Mark Stone, Deputy Chief of the Consumer & Governmental Affairs Bureau; Aaron Garza, Legal Advisor, Consumer & Governmental Affairs Bureau; Kurt Schroeder, Chief of the Consumer Policy Division & Information Access & Privacy Office; Nancy Stevenson, Deputy Chief of the Consumer Policy Division & Information Access & Privacy Office; and Richard Smith, Special Counsel, Consumer Policy Division & Information Access & Privacy Office. *See* Letter from H. Walker to M. Dortch, Secretary, FCC, of Dec. 12, 2013 (CG Docket Nos. 02-278, 05-338).

As noted previously, the parties at the meeting discussed the subjects covered in the Petition of Staples, Inc. and Quill Corporation for Rulemaking and Declaratory Ruling, CG Docket Nos. 02-278, 05-338 (July 19, 2013) (“Petition”), and the relief sought therein. The parties also discussed the fact that the Consumer & Governmental Affairs Bureau is actively engaged on these issues. In addition to talking about process and timing in this matter, the parties discussed the problem of proliferating class-action lawsuits under 47 C.F.R. § 64.1200(a)(3)(iv) (the “Solicited Fax Rule” or the “Rule”), which provides that “[a] facsimile advertisement that is sent to a recipient that has provided prior express invitation or permission to the sender must include an opt-out notice,” 47 C.F.R. § 64.1200(a)(3)(iv), as required for “unsolicited [facsimile] advertisement[s]” under 47 U.S.C. § 227(b)(1)(C)(iii). Staples and Quill highlighted the fact that each faces a putative class action premised upon alleged violations of the Solicited Fax Rule.¹ The plaintiffs in each case seek statutory

¹ The respective actions are captioned as follows: *Burik v. Staples Contract & Commercial, Inc.*, No. 12-10806 (D. Mass.), and *Whiteamire Clinic, P.A., Inc. v. Quill Corp.*, (Cont'd on next page)

Letter to Ms. Marlene H. Dortch
Page 2

damages under 47 U.S.C. § 227(b)(3),² despite the fact that the three facsimile advertisements upon which these class actions are based were sent only with the respective recipients' prior express consent and include language notifying the respective recipients of a toll-free mechanism for opting out of receiving future facsimile advertisements.³

Sincerely,

/s/ Helgi C. Walker

Helgi C. Walker
Counsel for Staples, Inc. & Quill Corp.

cc: Kris Monteith
Mark Stone
Aaron Garza
Kurt Schroeder
Nancy Stevenson
Richard Smith

(Cont'd from previous page)

No. 12-5490 (N.D. Ill.). Unlike most of the litigation under the Solicited Fax Rule, the *Whiteamire* case has not been stayed and is indeed proceeding apace, which means that Quill presently faces onerous and expensive discovery while its Petition is pending at the Commission, as was also discussed at the meeting.

² 47 U.S.C. § 227(b)(3) (authorizing a private right of action only to the extent “based on a violation of this subsection or the regulations prescribed under this subsection”).

³ See Exhibit A to Complaint, *Burik v. Staples Contract & Commercial, Inc.*, No. 12-10806 (D. Mass. filed May 4, 2012); Exhibit A to Complaint, *Whiteamire Clinic, P.A., Inc. v. Quill Corp.*, No. 12-5490 (N.D. Ill. filed July 12, 2012) (copies of the facsimile advertisements received by the putative class representatives in the *Burik* and *Whiteamire* cases) (attached hereto as Attachment A).

Attachment A

EXHIBIT A

/27/2008 12:04

mackenson.elysee@staples.com -> Barb Pruni

Page 1 of 3



FAX

To: Barb Pruni

From: Mackenson Elysee

Fax: (330) 627-3876

Pages: 1 (including cover)

Date: 5/27/2008

Customer #: 2921512972

Re: Hot Deals on SOMA Paper Products for Preferred Customers!

Dear Barb:

Save up to 47% on an assortment of SOMA paper products! This Preferred Customer offer is available to you until June 13, 2008, so stock up! See ordering details below.

| Item No. | Description | Discounted Price | Regular Price |
|-----------|--|------------------|---------------|
| 694522-ZN | SOMA Premium Paper Towels, 8 rolls/case | \$8.00 | \$14.99 |
| 694527-ZN | SOMA Premium Bath Tissue, 12 rolls/case | \$9.99 | \$12.99 |
| 694528-ZN | SOMA Premium Facial Tissue, 3 boxes/case | \$5.00 | \$6.99 |
| 694525-ZN | SOMA Premium Paper Napkins, 200/pack | \$2.50 | \$3.99 |

Ordering is easy. Here's how:

- Call 1-800-333-3330 and reference 8-digit item number or go to www.staples.com
- Simply click on the "Order by item number" section on staples.com
- Enter the 8-digit item number that corresponds to any of the products above
- Click on "Add to Cart"

Sincerely,

Mackenson Elysee
Staples, Inc.
Preferred Customer Account Manager
(P) (888) 224-3684 Ext. 1251
(E) mackenson.elysee@staples.com

We apologize if you received this fax in error. If you wish to be removed from our fax list, please write "remove" on this document and fax it back toll free to 1-877-490-2860.

01ACD11936Jr2

5/27/2008 12:04

mackenson.elysee@staples.com -> Barb Pruni

Page 2 of 3



FAX

To: Barb Pruni **From:** Mackenson Elysee
Fax: (330) 627-3876 **Pages:** 1 (Including cover)
Date: 5/27/2008 **Customer #:** 2921512972

Re: Exclusive \$50 coupon for Preferred Customers.

Dear Barb,

As a Preferred Customer, save big in the next couple of weeks with this exclusive offer. **From now until June 13th, get \$50 off your next delivery order of \$500 or more, excluding Desktop and Laptop computers.**

Questions? Please don't hesitate to contact me any time and thank you for shopping with Staples.

Regards,

Mackenson Elysee
 Staples, Inc
 Preferred Customer Account Manager
 (P) (388) 224-3684 Ext. 1251
 (E) mackenson.elysee@staples.com

EXPIRES 06/13/08

\$50 OFF

your next delivery order of \$500 or more, excluding desktop and laptop computers.

When ordering online or by phone, include coupon code:
2921889151113741

STAPLES

Offer expires 06/13/08. Valid online at www.staples.com or by phone. Limit one per customer, nontransferable. Minimum purchase requirement of \$500, must be met with purchases to which no other coupon or instant savings offer applies. May not be combined with any other coupon. No cash/credit back. Not valid on services, custom printing orders placed online promotional products, gift cards, prior purchases or any purchases on other provider Web sites. Tax and shipping not included in calculating minimum purchase.

We apologize if you received this fax in error. If you wish to be removed from our fax list, please write "remove" on this document and fax it back toll free to 1-877-490-2680.

7/27/2008 12:04

mackenson.elysee@staples.com -> Barb Pruni

Page 3 of 3

STAPLES Business Delivery

Economic Stimulus Center

Solutions and savings for small business.

As a company dedicated to small business, we're doing our part to make these tough economic times a little easier. To help your business stretch its budget, we've created the online Economic Stimulus Center — a helpful information and savings resource.

Visit www.staples.com/EconomicCenter to find:

- Great deals
- New tax tips
- Daily sweepstakes
- And more!

Check back often. We'll constantly update the site to provide timely information and regular savings opportunities.

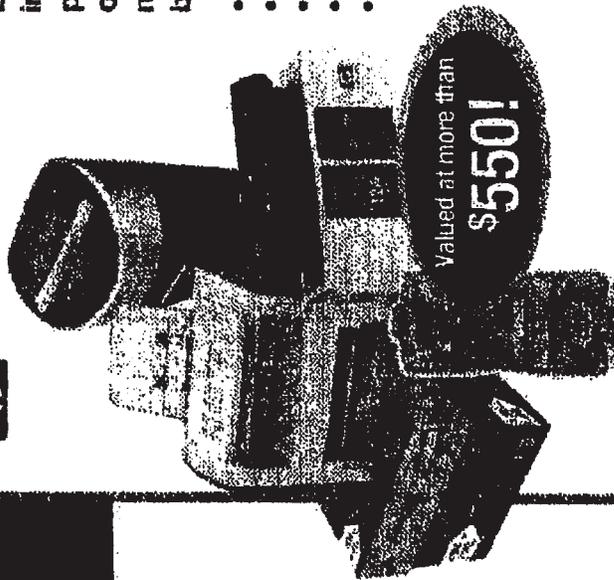
Business-Bundle-A-Day

G I V E A W A Y



Enter to win an incredible prize package for your office. There's a new winner every business day!

- HP all-in-one
- HP toner cartridge
- USB cables
- Shredder
- Case of paper



Valued at more than
\$550!

Enter at www.staples.com/EconomicCenter today!

CALL US: 800-368-3683

Visit www.staples.com/EconomicCenter today.

Only valid through 12/31/08. Excludes HP and IBM products. Void where prohibited. © 2008 Staples Inc. All rights reserved. See www.staples.com for details.

EXHIBIT A



Quill Corporation

100 Schelter Road, Lincolnshire, IL 60069-3621

Date: 8/21/2008
Time: 8:01:09 AM

To: vicki
Company:
Fax: +1 (419) 5296085
From:
Phone:
Fax:
Subject: New Customer Offer From Quill
Pages: 3

Comments: Hi Vicki,
Thanks for taking time out of your busy day to speak with me!

Give Quill a risk-free try today for office products and see for yourself why more than 1 million businesses across America count on us for the best value, the largest selection and service that are second to none. Get your first order with us off to a great start with these **EXCLUSIVE** limited-time "new customer" specials good through August 31, 2008!

CHOOSE EITHER

- \$15 off your first order of \$75 or more
Mention Instant Order Rebate Coupon Code 'TWG' at checkout
- OR
- \$30 off your first order of \$150 or more
Mention Instant Order Rebate Coupon Code 'TZA' at checkout

Plus get:

- Georgia Pacific® copy & print paper for only \$2.89 per ream (\$28.90 per carton; Limit total: 20 reams)
Use item number 374-S-214307 to receive this great price; additional reams are only \$3.09 per ream, item number 156-S-214307

Sample Paper Introductory Offer*:

| Product Details [92 bright, 20 lb] | Price |
|---|---------------------|
| 2 cases of Georgia Pacific Copy & Print Paper (20 reams) 374-S-214307 | \$57.80 |
| 1 case of Georgia Pacific Copy & Print Paper (10 reams) 156-S-214307 | \$30.90 |
| Your price before introductory offer | \$88.70 |
| \$15 COUPON APPLIED [CODE "TWG"] | Less \$15.00 |
| YOUR SPECIAL INTRODUCTORY PRICE | only \$73.70 |

[plus tax]

**The sample above represents one way you can save but check out www.quill.com to find everything you need to run your office including ink and toner, office furniture and technology!*

Order today by calling 1-800-789-1331 or visiting www.quill.com If you're not happy with any part of your Quill experience, just let us know and we'll do whatever it takes to make things right!

According to BizRate, Quill beats the superstores in overall satisfaction! What are you waiting for?

Sincerely,
Cathy Rasmussen



OFFERS GOOD THROUGH 8/31/08

Your only source for office supplies

Quill delivers for you!

- Great prices
- Fast, FREE delivery*
- Award-winning service



* on most orders over \$45

Go to www.quill.com and start saving today!

INSTANT COUPON

OFFER GOOD THROUGH 8/31/08

YOU MUST USE THIS INSTANT COUPON CODE WHEN PLACING YOUR ORDER

TWG

TAKE \$15

off your entire order of \$75 or more.

OR

TAKE \$30

off your entire order of \$150 or more.

May not be used with other discounts. Other exclusions may apply as noted on specific products. Tax and freight charges are not included in minimum purchase or discount. Offer is non-transferable and cannot be used on prior purchases. Quill may refuse to redeem any instant coupon which it believes in good faith to be fraudulently or improperly obtained.

INSTANT COUPON

OFFER GOOD THROUGH 8/31/08

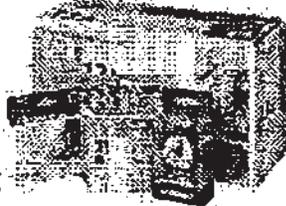
YOU MUST USE THIS INSTANT COUPON CODE WHEN PLACING YOUR ORDER

TZA

Coupon valid for recipient only—one time use.

Your lowest delivered price on ink and toner!

- The largest selection anywhere
- In-stock guarantee —for details visit www.quill.com/instock



Go to www.quill.com/inkandtoner and find what you need today!

Georgia-Pacific Copy & Print paper

289 Reg. \$7.29-

per ream in qty. (\$28.90 per carton)
Limit Total: 20 reams per customer
Item number 374-S-214307

Ordering more than 20 reams today?
You can still get a great price! \$3.05 per ream in qty. (Only \$30.90/carton). Must order in multiples of 10 reams.
Item number 156-S-214307.



Quill beats the superstores in overall satisfaction and satisfaction with on-time delivery in BizRate's Office Supplies Category!

Based on BizRate Research Office Supplies category data and ratings for calendar year 2007. ©2007 BizRate.com. All Rights Reserved.

Phone 800.789.1331 www.quill.com Fax 800.789.8955

Although Quill intends to maintain its prices during the life of its mailings, Quill reserves the right, to be exercised at its sole discretion, to revise prices, limit quantities and correct printing/pricing errors. This promotional message was sent by Quill Corporation. If you prefer not to receive future fax communications from Quill, call 800-789-1331. This media was intended for the recipient's use only. Only the original recipient may use any Instant Coupon Code included here. Quill reserves the right to reject Instant Coupon Codes which it believes in good faith to be fraudulently or improperly obtained from a bulletin board or other Internet site. Quill Lincolnshire, Inc., 100 Schelter Road, Lincolnshire, IL 60069.

5A E81 V5



Quill Corporation

100 Schelter Road, Lincolnshire, IL 60069-3621

Date: 9/22/2008

Time: 12:41:35 PM

To: Vicki Spangler
Company:
Fax: 14195296085

From: Stephen
Phone: 800-789-1331
Fax: 800-789-8955

Subject: New Customer Offer from Quill!
Pages: 2

Comments: Thanks for taking time out of your busy day to speak with us! Give Quill a risk-free try for office products and see for yourself why more than 1 million businesses across America count on us for the best value, largest selection and service that are second to none. Get your first order off to a great start with these EXCLUSIVE limited-time "new customer" specials good through September 30, 2008!

Order today by visiting www.quill.com or by calling 1-800-789-1331. According to BizRate, Quill beats the superstores in overall satisfaction! What are you waiting for?

**Sincerely,
Your Quill Team**

QUILL

OFFERS GOOD THROUGH 9/30/08

Your only source for office supplies

Quill delivers for you!

- Great prices
- Fast, FREE delivery*
- Award-winning service



* Fast, FREE delivery on most orders over \$45

Want to pay less for ink and toner?

- Save up to 71% on compatible ink and toner
- Great selection
- In stock or it's FREE!

See www.quill.com for more information.



Go to www.quill.com/inksavings

Georgia-Pacific Copy & Print paper

2.99

per 500 sheets (100% recycled, 100% post consumer waste)

Item # 135-02-1127

Go to www.quill.com/emailsingup

Phone 800.789.1331 www.quill.com

Although Quill intends to maintain its prices during the life of its mailings, Quill reserves the right, to be exercised at its sole discretion, to revise prices, limit quantities and correct printing/pricing errors. This promotional message was sent by Quill Corporation. If you prefer not to receive future fax communications from Quill, call 800-789-1331. This media was intended for the recipient's use only. Only the original recipient may use any Instant Coupon Code included here. Quill reserves the right to reject Instant Coupon Codes which it believes in good faith to be fraudulently or improperly obtained from a bulletin board or other internet site. Quill Lincolshire, Inc., 100 Schuster Road, Lincolshire, IL 60069

Bonus Coupon

FREE⁽¹⁾ case of Quill Brand[®] copy paper when you spend \$150 or more on ink and toner



TAKE \$30

off⁽²⁾ your entire order of \$150 or more.



TAKE \$15

off⁽²⁾ your entire order of \$75 or more.



(1) Offer may not be combined with other discounts, sales, coupons or promotions and is not valid on prior purchases or payments. Excludes special order items. Other restrictions and/or exclusions may apply.
 (2) May not be used with other discounts. Other exclusions may apply as noted on specific products. Tax and freight charges are not included in minimum purchase or discount. Offer is non-transferable and cannot be used on prior purchases. Quill may refuse to redeem any instant coupon which it believes in good faith to be fraudulently or improperly obtained.

Coupon valid for recipient only—one time use.