IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Civil Action No. 10-CV-01546-REB-CBS

The Direct Marketing Association
        Plaintiff,
        V
Roxy Huber, in her capacity as Executive
  Director, Colorado Department of Revenue
        Defendant

EXPERT REPORT OF F. CURTIS BARRY

I am **F. Curtis Barry**, the Founder and President of F Curtis Barry & Company, with offices in Richmond Virginia. I have been retained by the law firm of Brann & Isaacson, counsel to the Direct Marketing Association ("DMA"), to offer my expert opinions regarding the costs of compliance with certain requirements of a new Colorado statute and regulation that will be incurred by retailers located outside of Colorado subject to the law.

My compensation is on a per consulting day used at $1,850 (or $231.25 on an hourly basis). We are paid regardless of the outcome.

I.   STATEMENT OF OPINIONS.

After reviewing and considering the data and information described in Section II, I offer the following opinions:

- The Colorado regulation is an expensive process for out-of-state retailers to implement for a small number of purchasers spending over $500 annually.

- This regulation requires a considerable effort be spent on Information Technology (IT) systems. IT costs will vary between retailers and software vendors depending on the age of the order processing and website technologies; the flexible of the development technology; and the internal IT cost structure.
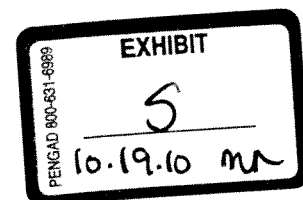
- This analysis has been formatted into categories of costs:

    o Costs incurred to satisfy basic statutory/regulatory requirements

    o Costs that are necessary but not discretionary

    o Costs that are discretionary but good business practice

Colorado in state retailers will have a competitive advantage.

Because of the customer sensitivity to costs and privacy, we anticipate that this regulation will cause out-of-state retailers to lose customers and sales.

There are a number of potential Customer Service issues in the Call Center and Customer Privacy Policies which out-of-state retailers will need to deal with.

II. DATA AND INFORMATION CONSIDERED IN FORMING OPINIONS.

The data or other information I considered in forming my opinions includes:

A. Court Documents and Regulations

- House Bill 10-1193

- Colorado Regulation 39-21-112.3.5

- State of Colorado enacted House Bill 10-1193

- DMA Amended First Complaint

- DMA Exhibit 2 – Colorado Regulation 39-21-112.3.5

B. Sources For Supporting Data

Over the course of 25 years we have worked with hundreds of customers, software companies and marketing service bureaus. In this section we cite our sources for the data and experience that we have used to develop these estimates.

1. Systems Development Costs

The cost to develop systems, whether designed and programmed internally or using commercial software vendors, is extensive in general. On a constant basis, we experience company management reactions of what it costs to develop systems. When you consider the costs which are in this expert opinion, we feel it is important to look at them in several contexts:

2

- Professional Programming Rates
- Systems Development Process and tasks involved to make the change
- Complexity of Evaluating, programming and Implementing Colorado's Regulation

a. Professional Programming Rates

i. Commercial Systems Development Rates

We assist our clients with Request For Proposals for commercial systems from software vendors, 3rd party fulfillment services and marketing service bureaus on a continual basis. We look at dozens of vendor responses each year for proposed work.

From external vendors, commercial programming rates for evaluating, programming and implementing program changes are charged back to the customers. These are the typical commercial rates that we see currently in the marketplace. The rates within the same software company vary from $140 per hour ($1,120 per day) to $225 per hour (or $1,800 per day) depending on the position and level of skill that is required. Examples of skill levels within a service provider are Trainer; various programmer skill levels; business analysts that analyze the business problem in terms of the system's design; software architect that understands the higher level design and data base changes; to project manager that leads the project. Trainers would be at $140 per hour and Project Managers at $225 per hour.

ii. Internal IT Systems Development Costs

Internal IT programming rates can vary widely depending on the skill level and marketplace. Much like the commercial rates cited above for skill levels and the positions, the labor costs can vary from $50,000 per year ($24.00 per hour) to $100,000 ($48.00 per hour) for experienced programmers. Project managers can earn more than $100,000 per year.

In addition, company benefit rates often add 20% to 30% to the cost of employing professionals. A 25% benefit rate added to these hourly costs brings the labor rate to $31 and $62 per hour.

b. The Systems Development Process

When you review the costs of implementing the Colorado regulation changes, we think it's important to take into account the types of work required to develop and implement the change. System development is a multi-phased process which is governed by industry best practices and company IT standards to insure the best solution for the company.

i. Cost to Evaluate Requested Systems Change

IT industry best practice - both internal IT departments and commercial systems providers -is to conduct an evaluation of proposed changes and gain approval by provider and

3

customer management. In most cases the customer or requesting department has to pay for a detail evaluation of the programming requested which can be $1,000 to $5000 on the low end to much higher costs for complex changes and new subsystems.

These evaluation tasks include how the proposed changes will impact the system or services; how many hours are required and for what skill levels; what programming resources availability; IT's opinion of the change; a schedule that can be met; and a requested sign off between the parties. In addition, the customer or vendor may choose to not proceed with the evaluated change. This evaluation process must take place and the customer must pay even if it's a mandatory legal or accounting change.

ii. Program Development Costs

All the tasks to develop user requirements; design program changes; develop program specifications; program the changes; testing at program, subsystem and total system level. At various control points in the process management signs off on the work.

iii. Implementation Costs

The cited costs include all the costs to implement the system within the company departments. These include IT training the user and program documentation for the change and operational production tasks.

iv. Complexity of Evaluating, Programming and Implementing Colorado's Regulation

As we mentioned earlier, we review and negotiate software contracts and modifications for clients with vendors on a regular basis. We have used our knowledge and experience to make a judgment about the complexity and an estimate of some of these order management systems and e-commerce costs.

How difficult the changes will be for companies to make will vary based:

- How flexible the system application and technology is. The vendors of commercial systems that have newer designed systems will have an easier time of implementing the regulation (new programming technologies, documentation and specialists, etc.).
- Whether outside programming resources are required to make the changes. With older order processing systems, systems can be in use 10 to 20 years because of the large investment.

In our interviews with retailers and software vendors the cost will vary considerably. We believe we have provided conservative estimates.

We will also aid that the IT industry has a poor track record of delivering on time and with budget. We find that 50% of the projects after completion are over budget.

2. Cost For Marketing Service Bureaus

For the costs we have cited, we have knowledge of a number of marketing service bureaus pricing models for building, updating and analyzing customer purchases. For this opinion we have used knowledge of mailing service costs to print and insert the Annual Purchase Summary and mailing First-Class.

EXHIBITS.

The Exhibits are used to summarize or support my opinions. The Exhibits below include:

Exhibit A – The Transactional Notice – Requirements and Costs

Exhibit B. Annual Purchase Summary – Requirements and Costs

Exhibit C. The Customer Information Report – Requirements and Costs

Exhibit D. Other Potential Costs Not Discussed

In Exhibits A – C, we have organized costs into three categories:

- o Costs incurred to satisfy basic statutory/regulatory requirements

- o Costs that are necessary but not discretionary

- o Costs that are discretionary but good business practice

Exhibit A – The Transactional Notice – Requirements and Costs

The regulation requires that the customer be notified that they are responsible for Colorado sales tax when purchasing from out-of-state retailers. This is required on every purchase.

1. Costs incurred to satisfy basic statutory/regulatory requirements

a) Change web order path

We believe that companies' e-commerce system will need to be modified by Information Technology (IT) personnel to notify the customer while they are in the order path but have not completed the transaction, of the Colorado requirements. The e-commerce shopping system would alert the purchaser to the fact that they will be required to pay Colorado sales tax on merchandise purchased through out-of-state retailers. We would expect that the customer would then be referred to the e-commerce sites Frequently Asked Questions (FAQs and answers) to learn more about the customer's sales tax obligations and the retailer's responsibilities. The customer would have the option to abort (cancel) the shopping cart or basket and void the transaction.

Companies strive to make the checkout process in e-commerce streamlined and with as few "clicks" or steps as possible. A slow complicated checkout process is one of the e-commerce's leading reasons for abandoning the sale.

6

Generally, companies avoid changing the order path because of the desire to move quickly through the transaction.

Retailers we have talked to are looking at a variety of solutions and workarounds including having the sales person or Call Center rep input a short phrase message that will print on the customer order and refer the customer to the website for more details. Another is that e-commerce customers to force the Colorado customer, when they enter their delivery address, to have to click a button before proceeding with the sale that they understand their sales tax obligations.

There are a variety of workarounds that we have heard discussed which probably do not meet the regulation. One is using e-commerce trigger e-mails to inform the Colorado customer after the order is accepted by the system. Another is flagging any Colorado customer order in the fulfillment system to be suspended in the warehouse and for Colorado literature to be inserted at the pack station.

Estimated cost to modify order the order path for the message is estimated $5,000; for older technologies and outside vendors up to $10,000.

b) Print statement on invoice / packing slip

Changing how the computerized order prints can be a significant change because of the comprehensiveness of the program logic. A message about sales tax payment will need to print on the order or pack slip. The message will be triggered by the Colorado state abbreviation "CO" in the customer or ship to address record.

Estimated cost to modify the computerized order or pack slip is estimated $5,000; for older technologies and outside vendors up to $10,000.

2. Costs that are necessary but not discretionary

a. Call center training and procedures. Call centers develop written scripts and procedures for training the representatives and handling transactions and exception conditions. Because of the negative customer impact for Colorado purchasers, call centers will need to develop procedures on how to explain the Statue and "save the sale" and/or "save the customer".

Costs estimated at $2,000 to $3,000. This does not include the actual training time which will vary by the call center size (i.e. number of reps).

b. Customer service call center costs to answer inquiries and complaints. Colorado purchasers typically represent about 1.6% of a direct marketer's house file based on Colorado population. We would expect that inquiries and complaints of this sensitive nature will result in a three to four minute call. Typically the fully loaded cost per call is between $1.50 and $2.00. In defining this as fully loaded costs we include call center rep direct hourly wages, management, employee benefits, space, telecom, etc. Our estimate is that 50% of the customers in Colorado

7

will have questions about sales tax. We did not estimate a cost as it varies with the size of the house file and therefore the number of customers and inquires.

c. Professional assistance. This Statue will require assistance from expert legal or accounting firms to ensure company's compliance. Also, the systems developed will have a need to be highly accurate and treated as a financial system even though the information may come from a marketing system. Companies will need to change their published Customer Privacy Policies. In addition, it will require effort from the company's creative department to create descriptions which are customer friendly as possible because of customer sensitive nature of this information

Costs estimated at $3,000 to $5,000. Initial costs of experts to set up disclosure and reporting and assure compliance.

d. On-Going Compliance Costs. Because of the customer implications and need for accuracy of reported purchases, we believe there will be the necessity for on-going compliance review. The estimated costs of on-going compliance costs: $1,500 to $2,000

3. Costs that are discretionary but good business practice

a. Modify the order processing system to calculate sales tax amount. We expect that retailers will want to provide the information as a service to customers when the call center rep or the e-commerce system informs the customer they have to pay the sales tax. This is especially true for Call Centers inquiries or orders when the customer is on the phone. They have an opportunity to "save the sale" when the customer starts to question the added cost and liability.

Presently, systems use zip codes or geo codes combined with merchandise categories and dollar limits to determine if a customer is subject to sales tax. In all cases where there is customer tax liability (nexus), the system calculates it and stores the tax total on the ordering systems' customer order.

In this case the retailer would not be collecting taxes. There is no "info only tax field" in systems to store the calculated sales tax value. In order to advise the customer, the order processing system would have to be changed either by the software vendor or internally.

The estimated costs for this modification may be in a $5,000 to $10,000 range.

8

Exhibit B. Annual Purchase Summary – Requirements and Costs

1). Costs incurred to satisfy basic statutory/regulatory requirements

This section identifies the associated costs to create the tracking and reporting system for the Annual Purchase Summary including:

- Systems costs resulting from year end disclosure requirements.

- Identifying purchasers with sales of $500+ sent as orders or ship tos (gifts) to Colorado.

  The retailer must run the analysis and report all customers even if the retailer has only one purchaser over $500.

- Total capture all purchase info (dates, amounts, categories).

There are two potential sources for this detail order information – operational order processing system and the direct marketing system. The order and customer number associated with the transaction will also be required to answer customer inquiries back to the operational file. As explained later in this section, Complication to Tracking and Notification Programming, there are complexities involved with the data base programming and identifying how to aggregate purchases.

- The regulation requires the production of the Annual Disclosure Notice by extracting the order files, to print and mail First Class letter, etc.

a. Program Development of the Colorado Tracking and Reporting Required

The retailer will have to develop a tracking and reporting system to meet the regulation's requirements. In a generalized way, we have outlined the production processing steps the system and the various departments would need to accomplish to meet the statue's annual requirements. The production steps are:

1. The new system will use as its base data a high data integrity marketing or operational customer purchase file. It must have all detail order/purchase activity data and customer name and address and ship tos. It must be totally accurate as a financial system would be.
2. IT Department extracts by state of Colorado purchases by customer for the year
3. IT Department extracts by state of Colorado ship tos and gift recipients names and addresses?
4. IT system logic determines which customers exceed $500 annual purchases.
5. IT system will track all Colorado customer purchases and report all purchases regardless of amount.

6. IT Department runs preliminary Notices of customers purchasing over $500 and Annual Purchase Summary to customers.
7. Retailer's Accounting Department would make a visual check and identify if any corrections are necessary.
8. Retailer Accounting Department makes any corrections and approves final IT production run.
9. IT Department runs final Notices and Annual Purchase Summary purchasers and ship to and gift recipients.
10. IT system outputs Annual Purchase Summary disclosures to magnetic media or transmits the required data and formats to mailing house.
11. Mailing house produces disclosures and Annual Purchase Summary; inserts the printed material in #10 envelops; and mails First Class
12. IT Department runs Customer Information Report for Department of Revenue
13. IT Department transmits the Customer Information Report to the Colorado Department of Revenue

Within the Retailer's organization the responsibilities cited above could be performed by different departments.

If the company chooses to run the new Colorado system at an outside service bureau, then the service would process the year end file of purchases. If the company hasn't done marketing system updates earlier in the year this would need to take place first. In many companies these updates take place monthly or quarterly.

Many smaller companies do not use merchandise categories and detail transactions are not satisfactory for this tracking and reporting. Is there any Colorado sales taxing by category of product that will be part of the systems logic?

The estimated costs for developing the system to track and produce the Annual Purchase Summary are as follows:

Company internal development costs to develop system internally internal costs of $8,000 to $10,000; or

External programming by marketing or software vendor to create system: $15,000 to $20,000

b. Annual Costs to Produce the Annual Purchase Summary

Essential to estimating the annual costs of all the steps in the process cited above, is to estimate how many customers will be affected by the Jan 31 Annual Purchase Summary For Total Sales Exceeding $500. Because of the variable nature of a) the number of Colorado customers, b) the size of marketing customer files and c) the expense incurred to produce the Annual Purchase Summary, the total costs and calculation on a cost per piece will vary.

10

In order to get a estimate of the number of customers, one has to develop an estimate of the number Colorado customers that are affected by the regulation. In general we feel there are several factors which will determine how many customers get the Annual Purchase Summary:

- Size of the 12 month buyer (purchaser) file – varies by sales volume
- Average order in dollars – many businesses have less than $100 average order
- The number of times annually a customer purchases annually is often less than 2 times
- Number of one time buyers – most businesses experience that 50% of all first time buyers are opportunistic and never buy again.

We had a occasion to talk with one mailer that had for Jan-Sept 2010 year to date only 600 orders (and less than 600 purchasers) for Colorado. Only 50 of those orders exceeded $500. This reflects orders; customer count will be lower because of repeat buyers.

Our conclusion is that less than 20% of the Colorado purchasers on a company file will buy $500 or more per year. We have used this in calculating the number of disclosures and the associated annual costs. This yields a relatively small number of customers for most out-of-state retailers.

As we said earlier, the costs of the annual IT production processing, the mailing house insertion, postage and mailing of the customer disclosures is a variable cost based on the number of customers over $500.

- Production run time costs annually. The cost of computer processing and the IT labor has a cost per hour which is not easily identified. This will be true whether internal company processing or through a marketing service bureau. If a computer requires a marketing service bureau generally will include a minimum set up charge (which could be $200 to $300) and a cost of $2 per 1000 names processed. We have not estimated this cost.

- Mailing service costs. Costs to run and insert the Annual Purchase Summary is a variable cost based on typically minimum set up cost (of $100 to $200 dollars bundled into the per piece cost) and a variable cost for 500 to 1,000 customers mailed. We would expect this will cost $1.25 to $1.50 per piece.

- Supplies will cost $0.10 to $0.20 per piece.
  We assumed up to two inserts and a #10 envelop.

- Annual Purchase Summary must be mailed First-Class Mail for $0.44.

When all costs are summed and the estimated number of Colorado customers purchasing over $500 annually is determined, the estimated costs on the average will cost on the low end $2.00 to $3.00 per customer disclosure (per piece costs) including all minimums and set ups.

11

Every company will be different based on the size of the house file, average order value, repeat 0purchase and one time buyer percentage.

Complication to Tracking and Notification Programming

As mentioned earlier, there are several direct marketing data base IT system concepts that complicate the programming of "who the purchaser is" and who will receive the Annual Purchase Summary and be required to pay the sales tax. The details are:

- Business-to-Business (B2B)- it is not uncommon for B2B to have a complicated marketing data base structure and mailing concept. If we use a school district as an example, it may be better understood. Public schools are part of an entity like a county or city. There are often many contact names, addresses, billing information, e-mails and telephone numbers in the total scheme of a customer record. For example, a teacher in a local school may be the one ordering the product.

  Customer purchase data might be grouped with other purchases under a school district; or school's department (e.g. science department). A county purchasing agent may pay for the order. Or a school purchasing agent. Or the individual teacher may pay for the shipment. By definition who is the customer that gets the notification and is reported?

- In consumer retailing, there is the concept of "house holding". Think of a house that has two children and an adult. They all live at the same address. Is the "customer" each individual purchasing or the household in total?

- To complicate tracking and reporting purchases customers often use different names. In the case of myself, my given Christian name is "Fred Curtis Barry". The name I choose to use for my company is "F. Curtis Barry & Company". The name many people know me as "Curt Barry". The complexity often generates multiple catalogs and other correspondence. For purchase tracking and reporting, who is the customer?

  These are technical programming questions that every direct marketer responding to the Colorado regulation will need to answer and develop programming around.

2. Costs that are necessary but not discretionary

Regarding the language on the Disclosure, we would expect that Statue's details would need to be disclosed similar to bank card and accounts receivable notices. However, retailers will want their notices to be more customer friendly in format and language than financial notices so that they do not lose the customer. No costs estimated.

3. Costs that are discretionary but good business practice

We believe that it would be prudent to have an internal person on site at mailing service to assure privacy when running and inserting the Annual Purchase Summary. No costs estimated.

12

As discussed earlier from a customer service perspective, we can envision companies wanting to be able to inform the customer of the amount of the sales tax. They may feel this will ease some of the negative impact.

13

Exhibit C. The Customer Information Report – Requirements and Costs

1. Costs incurred to satisfy basic statutory/regulatory requirements

In Exhibit B Annual Purchase Summary we described the 13 steps involved in processing the Annual Purchase Summary. The last two steps list the transmission or mailing of the report to the Colorado Department of Revenue. The steps are:
12. IT runs The Customer Information Report for Department of Revenue
13. IT transmits or mails The Customer Information Report.

The final specification for the transmission of the Annual Purchase Summary are not completed and are not included in these costs, if the regulation requires specialized software that retailers don't normally use.

Customer information and purchase information is protected by privacy statutes and the data is encrypted when sent between locations. This is not specified in the Colorado regulations and could increase costs.

These systems development costs were included in section B.

2. Costs that are necessary but not discretionary
None identified.

3. Costs that are discretionary but good business practice

None identified.

14

Exhibit D. Other Potential Costs Not Discussed

There a number of potential costs which we wish to point out that but have not been estimated or discussed earlier in the report.

Over 50% of the companies - retailers and software vendors – we have talked to have little of no knowledge of this regulation or the requirements. The larger retailers have more awareness. We are concerned about companies for non-compliance costs.

These estimates do not include the management time spent by Call Center, Marketing, Accounting and General Management personnel required to understand, develop and implement the required systems, changes in Customer Service and Privacy Policies, etc. These could easily exceed the stated costs in this opinion.

Cost of Litigation. Settling customer privacy and legal challenges by customers arising from inadvertent disclosure or customer privacy issues of the Statute.

High cost of losing customers and losing sales. Out-of-state retailers have existing relationships with Colorado purchasers and inquirers for their products. They have acquired Colorado customers promoting and mailing to Colorado purchasers. For example, the cost to acquire a customer can be $10 to $25 because of the low response nature of direct marketing. It often takes 2 or 3 purchases for retailers to have a profitable customer relationship because of these acquisition and fulfillment costs. We anticipate that this statue's requirement will cause a major percentage of the customers to abandon the shopping cart or stop and call the Call Center. Ultimately, the customer may stop shopping through these channels.

Retailers may unfortunately find that it's far cheaper to not advertise and solicit business in Colorado compared to spending additional money to acquire the customer and building relationship with the customer. Therefore, Colorado retailers have a competitive advantage over out-of-state retailers because they do not have to incur these tremendous costs.

For larger companies, many of these costs will be higher, when they have to meet Sarbanes/Oxley requirements.

15

III. QUALIFICATIONS AND PUBLICATIONS.

Attached hereto is a copy of my current *curriculum vitae*, including a list of publications I have authored in the previous four years.

IV. RECENT TESTIMONY.

I have testified as an expert at trial or at deposition during the past ten years in the following matters:

Casual Male Retail Group, Inc. and Casual Male RBT, LLC vs. Robert H. Yarbrough, RKC Mail LLC, d/b/a Mile Post Four and Westport Big & Tall, LLC; United States District Court, District Court of Massachusetts, 2007, Civil Action No. 05-12049; Case 1:05-cv-12049-NMG.

<div style="text-align: right">

_____
F. Curtis Barry

</div>

CURRICULUM VITAE

Fred Curtis "Curt" Barry, President

F. Curtis Barry & Company

1897 Billingsgate Circle, Suite 102

Richmond, VA 23238

804-740-8743, fax 804-740-6179

cbarry@fcbco.com

www.fcbco.com

Curt Barry is founder and president of F. Curtis Barry & Company, a national fulfillment and operations consultancy, with a specialty in systems for the multichannel industries (retail, e-commerce and catalog). These systems include website and e-commerce, call center and order management, warehousing, marketing, merchandising, inventory control, finance, point of sale (POS) and retail merchandising systems, etc.

Mr. Barry has extensive experience with clients that are developing direct and retail systems internally as well as with clients that are selecting and implementing commercial systems.

In his work with clients to select and implement commercial systems, his experience includes but is not limited to:

- Developing user requirements for the new system at a management, department and system functional level;
- Project management and participation in the vendor selection process including development of Requests For Proposal (RFP), evaluating vendors against the RFP, leading user demonstrations by vendor software, vendor due diligence (e.g. reference checks, site visits) and helping to make final vendor selection.
- Working with the vendor and the client to guide the system modification process including macro level and program specifications, cost estimation and understanding the severity of modifications to the base system;
- "Best of breed" systems integration to other systems including high level and detail data flows;
- Negotiating vendor software services contracts including defining client and vendor scope and deliverables, required system modifications, payment schedules, license and service agreements, project schedules, training and implementation plans, client/vendor responsibilities, etc.;
- Planning system testing prior to implementation including program testing, full systems and acceptance by the client;
- File conversion planning and execution for the new system;
- Project planning and management of client and vendor tasks for successful implementation;
- Gaining client and vendor project sign-offs at critical points in the project;

- Status reporting daily and weekly involving detail task plans, estimates and task completion management for clients and software vendors;
- Working with clients on best practices for selecting systems;
- Applying industry best practices in functional areas with the new application software system;

Mr. Barry's internal design, programming and implementation experience includes:

- F. Curtis Barry & Company development of proprietary systems for measuring product profitability and inventory forecasting systems.
- Currently, through a partnership with Taurus Software, F. Curtis Barry & Company co-develops an executive dashboard and analytics system, Manage Metrix (managemetrix.com).
- Mr. Barry was a principal in Molster, Barry & Mason, Inc. 1983 to 1985. The firm designed and programmed catalog order management systems for catalog companies Tiffany & Company, Henri Bendel and DH Holmes.
- Manager of Research and Development for the Corporate Data Center of Garfinckel, Brooks Brother, Miller & Rhoads from 1973 to 1983. The department Mr. Barry managed designed and programmed all of the information systems for the retail and catalog chain of 250 stores with sales of $500 million.

Mr. Barry has extensive experience with point of sale (POS) and store level merchandising systems. From 1970 to 1973, Mr. Barry was employed by NCR Corporation in selling and installing point of sale and retail systems in dozens of major retail department and specialty store chains.

In the F. Curtis Barry & Company, they have completed assignments for selecting and implementing POS systems for multichannel clients.

Bachelor of Science degree, Cornell University, 1970.

Published Articles By Curt Barry 2006 to 2010

Since 1983, Mr. Barry has authored hundreds of articles in catalog and e-commerce trade publications (Multichannel Merchant, Catalog Success, catalogue + e-business, Catalog Age). Other articles appear on the firm's blog and website. Mr. Barry authored the book Best Practices in Multichannel Operations & Fulfillment, ISBN 13:978-1-4196-9298-7. Published in 2008. Additional articles and blog opinions are available on www.fcbco.com.

Multichannel Merchant Magazine and Operations & Fulfillment Magazine

These are Penton Magazines and the articles are available from the magazines' website archives.

How Barcode Use Can Help Reduce Warehouse Costs
Sep 13, 2010, Multichannel Merchant, By Curt Barry

How to Reduce Warehouse Costs
Sep 01, 2010, Multichannel Merchant, By Curt Barry

Proper Slotting Can Reduce Warehouse Costs
Aug 30, 2010, Multichannel Merchant, By Curt Barry

How to Reduce Labor Management Costs
Aug 17, 2010, Multichannel Merchant, By Curt Barry

12 Mistakes to Avoid in Systems Selection
Jul 01, 2010, Multichannel Merchant, By Curt Barry

Evaluating Web platform systems
May 01, 2010, Multichannel Merchant, By Curt Barry

Tips for Finding Third-Party Fulfillment
Mar 29, 2010, Multichannel Merchant, By Curt Barry

Managing Your Fulfillment Folks
Mar 01, 2010, Multichannel Merchant, By Curt Barry

The state of free shipping offers
Feb 01, 2010, Multichannel Merchant, By Curt Barry

Web Expenditures: Sharpening your e-commerce Spend
Dec 01, 2009, Multichannel Merchant, By Curt Barry

Why Some Merchants are Saying Yes to SaaS
Nov 23, 2009, Multichannel Merchant, By Curt Barry

Sharpening Your E-Commerce Spend
Nov 19, 2009, Multichannel Merchant

Is outsourcing an option for you?
Oct 01, 2009, Multichannel Merchant, By Curt Barry

10 steps to better manage your stock | Take a financial view of inventory
Sep 01, 2009, Multichannel Merchant, By Curt Barry

Sorting Out Warehouse Automation
Jul 07, 2009, Multichannel Merchant, By Curt Barry

Tips to help with technology options with budget costs | Time to automate your DC?
Jul 01, 2009, Multichannel Merchant, By Curt Barry

Bean Backorder Customer service Says The Magic Words
Jun 10, 2009, Multichannel Merchant, By Curt Barry

On which version of data should we base our decisions? | Business information systems across the enterprise
May 01, 2009, Multichannel Merchant, By Curt Barry

19

<u>Surveying the software landscape | E-commerce platform providers are expanding offerings into order management</u>
Apr 01, 2009, Multichannel Merchant, By Curt Barry

<u>Is Now a Good Time to Invest in Systems? | Excellent time to invest in the e-commerce, order management and warehouse management software that your business needs</u>
Apr 01, 2009, Multichannel Merchant, Curt Barry

<u>Paying for free shipping and handling | High shipping and processing has been driven upwards by record freight increase and accessorial charges</u>
Feb 01, 2009, Multichannel Merchant, By Curt Barry

<u>A Database Marketer's Perspective on Free Shipping</u>
Jan 06, 2009, Multichannel Merchant, By Curt Barry

<u>Virtualization and Going Green in IT</u>
Dec 23, 2008, Multichannel Merchant, By Curt Barry

O&F<u>Conducting a Post Season Audit, Part I</u>

Dec 18, 2008, Operations & Fulfillment, by Curt Barry

<u>Sales Without Inventory</u>
Dec 03, 2008, Multichannel Merchant, By Curt Barry

<u>Prioritizing your tech spend | Where to put your technology dollars during downtown</u>
Dec 01, 2008, Multichannel Merchant, By Curt Barry

<u>IT Spending Priorities</u>
Nov 25, 2008, Multichannel Merchant, By Curt Barry

<u>Keeping contact center costs in line | Balancing expenses with service levels</u>
Oct 01, 2008, Multichannel Merchant, By Curt Barry

<u>Home Agent Trend Key to Reducing Attrition</u>
Oct 01, 2008, Multichannel Merchant, By Curt Barry

<u>Tough Times or Opportunities Knocking?</u>
Sep 30, 2008, Multichannel Merchant, By Curt Barry

<u>More Green Thoughts</u>
Sep 10, 2008, Multichannel Merchant, By Curt Barry

<u>Let Them Know You're Green</u>
Sep 03, 2008, Multichannel Merchant, By Curt Barry

<u>Eying IT expenditures | Where merchants should put information technology dollars | SaaS</u>
Aug 01, 2008, Multichannel Merchant, By Curt Barry

<u>IT Investment Intelligence</u>
Jul 30, 2008, Multichannel Merchant, By Curt Barry

20

Keeping DC costs at bay
Apr 01, 2008, Multichannel Merchant, By Curt Barry

Post-Holiday Liquidation Strategies
Feb 01, 2008, Multichannel Merchant, By Curt Barry

Clear It Out

Feb 01, 2008, Multichannel Merchant, By Curt Barry

Liquidation Tactics for the Holiday Hangover
Jan 29, 2008, Multichannel Merchant, By Curt Barry

Post-Season Audits, Part 2: Reducing Costs in the DC
Jan 02, 2008, Multichannel Merchant, By Curt Barry

The Fulfillment Doctor….On Third-Party Fulfillment

Jan 31, 2007, Operations & Fulfillment, By Curt Barry

Multichannel Inventory Management
Jan 01, 2008, Multichannel Merchant, BY Curt Barry

Give me the Goods

Jan 01, 2008, Multichannel Merchant, by Curt Barry

Conducting a Post Season Audit, Part I
Dec 18, 2007, Multichannel Merchant, By Curt Barry

15 Tips to Combat Parcel Rate Increases
Nov 28, 2007, Multichannel Merchant, By Curt Barry

Rising Transportation Costs and What To Do About Them
Nov 13, 2007, Multichannel Merchant, By Curt Barry

Fulfillment Doctor: The Real Cost of Employee Turnover
Nov 07, 2007, Multichannel Merchant, By Curt Barry

Twelve Trends in Fulfillment
Nov 01, 2007, Multichannel Merchant, BY CURT BARRY

The Fulfillment Doctor on… The Price of Free Holiday Shipping
Oct 31, 2007, Multichannel Merchant, By Curt Barry

E-commerce isn't the only facet of multichannel marketing to advance
Oct 01, 2007, Multichannel Merchant, by Curt Barry

Merchandising 2.0

Oct 01, 2007, Multichannel Merchant, by Curt Barry

21

Juggling Web and Phone Contacts

Nov 01, 2006, Multichannel Merchant, by Curt Barry

OF Thinking of Relocating Your DC? Consider These 5 Factors

Oct 4, 2006, Operations & Fulfillment, by Curt Barry

OF Quick Tip: Little Touches Can Yield Big Gains in Customer Service

Sept 13, 2006, Operations & Fulfillment, by Curt Barry

Multichannel Inventory: What You Need to Know

Sept 1, 2006, Operations & Fulfillment, by Curt Barry

Exhibit E. Report Supporting Details

Matt- I need to rewrite this section.

How many customers will be affected by the March 1 disclosures exceeding $500?

This is important so to understand the number of customers that a company may be disclosing to in the March 1 timeframe. In general we feel there are several factors in this calculation?

- How large the 12 month buyer (purchaser) file
- The average order in dollars
- The number of times annually a customer purchases annually
- Percentage of first time buyers that never buy again

Our conclusion is that not more than 20% of the Colorado purchasers on a company file will buy $500 or more per year. We have used this in calculating the number of disclosures and the associated annual costs. This yields a relatively small number of customers for most out-of-state retailers.

Here are the details of these calculations and assumptions:

Size of company 12 month buyer file

The size of the 12 month buyer file was used to estimate the number of purchasers.

Examples

Small to moderate sized companies

22

Companies larger than start ups may have 20,000, 12 month purchasers (or 320 Colorado customers) to 80,000, 12 month purchasers (or 1,280 Colorado customers). This figures in the mailing response rate. We expect this will create a large number of inquiries.

Curt will correct this-For start ups up to 80,000, 12 month buyers: $1,120 to $5,120???what is this????

For larger companies

For larger companies with 200,000, 12 month buyers:

Large company with 200,000, 12 month purchasers or higher (or 3,200 Colorado purchasers). $11,200 to $12,800

Average Order

Many consumer businesses are $100 or less for average

High Percentage of One Time (Purchase) Buyers

Many customers are opportunistic in terms of their direct commerce purchases. In analyzing most customer marketing files 50% to 70% of all 1st (one time) buyers never buy again. This low response rate are for a variety of reasons: great price, great offer or from the results of a comparison shopping engine between retailers.

Annual Customer Purchases

Most consumer catalogs are on the average less than 2 purchases annually.

23

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Civil Action No. 10-CV-01546-REB-CBS

The Direct Marketing Association
        Plaintiff,
        V
Roxy Huber, in her capacity as Executive
  Director, Colorado Department of Revenue
        Defendant

EXPERT REPORT OF F. CURTIS BARRY

I am **F. Curtis Barry**, the Founder and President of F Curtis Barry & Company, with offices in Richmond Virginia. I have been retained by the law firm of Brann & Isaacson, counsel to the Direct Marketing Association ("DMA"), to offer my expert opinions regarding the costs of compliance with certain requirements of a new Colorado statute and regulation that will be incurred by retailers located outside of Colorado subject to the law.

My compensation is on a per consulting day used at $1,850 (or $231.25 on an hourly basis). We are paid regardless of the outcome.

I.   STATEMENT OF OPINIONS.

After reviewing and considering the data and information described in Section II, I offer the following opinions:

Matt – I will add these once I've got the base report straight. Preliminarily my conclusions are:

- The Colorado regulation is an expensive process for out-of-state retailers to implement.

- The requirement to produce the Annual Purchase Summary for purchasers over $500 we feel will affect a small number of customers, at a high cost per customer mailed.

- This analysis has been formatted into categories of costs:

FCB 00182
Exh. C
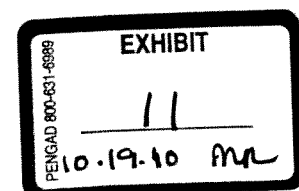
1. Costs incurred to satisfy basic statutory/regulatory requirements – costs estimated at $mmm,mmm

2. Costs that are necessary but not discretionary – costs estimated at $bbb,bbb. Some of these anticipated costs could not be accurately estimated.

3. Costs that are discretionary but good business practice – costs estimated at $ccc,ccc. Some of these anticipated costs could not be accurately estimated.

Colorado in state retailers will therefore have a competitive advantage.

This regulation requires a considerable effort be spent on Information Technology (IT) systems.

We anticipate that this regulation will lose customers and lose sales for out-of state retailers which has a significant cost.

There are Customer Service issues n the Call Center and Customer Privacy Policies which out-of-state retailers will need to deal with.

II. DATA AND INFORMATION CONSIDERED IN FORMING OPINIONS.

The data or other information I considered in forming my opinions includes:

- House Bill 10-1193

- Colorado Regulation 39-21-112.3.5

- State of Colorado enacted House Bill 10-1193

- DMA Amended First Complaint

- DMA Exhibit 2 – Colorado Regulation 39-21-112.3.5

III. EXHIBITS.

The Exhibits are used to summarize or support my opinions. The Exhibits below include:

Exhibit A – The Transactional Notice – Requirements and Costs

Exhibit B. Annual Purchase Summary – Requirements and Costs

Exhibit C. The Customer Information Report – Requirements and Costs

Exhibit D. Other Potential Costs Not Discussed

Exhibit E. Report Supporting Details

2

In Exhibits A – C, we have organized costs into three categories:

1. Costs incurred to satisfy basic statutory/regulatory requirements
2. Costs that are necessary but not discretionary
3. Costs that are discretionary but good business practice

Many of the costs that we have estimated have been developed from our experience over the past 40 years in fulfillment and systems work:

- With marketing, e-commerce and order processing system vendors on new functions and pricing of modifications.

- Improving Call Center's improve customer service.

- With processing systems to fill customer orders in the warehouse.

- Assisting Finance Departments to implement accurate and auditable systems.

Exhibit A – The Transactional Notice – Requirements and Costs

The regulation requires that the customer be notified that they are responsible for Colorado sales tax when purchasing from out-of-state retailers. This is required on every purchase.

1. Costs incurred to satisfy basic statutory/regulatory requirements

a) Change web order path

We believe that companies' e-commerce system will need to be modified by Information Technology (IT) personnel to notify the customer while they are in the order path but have not completed the transaction, of the Colorado requirements. The e-commerce shopping system would alert the purchaser to the fact that they will be required to pay Colorado sales tax on merchandise purchased through out-of-state retailers. We would expect that the customer would then be referred to the e-commerce sites Frequently Asked Questions (FAQs and answers) to learn more about the customer's sales tax obligations and the retailer's responsibilities. The customer would have the option to abort (cancel) the shopping cart or basket and void the transaction.

Companies strive to make the checkout process in e-commerce streamlined and with as few "clicks" or steps as possible. A slow complicated checkout process is one of the e-commerce's leading reasons for abandoning the sale.

Generally, companies avoid changing the order path because of the desire to move quickly through the transaction. We anticipate that this statue's requirement will cause a major

3

percentage of the customers to abandon the shopping cart or stop and call the call center rather than take their time to study the FAQs.

Estimated cost to modify order the order path for the message is estimated from $15,000 to $25,000. This is a significant change which will need to involve vendor's when commercial systems are involved.

b) Print statement on invoice / packing slip

Changing how the computerized order prints can be a significant change because of the comprehensiveness of the program logic. A message about sales tax payment will need to print on the order or pack slip. The message will be triggered by the Colorado state abbreviation "CO" in the customer or ship to address record.

Estimated cost to modify order the order for the message is estimated from $15,000 to $20,000. This is a significant change which will need to involve vendor's when commercial systems are involved.

2. Costs that are necessary but not discretionary

Call center training and procedures. Call centers develop written scripts and procedures for training the representatives and handling transactions and exception conditions. Because of the negative customer impact for Colorado purchasers, call centers will need to develop procedures on how to explain the Statue and "save the sale" and/or "save the customer".

Costs estimated at $2,000 to $3,000. One week develop procedures and training materials. This does not include the actual training time which will vary by the call center size (i.e. number of reps).

Customer service call center costs to answer inquiries and complaints. Colorado purchasers typically represent about 1.6% of a direct marketer's house file based on Colorado population. We would expect that inquiries and complaints of this sensitive nature will result in a three to four minute call. Typically the fully loaded cost per call is between $1.50 and $2.00. In defining this as fully loaded costs we include call center rep direct hourly wages, management, employee benefits, space, telecom, etc. Our estimate is that 50% of the customers in Colorado will have questions about sales tax. We did not estimate a cost as it varies with the size of the house file and therefore the number of customers and inquires.

Professional assistance. This Statue will require assistance from expert legal or accounting firms to ensure company's compliance. Also, the systems developed will have a need to be highly accurate and treated as a financial system even though the information may come from a marketing system. Companies will need to change their published Customer Privacy Policies. In addition, it will require effort from the company's creative department to create descriptions which are customer friendly as possible because of customer sensitive nature of this information

4

Costs estimated at $3,000 to $5,000. Initial costs of experts to set up disclosure and reporting and assure compliance.

On-Going Compliance Costs. Because of the customer implications and need for accuracy of reported purchases, we believe there will be the necessity for on-going compliance review. The estimated costs of on-going compliance costs: $1,500 to $2,000

3. Costs that are discretionary but good business practice

Modify the entire order system to calculate sales tax amount. We expect that retailers will want to provide the information as a service to customers when the call center rep or the e-commerce system informs the customer they have to pay the sales tax. This is especially true for Call Centers inquiries or orders when the customer is on the phone. They have an opportunity to "save the sale" when the customer starts to question the added cost and liability.

In order for order processing systems - an e-commerce website, order management or enterprise systems - to be able to provide support to the call center to inform the customer of their tax liability and notices. This would require a major programming change from current industry practices for sales tax logic.

Presently, systems use zip codes or geo codes combined with merchandise categories and dollar limits to determine if a customer is subject to sales tax. In all cases where there is customer tax liability (nexus), the system calculates it and stores the tax total on the ordering systems' customer order.

In this case the retailer would not be collecting taxes. There is no "info only tax field" in systems to store the calculated sales tax value. In order to advise the customer, the order processing system would have to be changed either by the software vendor or internally.

The estimated costs for this modification may be in a $20,000 to $25,000 range.

5

Exhibit B. Annual Purchase Summary – Requirements and Costs

a). Costs incurred to satisfy basic statutory/regulatory requirements

This section identifies the associated costs with the Annual Purchase Summary including:

- Systems costs resulting from year end disclosure requirements.

- Identifying purchasers with sales of $500+ sent as orders or ship tos (gifts) to Colorado.

  The retailer must run the analysis and report all customers even if the retailer has only one purchaser over $500.

- Total capture all purchase info (dates, amounts , categories).

  There are two potential sources for this detail order information – operational order processing system and the direct marketing system. The order and customer number associated with the transaction will also be required to answer customer inquiries back to the operational file. As explained in this section there are complexities involved with the data base programming and identifying how to aggregate purchases.

- The regulation requires the production of the Annual Disclosure Notice by extracting the order files, to print and mail First Class letter, etc.

The retailer will have to develop a tracking and reporting system to meet the regulation's requirements. In a generalized way, we have outlined the production processing steps the system and the various departments would need to accomplish to meet the statue's annual requirements. The production steps are:

1. The new system will use as its base data a high data integrity marketing or operational customer purchase file. It must have all detail order/purchase activity data and customer name and address and ship tos. It must be totally accurate as a financial system would be.
2. IT Department extracts by state of Colorado purchases by customer for the year
3. IT Department extracts by state of Colorado ship tos and gift recipients names and addresses?
4. IT system logic determines which customers exceed $500 annual purchases.
5. IT system will track all Colorado customer purchases and report all purchases regardless of amount.
6. IT Department runs preliminary Notices of customers purchasing over $500 and Annual Purchase Summary to customers.
7. Retailer's Accounting Department would make a visual check and identify if any corrections are necessary.
8. Retailer Accounting Department makes any corrections and approves final IT production run.

6

9. IT Department runs final Notices and Annual Purchase Summary purchasers and ship to and gift recipients.
10. IT system outputs Annual Purchase Summary disclosures to magnetic media or transmits the required data and formats to mailing house.
11. Mailing house produces disclosures and Annual Purchase Summary; inserts the printed material in #10 envelops; and mails First Class
12. IT Department runs Customer Information Report for Department of Revenue
13. IT Department transmits the Customer Information Report to the Colorado Department of Revenue

Within the Retailer's organization the responsibilities cited above could be performed by different departments.

If the company chooses to run the new Colorado system at an outside service bureau, then the service would process the year end file of purchases. If the company hasn't done marketing system updates earlier in the year this would need to take place first. In many companies these updates take place monthly or quarterly.

Many smaller companies do not use merchandise categories and detail transactions are not satisfactory for this tracking and reporting. Is there any Colorado sales taxing by category of product that will be part of the systems logic?

The estimated costs for developing the system to track and produce the Annual Purchase Summary. Computer programming costs to develop system internally internal costs of $8,000 to $10,000; or

New service from external marketing service bureau providing customer data base creation and update services that maintain customer master file. External programming by service to create system: $15,000 to $20,000

Annual Costs to Produce the Annual Purchase Summary

Essential to estimating the annual of all the steps in the process cited above, is to estimate how many customers will be affected by the Jan 31 Annual Purchase Summary For Total Sales Exceeding $500. Because of the variable nature of a) the number of Colorado customers, b) the size of marketing customer files and c) the expense incurred to produce the Annual Purchase Summary, the total costs and calculation on a cost per piece will vary.

In order to get a estimate of the number of customers, one has to develop an estimate of the number Colorado customers that are affected by the regulation. In general we feel there are several factors in this calculation:

- Size of the 12 month buyer (purchaser) file
- Average order in dollars
- The number of times annually a customer purchases annually
- Number of one time buyers

7

Our conclusion is that not more than 20% of the Colorado purchasers on a company file will buy $500 or more per year. We have used this in calculating the number of disclosures and the associated annual costs. This yields a relatively small number of customers for most out-of-state retailers. **Exhibit E. Report Supporting Details** contains the details of calculating the number of customer affected.

As we said earlier, the costs of the annual IT production processing, the mailing house insertion, postage and mailing of the customer disclosures is a variable cost based on the number of disclosures. Here are more details about cost considerations:

- Production run time costs annually. The cost of computer processing and the IT labor has a cost per hour which is not easily identified. This will be true whether internal company processing or through a marketing service bureau. Processing through a marketing service bureau generally will include a minimum set up charge (which could be $200 to $300) and a cost per 1000 names processed which could be $2 to $3.

- Mailing service costs. Costs to run and insert the Annual Purchase Summary is a variable cost based on typically minimum set up cost of $100 to $200 dollars and a variable cost for 500 to 1,000 customers mailed. These are the Colorado purchasers exceeding the $500+ in annual purchases. We assumed up to two inserts and a #10 envelop.

- Annual Purchase Summary must be mailed First-Class Mail for $0.44.

When taken all costs together and considering the estimated low number of Colorado customers being effected, the estimated costs on the average will cost $4 to $5 dollars per customer disclosure (per piece costs) including all minimums and set ups.

Complication to Tracking and Notification Programming

As mentioned earlier, there are several direct marketing data base IT system concepts that complicate the programming of "who the purchaser is" and who will receive the Annual Purchase Summary and be required to pay the sales tax. The details are:

- Business-to-Business (B2B)- it is not uncommon for B2B to have a complicated marketing data base structure and mailing concept. If we use a school district as an example, it may be better understood. Public schools are part of an entity like a county or city. There are often many contact names, addresses, billing information, e-mails and telephone numbers in the total scheme of a customer record. For example, a teacher in a local school may be the one ordering the product.

  Customer purchase data might be grouped with other purchases under a school district; or school's department (e.g. science department). A county purchasing agent may pay for the order. Or a school purchasing agent. Or the individual teacher may pay for the shipment. By definition who is the customer that gets the notification and is reported?

8

- In consumer retailing, there is the concept of "house holding". Think of a house that has two children and an adult. They all live at the same address. Is the "customer" each individual purchasing or the household in total?

- To complicate tracking and reporting purchases customers often use different names. In the case of myself, my given Christian name is "Fred Curtis Barry". The name I choose to use for my company is "F. Curtis Barry & Company". The name many people know me as "Curt Barry". The complexity often generates multiple catalogs and other correspondence. For purchase tracking and reporting, who is the customer?

  These are technical programming questions that every direct marketer responding to the Colorado regulation will need to answer and develop programming around. It also probably dictates that the more advanced marketing files rather than the internal operational order files will need to be used. Those more advanced systems are often external services which will increase costs.

b. Costs that are necessary but not discretionary

Regarding the language on the Disclosure, we would expect that Statue's details would need to be disclosed similar to bank card and accounts receivable notices. However, retailers will want their notices to be more customer friendly in format and language than financial notices so that they do not lose the customer.

c. Costs that are discretionary but good business practice

We believe that it would be prudent to have an internal person on site at mailing service to assure privacy when running and inserting the Annual Purchase Summary. No estimated cost.

As discussed earlier from a customer service perspective, we can envision companies wanting to be able to inform the customer of the amount of the sales tax. They may feel this will ease some of the negative impact.

Exhibit C. The Customer Information Report – Requirements and Costs

1. Costs incurred to satisfy basic statutory/regulatory requirements

In Exhibit B Annual Purchase Summary we described the 13 steps involved in processing the Annual Purchase Summary. The last two steps list the transmission or mailing of the report to the Colorado Department of Revenue. The steps are:

      12. IT runs The Customer Information Report for Department of Revenue
      13. IT transmits or mails The Customer Information Report.

The final specification for the transmission of the Annual Purchase Summary are not completed and are not included in these costs, if the regulation requires specialized software that retailers don't normally use.

Customer information and purchase information is protected by privacy statutes and the data is encrypted when sent between locations. This is not spelled out in the Colorado regulations and could increase costs.

2. Costs that are necessary but not discretionary
None

3. Costs that are discretionary but good business practice

None

Exhibit D. Other Potential Costs Not Discussed

There a number of potential costs which we wish to point out that but have not been estimated or discussed earlier in the report.

Cost of Litigation. Settling customer privacy and legal challenges by customers arising from inadvertent disclosure or customer privacy issues of the Statute.

High cost of losing customers and losing sales. Out-of-state retailers have existing relationships with Colorado purchasers and inquirers for their products. They have acquired Colorado customers promoting and mailing to Colorado purchasers. For example, the cost to acquire a customer can be $10 to $25 because of the low response nature of direct marketing. It often takes 2 or 3 purchases for retailers to have a profitable customer relationship because of these acquisition and fulfillment costs.

Retailers may unfortunately find that it's far cheaper to not advertise and solicit business in Colorado compared to spending additional money to acquire the customer and building relationship with the customer. Therefore, Colorado retailers have a competitive advantage over out-of-state retailers because they do not have to incur these tremendous costs.

For larger companies, many of these costs will be higher, when they have to meet Sarbanes/Oxley requirements.

Exhibit E. Report Supporting Details

Matt- I need to rewrite this section.

How many customers will be affected by the March 1 disclosures exceeding $500?

This is important so to understand the number of customers that a company may be disclosing to in the March 1 timeframe. In general we feel there are several factors in this calculation?

- How large the 12 month buyer (purchaser) file
- The average order in dollars
- The number of times annually a customer purchases annually
- Percentage of first time buyers that never buy again

Our conclusion is that not more than 20% of the Colorado purchasers on a company file will buy $500 or more per year. We have used this in calculating the number of disclosures and the associated annual costs. This yields a relatively small number of customers for most out-of-state retailers.

Here are the details of these calculations and assumptions:

Size of company 12 month buyer file

The size of the 12 month buyer file was used to estimate the number of purchasers.

Examples

Small to moderate sized companies

Companies larger than start ups may have 20,000, 12 month purchasers (or 320 Colorado customers) to 80,000, 12 month purchasers (or 1,280 Colorado customers). This figures in the mailing response rate. We expect this will create a large number of inquiries.

Curt will correct this-For start ups up to 80,000, 12 month buyers: $1,120 to $5,120???what is this????

For larger companies

For larger companies with 200,000, 12 month buyers:

Large company with 200,000, 12 month purchasers or higher (or 3,200 Colorado purchasers). $11,200 to $12,800

Average Order

Many consumer businesses are $100 or less for average

High Percentage of One Time (Purchase) Buyers

12

Many customers are opportunistic in terms of their direct commerce purchases. In analyzing most customer marketing files 50% to 70% of all 1st (one time) buyers never buy again. This low response rate are for a variety of reasons: great price, great offer or from the results of a comparison shopping engine between retailers.

<u>Annual Customer Purchases</u>

Most consumer catalogs are on the average less than 2 purchases annually.

IV. QUALIFICATIONS AND PUBLICATIONS.

Attached hereto is a copy of my current *curriculum vitae*, including a list of publications I have authored in the previous four years.

V. RECENT TESTIMONY.

I have testified as an expert at trial or at deposition during the past ten years in the following matters:

Casual Male Retail Group, Inc. and Casual Male RBT, LLC vs. Robert H. Yarbrough, RKC Mail LLC, d/b/a Mile Post Four and Westport Big & Tall, LLC; United States District Court, District Court of Massachusetts, 2007, Civil Action No. 05-12049; Case 1:05-cv-12049-NMG.

_____
F. Curtis Barry

13

CURRICULUM VITAE

Fred Curtis "Curt" Barry, President

F. Curtis Barry & Company

1897 Billingsgate Circle, Suite 102

Richmond, VA 23238

804-740-8743, fax 804-740-6179

cbarry@fcbco.com

www.fcbco.com

Curt Barry is founder and president of F. Curtis Barry & Company, a national fulfillment and operations consultancy, with a specialty in systems for the multichannel industries (retail, e-commerce and catalog). These systems include website and e-commerce, call center and order management, warehousing, marketing, merchandising, inventory control, finance, point of sale (POS) and retail merchandising systems, etc.

Mr. Barry has extensive experience with clients that are developing direct and retail systems internally as well as with clients that are selecting and implementing commercial systems.

In his work with clients to select and implement commercial systems, his experience includes but is not limited to:

- Developing user requirements for the new system at a management, department and system functional level;
- Project management and participation in the vendor selection process including development of Requests For Proposal (RFP), evaluating vendors against the RFP, leading user demonstrations by vendor software, vendor due diligence (e.g. reference checks, site visits) and helping to make final vendor selection.
- Working with the vendor and the client to guide the system modification process including macro level and program specifications, cost estimation and understanding the severity of modifications to the base system;
- "Best of breed" systems integration to other systems including high level and detail data flows;
- Negotiating vendor software services contracts including defining client and vendor scope and deliverables, required system modifications, payment schedules, license and service agreements, project schedules, training and implementation plans, client/vendor responsibilities, etc.;
- Planning system testing prior to implementation including program testing, full systems and acceptance by the client;
- File conversion planning and execution for the new system;
- Project planning and management of client and vendor tasks for successful implementation;
- Gaining client and vendor project sign-offs at critical points in the project;

14

- Status reporting daily and weekly involving detail task plans, estimates and task completion management for clients and software vendors;
- Working with clients on best practices for selecting systems;
- Applying industry best practices in functional areas with the new application software system;

Mr. Barry's internal design, programming and implementation experience includes:

- F. Curtis Barry & Company development of proprietary systems for measuring product profitability and inventory forecasting systems.
- Currently, through a partnership with Taurus Software, F. Curtis Barry & Company co-develops an executive dashboard and analytics system, Manage Metrix (managemetrix.com).
- Mr. Barry was a principal in Molster, Barry & Mason, Inc. 1983 to 1985. The firm designed and programmed catalog order management systems for catalog companies Tiffany & Company, Henri Bendel and DH Holmes.
- Manager of Research and Development for the Corporate Data Center of Garfinckel, Brooks Brother, Miller & Rhoads from 1973 to 1983. The department Mr. Barry managed designed and programmed all of the information systems for the retail and catalog chain of 250 stores with sales of $500 million.

Mr. Barry has extensive experience with point of sale (POS) and store level merchandising systems. From 1970 to 1973, Mr. Barry was employed by NCR Corporation in selling and installing point of sale and retail systems in dozens of major retail department and specialty store chains.

In the F. Curtis Barry & Company, they have completed assignments for selecting and implementing POS systems for multichannel clients.

Bachelor of Science degree, Cornell University, 1970.

Published Articles By Curt Barry 2006 to 2010

Since 1983, Mr. Barry has authored hundreds of articles in catalog and e-commerce trade publications (Multichannel Merchant, Catalog Success, catalogue + e-business, Catalog Age). Other articles appear on the firm's blog and website. Mr. Barry authored the book Best Practices in Multichannel Operations & Fulfillment, ISBN 13:978-1-4196-9298-7. Published in 2008. Additional articles and blog opinions are available on www.fcbco.com.

Multichannel Merchant Magazine and Operations & Fulfillment Magazine

These are Penton Magazines and the articles are available from the magazines' website archives.

How Barcode Use Can Help Reduce Warehouse Costs
Sep 13, 2010, Multichannel Merchant, By Curt Barry

How to Reduce Warehouse Costs
Sep 01, 2010, Multichannel Merchant, By Curt Barry

Proper Slotting Can Reduce Warehouse Costs
Aug 30, 2010, Multichannel Merchant, By Curt Barry

How to Reduce Labor Management Costs
Aug 17, 2010, Multichannel Merchant, By Curt Barry

12 Mistakes to Avoid in Systems Selection
Jul 01, 2010, Multichannel Merchant, By Curt Barry

Evaluating Web platform systems
May 01, 2010, Multichannel Merchant, By Curt Barry

Tips for Finding Third-Party Fulfillment
Mar 29, 2010, Multichannel Merchant, By Curt Barry

Managing Your Fulfillment Folks
Mar 01, 2010, Multichannel Merchant, By Curt Barry

The state of free shipping offers
Feb 01, 2010, Multichannel Merchant, By Curt Barry

Web Expenditures: Sharpening your e-commerce Spend
Dec 01, 2009, Multichannel Merchant, By Curt Barry

Why Some Merchants are Saying Yes to SaaS
Nov 23, 2009, Multichannel Merchant, By Curt Barry

Sharpening Your E-Commerce Spend
Nov 19, 2009, Multichannel Merchant

Is outsourcing an option for you?
Oct 01, 2009, Multichannel Merchant, By Curt Barry

10 steps to better manage your stock | Take a financial view of inventory
Sep 01, 2009, Multichannel Merchant, By Curt Barry

Sorting Out Warehouse Automation
Jul 07, 2009, Multichannel Merchant, By Curt Barry

Tips to help with technology options with budget costs | Time to automate your DC?
Jul 01, 2009, Multichannel Merchant, By Curt Barry

Bean Backorder Customer service Says The Magic Words
Jun 10, 2009, Multichannel Merchant, By Curt Barry

On which version of data should we base our decisions? | Business information systems across
the enterprise
May 01, 2009, Multichannel Merchant, By Curt Barry

Surveying the software landscape | E-commerce platform providers are expanding offerings into order management
Apr 01, 2009, Multichannel Merchant, By Curt Barry

Is Now a Good Time to Invest in Systems? | Excellent time to invest in the e-commerce, order management and warehouse management software that your business needs
Apr 01, 2009, Multichannel Merchant, Curt Barry

Paying for free shipping and handling | High shipping and processing has been driven upwards by record freight increase and accessorial charges
Feb 01, 2009, Multichannel Merchant, By Curt Barry

A Database Marketer's Perspective on Free Shipping
Jan 06, 2009, Multichannel Merchant, By Curt Barry

Virtualization and Going Green in IT
Dec 23, 2008, Multichannel Merchant, By Curt Barry

O&F Conducting a Post Season Audit, Part I

Dec 18, 2008, Operations & Fulfillment, by Curt Barry

Sales Without Inventory
Dec 03, 2008, Multichannel Merchant, By Curt Barry

Prioritizing your tech spend | Where to put your technology dollars during downtown
Dec 01, 2008, Multichannel Merchant, By Curt Barry

IT Spending Priorities
Nov 25, 2008, Multichannel Merchant, By Curt Barry

Keeping contact center costs in line | Balancing expenses with service levels
Oct 01, 2008, Multichannel Merchant, By Curt Barry

Home Agent Trend Key to Reducing Attrition
Oct 01, 2008, Multichannel Merchant, By Curt Barry

Tough Times or Opportunities Knocking?
Sep 30, 2008, Multichannel Merchant, By Curt Barry

More Green Thoughts
Sep 10, 2008, Multichannel Merchant, By Curt Barry

Let Them Know You're Green
Sep 03, 2008, Multichannel Merchant, By Curt Barry

Eying IT expenditures | Where merchants should put information technology dollars | SaaS
Aug 01, 2008, Multichannel Merchant, By Curt Barry

IT Investment Intelligence
Jul 30, 2008, Multichannel Merchant, By Curt Barry

Keeping DC costs at bay
Apr 01, 2008, Multichannel Merchant, By Curt Barry

Post-Holiday Liquidation Strategies
Feb 01, 2008, Multichannel Merchant, By Curt Barry

Clear It Out

Feb 01, 2008, Multichannel Merchant, By Curt Barry

Liquidation Tactics for the Holiday Hangover
Jan 29, 2008, Multichannel Merchant, By Curt Barry

Post-Season Audits, Part 2: Reducing Costs in the DC
Jan 02, 2008, Multichannel Merchant, By Curt Barry

The Fulfillment Doctor....On Third-Party Fulfillment

Jan 31, 2007, Operations & Fulfillment, By Curt Barry

Multichannel Inventory Management
Jan 01, 2008, Multichannel Merchant, BY Curt Barry

Give me the Goods

Jan 01, 2008, Multichannel Merchant, by Curt Barry

Conducting a Post Season Audit, Part I
Dec 18, 2007, Multichannel Merchant, By Curt Barry

15 Tips to Combat Parcel Rate Increases
Nov 28, 2007, Multichannel Merchant, By Curt Barry

Rising Transportation Costs and What To Do About Them
Nov 13, 2007, Multichannel Merchant, By Curt Barry

Fulfillment Doctor: The Real Cost of Employee Turnover
Nov 07, 2007, Multichannel Merchant, By Curt Barry

Twelve Trends in Fulfillment
Nov 01, 2007, Multichannel Merchant, BY CURT BARRY

The Fulfillment Doctor on... The Price of Free Holiday Shipping
Oct 31, 2007, Multichannel Merchant, By Curt Barry

E-commerce isn't the only facet of multichannel marketing to advance
Oct 01, 2007, Multichannel Merchant, by Curt Barry

Merchandising 2.0

Oct 01, 2007, Multichannel Merchant, by Curt Barry

18

Juggling Web and Phone Contacts

Nov 01, 2006, Multichannel Merchant, by Curt Barry

⊶Thinking of Relocating Your DC? Consider These 5 Factors

Oct 4, 2006, Operations & Fulfillment, by Curt Barry

⊶Quick Tip: Little Touches Can Yield Big Gains in Customer Service

Sept 13, 2006, Operations & Fulfillment, by Curt Barry

Multichannel Inventory: What You Need to Know

Sept 1, 2006, Operations & Fulfillment, by Curt Barry

Not used

Exhibit Disclosure Statement

Costs incurred to satisfy basic statutory/regulatory requirements

Costs that are necessary but not discretionary

Costs that are discretionary but good business practice

compensation