LOSS CONTROL BULLETIN

We Take A Personal Interest - Protecting What You Value Most®

Business E-Mail Advertising and the CAN-SPAM Act

Can your business afford penalties of $16,000 per electronic communication? According to the FTC, each separate email in violation of the CAN-SPAM Act is subject to penalties up to $16,000.[1]

What is Spamming?

Under FTC rules, some communications you might not consider to be 'spam' could very well be. The CAN-SPAM Act doesn't just apply to bulk email. The Act covers all commercial messages, or "any electronic mail message, the primary purpose of which is the commercial advertisement or promotion of a commercial product or service".

The FTC distinguishes various types of email communication. Your email could be considered commercial content, transactional content, or other content.
To determine the primary purpose, remember that an email can contain three different types of information:

Commercial Content – Advertises or promotes a commercial product or service, including content on a website operated for a commercial purpose.

Transactional or Relationship Content – Facilitates an already agreed-upon transaction or updates a customer about an ongoing transaction.

Other Content – Neither commercial nor transactional or relationship.

If the message contains only commercial content, its primary purpose is commercial and it must comply with the requirements of CAN-SPAM. If a message contains only transactional or relationship content, its primary purpose is transactional or relationship. In that case, it may not contain false or misleading routing information, but it is otherwise exempt from most provisions of the CAN-SPAM Act.[2]

Advice from the FTC

The FTC has some clear guidance on how to comply with the CAN-SPAM Act. Here is some of the information the FTC suggests businesses can consider for their commercial content:

1. Don't use false or misleading header information.
2. Don't use deceptive subject lines.
3. Identify the message as an ad.

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For more information or to locate an agent near you call 1 (877) 840-4400 or visit www.anpac.com

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4. Tell recipients where you're located (a valid physical postal address).
5. Tell recipients how to opt-out of receiving future email from you.
6. Honor opt-out requests promptly.
7. Monitor what others are doing on your behalf.

Other requirements may also apply depending on the type of electronic mail you are sending.

EMAIL MESSAGE

To: Jane Smith
From: XYZ Company

RE: Your Interest in our products*

We believe you would like to hear more about our products. Please let us know if you would like further information about our products. We'd love to hear from you!

Sincerely,

XYZ Company
**
***

* Appears to be a commercial transaction.
** No opt-out.
*** No physical postal address.

Considering the impact of the CAN-SPAM Act within your marketing plan can help assure that you preserve your business reputation and maintain compliance with the law. For more information about the CAN-SPAM Act, visit the Federal Trade Commission at www.ftc.gov. Email is one of the most accessible forms of communication between individuals and companies alike. Effective use of Email advertising can pay huge dividends. Improper use of Email for marketing can also lead to fines, penalties, and a negative reputation for your business.

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[1]Federal Trade Commission (2009) The CAN-SPAM Act: A Compliance Guide for Business. Last seen at http://www.ftc.gov/bcp/edu/pubs/business/ecommerce/bus61.shtm.

[2]Federal Trade Commission (2009) The CAN-SPAM Act: A Compliance Guide for Business. Last seen at http://www.ftc.gov/bcp/edu/pubs/business/ecommerce/bus61.shtm.