

MARKETING BY EMAIL



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What you need to know to avoid prosecutions by the FTC

- I. FALSE/DECEPTIVE ADVERTISING (15 USC 52)
- II. CAN-SPAM ACT (15 USC 7701)



I. FALSE/DECEPTIVE ADVERTISING

- FTC Prohibits False and Deceptive Advertising (any medium, not just email)
- 3 Prong Test:
 - 1) a claim was made
 - 2) the claim was likely to mislead a reasonable consumer
 - 3) the claim was material



II. CAN-SPAM ACT

- Designed to regulate commercial email advertising

A. WHAT EMAIL DOES CAN-SPAM ACT APPLY TO?:

- Applies to e-mails if the primary purpose is promotion of commercial product or service



PRIMARY PURPOSE

Q: How do I know if the CAN-SPAM Act covers email my business is sending?

A. What matters is the “primary purpose” of the message. To determine the primary purpose, remember that an email can contain three different types of information:

- Commercial content – which advertises or promotes a commercial product or service, including content on a website operated for a commercial purpose;
- Transactional or relationship content – which facilitates an already agreed-upon transaction or updates a customer about an ongoing transaction; and



PRIMARY PURPOSE (CONT'D)

- Other content – which is 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 it 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 is otherwise exempt from most provisions of the CAN-SPAM Act.

[Source FTC]



PRIMARY PURPOSE (CONT'D)

Q: How do I know if what I'm sending is a transactional or relationship message?

- A. That primary purpose of an email is transactional or relationship if it consists only of content that:
- facilitates or confirms a commercial transaction that the recipient already has agreed to;
 - gives warranty, recall, safety, or security information about a product or service;



PRIMARY PURPOSE (CONT'D)

- gives information about a change in terms or account balance information regarding a membership, subscription, account, loan or other ongoing commercial relationship;
- provides information about an employment relationship or employee benefits; or
- delivers goods or services as part of a transaction that the recipient already has agreed to.

[Source FTC]



PRIMARY PURPOSE (CONT'D)

MESSAGE A:

TO: Jane Smith

FR: XYZ Distributing

RE: Your Account Statement

We shipped your order of 25,000 deluxe widgets to your Springfield warehouse on June 1st. We hope you received them in good working order. Please call our Customer Service Office at (877) 555-7726 if any widgets were damaged in transit. Per our contract, we must receive your payment of \$1,000 by June 30th. If not, we will impose a 10% surcharge for late payment. If you have any questions, please contact our Accounts Receivable Department.

Visit our website for our exciting new line of mini-widgets!

MESSAGE B:

TO: Jane Smith

FR: XYZ Distributing

RE: Your Account Statement

We offer a wide variety of widgets in the most popular designer colors and styles – all at low, low discount prices. Visit our website for our exciting new line of mini-widgets!

Sizzling Summer Special: Order by June 30th and all waterproof commercial-grade super-widgets are 20% off. Show us a bid from one of our competitors and we'll match it. XYZ Distributing will not be undersold.

Your order has been filled and will be delivered on Friday, June 1st.



PRIMARY PURPOSE (CONT'D)

- CAN-SPAM applies to ads on Facebook, LinkedIn, and similar sites sent to users' Facebook walls and news feeds
- CAN-SPAM applies to prior business relationships (i.e. existing Resort member base)
- Includes B-to-B emails
- Does not include:
 - NFP/Charity emails
 - Political



B. IF CAN-SPAM ACT APPLIES, WHAT MUST I DO TO COMPLY?

Remember 7 things:

1. Don't use false or misleading header information.
2. Don't use deceptive subject lines.
3. Identify the message as an ad.
4. Tell recipients where you're located.
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.

[Source FTC]



C. PENALTIES FOR VIOLATIONS OF CAN-SPAM ACT

- 1) FTC – \$16,000 per violation
- 2) STATE AG – \$250 per violation (per email) up to \$2 mil maximum
- 3) Internet Access Services – (Google, Yahoo, Facebook, LinkedIn)
- 4) No private COA



THANK YOU

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