

# Don't Get Slammed for Spam— Understanding the Email Rules for Businesses

by Dan Brecher on March 21, 2012

Most New York and New Jersey businesses use some form of email marketing. However, many are not aware that emails that are commercial in nature must comply with certain rules established by the CAN-SPAM Act. Moreover, failure to do so can result in costly penalties of up to \$16,000 *per email*.

As noted above, the rules only apply to commercial messages. Commercial messages advertise or promote a commercial product or service. Meanwhile, transactional or relationship messages, which facilitate an already agreed-upon transaction or update a customer about an ongoing transaction, are exempt from most provisions of the CAN-SPAM Act.

If the email contains both commercial and relationship content, the primary purpose of the communication must be determined. The Federal Trade Commission, the entity responsible for enforcing the CAN-SPAM Act, offers the following guidance:

“If a recipient reasonably interpreting the subject line would likely conclude that the message contains an advertisement or promotion for a commercial product or service or if the message’s transactional or relationship content does not appear mainly at the beginning of the message, the primary purpose of the message is commercial.”

Once you have determined that an email is commercial in nature, it must comply with the following provisions, as outlined by the FTC:

- Don't use false or misleading header information. The “From,” “To,” “Reply-To,” and routing information – including the originating domain name and email address – must be accurate and identify the person or business who initiated the message.
- Don't use deceptive subject lines. The subject line must accurately reflect the content of the message.
- Identify the message as an advertisement. You must disclose clearly and conspicuously that your message is an advertisement.
- Tell recipients where you're located. Your message must include your valid physical postal address.
- Tell recipients how to opt out of receiving future email from you. Your message must include a clear and conspicuous explanation of how the recipient can opt out of getting email from you in the future.

- Honor opt-out requests promptly. Any opt-out mechanism you offer must be able to process opt-out requests for at least 30 days after you send your message. You must honor a recipient's opt-out request within 10 business days.
- Monitor what others are doing on your behalf. The law makes clear that even if you hire another company to handle your email marketing, you can't contract away your legal responsibility to comply with the law. Both the company whose product is promoted in the message and the company that actually sends the message may be held legally responsible.

As this post highlights, state and federal regulations can impact nearly every aspect of your New York and New Jersey business. In addition, the cost of noncompliance is often steep. Therefore, it is important to consult with an experienced New York and New Jersey business attorney.