

Spam, spam, wonderful spam

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By Jessica John Bowman

At first glance, email marketing campaigns may appear to be an ideal way to market your business: A business that engages in an email marketing campaign can reach thousands of potential customers with the push of a button, and without incurring the significant costs associated with other forms of advertising. But a seemingly inexpensive email campaign may, in fact, come with a very high price tag if the campaign runs afoul of the CAN-SPAM Act.



Congress enacted the CAN-SPAM Act in an attempt to quell the perceived onslaught of spam email advertisements. Among other things, the act prohibits the use of false or misleading subject lines and requires that all commercial emails contain the following.

- A statement indicating the commercial nature of the email.
- A provision informing the recipient of his right to opt-out of future mailings.
- An opt-out procedure whereby the recipient may remove himself from future mailings.
- A physical address where the originating party may be contacted. To encourage compliance, Congress established a private right of action for certain entities that are injured by CAN-SPAM violations. These entities can obtain either actual or statutory damages for each email sent in violation of the act.

Significantly, a company may not necessarily avoid CAN-SPAM liability by outsourcing its marketing campaigns. Courts could permit a CAN-SPAM plaintiff to recover from both the entity that sent the offending emails and, in some cases, the entity that procured the advertisements. As a result, a business that hires an outside marketing company may, in some circumstances, be held liable for its marketing company's misconduct. Any business that employs an outside marketing company should, therefore, take steps to ensure compliance with all provisions of the CAN-SPAM Act, such as ensuring that the marketing company is familiar with the act's terms, requiring compliance with the act as a condition of any contract governing the relationship with the marketing company, and requiring that the marketing company take steps to detect, correct and prevent CAN-SPAM violations.

Of course, no policy is guaranteed to prevent all CAN-SPAM violations. But by ensuring that your outside marketing company is familiar and in compliance with the requirements of the CAN-SPAM Act, you can continue to enjoy the many benefits of email marketing, without added costs.

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