



E-mail Advertising – Making CAN-SPAM Work for You

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The advent of e-mail as a primary medium of communication has forced many businesses to change the way they advertise and communicate with current and prospective customers. President George W. Bush signed the CAN-SPAM Act into law in 2003 in an attempt to regulate the use of unsolicited e-mails sent for commercial purposes. While it is no surprise to anyone, the Act did not prohibit the transmission of commercial e-mails to individuals without their permission. Rather, the Act set certain guidelines for businesses to follow when they send commercial e-mails.

The CAN-SPAM Act regulates any e-mail where its primary purpose is commercial advertisement or promotion of a commercial product or service. Transaction or relationship e-mail is not regulated.

Transaction or relationship e-mail includes messages with the primary purpose of facilitating a commercial transaction that the recipient previously agreed to, transmitting warranty information, product recall information, or safety information with respect to a commercial product or service used or purchased by the recipient, providing notification concerning a change in the terms or features of a subscription, membership, account, loan, or comparable commercial relationship, providing information directly related to an employment relationship or related benefit plan in which the recipient is currently enrolled, and delivering goods or services, including product updates or upgrades, that the recipient is entitled to under the terms of an agreement that the recipient has previously agreed to.

As commercial e-mail advertising becomes more and more popular, it is important to keep in mind the following requirements when sending commercial e-mails:

1. Use accurate header and transmission information. Header information includes the source, destination, and routing information associated with an e-mail, including the originating domain name and originating e-mail address.
2. Do not use deceptive subject headings. It is unlawful to use a subject heading that would be likely to mislead a recipient about a material fact regarding the subject matter of the e-mail.
3. Include a functioning return e-mail address or other [Internet](#)-based mechanism that a recipient may use to submit a reply e-mail or other communication requesting not to receive future commercial e-mails. This return e-mail address or other communication medium must be capable of receiving such requests for no less than 30 days after the transmission of the original message.
4. Give recipients clear directions on how to "opt out" of receiving future commercial e-mails.
5. Promptly comply with opt-out requests. A business has 10 days to honor such requests.
6. Identify commercial e-mails as an "advertisement" or "solicitation."

7. Include a valid physical postal address in the e-mail.
8. Remember, even if you contract with an outside firm to provide e-mail marketing services, the legal responsibility remains with you to ensure that the CAN-SPAM rules are being followed.

Adhering to the above requirements when sending commercial e-mails will ensure your compliance with CAN-SPAM and will alleviate the risk of the severe penalties that accompany non-compliant messages.