



Michael M. Ratoza
Portland, Of Counsel

Direct Dial: 503.499.4695
Fax: 503.295.0915
Email Attorney

Is your business CAN-SPAM compliant?

By Michael M. Ratoza

New anti-Spam regulations in effect

Updates to the 2003 CAN-SPAM Act (Controlling the Assault of Non-Solicited Pornography and Marketing Act) took effect on Monday, July 7 to enforce tighter federal regulations on commercial email distribution.

Background

The CAN-SPAM Act (the "Act") was signed into law by President George Bush in December 2003 after being nearly unanimously passed by the House and Senate. The Act became effective in January 2004.

The Act was designed to establish mandatory requirements for senders of commercial email and enforce penalties for individuals or companies that do not comply. The Act also grants consumers the right to unsubscribe or "opt out" of receiving further commercial email from mass marketers and other so-called "spammers."

Commercial email includes any email whose primary purpose is advertising or promoting a commercial product or service, including content on a Web site. The Act does not apply to private, relationship-based emails, such as those involving permission-based consumer purchases.

Updates to the Act

Beginning July 7, the FTC will enforce changes to three major provisions of the law: 1) revisions to the unsubscribe requirements, 2) altered definitions of "sender" and "person," and 3) the valid postal address requirement.

The unsubscribe requirements will now prohibit commercial emailers from collecting a fee and asking recipients to provide information other than their email address and their "opt-out" preferences, thereby making the unsubscribe process less complicated for recipients.

The definitions of "sender" and "person" have also been revised to further protect recipients. A "sender" will now be defined as "the entity whose goods, services, business, or organization are advertised in a commercial email," limiting the defense often employed by product manufacturers that they were not personally responsible for sending the offending email. The definition of a "person" will no longer be limited to a human being. A "person" will now encompass groups, institutions, unincorporated associations, businesses of all sizes and nonprofits in addition to human beings.

The updated valid postal address requirement will allow senders to use an "accurately registered" post office box or private mailbox, as opposed to the previous limitation of a physical postal address. Commercial emailers that use "Forward-to-a-friend" type emails will also be required to provide a valid address and abide by the unsubscribe requirements as well.

What this means for consumers and commercial emailers

For consumers, the new revisions to the provisions will benefit their interaction with commercial email. Recipients are now better protected with greater control due to the unsubscribe process and access to more information on the sender through the required valid postal address.

The new updates to the law's main provisions will affect all commercial email marketers and their daily practices, particularly with respect to their compliance with the unsubscribe rules and address listing requirements. Those that do not comply with the CAN-SPAM regulations are subject to penalties including fines, lawsuits, or even prison time.

If you have any questions about the new regulations, or to ensure your commercial e-mails are compliant, please contact your Bullivant attorney.