



False Urgency, Real Risk: Navigating the Rise of Email Marketing Lawsuits

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Regulatory Overview

- CAN SPAM
 - Federal law that governs email marketing.
 - No private right of action for consumers.
 - Preempts state laws except to the extent they prohibit falsity or deception.
- State Laws
 - More than 30 states have email marketing laws.
 - No one paid attention to those laws, until now....

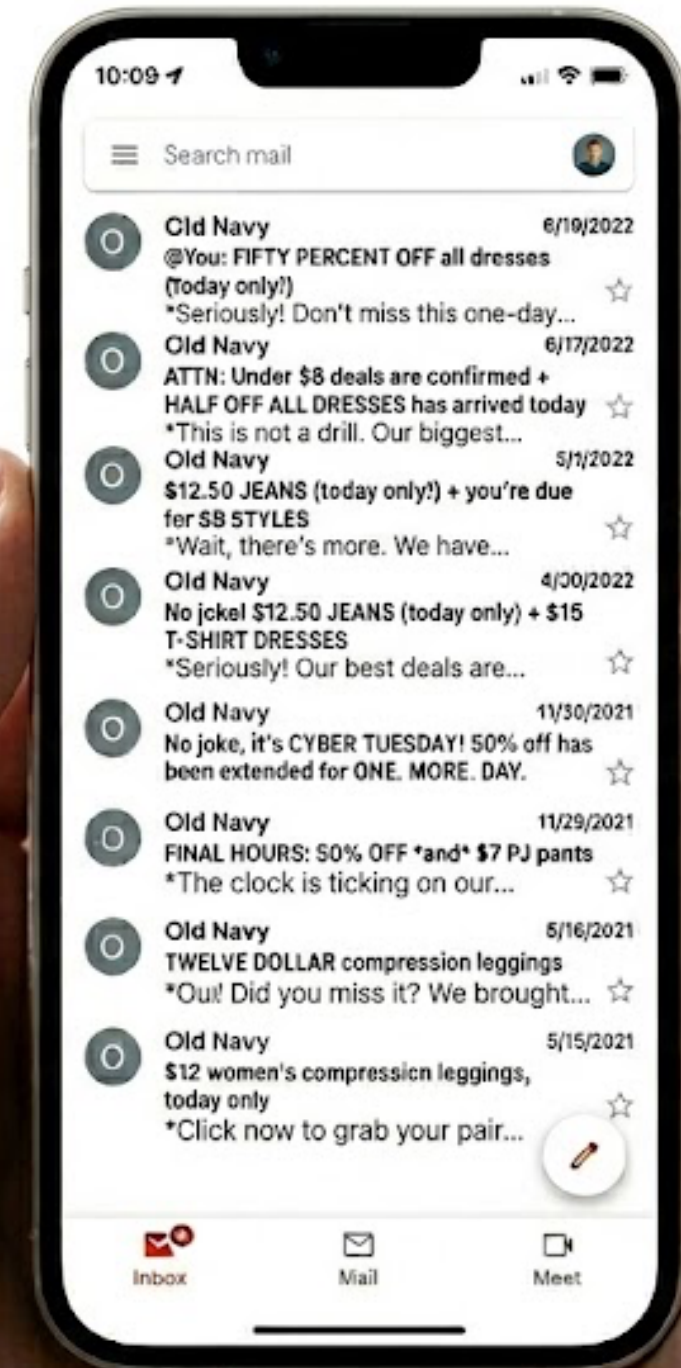
Washington CEMA

- Can't send commercial email to an address “the sender knows, or has reason to know, is held by a Washington resident that...(b) contains false or misleading information in the subject line.”
- Statutory damages:
 - Currently \$500 per email (without having to prove damages).
 - Can be trebled.
- Example of Potential Impact:

One email with an (allegedly) misleading subject line sent to 100,000 WA residents could lead to liability of \$50 million (or more).

Brown v. Old Navy

- Plaintiffs argued Old Navy violated CEMLA.
- The complaint included 91 subject lines.



WA Supreme Court Decision

- What type of deception does CEMA prohibit?
- A company violates the law even when false or misleading information doesn't deceive consumers about the commercial nature of an email.

“ CEMA protects consumers by requiring that commercial emails communicate honestly about the terms of a given promotion or sale in the subject line. ”

The Floodgates Open

- Eight lawsuits were filed in the first 20 years after CEMA was enacted.
- More than 100 lawsuits have been filed in the year since *Brown* was decided.
- Class action plaintiff firms are actively soliciting clients.

Class Action Org

Lane Bryant – Investigation into misleading “limited time” sale emails

Captured Apr 28, 2026

Investigation targets Lane Bryant’s allegedly misleading “limited time” sale emails that appear routinely extended, potentially violating Washington and Maryland laws; recruiting affected consumers to join legal action.

Ran

Apr 27 – Apr 27, 2026

Status

Active

Platforms

FACEBOOK INSTAGRAM

AUDIENCE NETWORK MESSENGER

THREADS

Landing Page

<https://join.classaction.org/bm-lane-bryant-emails>



ClassAction.org

Sponsored

Recipients Could Be Owed Money

Attorneys believe Lane Bryant may be sending potentially misleading emails promoting “limited time” sales that seem to be routinely extended. The attorneys suspect these emails may violate Washington and Maryland law—and they’re now gathering affected consumers to take legal action against the retailer. Find out how to sign up today.



Strauss Borrelli PLLC

Retailers and e-commerce companies – Investigation into deceptive “Sale Ending” emails in Washington

Captured Feb 27, 2026

Investigation targets retailers and e-commerce companies alleged to send “final hours,” “last day,” or “sale ending” emails followed by sale extensions, potentially violating Washington State law and offering up to \$500 per deceptive email.

Ran

Feb 25 – Feb 28, 2026

Status

Active

Platforms

FACEBOOK INSTAGRAM

Landing Page

No landing page detected



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Attention Washington Residents

Have you received a “Sale Ending” email followed by a sale extension? You may be entitled to up to \$500 per deceptive email under Washington State law. \$\$ Submit a claim today.

Have you received any

“Sale Extended”

EMAILS?

YOU MAY BE ENTITLED TO COMPENSATION.



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ADVERTISEMENT

Challenges to CEMA

- Main theories:
 - CEMA is preempted by CAN SPAM.
 - CEMA violates the dormant commerce clause.
 - Courts have rejected both.
- A pending motion argues that CEMA violates the Due Process Clause.



WASHINGTON RETAIL
ASSOCIATION

A photograph of the Washington State Capitol building, featuring a prominent dome and classical architectural elements, set against a blue sky with scattered white clouds. The bottom portion of the image is overlaid with a semi-transparent orange gradient.

ACTION ALERT

March Amendment

- The amendment makes two key changes:
 - Damages are reduced from \$500 per message to \$100 per message, or actual damages, whichever is greater.
 - A plaintiff must prove that a sender either actually knew a subject line was false or misleading, or that objective facts show they reasonably should have known.
- The changes will become effective on June 11, 2026.
- The Washington Retail Association hopes to find a better solution in 2027.
- Plaintiffs must still allege and prove that “the sender knows, or has reason to know, is held by a Washington resident that...(b) contains false or misleading information in the subject line.”

Beyond Washington



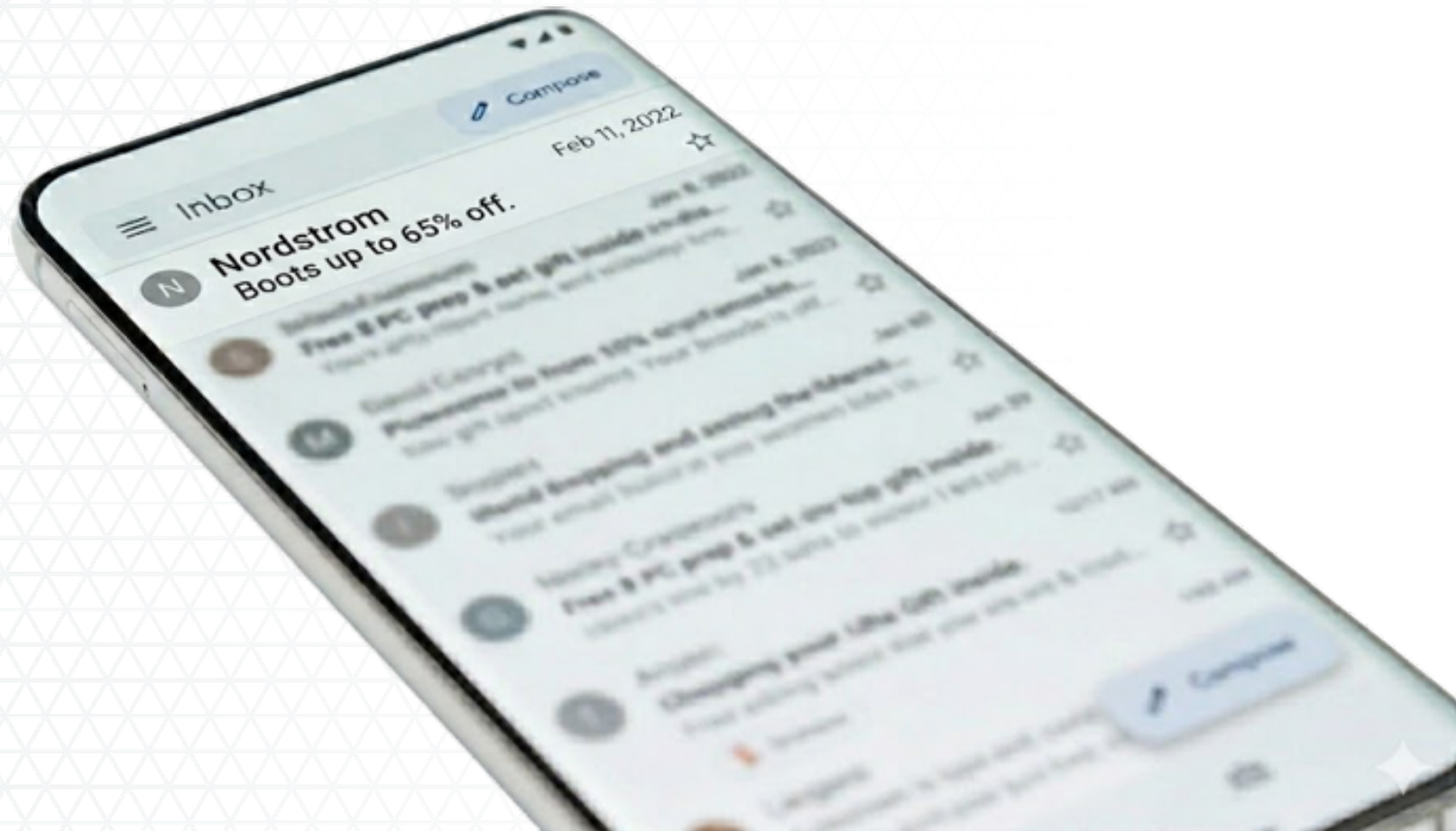
Themes

- The low-hanging fruit:
 - Sales extended
 - False sense of urgency
- Stretching a little further:
 - Reference pricing
 - Free offers

Reference Pricing

- FTC guides state that a former price must be “actual, bona fide price at which the article was offered to the public on a regular basis for a reasonably substantial period of time.”
- Approximately 20 states have pricing laws, many of which are ambiguous:
 - “Prevailing” price
 - “Reasonably substantial period of time”
- Even states without pricing laws can pose risks.

Lee v. Nordstrom Complaint



“ In reality, Nordstrom calculated the “xx% Off” statements from fictitious list prices at which Nordstrom never or almost never offered the products. ”

Lee v. Nordstrom

- The case is still pending.
- However, a decision in a non-CEMA case may provide some hope....

Montes v. SPARC Group Complaint

The screenshot shows the product page for 'Seriously Soft Heathered High-Rise Leggings' on the Aéropostale website. The page features a navigation bar with categories like GIRLS, GUYS, JEANS, AERO WORLD, NEW ARRIVALS, and CLEARANCE. The breadcrumb trail indicates the product is in 'Girls / Bottoms / Leggings + Active / Seriously Soft Heathered High-Rise Leggings'. The product is displayed with four images: a full-body view, a side view, a close-up of the waistband, and a back view. The price is listed as \$6.00, with a crossed-out regular price of \$12.50. The page also includes a star rating (5 stars, no reviews), a description, shipping information, a Klarna payment option, color and size selection, and an 'ADD TO BAG' button.

AÉROPOSTALE GIRLS GUYS JEANS AERO WORLD NEW ARRIVALS CLEARANCE

Girls / Bottoms / Leggings + Active / Seriously Soft Heathered High-Rise Leggings

☆☆☆☆☆ (No Reviews)

Seriously Soft Heathered High-Rise Leggings

So comfy and easy to pair with everything in your wardrobe.

\$6.00 ~~\$12.50~~

FREE SHIPPING OVER \$50 [Details](#)

4 interest-free payments. Available for orders above \$10. [Klarna. Learn more](#)

COLOR: Med Hthr Grey

SIZE:

XSMALL SMALL MEDIUM LARGE XLARGE

[FIT FINDER](#) [Find your size](#)

ADD TO BAG

“ The advertised regular price and discount for the Leggings...were false and deceptive because, unbeknownst to Ms. Montes, Aéropostale had almost never offered the Leggings at the advertised regular price of \$12.50. ”

* Not a CEMA case.

Montes v. SPARC Group

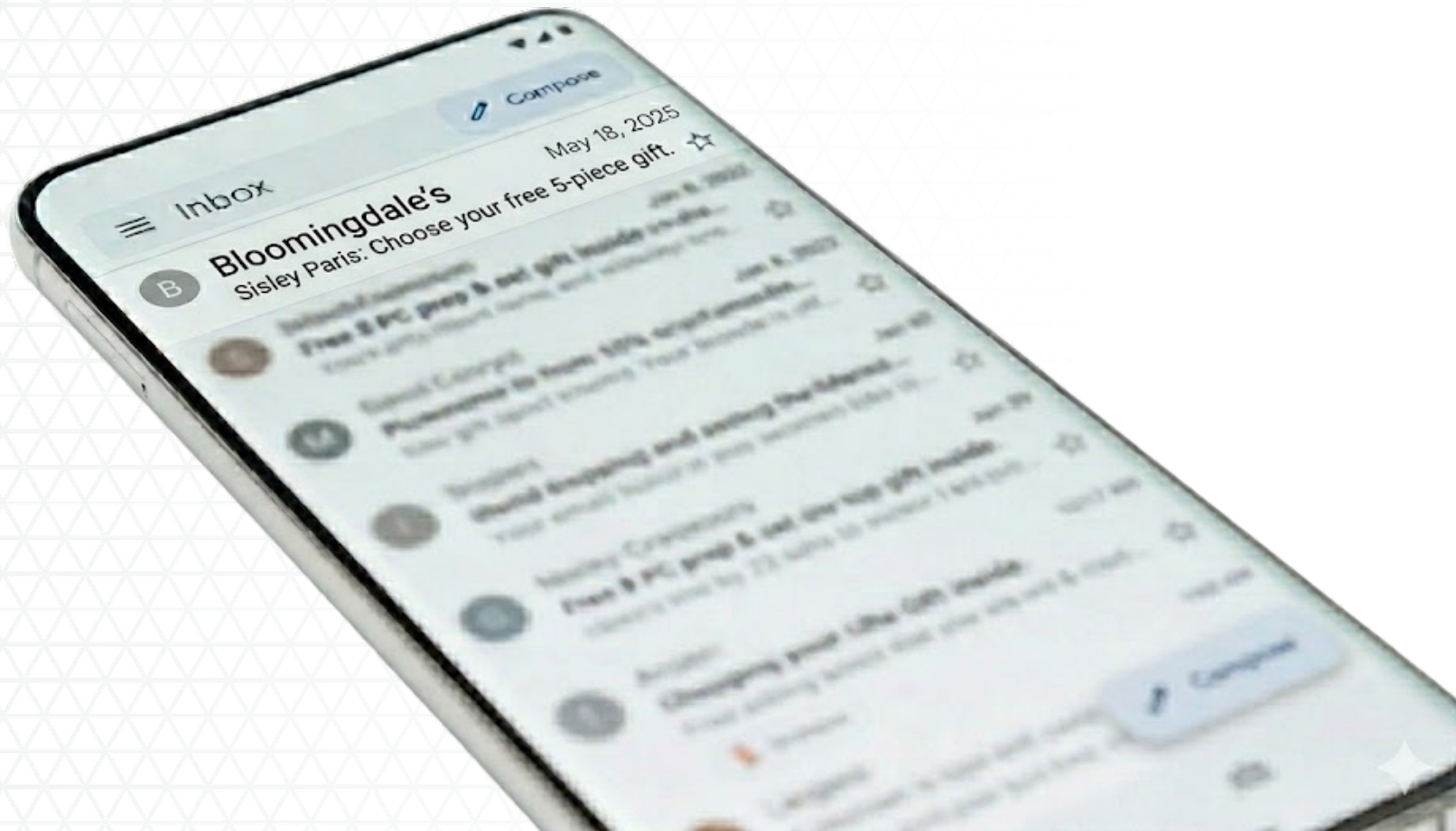
- 9th Circuit asked WA Supreme Court whether Montes demonstrated she suffered an injury covered by the Washington Consumer Protection Act.
- The Supreme Court said no:
 - “A consumer does not suffer an injury in ‘her business or property’ when she purchases — and obtains and keeps — the fungible product she sought to obtain but does so because the seller misrepresented the product’s price history.”
 - “Her allegations do show disappointed expectations. But disappointed expectations do not support a CPA claim.”

Free Offers

FTC Free Guides

- The term “free” indicates that a recipient pays nothing for the item and no more than the regular price for any required purchase.
- All terms “should be set forth clearly and conspicuously at the outset of the offer so as to leave no reasonable probability that the terms of the offer might be misunderstood.”

Scott v. Bloomingdales Complaint



“ This subject line implies that a “free gift” is being provided unconditionally and at no cost to the recipient. ”

Scott v. Bloomingdales

District Court of Maryland dismissed the complaint:

A commercial e-mail with a promotional subject line is not required to include every conceivable limitation on an offer, and the absence of a meaningful limitation alone is not enough to make a subject line false or misleading.

Repperger et al v. Ulta Salon Complaint



“ This subject line implies that a gift is being provided unconditionally and at no cost to the recipient just by opening the email. ”

Repperger et al v. Ulta Salon

US District Court for the Eastern District of Washington allowed the case to proceed:

For purposes of this motion, the Court accepts as true the “free gift” and “percentage discount” email subject lines identified by Plaintiffs are false or misleading as alleged based on the limitations and restrictions contained in the bodies of the emails.”

California's Anti-Spam Law

- The law prohibits:
 - Unauthorized use of third-party domains;
 - Falsified, misrepresented, or forged header information; and
 - Subject lines that sender knows are likely to mislead recipients about material facts.
- Private right of action:
 - A recipient of an “**unsolicited** commercial e-mail advertisement” can bring an action.
 - Statutory damages of \$1,000 per email.

Lawsuits

- One firm has filed over 50 cases.
- Many of these complaints target affiliate marketing.

Purscelley v. Optima Tax Relief Complaint

From: Optima Tax Relief <UltravioletBlockchainGearCalm@richardwacker.com>
Date: January 17, 2026 at 10:16:56 PM PST
To: tommyp2019@yahoo.com
Subject: Stop stressing over your tax debt DdzMvZ
Reply-To: richardwacker.com



**Solve Your
IRS Tax Problems**

Optima Tax Relief specializes in
resolving IRS or State Tax Debt.

Get Free Estimate

WHY CHOOSE US

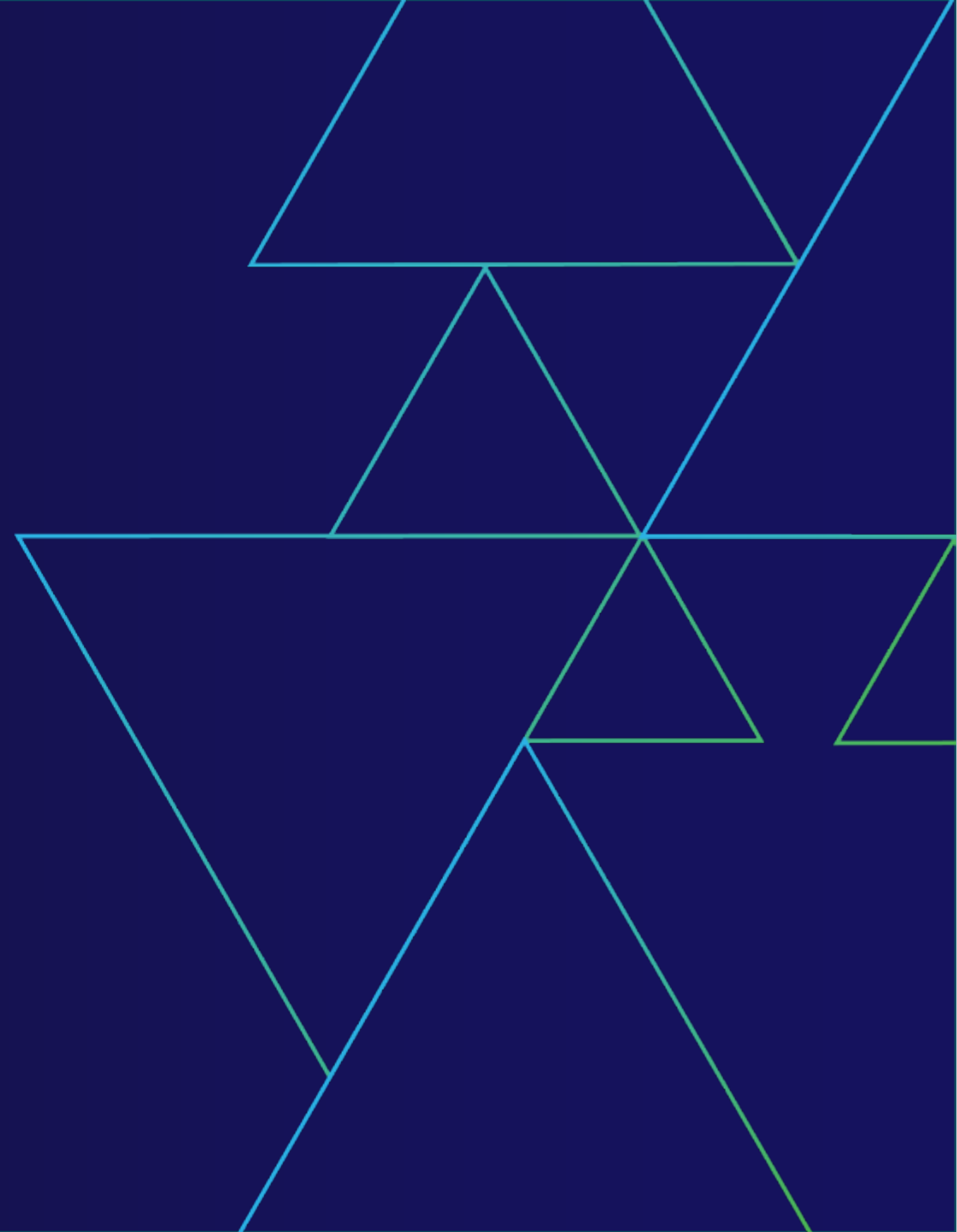
“Everything that people rightfully *hate* about spam.”

- Unauthorized use of a domain name
- Misrepresented header information
- Deceptive subject line and contents

Rodriguez v. Endurance Warranty Services, L.L.C.

- Southern District of California granted MTD on:
 - Unauthorized use of third-party domains
Preempted by CAN SPAM
 - Falsified, misrepresented, or forged header information
Preempted by CAN SPAM
- Southern District of California denied MTD on:
 - Subject lines that sender knows are likely to mislead recipients about material facts
Not preempted by CAN SPAM

Tips to Reduce Risk



Subject Lines to Avoid

- Subject lines stating a sale ends on a specific date if the sale is extended (or you will soon launch a similar sale).
- Subject lines creating a false sense of urgency.
- Subject lines referring to “free” gifts.
- Subject lines that contradict claims in previous emails.
- Subject lines that advertise discounts if products weren’t regularly offered at the former price.
- Subject lines with anything else that could be misleading.

Additional Tips (with a California Focus)

- Opt-in
 - Only send commercial emails to people who have opted in.
 - Maintain records of opt-in.
- Affiliates
 - Require compliance with laws.
 - Address indemnification.
 - Provide guidance.
 - Monitor performance.

Thank you.



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