

Rules of the Road: Following Unsolicited Commercial Email (UCE) Requirements

Eighteen states have Unsolicited Commercial Email (UCE), also known as spam, statutes in effect currently. Requirements between states vary greatly, therefore, it is best to abide by the strictest state rules in order to make sure that you do not run afoul of any state's UCE regulations.

A state by state summary of UCE requirements follows, but in general, the strictest state law requirements call for producers of UCE to abide by the following "rules of the road":

1. Use "ADV:" as the first characters in the subject line of the email
2. Use "ADV:ADLT" as the first characters in the subject line of the email, when the solicitation involves goods and services that may only be purchased by someone 18 or older;
3. Provide full contact information, including street address and phone number;
4. Provide consumers with a valid and free means of declining further emails;
5. Clearly identify the date/time the email is sent;
6. Never falsify point of origin or transmission path information;
7. Never use a third-party's email address or domain name in spam without their permission; and
8. Never have false or misleading information in the subject line;

STATE BY STATE SUMMARY OF UCE REGULATIONS

1. California

- UCE must have toll-free number or valid e-mail address for recipient of UCE to use in order to decline receipt of additional UCE
- UCE must use "ADV:" as first characters in subject line
- UCE must use "ADV:ADLT" if UCE advertises goods or services that may only be purchased by someone 18 years of age or older

2. Colorado

- UCE cannot contain false information on its point of origin or transmission path
- UCE must have "ADV:" as first characters in subject line

Unless:

- 1) Organization is sending UCE to members or employees, OR
 - 2) Sender has an existing personal or business relationship with recipient
- UCE must provide recipients with a means to remove themselves from the email list, at no cost to themselves

3. Connecticut

- UCE cannot contain false information on its point of origin or transmission path

4. Delaware

- UCE cannot contain false information on its transmission path
- UCE must provide information on how recipient can stop receipt of additional UCE

Unless: Sender has an existing personal or business relationship with recipient

5. Idaho

- UCE must provide information on how recipient can stop receipt of additional UCE
- UCE cannot use a third-party's domain name or email address without their permission
- UCE cannot contain false information on its point of origin or transmission path

6. Illinois

- UCE cannot use a third-party's domain name or email address without their permission
- UCE cannot have false or misleading information in the subject line

7. Iowa

- UCE cannot use a third-party's domain name or email address without their permission
- UCE cannot contain false information on its point of origin or transmission path
- UCE cannot have no information about point of origin or transmission path
- UCE must have a return email address for a recipient to decline receipt of additional UCE

8. Louisiana

- UCE cannot contain false information on its transmission path

9. Missouri

- UCE must have toll-free number or valid e-mail address for recipient of UCE to use in order to decline receipt of additional UCE

10. Nevada

- UCE must:
 - 1) Be sent to someone with whom the sender has an existing personal or business relationship; OR
 - 2) Be sent to someone who has consented to the receipt of the UCE; OR
 - 3) Be readily identifiable as promotional AND contain:
 - a) Legal name, street address and email address of sender; AND
 - b) Procedures for recipient to decline additional UCE

11. North Carolina

- UCE cannot contain false information on its point of origin or transmission path

12. Oklahoma

- UCE cannot contain false information on its point of origin or transmission path
- UCE cannot have no information on the point of origin

13. Pennsylvania

- If UCE contains obscene material or a hyperlink that connects to obscene material, UCE must use “ADV – ADULT” as first characters of subject line
- If UCE contains obscene material or a hyperlink that connects to obscene material, UCE must have information that allows recipient to decline receipt of additional UCE

14. Rhode Island

- UCE cannot contain false information on its point of origin or transmission path
- UCE cannot use a third-party’s domain name or email address without their permission
- UCE must contain opt-out instructions and contact information

15. Tennessee

- UCE must have toll-free number or valid e-mail address for recipient of UCE to use in order to decline receipt of additional UCE
- UCE must have “ADV:” as first four characters in the subject line
- UCE must use “ADV:ADLT” as first eight characters in subject line when UCE contains solicitation for goods or services that may only be viewed or purchased by someone 18 years of age or older

16. Virginia

- UCE cannot contain false information on its point of origin or transmission path

17. Washington

- UCE cannot contain false information on

its point of origin or transmission path

- UCE cannot use a third-party’s domain name or email address without their permission
- UCE cannot have false or misleading information in the subject line

18. West Virginia

- UCE cannot use a third-party’s domain name or email address without their permission
- UCE cannot contain false information on its point of origin or transmission path
- UCE cannot have false or misleading information in the subject line
- UCE must identify clearly:
 - 1) date and time message was sent
 - 2) identity of person sending the message
 - 3) return email address
- UCE cannot contain sexually explicit materials (visual depictions or explicit depictions in a sexual context)

ABOUT OUR ADVERTISING AND MARKETING PRACTICE

Kelley Drye Collier Shannon’s Advertising & Marketing practice comprises attorneys with proven success in advertising litigation and NAD proceedings; expertise in the area of advertising, promotion marketing, and privacy law; and experience at the FTC, FDA, and the Offices of State Attorneys General. We help leading companies identify risks, respond effectively to inquiries, and prevail in contested proceedings.

ABOUT KELLEY DRYE COLLIER SHANNON

Kelley Drye Collier Shannon, the Washington, DC office of Kelley Drye & Warren, is an international, multidisciplinary law firm that solves competitive problems for Fortune 500 companies, privately-held corporations, government entities, and trade associations. Founded more than 170 years ago, Kelley Drye & Warren has more than 400 attorneys and professionals practicing in eight locations around the world and specializing in: Advertising and Marketing; Antitrust and Trade Regulation; Corporate; Employee Benefits and Executive Compensation; Environmental; Government Contracts; Government Relations and Public Policy; Homeland Security; Intellectual Property; International Trade and Customs; Labor and Employment; Litigation; Private Clients; Real Estate; Restructuring, Bankruptcy, and Creditors' Rights; Tax; Technology; Telecommunications; and Trade Associations.

FOR MORE INFORMATION

To learn more about Kelley Drye Collier Shannon, please visit:

www.kelleydrye.com