

Washington Supreme Court Expands Scope of Anti-Spam Law

Gonzalo E. Mon

April 27, 2025

Two years ago, we [posted](#) about a proposed class action lawsuit that accused Old Navy of spamming consumers with emails that included false or misleading information about the duration of sales. For example, the complaint alleged that the retailer advertised that a sale would only last one week, even though the sale continued the following week.

The plaintiffs argued (among other things) that Old Navy's emails violated Washington's Consumer Protection Act and Commercial Electronic Mail Act (or "CEMA") which has a limited private right of action and provides for \$500 in statutory damages per message that violates the law. Last week, the Washington Supreme Court held that some of the retailer's subject lines violated the law.

The relevant CEMA provision prohibits anyone from sending a commercial email to a Washington resident that "contains false or misleading information in the subject line." In 2023, a federal court held that this provision only "prohibits false and misleading information as to the nature of the email, i.e. that the email is an advertisement." The Washington Supreme Court took a more expansive view.

In a 5-4 decision, the Court held that a company violates the law "even when the false or misleading information in the subject line does not deceive consumers about the advertising purpose or commercial nature of the e-mail." In other words, CEMA "prohibits sending Washington residents commercial e-mails that contain *any* false or misleading information in the subject lines of such e-mails."

Old Navy had expressed concerns that a ruling for the plaintiffs could lead to a situation in which "instances of banal hyperbole" could lead to "millions of dollars of potential exposure in CEMA liability." The Court addressed those concerns by noting that "mere puffery" in subject lines of emails would not violate CEMA. Only representations of fact can violate the law.

Companies should be careful to ensure that the subject lines of their emails are not misleading in any regard, particularly when communicating with residents of Washington.