

Anti-spam Regulation:

How the Promotional
Products Industry Can Stay
Ahead of the Curve





Executive Summary:

On the one hand, a promotional products business needs to undertake marketing campaigns to create awareness about the unique features of its product range. On the other, the business needs to comply with anti-spam regulation while implementing digital marketing and telemarketing campaigns. This abridged white paper is a primer to gain an overview of the regulatory landscape, follow best practices, and understand the pitfalls of non-compliance.

Please note: The anti-spam regulation domain is vast and far-reaching. While this white paper does not cover every aspect of applicable regulations, our purpose is to ensure that you are better informed while planning marketing campaigns. Businesses should consult legal experts for specific guidance.

Suppliers and distributors in the promotional products industry need to comply with the Controlling the Assault of Non-Solicited Pornography and Marketing (CAN-SPAM) Act and the Telephone Consumer Protection Act (TCPA) for their electronic and telemarketing campaigns. These acts, as well as the California Consumer Privacy Act (CCPA) and General Data Protection Regulation (GDPR) of the European Union (EU) region protect the interests of consumers and businesses from unsolicited communication.

Disclaimer: The information provided in this white paper does not, and is not intended to, constitute legal advice. All information available herein are for general informational purposes only and may not be up-to-date in some jurisdictions, given the ever-changing regulatory landscape. Readers of this paper are encouraged to contact their attorney to obtain advice with respect to application of law to any particular matter. All liability with respect to actions taken or not taken based on the contents of white paper are hereby expressly disclaimed.

The Controlling the Assault of Non-Solicited Pornography and Marketing (CAN-SPAM) Act

The CAN-SPAM Act establishes rules for commercial email messages, enshrines the right for recipients to stop receiving emails, and stipulates stringent penalties for violations by companies. The Act is relevant for both B2B and B2C communication. It outlines key provisions such as accurate header information, non-deceptive subject lines, identification as an advertisement, inclusion of a valid physical postal address, opt-out mechanism, and monitoring what others are doing on your behalf.

PPAI proposes best practices to comply with CAN-SPAM across provisions:

- Obtain consent and maintain opt-out lists (double opt-in, clear consent language, regular list maintenance).
- Proper use of email headers and subject lines (accuracy, transparency).
- Include valid physical postal addresses (permanent address, address consistency).

- Provide clear opt-out mechanisms (easy opt-out, prompt processing).

The Telephone Consumer Protection Act (TCPA)

TCPA addresses the issue of unsolicited telemarketing calls and faxes. The TCPA restricts telemarketing calls, auto-dialed calls, prerecorded calls, text messages, and unsolicited faxes. It outlines key provisions such as prior express content, identification of caller, time-of-day restrictions, opt-out mechanism, and do not call (DNC) registry compliance.

PPAI recommends best practices to comply with TCPA across provisions:

- Manage contact lists and consent documentation (accurate records, regular updates).
- Script and message requirements (clear identification, compliance with content rules).
- Time-of-day restrictions and frequency limits (calling times, frequency management).
- Use of automated dialing systems and prerecorded messages (consent requirements, opt-out mechanisms).

California Consumer Privacy Act (CCPA)

The CCPA grants residents of California rights for their personal information and imposes various data protection obligations on businesses. It outlines key provisions such as the right to know, right to delete, right to opt-out, non-discrimination, and a privacy policy outlining consumer rights and business practices.

General Data Protection Regulation (GDPR)

GDPR regulates the processing of personal data of EU residents. While it applies to businesses operating within the EU region, it impacts companies outside the territorial limits of the EU that have a presence in the EU region. It outlines key provisions such as lawful basis for processing, consent, data subject rights, data protection officer, and data breach notification.

A holistic strategy to comply with global regulations requires adopting best practices that integrate multiple compliance requirements:

- Unified consent management.
- Consistent privacy policies.
- Regular training.
- Develop a comprehensive compliance strategy that includes risk assessment, monitoring and auditing, and legal consultation.

Fines and Penalties

CCPA: Levies a penalty ranging from a few hundred dollars per consumer affected to hundreds of thousands of dollars for the corporation, depending on the severity of the violation.

GDPR: Levies a fine of up to 20 million euros, or for a company, up to 4% of the total global turnover of the preceding fiscal year, whichever is higher.

Best Practices for Compliance:

- **CAN-SPAM Act:** Ensure all commercial emails have accurate headers, non-deceptive subject lines, identification as advertisements, valid physical addresses, and clear opt-out mechanisms.
- **TCPA:** Obtain prior express consent for telemarketing calls and text messages, provide clear caller identification, adhere to time-of-day restrictions, and include opt-out mechanisms.
- **GDPR:** For companies with EU clients, ensure lawful data processing, obtain explicit consent, respect data subject rights, appoint a data protection officer if required, and notify authorities of data breaches promptly.
- **CCPA:** For companies with California clients, provide transparency in data collection; respect consumer rights to access, delete, and opt out of data collection; and maintain a comprehensive privacy policy.



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References:

- Federal Trade Commission (FTC): <https://www.ftc.gov>
- United States Code (Office of the Law Revision Counsel): <https://uscode.house.gov>
- FTC's Bureau of Consumer Protection: <https://www.ftc.gov>
- FTC CAN-SPAM Act Compliance Guide: <https://www.ftc.gov>
- Federal Communications Commission (FCC) TCPA Compliance Guide: <https://www.fcc.gov>
- Telephone Consumer Protection Act (TCPA): <https://www.fcc.gov>
- FCC's Consumer Complaint Center: <https://consumercomplaints.fcc.gov>
- European Commission GDPR Overview: <https://ec.europa.eu>
- California Attorney General CCPA Compliance Guide: <https://oag.ca.gov>
- National Do Not Call Registry (for Sellers, Telemarketers, or Service Providers): <https://telemarketing.donotcall.gov/>

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