

Misleading email subject lines can lead to substantial liability

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In *Brown v. Old Navy, LLC*, 567 P.3d 38 (Wash. 2025), the Washington Supreme Court recently interpreted the state’s Commercial Electronic Mail Act to prohibit any false or misleading information in the subject line of a commercial email, bringing with it a per se statutory penalty of \$500 per email. With consumer class actions spiking around the country, and with more than 35 states having similar or identical laws on the books, this could open another litigation trap for the countless businesses who rely on email to drive sales.

The *Old Navy* suit claimed that the subject lines of “Three Days Only” or “Today Only” were misleading because the promotions at issue were in fact available beyond the timeframes stated in the subject line. Under Washington law, only the subject line of the email is relevant to liability; in other words, any clarification, disclaimer, or other explanatory language in the body of the email is immaterial. Thus, this type of case presents the potential for staggering liability, and a number of additional suits have already been filed. Accordingly, retailers should exercise caution when drafting promotional emails.



Washington Court Expands Liability for Misleading Retail Emails

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