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Spammed by SPAM Suits? Blame Washington (State)

October 29, 2026

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When the Washington Supreme Court decided *Brown v. Old Navy*, 567 P.3d 38 (Wash. 2025), the consequences predictably reached California. *Brown* interpreted Washington’s Commercial Electronic Mail Act (CEMA) to prohibit false or misleading information in commercial-email subject lines, regardless of the email’s content. Since then, plaintiffs’ firms have filed a wave of putative class actions under California Business & Professions Code § 17529.5, also known as California’s Anti-Spam Law, with similar suits emerging in other states. For any retailer that emails, the stakes are massive.

(It’s not *all* bad news, though, as a recent Indiana federal court decision looked beyond the subject line to the terms and conditions within the email.)

Why California?

California’s Anti-Spam Law became a particularly attractive vehicle after *Brown*. Since April 2025, plaintiffs have filed more than 40 California suits alleging misleading email subject lines; before *Brown*, there was one. Correlation doesn’t always imply causation—but it’s hard to look at those numbers and conclude anything else.

First, the potential damages are greater.

Washington’s CEMA now provides \$100 per email (down from \$500 thanks to a legislative change),

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while California authorizes \$1,000 per email per recipient, up to \$1 million per incident. Applied to a single email blast, the exposure can be enormous.

Second, plaintiffs claim the statute imposes strict liability. Plaintiffs are arguing that California’s Anti-Spam Law requires no proof of intent, reliance, or even actual harm—which is the same framework wreaking havoc in Washington. (Washington now requires “actual knowledge” that the email contains false or misleading information, but this amendment does not apply to any action commenced prior to June 11, 2026.)

Third, preemption is an uphill battle. Most Washington courts and California state courts have rejected the defense although Ninth Circuit federal courts may be more receptive—making removal attractive where available. A federal court in Indiana also rejected preemption under that Indiana’s version of CEMA.

Fourth, California courts (both state *and* federal) rarely dismiss cases early on. Even though the Washington Supreme Court’s decision makes a distinction between puffery and falsity—noting that companies should not be punished for puffery—California courts may defer that determination until after (costly and time-consuming) discovery.

The Theory

The same “Today Only,” “Ends Tonight,” and “Final Sale” subject line claims are attacked in the California cases, as well as subject lines that overstate the scope, price, or duration of a promotion. Unlike Washington, California’s statute requires the misrepresentation to concern a “material fact regarding the contents or subject matter of the message”—a narrower hook in theory, but California courts generally interpret the statutory requirements favorably to consumers.

What Retailers Should Do

The good news is that California's Anti-Spam Law contains a built-in incentive for compliance: courts may reduce statutory damages from \$1,000 to \$100 per email (and from \$1 million to \$100,000 per incident) if a defendant implemented and maintained reasonable practices and procedures designed to prevent otherwise unlawful email. That, combined with the practical steps below, can help reduce exposure:

- **Audit subject lines for verifiable accuracy.** Treat urgency claims, “final” sales, percentage-off references, “X hours left,” and “free” offers as more than just marketing—get legal involved. If a sale is extended beyond its original expected end date, document the business reason.
- **Document a written anti-spam compliance program.** Policies, training, vendor monitoring, and recordkeeping aimed at preventing violations can help both trigger the statutory damages cap and reduce exposure.
- **Push consent and dispute-resolution terms upstream.** Class-action waivers and arbitration provisions remain a meaningful defensive option.

The Bottom Line

Brown opened the floodgates, and California presents still greater exposure. Retailers should review subject-line practices, formalize compliance procedures, and preserve evidence of those efforts before the next demand or lawsuit arrives.