

A friendly SPAM reminder

MAR
QUE

Another lockdown, another round of questionable online purchases. At Marque, our purchases have ranged from chic but dysfunctional coffee machines, outdoor projectors, skincare products, soap-making kits, a recorder, and, of course, wine.

During our online shopping sprees, we have noticed an increase in marketing messages from brands and companies hitting our inboxes after our purchase, or even after we exercised some restraint and stopped halfway through the check-out process, when we never gave consent to receive those messages. Of course, our lawyer ears pricked up, so we thought we'd issue a friendly reminder of the rules around SPAM and sending electronic commercial/marketing messages.

Electronic messages include emails, SMS and other types of instant messaging and are considered commercial where the purpose of the message is to offer to supply, advertise, and/or promote, goods and/or services. To send these types of messages, you need the consent of the recipient and consent can be express or inferred.

Express consent is the best kind of consent, and it usually involves the recipient actively checking a box agreeing to be sent newsletters and other marketing messages/communications.

Inferred consent is more nuanced and involves a more detailed assessment of your relationship with the recipient. For example, do they have an ongoing relationship with your brand or business, is the marketing directly related to that relationship, and is it reasonable to believe that they would expect to receive marketing from you. Consent **cannot be inferred** (in the absence of express consent) by someone simply making a purchase from your business or plugging their details into your check-out page.

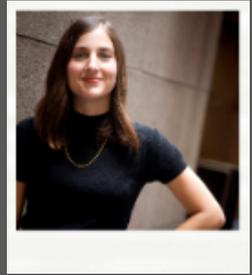
Once you have consent, you're responsible for ensuring that:

- you clearly identify your brand or business as the sender of your messages;
- the consent is ongoing;
- there are clear and functional opt-out mechanisms in each message; and
- you honour opt-out requests within 5 working days.

SPAM penalties can be quite substantial and are calculated per breach of the SPAM Act. Last year, Woolworths was fined over \$1 million, and Optus was fined about \$500,000, both for continuing to send messages to people who had already unsubscribed.

We recommend reviewing your practices around sending commercial/marketing messages and ensuring they're above board.

Questions? Give us a call.



Sophie Ciuffo
Senior Associate

+61 2 8216 3078
[Email Sophie](#)



Justin Cudmore
Partner

+61 2 8216 3015
[Email Justin](#)

Marque Lawyers Pty Ltd
Level 4, 343 George St
Sydney NSW 2000

Ph : +61 2 8216 3000
Fax: +61 2 8216 3001

[Visit Website](#)

