

How Pierce County woman's complaint about Old Navy shaped WA's spam email law

By Shea Johnson

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The Washington Supreme Court has ruled that marketers cannot send emails to Washingtonians that contain any false or misleading information in their subject lines, a broader interpretation of state law than retailers had urged amid fears of significant legal exposure.

In a 5-4 decision, the state's highest court affirmed that email subject lines with any false or misleading information violate the Commercial Electronic Mail Act, a 1998 state law intended to prevent residents from receiving unpermitted or deceptive emails.

The state Supreme Court opinion published Thursday stemmed from a proposed class-action lawsuit brought by two women, one of whom is from Pierce County, against Old Navy. The women alleged in a federal complaint filed in 2023 that the national clothing retailer's email subject lines misstated the duration of promotions to create a false sense of urgency, among other purported deceptive practices, court records show.

"No joke! \$12.50 JEANS (today only)," the plaintiffs offered as one example, according to the suit, which was filed in U.S. District Court for Western Washington.

"Old Navy commonly claims or suggests that sales will only be available for a certain amount of time in the email subject line," the complaint said. "However, in many instances, the sale is available for longer than the time period stated in the email subject line."

In a court-filed response, Old Navy denied that it had a practice of sending emails about sales with imaginary time limits or fake extensions. Even so, attorneys representing Old Navy argued that the Commercial Electronic Mail Act (CEMA) only prohibited false or misleading subject lines that concealed that an email was commercial in nature.

To gain clarity on CEMA, the plaintiffs asked the U.S. District Court for Western Washington to seek guidance from the state Supreme Court on the scope of the law's protections. In November 2023, the litigation was paused so that the federal court could submit an inquiry to the state Supreme Court.

Old Navy hoped that the justices would follow a recent federal court ruling that held that CEMA's scope was limited to subject lines that disguise the commercial nature of an email. The state Supreme Court, which isn't bound by federal courts' interpretation of Washington laws, ultimately followed the state statute's plain language.

In their majority opinion, five justices ruled that an email subject line didn't need to deceive consumers about the email's subject or purpose to violate CEMA but merely needed to contain any false or misleading information.

"CEMA does two things: it prohibits disguising the sender of commercial e-mail and it prohibits including false or misleading information in the subject line," Justice Steven González wrote.

Four justices disagreed that it was as simple.

In authoring the dissenting opinion, Justice Barbara Madsen said that the legislative intent behind CEMA was to protect consumers by stemming the flow of spam emails with subject lines that disguised a sender's attempt to sell something to the recipient.

"In my view, the plain language of the statute, the stated legislative intent and history, and state and federal case law preclude only those with subject lines concealing the e-mail's commercial purpose," Madsen wrote. "The majority reaches the opposite conclusion by reading (CEMA) in isolation from its context and legislative intent, contrary to our rules of statutory interpretation, and broadens the statute's reach beyond the legislature's intent."

Neither attorneys representing Old Navy nor attorneys for the plaintiffs in the federal lawsuit returned multiple messages seeking comment on the ruling and how it might be expected to shape the case moving forward. The parties were previously told they must submit a joint status report within 14 days from the state Supreme Court's decision, court records show.

No report had yet appeared to have been filed as of Monday.



The Old Navy store in Lakewood Towne Center, on Monday, April 21, 2025, in Lakewood. Washington State Supreme Court weighed in on a federal lawsuit filed by a Pierce County resident over allegedly false and misleading email subject lines from Old Navy. The Supreme Court ruled that any false or misleading information in email subject lines violate state law. Brian Hayes bhayes@thenewstribune.com

Retailers, lawyers watching anti-spam law decision

The decision, which the federal court previously said “will have far-reaching effects on individuals subject to Washington law,” was being closely watched by the state Attorney General’s Office, retailers and others.

Mike Faulk, a spokesperson for the Attorney General’s Office, told The News Tribune on Monday that the majority state Supreme Court offered a straightforward interpretation of the law.

“We’re glad the court rejected Old Navy’s attempt to narrow the scope of CEMA,” Faulk said in a statement. “CEMA favors the protection of Washington consumers from unfair and deceptive practices.”

An attorney representing The Retail Litigation Center, Inc., which represents national and regional retailers, and the Washington Retail Association did not return a message seeking comment on the ruling’s potential effects.

The organizations has made it clear that they sided with Old Navy in supporting a narrower interpretation of CEMA.

In a legal brief filed in connection to the state Supreme Court’s case in March 2024, attorneys representing the two groups argued that a broader interpretation of CEMA was unnecessary and duplicative since the Washington Consumer Protection Act already penalizes false and misleading marketing in all forms. It also was widely understood that subject lines aren’t comprehensive and that bodies of emails contain additional details, they said.

“If Plaintiffs were to prevail, businesses big and small would risk allegations that any missing information in the subject line violates CEMA, and thereby potentially incur massive exposure,” the legal brief said.

The majority state Supreme Court assured in its ruling that common marketing subject lines such as “best deal of the year” weren’t violations of state law.

“Mere puffery includes subjective statements, opinions, and hyperbole,” González wrote. “Mere puffery is contrasted by representations of fact — like the duration or availability of a promotion, its terms and nature, the cost of goods, and other facts Washington residents would depend on in making their consumer decisions.”

In recent days, lawyers from outside the region have taken note publicly of the decision, offering warnings to businesses to be mindful of what they say in email subject lines to Washington residents.

“The Washington Supreme Court has just handed down a decision significantly expanding the scope of its anti-spam law to now cover a wide array of false advertising

claims relating specifically to commercial emails,” attorneys for Los Angeles-based firm Greenberg Glusker wrote on the firm’s blog Monday.

CEMA, which penalizes violators \$500, doesn’t require actual damages to be proven because receiving the violating email is an injury, in it of itself, according to the state Supreme Court.

The lawsuit filed in federal court seeks statutory damages for plaintiffs and proposed class members of \$500 for each CEMA violation, court records show. Beyond seeking class-action status, the complaint requests that the federal court grant an injunction to prevent Old Navy from allegedly continuing to use misleading or false subject lines in its emails.

The class would comprise all Washington residents who, during a specific period, received an email from Old Navy with a subject line that the lawsuit claimed was deceptive, court records show. Two examples included any subject lines that advertised a sale that continued longer than stated or a sale that was presented as new but had actually been ongoing.

Proposed class members would have needed to receive such an email within four years prior to the date of the lawsuit being filed in April 2023 and until the date of a court order that certifies the class. No such order had been issued as of Monday, court records show.