

## CAN-SPAM Act Held to Apply to Conduct by Facebook User

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More and more lawsuits seem to involve the question of what laws apply to conduct on social media sites. Recently, a federal court in California was asked to decide whether the Federal CAN-SPAM Act applies to a Facebook user's alleged inappropriate conduct.

Facebook filed a lawsuit against Max-Bounty Inc., an advertising intermediary, that allegedly set up "fake" Facebook profiles to apparently re-direct unsuspecting Facebook users to third party sites. Facebook further alleged that Max-Bounty offered enticing offers for Facebook users to become a fan of the fake page, invite their network of friends to do the same and provide additional information as part of a "registration" process.

Facebook alleged, among other claims, that Max-Bounty's conduct violated the CAN-SPAM Act, 15 USC 7701. The Act prohibits "the transmission, to a protected computer, of a commercial electronic mail message, or a transaction or relationship message, that contains, or is accompanied by, header information that is materially false or materially misleading." 15 USC 7704(a)(1). Max-Bounty moved to dismiss the claim, arguing that the CAN-SPAM ACT did not apply to its conduct on Facebook and that any messages it sent were not sent to email addresses and were therefore not electronic messages.

The court noted that the statutory definition of "electronic mail messages" is broad enough to include alternative forms of messages, not just those directed to a "traditional email with a local part and a domain part (i.e., [user@domain.com](#)). " The court found that Max-Bounty's messages were directed to Facebook's users' "walls," "newsfeeds" and the home pages of the users' friends, all of which required some routing activity by Facebook. The court denied Max-Bounty's motion. The court concluded that Max-Bounty's alleged communications on Facebook were "electronic messages" and consistent with Congress' intent to mitigate the number of misleading commercial communications overburdening the Internet.

This decision is relevant to your organization as a user of social media sites. If you are on the receiving end of false or misleading advertising, the CAN-SPAM Act may provide a remedy. If you advertise on social media, take care that your conduct is compliant with applicable state and federal laws, including the CAN-SPAM Act. [Review the court's decision here.](#)

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