

## Lawsuit Over Spam Emails from Third-Party Advertisers Revived

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- Marketing companies sent unsolicited emails
- Domain names must be identifiable, court says

California law allows spam email recipients to sue third-party advertisers who fail to disclose their own identity under relevant advertising statutes, a state appellate court said.

A group of Californians who said they received nearly 300 spam emails advertising products sold by Digital Media Solutions LLC, which operates as Platinum Auto Warranty, can therefore proceed with a challenge to allegedly untraceable domain names, the California Court of Appeal, First District said.

The complaint, filed in San Francisco Superior Court in 2018, alleged violations of the California Business and Professions Code, which prohibits commercial emails containing false or misleading header information and misleading subject lines.

The trial court dismissed the complaint, which challenged sender names, subject lines, and domain names, finding it failed to state a claim under either the header or subject line subsets of state law.

Neither the sender names or subject lines were false or misleading, but the challenge to domain names must be allowed to proceed, Justice Jim Humes wrote Monday in a partially published opinion.

Subject lines such as “your auto warranty is running out!” are ambiguous and arguably misleading by suggesting the recipient already has an auto warranty with the sender, Humes said. But they don’t falsify the source of the email, and a directive to confirm a warranty doesn’t make any factual representations.

A statement like that is technically true if the recipient has an auto warranty, and if they don’t have a warranty, it’s immaterial, he said. And the sender names also can’t be used

to stake a cause of action because they don't make statements about the email's source.

But according to the complaint, the dozens of different domain names, which allegedly included "[Vehicle.Service.Plan@badealz.com](mailto:Vehicle.Service.Plan@badealz.com)" were registered to fake entities, and couldn't be traced back to the third-party marketing companies which sent them, Humes said.

An email with a made-up and untraceable domain name affirmatively and falsely represents the sender has no connection to the third-party companies, Humes wrote.

The recipients' allegations that the domain names used in the spam emails were made up and untraceable present an issue of fact that can't be resolved at this stage, he said.

Justices Sandra L. Margulies and Gabriel P. Sanchez joined the opinion.

Daniel Balsam, Jacob Harker, and Pacific Legal Group PC represent the plaintiffs. Sheppard Mullin Richter & Hampton LLP and Klein Moynihan Turco LLP represent DMS.

The case is [Greenberg v. Digital Media Sol. LLC](#) , Cal. Ct. App., 1st Dist., No. A158854, 6/21/21 .