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Unsolicited Mobile Ads – Spam?

Qualification & Information Requirements in Mobile Advertising

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Overview

- Introduction – „Spam“
- Mobile Ad Messages – Forms
- European Strategy on Spam
- Swiss Law on Spamming
- Information Requirements in M-Advertising
- Information Requirements in M-Commerce
- Do's and Don'ts



Introduction - Spam

- Analogy of Email-Spam and M-Messages?
- Spam is a problem for many reasons:
 - Invasion of privacy
 - Frequently misleading or deceptive
 - Shocking illegal content
 - Loss of time (emptying e-mailboxes) and financial costs to user (filtering software)
 - Considerable cost to businesses (loss of productivity)

Mobile Ad Messages

- A lot is possible:
 - Web- or App Display Ads
 - SMS-, MMS-Ads
 - Pop-Ups, Interstices
 - Ads in mobile games, videos or mobile TV
 - Bluetooth messages
 - Push-messages
 - Location based online sponsoring
 - Audio ads
 - Etc.
- > What is to be considered as spam if received unsolicited?

Mobile Ad Messages

■ Types of Mobile Advertising

SMS Ads	Search Ads	Web Display Ads	App Display Ads
			
	Google's Focus 	AdMob's Focus 	

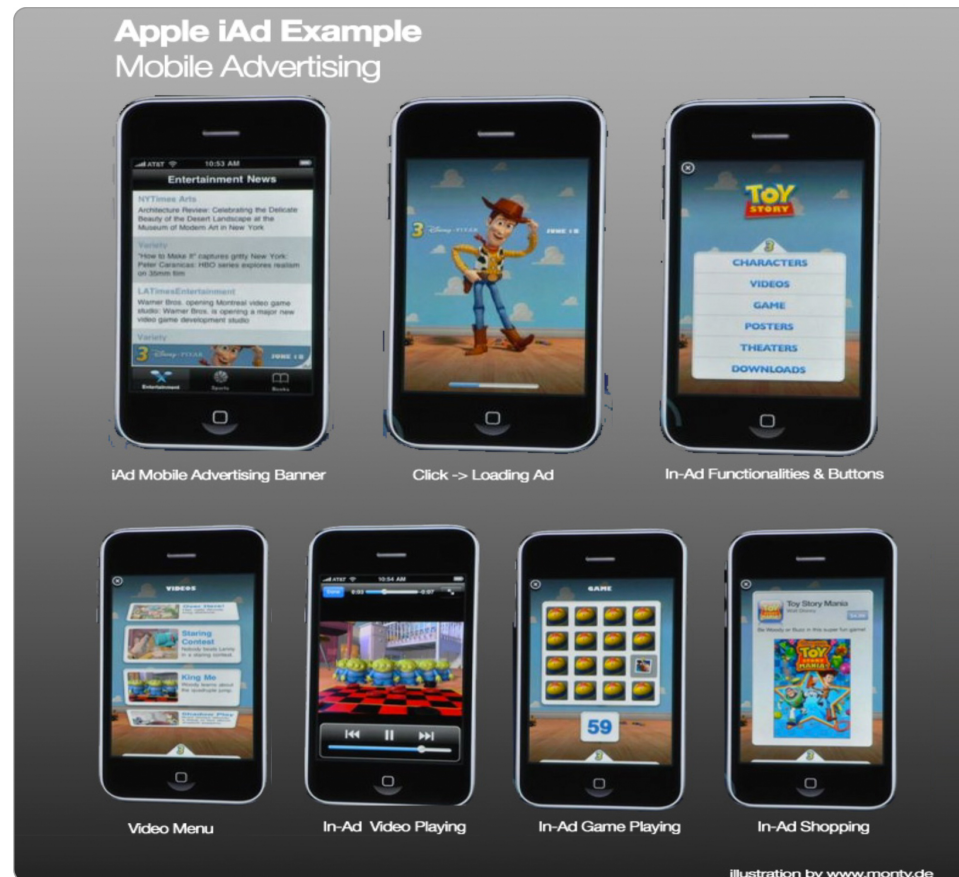
Mobile Ad Messages

- App Display Ad



Mobile Ad Messages

- App Display Ad



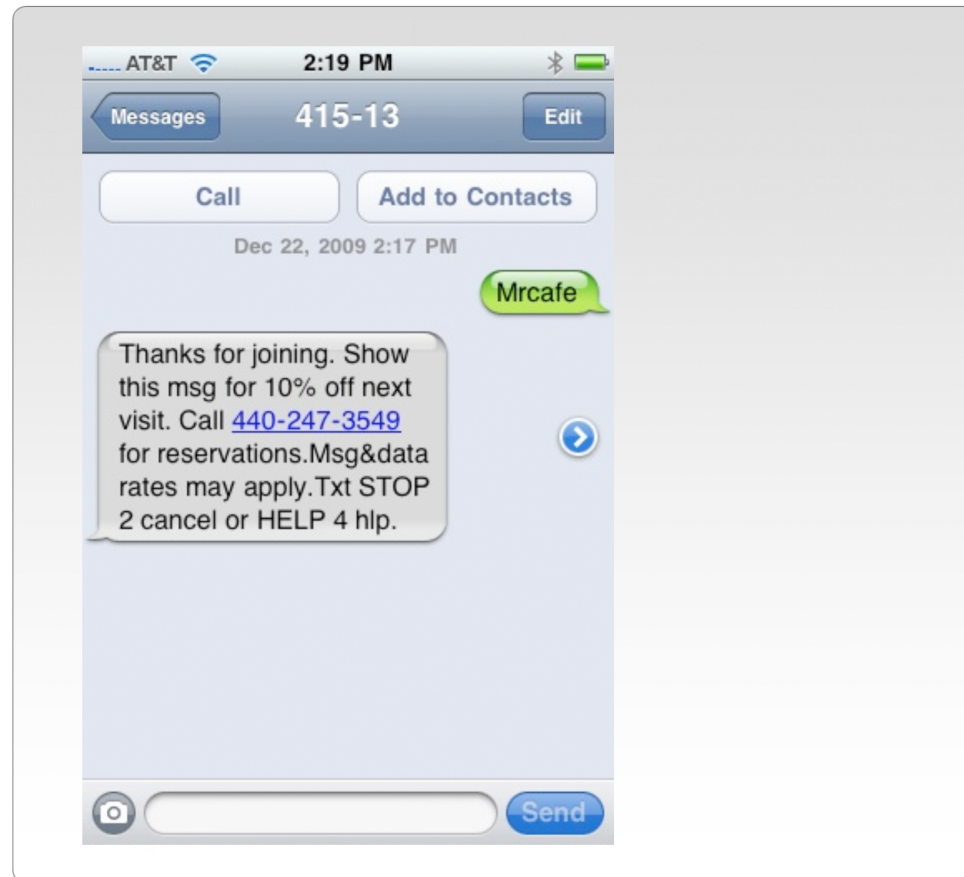
Mobile Ad Messages

- Web Display Ad



Mobile Ad Messages

- SMS/Coupon Ad



European Strategy Against Spam

- General ban on unsolicited commercial mail (e-mail, SMS or MMS) without prior consent of the subscriber (“opt-in”)
- Comprehensive lawmaking as to:
 - Remedies and penalties
 - Complaint mechanisms
 - Cross-border complaints
 - Cooperation with third countries
 - Monitoring
- Technical and self-regulatory action by market player
- Consumer awareness-raising

European Strategy Against Spam

EU Law on Unsolicited Commercial Messages

Directive 97/7/EC (Distance Selling)

Directive 2000/31/EC (E-Commerce)

Directive 2002/58/EC (Data Protection in Electronic Communications)

EU Member States National Law

Unfair Competition
Consumer Protection
Data Protection

EU Member States National Law

Unfair Competition
Consumer Protection
Data Protection

EU-Anti-Spam Regulation

- Directive 97/7/EC (Distance Contracts)
 - Art. 10 para. 1: opt-in messages sent by Voice-Mail systems or telefax
 - Art. 10 para. 2: opt-out in case of all other telecommunication means
 - Art. 14: EU Member States may generally require opt-in
- Directive 2000/31/EC (E-Commerce)
 - Art. 7: Commercial messages must be clearly visible as such
 - Art. 7 para. 2: mandatory opt-out register for consumer
- Directive 2002/58/EC (Data protection in electronic communication)
 - General ban on spamming
 - Art. 13: legal with prior consent of recipient (opt-in)
 - Art. 13 para. 2: excludes messages to legal persons (opt-out)
 - Art. 14 para. 4: general ban on anonymous advertising messages

Swiss Law on Spamming

- Definition Spam (art. 3 lit. o Swiss Act on Unfair Competition):
 - Unsolicited mass advertising sent by way of telecommunication resources (email, SMS, MMS, etc.) **is illegal**:
 - without obtaining the prior consent of the recipients;
 - without providing accurate details about the sender; or
 - without instructions describing a simple and free tool to refuse further ads.
 - However, unsolicited mass ads **are permissible** without prior content if:
 - customers contact details were collected in the course of a prior sale of goods or services;
 - customers were informed simultaneously about the possibility to refuse to allow their data to be used and shared for further ad purposes
 - mass ad relates to goods / services similar to those previously purchased

Swiss Law on Spamming

- „mass advertising“ – two components:
 - Advertising: message must be directly aimed at promoting the sale of products or services of a specific producer or service provider.
 - Mass: message sent to an important number of recipients.
- Sanctions & Remedies
 - Criminal penalties, fines or imprisonment of up to 3 years
 - Civil remedies (damages, injunctions)
 - Publication of judgment
 - Release of profit

Scope of Anti-Spam Regulation

■ Unsolicited Commercial Communication:

- „*‘electronic mail’ means any text, voice, sound or image message sent over a public communications network which can be stored in the network or in the recipient’s terminal equipment until it is collected by the recipient*” (Art. 2 lit. h EC Directive 2002/58/EC).
- “*mass advertising sent via telecommunication means*” (Art. 3 lit. o Swiss law on Unfair Competition)

■ Justifying arguments to cover m-messages:

- Direct and individually addressed (email-address, phone-number, skype-account, etc.)
- Locally stored on the user’s device or online-account
- Lack of possibility to “turn-off” receipt of messages (ex. Bluetooth, push-messages, iPad Apps)
- Costs linked with prevention of messages

Covered by Anti-Spam Regulation?

- NO** Mobile Web Banners
- YES** SMS-, MMS-Ads
- NO** Pop-Ups, Interstices
- NO** Ads in mobile games, videos or mobile TV
- NO** Bluetooth messages
- MAY BE** Push-messages
- NO** Location based online sponsoring
- MAY BE** Audio ads

Information Requirements

- M-Advertising / M-Commerce



Information Requirements

- Important anyway:
 - Information has to be provided on screen and in a way such as to allow the user to easily acknowledge it !

Information Requirements

- M-Advertising
 - Clearly identifiable as commercial message
 - No anonymous advertising (identity of the sender)
 - Name of service provider
 - Address of establishment
 - Contact details (email-address)
 - Trade register (if applicable)
 - Relevant supervisory authority (if applicable)
 - VAT number
 - Information on the data collected and stored (incl. location data) and its use
 - Meet local legal advertising requirements of recipient
 - Price-advertising
 - Value added mobile services
 - Financial services
 - Restricted products and/or services
 - Etc.

Information Requirements

- M-Commerce (EU Information Rules on Distant Selling)
- Important set of additional information to be provided prior to conclusion of any contract:
 - Different steps to conclude the contract
 - Prices and shipping costs
 - Description of product/service
 - Delivery times
 - Right to cancel (in detail)
 - General conditions
 - Etc.

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Thank you very much for your attention!.



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