

STATE OF INDIANA) IN THE LAKE COUNTY CIRCUIT COURT NO.
) SS:
) CAUSE NO.
COUNTY OF LAKE)

ERIK CABAN and **DELDURON GREEN**,
on behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

**MACYS.COM, LLC, MACY’S RETAIL
HOLDINGS, LLC, ADVERTEX
COMMUNICATIONS, INC., and
MACY’S MERCHANDISING CORP.,**

Defendants.

DEMAND FOR A JURY TRIAL

COMPLAINT

Plaintiffs Erik Caban and Delduron Green, on behalf of themselves and all others similarly situated, complain of Defendants Macys.com, LLC, Macy’s Retail Holdings, LLC, Advertex Communications, Inc., and Macy’s Merchandising Corp. (collectively, “Macy’s”) as follows, on information and belief except as to their own experiences and matters of public record:

INTRODUCTION

1. In 2003, like other states around the same time, to protect Indiana residents from the annoyance and harassment caused by the burgeoning spam email industry, the General Assembly enacted and the Governor signed the Deceptive Commercial Electronic Mail Act (DCEMA), codified at Indiana Code title 24, article 5, chapter 22.

2. Among other things, DCEMA prohibits transmitting commercial email that “contains false or misleading information in the subject line” to email addresses actually or constructively known to be held by Indiana residents. Ind. Code § 24-5-22-7(b)(3), (c)(2).

3. Macy's does just what DCEMA prohibits.

4. Macy's spams Hoosiers, including Plaintiffs, with email subject lines that employ various tactics to create a false sense of urgency in their minds and, ultimately, their wallets.

5. Macy's floods Hoosiers' email inboxes with messages communicating, falsely, that their time to act—that is, purchase Macy's products—is short.

6. This false urgency wastes Hoosiers' time by enticing them to engage with the Macy's fictitious deadlines. It impedes them from making informed purchasing decisions. And it steers them away from shopping around for better deals.

7. Plaintiffs bring this action to put an end to Macy's harassment of Indiana residents and to remedy the injuries it has caused.

JURISDICTION AND VENUE

8. The Court has of this action under I.C. § 33-28-1-2(a) and I.C. § 33-29-1-4(1).

9. The Court has jurisdiction over Defendants under T.R. 4.4(A) and the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution because Defendants market and sell their products in Indiana.

10. Venue is proper in this Court under T.R. 75(A)(5) because Plaintiffs reside in Lake County.

PARTIES

11. Each Plaintiff is a resident of Lake County, Indiana.

12. Each Defendant is a subsidiary of Macy's, Inc., that employs individuals whom Defendant Macy's Retail Holdings, LLC, has identified as knowledgeable about and having oversight responsibilities for Macy's email marketing efforts.

FACTUAL ALLEGATIONS

I. DCEMA protects Indiana residents from deceptive spam emails.

13. All Internet users—which is to say, virtually everyone—bear the cost of deceptive commercial spam.

14. In the more than two decades since DCEMA’s enactment, the problem of commercial spam has only grown exponentially.

15. In 2003, the United States Congress found that “[m]any senders of unsolicited commercial electronic mail purposefully include misleading information in the messages’ subject lines in order to induce the recipients to view the messages.” 15 U.S.C. § 7701(a)(8).

16. In 2012, one study estimated that Americans bear “costs of almost \$20 billion annually” due to unsolicited commercial email. Justin M. Rao & David H. Reiley, *The Economics of Spam*, 26 J. of Econ. Perspectives 87, 88 (2012).

17. Even when bulk commercial email marketers are operating under color of consumer consent, the reality is that “[m]ost privacy consent”—especially under the “notice-and-choice” approach predominant in the United States—“is a fiction.” Daniel J. Solove, *Murky Consent: An Approach to the Fictions of Consent in Privacy Law*, 104 Boston Univ. L. Rev. 593, 596 (2024).

18. Consumers therefore routinely “consent” to receive flurries of commercial emails which they did not meaningfully request and in which they have no genuine interest.

19. This includes emails sent to consumers from businesses with which they have no prior relationship, thanks to commercial data brokers and commercial data sharing agreements.

20. Simply conducting the routine affairs of daily life often exposes consumers to unanticipated and unwanted volumes of commercial email. “Nowadays, you need an email address for everything from opening a bank account to getting your dog’s nails trimmed, and ... [o]nce you hand over your email address, companies often use it as an all-access pass to your inbox:

Think of shopping websites that send account updates, deals, ‘we miss you’ messages, and holiday promotions throughout the year. It’s too much.” Kaitlyn Wells, *Email Unsubscribe Services Don’t Really Work*, N.Y. Times Wirecutter (Aug. 19, 2024), <https://perma.cc/U8S6-R8RU/>.

21. DCEMA exists to remedy and deter these harms, akin to those remedied and deterred by nuisance or fraud actions.

22. DCEMA’s requirement of truthfulness in commercial email marketing simultaneously protects consumers from nuisance and deception and facilitates honest commerce.

II. False time scarcity claims are an insidious tool in the commercial spammer’s toolkit.

23. One common way online marketers “manipulate consumer choice by inducing false beliefs” is to create a false sense of urgency or to falsely claim that consumers’ time to act is scarce. Fed. Trade Comm’n, *Bringing Dark Patterns to Light* 4 (2022), <https://perma.cc/847M-EY69/>; see also U.K. Competition & Mkts. Auth., *Online Choice Architecture—How Digital Design Can Harm Competition and Consumers* 26 (2022), <https://perma.cc/V848-7TVV/>.

24. The Federal Trade Commission has identified the “False Limited Time Message” as one example of false time scarcity claims, in which the marketer creates “pressure to buy immediately by saying the offer is good only for a limited time or that the deal ends soon—but without a deadline or with a meaningless deadline that just resets when reached.” *Bringing Dark Patterns to Light*, *supra* para. 23, at 22.

25. “False or misleading scarcity claims can change the behavior of consumers.” *Online Choice Architecture*, *supra* para. 23, at 27.

26. Representations about the timing and duration of sales, discounts, and other special offers are fundamentally representations about prices, and such representations matter to ordinary consumers. See, e.g., Huiliang Zhao *et al.*, *Impact of Pricing and Product Information on Consumer Buying Behavior with Customer Satisfaction in a Mediating Role*, 12 *Frontiers in*

Psychology 720151 (2021), available at <https://pmc.ncbi.nlm.nih.gov/articles/PMC8710754/pdf/fpsyg-12-720151.pdf/>.

27. False scarcity claims are psychologically effective. As “considerable evidence” suggests, “consumers react to scarcity and divert their attention to information where they might miss opportunities.” *Online Choice Architecture*, *supra* para. 23, at 26.

28. Invoking this time pressure achieves a seller’s aim to narrow the field of competitive products and deals, by “induc[ing] consumers to rely on heuristics (mental shortcuts), like limiting focus to a restricted set of attributes or deciding based on habit.” *Id.*

29. Under time pressure, “consumers might take up an offer to minimize the uncertainty of passing it up.” *Id.*

30. False time scarcity claims thus *harm consumers* by manipulatively distorting their decision-making to *their detriment—and the seller’s benefit*.

31. Indeed, one 2019 study found that “customers who took timed deals rather than waiting to see wider options ended up worse off than those who waited.” *Id.* at 27.

32. False time scarcity claims also harm market competition. Consumers learn to ignore scarcity claims, “meaning that when a product [or offer] is truly scarce, the seller will not be able to credibly communicate this information.” *Id.*

III. The subject lines of Macy’s commercial emails deploy false time scarcity tactics against consumers.

33. Macy’s operates a national department store chain and also sells and markets its products online.

34. To promote its products, Macy’s floods consumers’ inboxes with marketing emails at an approximate average rate of three per day, every day.

35. False time scarcity claims are a staple of Macy's email marketing practices. These claims are part of a preplanned, preconceived marketing strategy that Macy's orchestrates in advance to maximize sales by distorting information about the duration and availability of its sales, promotions, and other offers.

36. On February 13, 2024, Macy's transmitted an email with the subject heading: "Open ASAP: up to 65% off ends tomorrow 🕒 🕒" which communicated discounts on items in their home department.

37. As demonstrated by an email sent on February 17, 2024, and with the subject heading "Here, but not for long: 10-65% off all things home + Bonus Days!" the call to urgency on February 13 was misleading because the reduced pricing would be offered once again only four days later.

38. Then, in less than two weeks' time, on February 28, 2024, Macy's sent another email informing recipients that comparable reductions were available, though buyers would, of course, have only hours to act upon the offer: "Hours left for 30-60% off *the best* home deals."

39. On November 10, 2024, Macy's blasted consumers with an email with the subject heading: "Last chance! 40-60% off disappears tonight *poof*," suggesting that November 10 was the final opportunity for customers to receive the advertised discounts.

40. But this was not the "last chance" for such savings. Macy's quickly resumed spamming inboxes with "deals." On November 14, 2024, mere days after the "last chance" warning, Macy's sent another email with the subject line "Black Friday deals are here! 🎉" and advertising additional reductions, some of which exceeded 60%.

41. On November 13, 2024, Macy's sent an email with the subject heading "Today only! Save on Nike, Crocs & more during our Parade of Deals." As confirmed within the email, children's Nike merchandise was offered at 25% off.

42. But it was not a "Today only" deal.

43. Just three days later, on November 16, 2024, Macy's sent another email saying that Nike products were yet again offered on sale in an email with the subject heading: "25-40% off Nike, Reebok and more." Text within the email confirms that children's activewear was again offered at 25% off, right below an image of children's Nike apparel.

44. The following month, Macy's deployed this same strategy to mislead, bait, and switch.

45. On December 15, 2024, Macy's sent an email with the subject line "Ends in hours! 40% off dresses & more."

46. Three days later, on December 18, 2024, Macy's again utilized the call to urgency, for an even better deal on dresses, in an email titled "Final hours! 50-60% off dresses, suits & more party looks."

47. And again, a mere two days later, Macy's was still offering dresses at reduced pricing as confirmed in a December 20, 2024, email sent with the subject line, "Right now: 40% off dresses, online only .

48. The misleading nature of these communications could not be clearer. A customer in receipt of the December 15 email is urged to buy immediately because the subject line advises that the offered pricing is in its "final hours." However, twice in less than a week's time, the same (*or better*) deals on dresses were offered.

49. Macy's continued using this strategy in 2025.

50. On January 30, 2025, Macy's sent an email with the subject heading "Today only: 50-65% off men's suits & more during our Flash Sale."

51. Yet, on February 5, 2025, Macy's sent another email indicating that men's suits were again offered at a discounted rate (in some cases, *better* than the January 30 deal), stating in the subject line: "Flash Sale ⚡ 50-70% off men's suits, shoes & more, today only!"

52. A similar instance arose in the weeks that followed.

53. On February 17, 2025, Macy's transmitted an email with the subject line: "Ends tonight! Up to 70% off jewelry." A few weeks later, On March 4, 2025, Macy's sent another email titled "Hours left! Score up to 70% off jewelry & watches NOW 💎 [.]"

54. Then, on March 14, 2025, yet another "temporary" sale: "Up to 70% off jewelry + earn faster with Star Money Bonus Days". And on March 15, 2025, Macy's offered recipients reduced pricing yet again in an email with the subject: "Up to 70% off jewelry + earn faster with Star Money Bonus Days."

55. Thus, within a span of thirty days, customers had multiple opportunities to purchase jewelry from Macy's at a 70% discount despite Macy's representing the offer as scarce or time-limited.

56. Macy's deployed the same strategy in the context of a flash sale the following month.

57. On April 15, 2025, Macy's sent an email titled "Flash Sale! 50% off dresses, suits & more" while the body of the email confirmed this sale was for "today only."

58. But the pricing scarcity suggested in the email's subject might be better described as a slow burn rather than a flash.

59. Two days later, Macy's sent an email with the subject line, "Star Money Bonus Days + up to 50% off dresses, suits & more" making the same pricing available yet again. Then, the following month, the same pricing was offered again in yet another flash sale as communicated in a May 28, 2025, email titled, "Flash Sale! 50% off men's suits, dresses & more."

60. Unlike so many of its alleged deals, Macy's spam campaigns are limited by neither time nor season. The misleading strategy was in full swing for the summer of 2025. On May 26, 2025, Macy's sent an email with the subject line: "Up to 60% off! Last chance to save on summer styles." Such reductions, however, would be typical for the summer season. The same rate would be offered again in a June 12, 2025, email titled "Up to 60% off what you NEED for summer." The spam continued the following day, June 13, 2025, with an email containing the subject line, "Up to 60% off! See our TOP offers for summer."

61. Similarly, a July 13, 2025, email included a subject line signaling the end of epic deals on summer items: "Ends tonight! EPIC deals on summer styles." Yet, within five days, a July 18, 2025, email heading announced the beginning of a comparable sale: "Starts now! Up to 50% off summer styles."

62. The misleading summer style campaign continued into August. On August 3, 2025, Macy's sent an email with the subject line: "End-of-summer sale: up to 50% off ends tonight!" Later that same day, Macy's transmitted another email with the subject line "Ends in hours! Our BEST deals of the summer."

63. Despite their promise that the summer's best deals would end on the third, Macy's advertised deeper discounts on summer styles a mere two days later in an August 5, 2025, email with the subject line: "Flash Sale: up to 60% off summer styles starts NOW."

64. Within a week's time, on August 11, 2025, email confirmed even deeper reductions were to come with its subject line "Clearance! Up to 70% off summer looks 🦋 🍷 🧊."

65. Macy's has also used its email campaigns to misrepresent the duration of certain sales. For example, on Friday, March 14, 2025, Macy's sent an email with the subject line: "One Day Sale is on! Up to 60% off spring finds." But one needs only to open the message to confirm the falsity of its title. Within the body of the email, a scrolling banner across the top indicates that the sale is "now through Sunday." By any definition, this Friday deal that extended through Sunday was not a "One Day Sale."

66. Macy's continued to deploy these tactics through 2025 and into 2026.

67. The following email subject lines follow the patterns described above:

a. November 4, 2025: "Ends tonight! 30% off brands that RARELY go on sale". A better discount (70%) was announced the following day.

b. November 4, 2025: "Ends in hours! Friends & Family is almost over..." Again, a better discount (70%) was announced the following day.

c. December 20, 2025: "1 day left for holiday delivery! 🎁". There was more than one day left; holiday delivery was still available on December 22.

d. January 29, 2026: "Today only: Up to 65% off men's designer suits, active & more". A better discount (70%) was announced just days later, on February 3.

e. April 19, 2026: "Last day! Comforter sets starting at \$29.99, plus more home deals". A superior promotion was announced just days later, on April 21.

IV. Macy's knows, actually or constructively, when it sends emails to Indiana residents.

68. A sophisticated commercial enterprise, like Macy's, which is engaged in persistent marketing through mass email campaigns across the United States, has several ways of knowing

where the recipients of its marketing emails are located. The means it employs are peculiarly within its knowledge.

69. First, the sheer volume of email marketing that Macy's engages in put it on notice that Indiana residents would receive its emails.

70. Second, Macy's may obtain location information tied to email addresses when consumers purchase Macy's products, or otherwise self-report such information to Macy's.

71. Third, Macy's may obtain location information tied to email addresses by tracking the IP addresses and other identifiers of devices used to open Macy's emails, which in turn can be correlated to physical location (as illustrated, for example, by the website <https://whatismyipaddress.com/>). Among other technologies, Macy's uses Oracle to manage its email marketing campaigns, which, on its own or in combination with other data and analytics tools, gives Macy's detailed insight into the behavior and characteristics of its email audiences.

72. Fourth, Macy's may obtain location information tied to email addresses by purchasing consumer data from commercial data brokers such as Acxiom, Oracle, and Equifax, which sell access to databases linking email addresses to physical locations, among other identifiers.

73. Fifth, Macy's may obtain location information tied to email addresses by using "identity resolution" services offered by companies such as LiveRamp, which can connect consumers' email addresses to their physical locations, among other identifiers.

74. It is highly probable that a seller of Macy's size and sophistication employs not just one but several means of tying consumers' email addresses to their physical locations, at least at the state level.

V. Macy's has violated Plaintiffs' rights under DCEMA to be free of deceptive commercial spam.

75. Macy's has spammed Plaintiffs with commercial emails whose subject lines contain false or misleading statements in violation of their rights to be free from such annoyance and harassment under DCEMA.

76. Plaintiff Caban received, for example, the following emails from Macy's, each of which is discussed above, at a personal email address.

- a. November 4, 2025: "Ends tonight! 30% off brands that RARELY go on sale".
- b. November 4, 2025: "Ends in hours! Friends & Family is almost over..."
- c. December 20, 2025: "1 day left for holiday delivery! 🎁".
- d. January 29, 2026: "Today only: Up to 65% off men's designer suits, active & more".

77. Plaintiff Green received, for example, the following email from Macy's, which is discussed above, at a personal email address.

- a. April 19, 2026: "Last day! Comforter sets starting at \$29.99, plus more home deals".

78. The subject lines of these emails are false or misleading, in violation of DCEMA, because they made false or misleading factual representations about the duration or availability of Macy's sales, offers, or other promotions.

79. It is likely that Plaintiffs have received all the marketing emails sent by Macy's since their email addresses were added to Macy's marketing list, beyond those which they happened to save in their inbox.

CLASS ALLEGATIONS

80. Plaintiffs bring this action under T.R. 23, on behalf of themselves and all others similarly situated.

81. Subject to future amendment or revision, Plaintiffs seek to represent the following putative class (“Class”):

All Indiana residents who, during the Class Period, received a commercial email sent by Defendants or with Defendants’ assistance that contained messaging in the email’s subject line which misrepresented the facts of a sale, deal, or other promotion.

82. Excluded from this definition of the Class are Defendants’ officers, directors, and employees; Defendants’ parents, subsidiaries, affiliates, and any entity in which Defendants have a controlling interest; undersigned counsel for Plaintiffs; and all judges and court staff to whom this action may be assigned, as well as their immediate family members.

83. The Class Period extends from the date six years before this Complaint is filed to the date a class certification order is entered in this action.

84. Plaintiffs reserve the right to amend the Class definition as discovery reveals additional emails containing false or misleading information in the subject line that Defendants sent or caused to be sent during the Class Period to email addresses held by Indiana residents.

85. The Class is so numerous that joinder of all members is impracticable because the Class is estimated to contain, at minimum, thousands of members.

86. There are questions of law or fact common to the class, including without limitation whether Defendants transmitted or assisted the transmission of commercial emails containing false or misleading information in the subject line; whether Defendants sent such emails to email addresses they knew or had to reason to know were held by Indiana residents; whether Defendants’ conduct violated DCEMA; and whether Defendants should be enjoined from such conduct.

87. Plaintiffs' claims are typical of the Class's because, among other reasons, Plaintiffs and Class members share the same statutory rights under DCEMA, which Defendants violated in the same way by the uniform false or misleading marketing messages they sent to all putative Class members.

88. Plaintiffs will fairly and adequately protect the Class's interests because, among other reasons, Plaintiffs share the Class's interest in avoiding unlawful false or misleading marketing; have no interest adverse to the Class; and have retained competent counsel extensively experienced in consumer protection and class action litigation.

89. Defendants have acted on grounds generally applicable to the Class, in that, among other ways, they engaged in the uniform conduct of sending uniform commercial emails to Plaintiffs and the Class, which violate DCEMA in the same way, and from which they may be enjoined as to Plaintiffs and all Class members, thereby making appropriate final injunctive relief with respect to the Class as a whole.

90. The questions of law or fact common to the members of the Class predominate over any questions affecting only individual members, in that, among other ways, Defendants have violated their rights under the same laws by the same conduct, and the only matters for individual determination are the number of false or misleading emails received by each Class member and that Class member's resulting damages.

91. A class action is superior to other available methods for the fair and efficient adjudication of the controversy because, among other reasons, the claims at issue may be too small to justify individual litigation and management of this action as a class presents no special difficulties.

CLAIMS TO RELIEF

COUNT I

**Violation of the Indiana Deceptive Commercial Electronic Mail Act
Ind. Code § 24-5-22-7
On behalf of the Class**

92. Plaintiffs incorporate and reallege paragraphs 1–79 above.

93. Defendants have initiated the transmission, within the meaning of Indiana Code § 24-5-22-4, or assisted the transmission, within the meaning of Indiana Code § 24-5-22-1, of commercial electronic mail messages, within the meaning of Indiana Code § 24-5-22-2, that contain false or misleading information in the subject line to electronic email addresses, within the meaning of Indiana Code § 24-5-22-3, that Defendants know or have reason to know are held by residents of Indiana.

94. Plaintiffs have received commercial electronic mail messages containing false or misleading information in the subject line of which Defendants have initiated the transmission or assisted the transmission.

95. For Defendants’ violations of the Deceptive Commercial Electronic Mail Act, Plaintiffs seek an injunction against future violations, as well as actual damages or presumptive damages of \$500 for each violation, whichever is greater.

PRAYER FOR RELIEF

96. Plaintiffs ask the Court to

a. Certify this action as a class action under T.R. 23; appoint Plaintiffs as Class representatives; and appoint Plaintiffs’ counsel as Class counsel;

b. Enter a final judgment in Plaintiffs’ and the Class’s favor that awards actual or presumptive damages to Plaintiffs and the Class, according to proof; permanently

enjoins Defendants from the unlawful conduct alleged; and awards pre- and postjudgment interest, as allowed by law;

c. Award Plaintiffs and their counsel their reasonable costs and fees incurred in prosecuting this action, as allowed by law; and

d. Order such further relief as the Court finds appropriate.

JURY DEMAND

97. Plaintiffs demand a trial by jury on all issues so triable.

[Signature page follows]

DATE: July 7, 2026

Respectfully submitted,

/s/ Lynn A. Toops

Lynn A. Toops, No. 26386-49
Natalie A. Lyons, No. 36583-32
Ian R. Bensberg, No. 33956-53
COHENMALAD, LLP
One Indiana Square, Suite 1400
Indianapolis, IN 46204
Tel.: (317) 636-6481
ltoops@cohenmalad.com
nlyons@cohenmalad.com
ibensberg@cohenmalad.com

Gerard J. Stranch, IV*
Michael C. Tackeff*
**STRANCH, JENNINGS &
GARVEY, PLLC**
223 Rosa L. Parks Avenue, Suite 200
Nashville, TN 37203
Tel.: (615) 254-8801
gstranch@stranchlaw.com
mtackeff@stranchlaw.com

Samuel J. Strauss*
Raina C. Borrelli*
STRAUSS BORRELLI, PLLC
980 N. Michigan Avenue, Suite 1610
Chicago, IL 60611
Tel.: (872) 263-1100
sam@straussborrelli.com
raina@straussborrelli.com

Attorneys for Plaintiffs

* Applications for admission *pro hac vice*
forthcoming