Point of sale email

Managing compliance, privacy and deliverability with in-store email acquisition

An Experian Marketing Services white paper
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Introduction
Retailers today collect email at every point of interaction, including at the call center, through Website opt-ins and through mobile, social and in-store contact. Of all these touch-points, collecting customer information in the store at the point of sale (POS) typically offers the greatest potential to build a retailer’s email list quickly and to drive timely offers and communications that increase customer loyalty and retention. For instance, Eastern Mountain Sports saw 8 percent of customers acquired at POS are currently purchasing online.¹

While POS collection has become an industry standard due to its potential for tremendous list growth, the practice carries its share of compliance and deliverability risks due to inappropriate or incorrect collection and use of email data.

If you are engaging in POS collection, you should be particularly mindful of:

- State and federal laws covering in-store data collection
- Consumer expectations about choice and privacy
- Data accuracy and integrity pitfalls
- Deliverability best practices

A holistic approach to risk mitigation should begin with staff education, flow into customer perception management, and then focus on data management and deliverability.

This white paper focuses on these issues and provides best practice suggestions for marketers collecting customer information at the retail counter.

The information contained herein is marketing guidance from Experian Marketing Services and should not, under any circumstances, be construed as legal advice. Recipients should consult their own counsel for appropriate advice regarding legal issues.

¹ Experian Marketing Services case study:
http://www.experian.com/cheetahmail/case-studies-eastern-mountain-sports.html
California compliance

California's Song-Beverly Credit Card Act of 1971

Collection of personally identifiable information (PII) at the point of sale is governed by various state laws, the most restrictive of which is California's Civil Code 1747.8, a part of the Song-Beverly Credit Card Act of 1971. To date, 14 other states and the District of Columbia have merchant laws in this area. Although these laws are considered less restrictive than their California counterpart, a growing body of case law is reason enough to operate with care.

Song-Beverly defines PII as “information set forth on the credit card, and including, but not limited to, the cardholder’s address and telephone number.”

While Song-Beverly does not prohibit merchants from requiring cardholders to provide reasonable positive identification, it prohibits them from leading a consumer to believe that providing PII is necessary to complete a credit card transaction.

It also is important to note that California grants a private right of action to credit card users to sue retailers, and the state could levy civil penalties of up to $250 for the first violation and $1,000 for each subsequent violation plus costs and legal fees against merchants found in violation of the act.

Pineda v Williams-Sonoma Stores, Inc.

Taking the definition of PII and the “but not limited to” language into account, the California Supreme Court ruled in Pineda v Williams-Sonoma Stores, Inc., that PII includes ZIP® codes.

The repercussions of this decision are twofold:

1. The California court system has since seen an increase in class action lawsuits against merchants.

2. Pineda paved the way for a critical ruling impacting all email marketers.

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2 Delaware, District of Columbia, Georgia, Kansas, Maryland, Massachusetts, Minnesota, Nevada, New York, New Jersey, Ohio, Oregon, Pennsylvania, Rhode Island and Wisconsin
3 California Civil Code §1747.08(b)
Powers v Pottery Barn, Inc.
In the 2009 case of Powers v Pottery Barn, Inc., the U.S. District Court for the Central District of California held that email addresses also were covered under Song-Beverly, effectively prohibiting marketers from collecting email addresses during credit card transactions.

In its decision, the court stressed that the purpose of Song-Beverly was to address the misuse of personal information for marketing purposes, and that the statute was “specifically passed with a brick-and-mortar merchant environment in mind.”

Saulic v Symantec Corp.
This limited application of Song-Beverly was echoed in the case of Saulic v Symantec Corp., where the California Supreme Court held that Song-Beverly did not, in fact, extend to online transactions.

Point of sale compliance implications
In light of these recent case findings and the growing number of Song-Beverly-like state statutes, California brick-and-mortar retailers must be more conscientious than ever in planning and executing their POS strategy.

The key issue to note is that POS collection is possible in California if the consumer pays in cash, or if PII is distinctly requested prior to or following the credit card transaction.

4 177 Cal. App 4th 1039, 1044 (Ct. App. 2009)
CAN-SPAM Act compliance
When thinking about a POS strategy, marketers also should be aware of their responsibilities under the CAN-SPAM Act.

E-Receipts
One popular technique among retailers is to ask shoppers if they would like a receipt emailed to them. It is important to note that an agreement to receive an e-receipt should not be necessarily interpreted as consent to be added to a commercial email list unless this intent is adequately communicated to the consumer and they consent. It is always a best practice to reference their consent to marketing emails at the same time as the e-receipt request.

Alternatively, there is an opportunity to request a commercial email opt-in within the e-receipt email. In these circumstances, it is recommended to use a true confirmation link request as opposed to a welcome email with an opt-out link, since the opt-out method may, in some cases, not satisfy CAN-SPAM Act compliance and may lead to deliverability risks with emailing “spam traps.”

Additional caution is recommended when designing the e-receipt creative. According to the FTC’s CAN-SPAM Act Primary Purpose Rule, the primary purpose of a message can be determined by its subject line and content, and not just by the conditions under which it was sent. While it is commonly thought that a receipt is by default a “transactional message” and is exempt from commercial compliance requirements, this is not always the case. If the message includes any commercial content in the subject line, or if the receipt is overwhelmed by surrounding marketing collateral at or near the top of the message, its primary purpose may be viewed as “commercial,” and it is subject to the law’s identification and opt-out compliance requirements.

Opt-out compliance
The CAN-SPAM Act requires senders to obtain affirmative (opt-in) consent from consumers who have previously unsubscribed from commercial communications before re-adding them to a marketing list. If affirmative consent is not recorded at POS, the address should be checked against a suppression list before mailing.

5 FTC’s final rulemaking to the CAN-SPAM Act, 2008
Consumer privacy
Is the impact on the customer experience at POS acceptable, considering the benefit of capturing customer email information?

Privacy-conscious marketers should think about their POS strategy by asking themselves the following questions:

• Which company lists will the email be added to? Will the email be added to a single promotion list or will the customer be subscribed to multiple types of messaging?

• Will the customer's email address be shared with partners or with third parties for marketing purposes?

• What are the resource capabilities at each customer touch-point, and how will email capture impact the customer experience? Are there resources for the stores to make use of electronic kiosks, iPad® devices or similar technology to enable customers to self-enter their email addresses?

• Will customers receive an incentive to provide their email at POS? Please note that email acquisition incentives such as coupons should only be fulfilled via email and not during the transaction at the counter to mitigate potential fraud.

• Can the paper receipt be used to drive email acquisition, such as by referencing an incentive on the Website or with social media engagement opportunities?

Logistical challenges
Fast-paced retail environments present a significant logistical challenge to POS efforts. When pressure mounts, there is a natural inclination for staff to rush the transaction and cut corners, resulting in mistakes made on both sides of the register. Most commonly, customers leave without knowing they've been auto-enrolled in a commercial email program or staff receive incorrect or purposely falsified addresses.

Cutting corners at the counter also may lead to inadvertent Song-Beverly violations, mistakes that easily could erase return on investment (ROI) through costly litigation.
To address privacy concerns, consider creating mandatory scripts for personnel to follow at the counter. If staff training is a concern, consider spelling out the notification and collection process on a written countertop notice, a kiosk, a credit card terminal or a touchpad device where both consumers and sales associates won’t miss it.

**Data accuracy**
When retail marketers are comfortable with the privacy aspects of POS collection, their attention often turns to the accuracy of captured data. Typos and mistakes at the counter are becoming more significant and are negatively impacting deliverability. The benchmark “bounce” or undeliverable rate for welcome emails collected at POS is 19 percent, compared with the 2 percent overall bounce or undeliverable rate across all emails sent by Experian Marketing Services in 2011.⁶

Email addresses should be validated at POS to prevent fraudulent users or bad data, such as domain misspellings and other common typos, from entering the customer database.

**Best practices for email collection at POS include:**

- The associate should spell back the submitted email address to the customer and possibly re-enter it for further verification.

- The cashier should ask customers to verify the email address submitted on a kiosk, a terminal or an iPad.

- Retailers should consider using mobile-friendly Quick Response (QR) codes to capture email addresses, as the technology is an easy way to capture customer data accurately.

- Marketers should engage third-party email management tools and services such as Experian QAS to validate customer data. Utilizing Experian QAS email validation will increase data accuracy and reduce bounce rates.

**The ideal validation solution**
The ideal solution would enable retail marketers to proactively manage data quality at the point of email acquisition. Look for tools that catch and correct syntax errors, confirm email domains are active and verify whether mailboxes exist. For best results, retailers should look for a partner that can also flag or suppress known complainers and spam traps.

Many retailers leverage this functionality during data capture. Email addresses are validated immediately as the store associate submits the information, providing an opportunity to resolve any issues. Other retailers prefer to run daily or weekly list audits. Automated list cleansing is easily implemented and requires minimal technical resources. This way, retailers who wish to avoid workflow disruption still are able to ensure that new subscriber data is reviewed before a welcome mailing deploys.

In addition to real-time validation, retailers also should perform periodic list cleanses. This helps to mitigate risk associated with inactive or nonresponsive subscribers and enables recovery of some inaccurate entries. By analyzing this subscriber segment, retail marketers keep their mailing lists fresh, remove outdated information and even correct a portion of that inactive list.

Combined, these strategies lead to higher deliverability; stronger reputation amongst ISPs; improved open and click-through rates; and ultimately, a greater ROI for senders.

**Deliverability**

In a typical e-receipt scenario, data quality can be improved by sending a welcome email, a confirmation or an engagement series. A real-time welcome email always is recommended to reinforce subscriber opt-in recognition. Welcome content may include a retail incentive fulfillment component, further increasing a subscriber’s affinity to your brand and the likelihood of future engagement.

**In addition, deliverability best practices recommend the following:**

- If the customer consents to the in-store e-receipt and opts into your marketing messages at the register, send a welcome email shortly after the e-receipt to confirm the customer’s subscription status and to outline the benefits of your commercial email program.

- Be sure to include a clear and easy unsubscribe or preference management mechanism as well as a prominent link to your privacy policy.

- Consider offering subscribers the option to manage frequency, types of content, or mobile versus rich HTML versions.

- If the customer only consents to the in-store e-receipt, or if you’re not sure whether they opted in to commercial emails (or if they are on a suppression list), it’s a best practice to include an opt-in link, a button or a banner toward the bottom of the e-receipt creative along with a link to your privacy policy.

- Make sure all welcome emails are bounce-removed immediately.
Engagement optimization

The majority of new subscribers will open or click a client’s email within the first 30 days or within approximately four to six campaigns. Once the addresses are captured and validated, POS subscribers who open or click should be included with all regular promotional marketing streams.

However, if a POS subscriber has not opened or clicked within the first 30 days, or as long as within a 90-day period, the email address can be considered suspect.

**Experian Marketing Services’ Deliverability Team and Strategic Services Group can assist marketers with the process of identifying and defining inactive subscribers, using the following strategies:**

- Establishing the potential causes for subscriber inactivity to mitigate spam-trap risks and inform engagement strategies

- For the remaining addresses which may be salvageable, developing and targeting subscribers with a re-engagement program

- If all else fails, sending a reconfirmation series to renew consent and to further verify the validity and accuracy of the data
Putting it all together

Clients who take the proper steps to overcome POS email acquisition hurdles and to identify and tackle inactivity early on will reap the rewards of better deliverability, stronger reputation, subscriber loyalty and increased engagement.

Here's how you put it all together:

**Pre-POS**
- **Kiosk/iPad entry**
  Privacy policy or disclaimer at point of collection
- **Notepad**
  Ask to check spelling
- **Fishbowl**
  Write-in-drop contest (repermission B2B)

**At POS**
- **Cash versus credit**
  Cash transactions are exempt; otherwise can't obtain email during transaction in California
- **Disclaimer is optional**
  but is a privacy best practice
- **E-Receipt**
  Provide a disclaimer or an email request after card clears

**Post-POS**
- **Credit card terminal**
  Email entry following transaction
- **Automatic teller request**
  Privacy policy or disclaimer at point of collection
- **Cashier request**
  Disclaimer is optional but advised as a privacy best practice
- **Paper receipts**
  are prime real-estate to promote your social media presence and Website

**CAN-SPAM**

If the collected address is a former unsubscriber, he or she must be asked to affirmatively consent to the mailing list on the spot or through opt-in permission pass email.
In summary

It is possible to collect PII at the counter in California (or elsewhere) in a careful and conscientious manner if you follow these guidelines:

1. **Decouple PII collection from the credit card purchase.** Ask customers for their email addresses before taking their credit cards or after they sign off on the purchase so it is clear that email is not required as part of the transaction. Create a script for your sales associates to follow when requesting PII at the register.

2. **Consider using the credit card terminal or other touchpad device for customers to enter their email rather than using the sales associate.** The device should first prompt the customer to consent to receiving an in-store e-receipt and/or marketing communications, ideally before proceeding with the transaction, but it could be after as well.

3. **Be transparent about the commercial intent.** A consumer who feels misled is more likely to complain and to seek redress under the state’s Song-Beverly or other consumer protection laws. If following different scripts is a challenge, apply the same disclosure/request script for both credit and cash transactions.

4. **Fulfill any incentives offered at the counter through email.** Provide each consumer with a dynamic and unique link. A consumer will have less of a reason to give you a valid email address if you offer and fulfill the incentive at POS. Limiting the use of the incentive to email will help you avoid incentive abuse.

5. **Validate submitted data.** Ask customers to verify the accuracy of their PII before submitting. Use appropriate list management tools to prevent avoidable domain errors.

6. **Send a welcome permission pass.** Don't assume that the customer wants anything more than an in-store e-receipt even if you can legally claim to have this right. Let the customer make an informed decision at the counter or in a subsequent email.

Clients that take the proper steps to overcome POS challenges and risks will reap the rewards of subscriber loyalty, a stronger reputation and better inbox performance in the long run.

If you would like more information on how Compliance, Deliverability and Email Validation can help your POS strategy, then please visit our Website at experian.com/marketingservices, email us or call us at 1 866 626 6479.