



YOUR BUSINESS • APRIL 2019

Can I use refer-a-friend promotions as a direct marketing tool?

What you need to know.

We increasingly notice that undertakings are encouraging their customers to provide them with contact details (such as e-mail addresses) for their friends and acquaintances. Undertakings then use this information to send direct marketing to those friends and acquaintances. In exchange for those contact details, all of the persons involved will receive e.g. a discount coupon. Such a “refer-a-friend” promotion or viral marketing promotion unquestionably qualifies as direct marketing.

The Belgian Data Protection Authority recommends asking the recipient’s consent before sending out direct marketing. For direct marketing via electronic communications, such as e-mail, this is in principle even required by law. Thus, for refer-a-friend promotions, an undertaking also needs the consent of the friend whose contact details were passed on.

And that is where the shoe pinches: it is practically impossible to obtain the (prior) consent of these friends, or at least it cannot be proven. Therefore, refer-a-friend promotions as a direct marketing tool are prohibited. The Belgian Data Protection Authority explicitly confirms this in its 2013 [recommendation on direct marketing](#) (in French).

What you need to do.

As a company, you are not allowed to use refer-a-friend promotions as a direct marketing tool, and you will have to stop any ongoing promotions. Otherwise you run the risk that the data protection authority will qualify these promotions as a breach of the privacy legislation. In the event of such a breach, the data protection authority may impose an appropriate sanction, such as a warning or even a fine. Please remember that such promotions constitute a particularly “public” infringement which may lead to further investigations by the authority.

Is there any permissible alternative for refer-a-friend promotions? Absolutely! For example, as an

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undertaking you can send a discount coupon to your customers, who in turn can pass this discount coupon on to their friends. If their friends use this discount coupon when ordering, the initial customer can then also receive a discount coupon for his next order.