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Hands-on Counsel, Gloves-off Litigation

Rachel Hirsch, Esq. *Senior Associate*

Call Me Maybe? ... Or Maybe Not

Recent Enforcement Trends Under the Telephone Consumer Protection Act

**Hello! May I please interrupt
your private time to sell you
something you don't want?**



WHAT IS THE TCPA?

47 U.S.C. § 277

- Enacted In 1991 to Protect Consumers From Automated Telemarketing Via Phone And Fax.
- Includes Specific Provision Banning (With Certain Exceptions – i.e. Consent) Any Type Of Automated Call To Mobile Phones, Even For Non-Commercial Or Informational Purposes.
- Extends To Automated Text Messages, Or “SMS” Text Messages.
- Provides For \$500 In Damages For Each Violation And Up To \$1500 In Damages If Actions Deemed “Willful.”
- Enforced By FCC, State Attorney Generals, Private Litigants, And FTC.



RECENT FCC RULINGS

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SoundBite Communications Secures Successful FCC Declaratory Ruling For Text Messaging Compliance

SoundBite leadership champions compliance clarity, paving a clear path for mobile communications

BEDFORD, MA – November 29, 2012 – SoundBite Communications (NASDAQ: SDBT), a provider of customer experience management solutions, today announced the Federal Communications Commission's (FCC) recent favorable ruling on its February 2012 Petition for Declaratory Ruling. Sound public policy was clearly a guiding principle in removing the ambiguity around sending consumers confirmatory opt-out text messages. The ruling clarifies that sending a single opt-out confirmation after a consumer opts out of receiving text messages from a company does not violate the Telephone Consumer Protection Act (TCPA).

With its filing, SoundBite has championed the cause of consumers and businesses alike. This consumer-friendly ruling provides consumers with an optimal mobile experience, as they will now enjoy the "peace of mind" that comes from receiving a confirmation whenever they ask to be removed from mobile text messaging campaigns. Equally as important, companies now have complete clarity on how to handle consumer opt-outs. SoundBite played the lead role in creating this "win-win" and providing clarity to the

PRIVATE LITIGATION TRENDS

A red rectangular advertisement with a white border. The text is white and centered. It reads 'Telephone Consumer Protection Act Class Action Lawsuit' in a large font, followed by 'Click here for' in a smaller font, and a button that says 'More Information' in a white font on a grey background.

Telephone Consumer Protection Act Class Action Lawsuit

Click here for

More Information

- Class Certification Means Substantial Recoveries For Plaintiff' s Lawyers.
- Recent Supreme Court Decision Allows Consumers To Challenge Telemarketers In Federal Or State Court.
- Some Companies May Be Held Liable For Third-Party Vendors.

PRIVATE LITIGATION TRENDS – CASE STUDIES

GET IT WHILE IT'S HOT!



Papa John's

- \$16.335M Settlement Resulting From Unsolicited Text Messages To More Than 200,000 Individuals.
- \$2.86M Worth Of Free Pizza Vouchers To Class Members.
- \$11M Cash Awards To Class Members.

Domino's

- \$9.75M Settlement To Consumers Who Received Prerecorded Robocalls On Their Cell Phones.
- Total Class Of 1,152,617.
- \$3M In Attorney's Fees.



PRIVATE LITIGATION TRENDS – CASE STUDIES

GOT DEBT? – NEW BANK OF AMERICA CLASS ACTION LAWSUIT

Bank of America.



- Accuses Bank of America Of Using Automated Dialers To Call Customers' Cellphones To Collect Debt.
- Alleges That Lead Plaintiff Revoked Any Prior Express Consent.
- Seeks Statutory Damages Under Both The TCPA And FCCPA.
- Seeks Class Certification Less Than One Month After Complaint Filed.

FTC ENFORCEMENT



FTC Can Enforce Through Section 5 Authority.



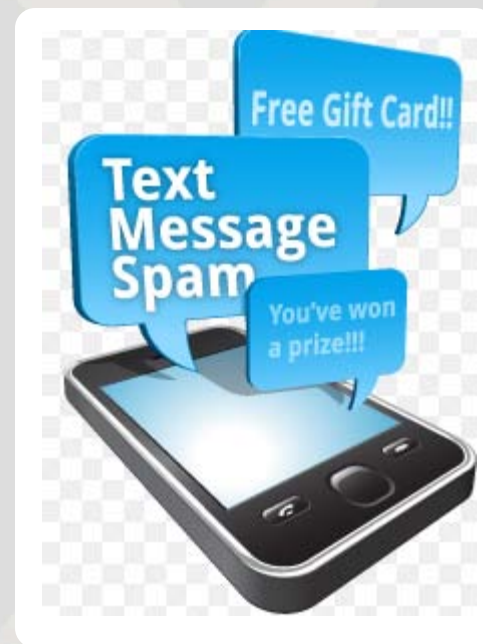
For FTC, Content Matters; For TCPA, It Does Not.



Robocalling May Also Violate The Telemarketing Sales Rule.



Companies Face Disgorgement of Ill-Gotten Gains.



OFF THE HOOK

4 BEST PRACTICES TO PROTECT AGAINST TCPA LITIGATION



Educate Employees



Avoid Purchased List Of Numbers



Review Compliance With Outside Contractors



Obtain Necessary Consent

ON THE HOOK

4 BEST PRACTICES TO DEFEND AGAINST TCPA LITIGATION



Maintain Company
Records



Evaluate Legal
And Factual Defenses



Review Insurance
Coverage



Avoid Class Action
Certification



1717 Pennsylvania Avenue, Suite 650
Washington, D.C. 20006
www.ifrahlaw.com

email: rhirsch@ifrahlaw.com

blog: FTCBeat.com