Call Me Maybe? ... Or Maybe Not

Recent Enforcement Trends Under the Telephone Consumer Protection Act
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.
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

- 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

• 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
- Review Compliance With Outside Contractors
- Avoid Purchased List Of Numbers
- 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
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