



**IfrahLaw**

Hands-on Counsel, Gloves-off Litigation

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# 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?



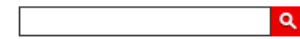
# WHAT IS THE TCPA?

47 U.S.C. § 227

- 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 button with a white border. The text 'Telephone Consumer Protection Act Class Action Lawsuit' is written in white, bold, sans-serif font. Below it, in a smaller white font, is 'Click here for'. At the bottom, there is a white button with the text 'More Information' in black.

### 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.



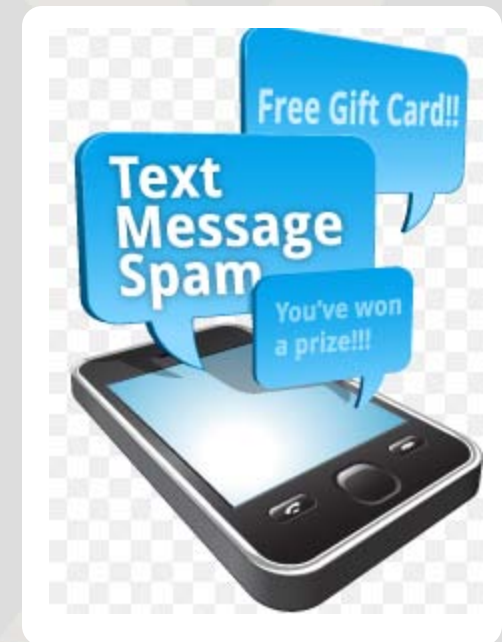
For FTC, Content Matters; For TCPA, It Does Not.



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



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