

Light at the End of the Text-to-Stop Tunnel?

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The Southern District of California recently granted summary judgment in favor of the defendant in a class action alleging that it had violated the Telephone Consumer Protection Act (TCPA) by sending a confirmation text message in response to a consumer's text message opt-out request. The TCPA protects consumers from unsolicited, autodialed calls. Under the Act, text messages are considered "calls." As we have reported, plaintiffs' class action attorneys have been filing series of cases arguing that messages sent to confirm an opt-out request violate the TCPA, as they were sent – according to the class action lawyers – without consent. In finding for the defendant and disagreeing with the plaintiff's reading of the law, the court noted that the Act was designed to prevent intrusive calls causing an invasion of privacy, and the unobtrusive confirmatory text message was not an invasion of the plaintiffs' privacy. Therefore, the text was not a violation of the TCPA. Similar cases have settled before trial so this decision reflects one of the first times a court has addressed the issue of opt-out confirmation text messages under the TCPA. It is not clear if other courts will follow the reasoning of this California district court. In the meantime, as we reported recently, the FCC is considering whether it should amend the TCPA regulations to specifically exclude from its consent requirements confirmations sent in response to a consumer's opt-out request.

TIP: It is possible that courts will begin to agree with companies and dismiss lawsuits filed in response to confirmation texts sent after a consumer texts STOP. It is not clear, though, if the reasoning in this case will be widely accepted. As a precautionary measure, companies who send text messages would be well-served to disclose that STOP requests will receive a confirmation text, and provide an alternative method for opting out, such as a phone number to call, or an email address to contact.

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