

Case Regarding Ability to Send Text After Consumer Opt Out Survives Motion to Dismiss

DECEMBER 2, 2011

According to a complaint filed in the Southern District of California, a bank customer received an unsolicited text message from his bank after inquiring about a personal line of credit. The message indicated that the bank needed to talk to the customer about “your recent application.” The customer opted out as directed in the text, and received a confirmation text indicating that the bank would no longer send him text messages. The customer filed suit, alleging that both messages violated the Telephone Consumer Protection Act, since they were sent without his consent. The bank moved to dismiss, and the court denied the motion stating that the appropriate way for the bank to establish that the customer’s claims were not founded was a motion for summary judgment, not a motion to dismiss.

TIP: This is one of several cases that has been filed alleging that a company has violated the TCPA by sending a confirmation to let a consumer know that an opt-out request was received and would be honored. As we have indicated previously, companies should take steps to ensure that their text message opt-out procedures are compliant with the TCPA.

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