

Sean Wieber Discusses Liability for Unsolicited Marketing Text Messages Under Telephone Consumer Protection Act with *Legaltech News*

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Winston & Strawn Litigation Partner Sean Wieber discussed the current debate among courts to determine whether unsolicited text messages can trigger a violation of the Telephone Consumer Protection Act (TCPA). His comments appeared in *Legaltech News*' article "Lawsuits Following Unsolicited Marketing Texts Keeps Pressure on TCPA Compliance."

Sean explained that to suggest there is a split among circuit courts regarding whether one unsolicited text message has standing is somewhat misleading.

"Only the Eleventh Circuit has specifically addressed the 'single text message' scenario," he said.

"The Ninth, Second and Seventh Circuit courts have held, generally, that receiving text messages constitutes injury under the TCPA, without specifically noting how many text messages are required," he added.

The article noted that in 2017, the U.S. Court of Appeals for the Ninth Circuit ignited some fears that one unsolicited marketing text message is sufficient to bring a TCPA violation.

In contrast, last year the Eleventh Circuit ruled a single, or even a few, text messages didn't have Article III standing.

The Seventh Circuit took a different perspective in a recent ruling, writing, "A few unwanted automated text messages may be too minor an annoyance to be actionable at common law. But such texts nevertheless pose the same kind of harm that common law courts recognize—a concrete harm that Congress has chosen to make legally cognizable."

In turn, the Seventh Circuit agreed with both Ninth and Second Circuit decisions that the number of texts is irrelevant to the injury-in-fact analysis and unwanted text messages can constitute an injury.

While there is uncertainty about the stance of other courts, the article concluded that compliance with the TCPA is the first step to prevent a violation or lawsuit.

For more insight on this issue, read the full *Legaltech News* article [here](#). (Subscription required)

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