

Court Allows TCPA Claim Alleging Failure to Honor STOP Request to Proceed

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A Florida district court recently denied Voice Media Group's motion to dismiss a class action alleging that the company violated the Telephone Consumer Protection Act (TCPA) by sending the plaintiffs multiple text messages after they texted STOP, thereby opting out of all text messages. The plaintiff representative had initially consented to receive text messages from VMG, which provides a text alert service, but subsequently texted STOP to opt out of such messages, and further followed directions provided by VMG to then text STOP ALL to stop all text messages. The court recognized that the TCPA is silent about whether consumers can revoke their consent to receive text messages. However, the court held that the plaintiff had sufficiently plead that plaintiff had followed the steps provided by VMG itself to stop text messages and by doing so had revoked his consent to receiving text messages. As such, messages sent after his revocation were sent without the plaintiff's consent. The court also rejected VMG's argument that failure of its system to process the STOP request nullified the revocation. Finally, the court also found that the plaintiff's allegations that VMG sent mass texts to consumers was sufficient to support the inference that in sending such text messages VMG used an automatic telephone dialing system.

TIP: Under the recently amended TCPA regulations, prior express written consent is required to send text messages that contains any advertising content using an automatic telephone dialing system. While the TCPA is silent as to whether (or how) consent can be revoked, if your company gives consumers the option to revoke consent, any such request should be promptly honored.

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