

## Text Messages Sent By Taxi Dispatch Service Found Not Sent By Autodialer

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A federal district court recently granted defendant's summary judgment in a case filed by a defendant for violations of the Telephone Consumer Protection Act. In his complaint, plaintiff alleged that defendants Orange Cab Company and TaxiMagic, a company that sends text message updates to consumers regarding their cab requests, violated the TCPA when they sent plaintiff a text message for which plaintiff did not provide prior express consent. Instead, the plaintiff called the taxi company using his cell phone, and the dispatcher manually entered his cell phone number into a program called "TaxiMagic." That program sends consumers messages telling them where their cabs are, how far away the cabs are, as well as an invitation to download the TaxiMagic app. The plaintiff alleged that the message he received constituted an unsolicited advertisements sent without consent, in violation of the TCPA. If texts are sent using an "automatic telephone dialing system" (ATDS), the TCPA requires prior *written* consent to send messages containing advertising content, and prior consent to send messages without advertising content. The court determined that the technology utilized by defendants did not constitute an ATDS under the TCPA and therefore the text message did not fall under the TCPA's regulation. The court reiterated that under the TCPA, equipment constitutes an ATDS if it either has the capacity to store or produce telephone numbers to be called, using a random or sequential number generator; and to dial such numbers (citing the TCPA), or is a predictive dialer with the capacity to dial telephone numbers from a list without human intervention (citing a 2008 FCC ruling). The court held that based on the evidence presented, the system's present capacity was not to store, produce or call randomly or sequentially generated telephone numbers. Similarly, the court found that human intervention was essential to sending a text message through defendants' system in as much as "the customer must have first provided some amount of information to the dispatcher, the dispatcher must have pressed 'enter' to transmit that information to both the TaxiMagic program and the nearest available driver, and the driver must have pressed 'accept' on his or her mobile data terminal." As such, the court granted the cab companies' motion for summary judgment on the TCPA claim.

**TIP: Under the TCPA, companies must get prior express consent to send text messages, if the messages are sent using an automatic telephone dialing system. When engaging in a text message program, companies should carefully evaluate the technology used to send such text messages to determine whether the technology constitutes an ATDS under the law, and if so, ensure that appropriate consent is obtained.**

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