

An Autodialed Text About Employment Opportunity Is Not Advertising

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An Illinois federal district court recently dismissed a Telephone Consumer Protection Act (TCPA) case against Kale Realty LLC, finding its autodialed text message about a real estate employment opportunity did not constitute an advertisement or telemarketing.

Kale sent plaintiff a text message that read “Kale Realty named 2013 Top 100 Places to Work by Tribune – We pay 100% on sale – Reply or visit <http://joinkale.com> to learn more! Rply 68 to unsubscribe.” Plaintiff argued this message was a telemarketing call that contained an advertisement for Kale’s services and alleged Kale sent the text without obtaining his prior express written consent. The court disagreed, finding that the intent of the message was not to “encourage an individual to purchase any of Kale’s services,” but instead to “inform” plaintiff “about an opportunity to become an independent contractor for Kale.”

As a result, the message neither introduced an advertisement nor constituted telemarketing, and plaintiff’s written consent was not required. Moreover, the court found plaintiff had provided his prior express consent when he exchanged emails with Kale about potentially merging their real estate businesses and included his cell phone in his email signature. Plaintiff’s consent remained valid even after a two-year time lapse since he failed to revoke it and the text message content also related to developing a business relationship.

TIP: While noteworthy, this case is primarily another reminder of the significant class action activity surrounding the TCPA and communicating with individuals via their cell phone numbers, where the applicability of certain consent requirements will be decided on a fact-specific basis.

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