

## Providing Cell Phone Number During Purchase is Not Consent for Marketing Texts

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The U.S. District Court for the Southern District of Florida recently held that an individual who provided his cell phone number when purchasing tickets to a comedy show online did not provide consent under the Telephone Consumer Protection Act to receive future marketing communications from the club hosting the show. The court reasoned that the plain language of the TCPA requires a consumer's "express consent" before sending text messages, and merely providing a cell phone number in the course of a retail transaction did not constitute such "express consent." The comedy club argued for the applicability of a 1992 order from the FCC, which suggests that those who knowingly release their phone numbers have effectively given their permission to be called at the number provided, absent instructions to the contrary. However, the court ruled that the FCC's ruling is "not entitled to deference" in this case because it deviated from the "clear" language of the TCPA, which requires express consent rather than mere implied consent.

**TIP: This case is a reminder that companies must have mechanisms in place for getting consent for automatically dialed text messages. Since TCPA has a private right of action, this is an area of ever-increasing activity.**

*This tip has been created for information and planning purposes. They are not intended to be, nor should they be substituted for, legal advice, which turns on specific facts.*

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