

Cab Companies Sued in Washington for Texting Practices

FEBRUARY 12, 2013

U.S. District Court for the Western District of Washington recently decided that a text message sent by two cab companies to a consumer could be considered “commercial” and thus regulated under Washington state law, but that plaintiff had not pled enough facts to state a claim under the federal Telephone Consumer Protection Act (“TCPA”). According to the plaintiff, the cab companies, working together, sent a single unsolicited text message offering a free smart phone app that would allow plaintiff to book taxis. For this alleged act, plaintiff sought relief under the TCPA and two Washington state laws—the Commercial Electronic Mail Act (“CEMA”) and Consumer Protection Act. The TCPA requires consent when a message is sent using an auto-dialer. The court struck down plaintiff’s TCPA claim, stating that the complaint did not plausibly allege that the defendants used an auto-dialing system to deliver the text message. The court did, however, provide plaintiff leave to amend the complaint, if he can provide additional allegations regarding factors that would presumably give more color to the argument that an auto-dialer was used. Namely: (1) the number of texts defendant sent containing substantially the same message and (2) the time between plaintiff’s use of defendants’ services and the moment he received the text. With respect to the CEMA claim, the court noted that this state anti-spam law forbids sending a commercial text message to a Washington resident’s cell phone. This anti-spam law is unique in this respect, as most other states spam laws are specific to email, and do not cover text messages. In the context of the CEMA, “commercial” means “sent to promote real property, goods, or services for sale or lease.” The defendants argued that the text was not “commercial,” because the app being offered was free. Although the judge conceded that case law exists to support this argument, the claim was allowed to go forward against defendants, because the text encouraged future use of defendants’ taxis services, leading to the reasonable conclusion that the text promoted future commercial transactions. For this reason, the court explained, the text might reasonably be “commercial” under CEMA. As to plaintiff’s claims brought under Washington’s Consumer Protection Act—which prohibits unfair or deceptive commercial acts—the court requested further briefing by the parties on the issue of whether plaintiff’s claim amounts to “mere annoyance,” and whether the claimed actions taken by defendants led to cognizable injury by plaintiff.

TIP: Companies that send text messages should keep in mind that in addition to federal law (the TCPA), Washington’s spam law appears to cover commercial text messages. Although the federal CAN-SPAM Act pre-empts the email portion of Washington’s spam law, the pre-emption of the texting provisions is less clear. As such, following the same procedures for sending texts through auto-dialers – getting consent – is a best practice to avoid exposure.

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.

2 Min Read

Related Topics

Consumer Privacy

Data Breach

Related Capabilities

Privacy & Data Security

This entry has been created for information and planning purposes. It is not intended to be, nor should it be substituted for, legal advice, which turns on specific facts.