

Cruise Line Sued in NY for Alleged TCPA Violation

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In February 2012 a class action suit was brought against Caribbean Cruise Line alleging violations of the Telephone Consumer Protection Act (TCPA). According to the complaint, the named defendant received a call that used an artificial or pre-recorded voice, indicating that if he stayed on the line, he could take a survey and have a chance to win a free cruise. According to the complaint, if a consumer did stay on the line, he was connected to a representative who promoted the company's hotels. The named defendant had not consented to receiving these calls, and apparently did not have a business relationship with the company. The TCPA and its regulations prohibit making calls using pre-recorded or artificial voices unless, *inter alia*: (1) the caller and the recipient have a pre-existing business relationship; (2) the call is not "made for a commercial purpose;" or (3) if made for a commercial purpose "does not include or introduce an unsolicited advertisement" nor constitute a "telephone solicitation" (i.e., a call to induce someone to make a purchase). This law is similar, but different from the Telephone Sales Rule, which prohibits pre-recorded sales calls made without permission (a law not cited by the plaintiffs). This new case is still pending, and it appears that a decision will turn on the facts, including whether the subject matter of the call included an advertisement or attempt to sell goods or services.

TIP: If your company has a program in place to call its customers, make sure that you have obtained suitable consent prior to making the calls. Be careful of obligations under both the TSR and the TCPA, and keep in mind that states have their own laws as well. Be particularly careful when vetting a calling program to understand the full subject matter of the calls.

1 Min Read

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