

District Court Finds Web Order Text Reminder Does Not Constitute Telemarketing

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A federal district court recently held that a reminder text message regarding an unfinished order for a free sample did not constitute telemarketing under the Telephone Consumer Protection Act (TCPA). Plaintiff Noah Wick alleged that he visited a website and submitted his name, address, and cell phone number as part of a process to obtain a free sample of a pre-workout supplement product. According to the complaint, plaintiff decided not to continue, but then received an “unsolicited” text message reminding him to complete his order. (The text message read: “Noah, Your order at Crevalor is incomplete and about to expire. Complete your order by visiting [URL].”) Plaintiff then sued Twillio, Inc., the sender of the message, alleging that the communications company sent a telemarketing message without his prior express written consent in violation of the TCPA.

Judge Robert S. Lasnik disagreed, finding that Twillio obtained the required consent. While marketing text messages can only be sent with the recipient’s prior express *written* consent under the TCPA, other transactional texts that do not qualify as “telemarketing” require only the recipient’s “prior express consent.” Here, Judge Lasnik found that the text simply reminded Wick how to complete the order process he initiated without offering or encouraging the purchase of any other product. According to the court, Twillio met the requisite “prior express consent” standard for this customer service message, since plaintiff provided his number to the website without limiting instructions. The case has been dismissed with leave to amend.

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. It is also not clear that other courts would reach a similar conclusion about “reminder to purchase” texts.

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