

FTC Settles with Text “Spammer”

JULY 24, 2013

The FTC recently settled with an alleged texting “spammer” who sent millions of unsolicited text messages to consumers, claiming that the recipients had won free iPads. The defendant, Henry Nolan Kelly, was first sued in March, along with a series of others whom the FTC alleged were sending spam text messages. These defendants were acting in violation of the FTC Act, the FTC alleged, by misleading consumers into believing they had won prizes. Instead consumers were directed to websites where they were required to participate in multiple offers to qualify for the prizes. To participate in the offers, consumers had to make several purchases, sometimes negative offer purchases, and provide billing information, names, mailing addresses, phone numbers, and dates of birth. The FTC also alleged that the practices were unfair, inasmuch as the receipt of these messages –messages many consumers had to pay for because of the nature of their text message plan - caused injury that the consumers could not avoid, and was not outweighed by a benefit to the consumer or to competition generally. Kelly has now settled the allegations by disgorging his income from the text message campaign (\$60,950), has agreed not to send any future unauthorized text messages, and has agreed not to use any of the information he obtained from his activities.

TIP: This case is a reminder that the FTC is looking carefully at text message practices, and companies clearing these campaigns should think not only about traditional “text” laws like the TCPA and CAN-SPAM, but also at general deceptive and unfairness issues.

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