

Retailers Settle Text Lawsuit for \$10M

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Abercrombie & Fitch, Co. and Hollister Co. recently settled a class action lawsuit in which they were alleged to have sent text messages to consumers' cell phones without the consumers' prior express written consent, violating the Telephone Consumer Protection Act (TCPA).

According to the complaint, the defendants sent unsolicited advertisement messages to over 3.7 million consumers as early as August 2010 without appropriate consent. The complaint also alleged that the messages did not include an opt-out mechanism, despite the fact that the "text terms" on both companies' websites stated that people could opt-out of texts by replying "STOP" to any message. The plaintiffs sought statutory and treble damages as well as injunctive relief prohibiting violations under the TCPA. The retailers ultimately settled the case for \$10,000,000, which will be set up as a settlement fund for class members.

Tip: This case is a reminder to ensure that prior express consent is obtained before sending marketing text messages and class action attorneys are closely scrutinizing companies' representations, including descriptions of opt-out mechanisms, to determine if they are accurate.

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