

Mobile Marketing and the Telephone Consumer Protection Act: Is Your Company at Risk?



What is the Telephone Consumer Protection Act?

The Telephone Consumer Protection Act (TCPA) prohibits the use of an automatic telephone dialing system (ATDS) to make calls or send text messages to cellular telephones without the “prior express consent” of the recipient. For calls to cellular telephones made for the purposes of marketing goods or services, callers must obtain the “prior express *written* consent” of the recipient. Recent legal decisions, rapidly changing technology, steep statutory damages, and large monetary settlements have fueled explosive growth in TCPA litigation.

What is your potential financial exposure if you are sued under the TCPA?

Failure to comply with the TCPA can open your company to significant financial risk. The TCPA is a strict liability statute that provides statutory damages of \$500 per violation and up to \$1,500 per willful violation. These statutory damages have led to significant judgments and settlements. In 2019, a jury in Oregon returned a verdict of \$925M in a TCPA class action lawsuit against ViSalus, a multi-level marketing company. In one of the largest TCPA settlements to date, Capital One agreed to pay \$75.5 million in 2014 to end a TCPA class action lawsuit.

What is the current legal landscape?

Complicating efforts to comply with the law is growing uncertainty regarding what equipment qualifies as an ATDS under the TCPA. There is currently a circuit split on this issue, and the U.S. Supreme Court recently agreed to hear a case challenging the Ninth Circuit’s expansive interpretation of an ATDS.

Farella aggressively defends companies against TCPA class action litigation. Because it is a strict liability statute, defending a TCPA lawsuit can be challenging. Early case evaluation is critical to maximizing the prospects of a positive outcome.

For more information on TCPA litigation and how your company can minimize its risk of being sued for TCPA violations, please contact:



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