ECKERT SEAMANS

Telephone Consumer Protection Act (TCPA)

OVERVIEW

Though Congress passed the Telephone Consumer Protection Act (TCPA) nearly 30 years ago, recent years have seen a proliferation of TCPA litigation, and technological advancements have raised novel TCPA regulatory and compliance issues and challenges for businesses that engage in or utilize telemarketing.

TCPA claims have become a particular favorite of the plaintiffs' bar, with scores of individual TCPA cases and class actions filed across the country. One Federal Communications Commissioner recently noted that "the TCPA has become the poster child for lawsuit abuse, with the number of TCPA cases filed each year skyrocketing …." Another commissioner said the expanded scope of the TCPA "penalizes businesses and institutions acting in good faith to reach their customers using modern technologies" and "will lead to more litigation and burdens on legitimate businesses without actually protecting consumers from abusive [practices]." The TCPA makes statutory damages available for phone calls made or texts sent in violation of the TCPA's provisions. TCPA statutory damages range from $500 to $1,500 per call or text. Consequently, for companies that engage in extensive telemarketing and place hundreds or even thousands of calls each day, TCPA liability risks can be daunting.

Eckert Seamans attorneys provide counseling and regulatory guidance to help clients limit TCPA risks. Our TCPA Group understands the legislation itself, TCPA regulations and regulatory decisions, and critical judicial opinions in TCPA cases. With that experience and knowledge base, we help clients analyze and improve existing marketing practices, identify risks, and avoid or limit missteps that could lead to TCPA litigation and liability.

Our team of litigators also defends clients who face threatened or active TCPA lawsuits. Eckert Seamans' TCPA Group has experience helping clients forestall and avoid threatened claims and also in defending active individual and putative class action TCPA suits. Eckert Seamans marshals its resources, knowledge, and experience to defend those claims creatively, vigorously, and efficiently so that our clients can focus on their own businesses and properly acquiring, serving, and retaining their own customers.

REPRESENTATIVE MATTERS

- Provide counseling on operational TCPA compliance
- Experience dealing with lead generation vendors, call centers, and with tactics of prolific TCPA claimants and plaintiff firms
- Reached early and efficient resolution of dozens of TCPA cases involving threatened class actions or individual claims
- Detailed familiarity with evolution of FCC regulations and Orders, landmark judicial opinions, and current Circuit and district court conflicts on TCPA issues
- Succeeded in request to bifurcate discovery of individual named plaintiff's claims from class-wide discovery, with opportunity to seek early summary judgment and motion to strike class allegations and thereby potentially avoid burdensome broad discovery
- Obtained summary judgment for defendant in putative class action on issue of whether use of a predictive dialer qualifies as use of ATDS. Richardson, 354 F. Supp. 3d 639 (E.D. Pa. 2018) (based on the DC Circuit's ACA decision and the Third Circuit's Dominguez decision), cited in CJS *Telecommunications* § 169.
- Obtained summary judgment in defendant's favor because court concluded that calls placed to a number assigned to a VOIP service were beyond the scope of the TCPA's statutory reach/provisions. Klein v. Commerce Energy Inc., 256 F. Supp. 3d 563 (W.D. Pa. 2017), cited in 132

A.L.R. Fed. 625 and 140 Am. Jur. Proof of Facts 3d § 509.