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Sixth Circuit: Calls to Prior Customers Violates TCPA

February 7, 2017

Many businesses routinely make telemarketing calls to prior customers. However, a recent ruling holds that this may violate the Telephone Consumer Protection Act ("TCPA)" and may open up businesses and franchises to class action suits, even when a business thought it had written permission to call.

On Jan. 11, 2017, in an unpublished but significant case, *Stevens-Bratton v TruGreen Inc.*, the U.S. Court of Appeals for the Sixth Circuit allowed a class action to proceed for alleged violation of the TCPA. The crux of the ruling was that when a contract provides for specific authorization to call a customer, once the services contract is terminated, that right ends.

According to the Sixth Circuit, the customer agreed in her contract that the provider could call her cell phone for several purposes, including "to discuss … possible future services." After the parties' contract expired, the customer registered with the National Do-Not-Call Registry. However, the provider called the customer, allegedly more than 10 times, despite a request not to do so. The customer brought a class action suit, claiming that these calls violated the Telephone Consumer Protection Act ("TCPA") (46 USC Sec 227). The provider sought to have the matter dismissed, claiming that the permission to call survived the contract termination. The provider also sought to assert the mandatory arbitration clause and class action waiver in the contract.

The Sixth Circuit, reversing the holding of the lower court, held that the expired contract's permission to call did not survive the termination, and that the arbitration and class action waivers were also unenforceable.

All businesses (including both franchisors and franchisees) should promptly review their telemarketing strategy and the wording of any contracts to ensure that they do not run afoul of this new ruling, and contact a Miller Canfield attorney with questions.