

Spam Text Class Action Certified

December 10, 2012

If your organization sends text message advertisements, a recent order by the U.S. District Court for the Western District of Washington will be of interest to you. The judge certified two classes of plaintiffs in an action brought against Papa John's International, Inc. Named plaintiff, Maria Agne, alleged that Papa John's sent thousands of text messages to consumers without their express permission, in violation of the federal Telephone Consumer Protection Act (TCPA) and Washington's state consumer protection act. The classes certified by the court were as follows:

- all consumers in the U.S. who received at least one text message advertisement from defendant OnTime4U that sent messages on behalf of several Papa John's franchisees, and
- a subclass of consumers from that group located in Washington state.

The TCPA requires that a consumer consent to receive messages. Papa John's argued that it or its franchisee had an established business relationship with the consumers receiving the messages which obviates the need for express consent. The court found that a common issue yet to be determined was whether a consumer's act of buying a pizza established such a business relationship that would satisfy the TCPA. Text messaging practices, either directly or through a service provider, should be reviewed to ensure compliance with the TCPA and other applicable state laws. The court's order is available at <http://www.impactlitigation.com/wp-content/uploads/2012/11/Cert-Order.pdf>