

Courts Continue to Wrestle with TCPA Consent

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The Telephone Consumer Protection Act (TCPA) prohibits non-emergency calls to cell phones using automatic telephone dialing systems or prerecorded voice messages absent the called party's prior express consent. Text messages are treated as calls under the statute.

In *Gager v. Dell Financial Services, LLC*, the Third Circuit Court of Appeals reversed a lower court decision to hold that a consumer can revoke prior express consent, for purposes of the TCPA, to be called at a number previously provided in writing to a creditor, and that there is no temporal limitation on the customer's right to revoke consent. Since *Gager*, which was decided in August of last year, the issues of consent, and whether it may be revoked, continue to arise in TCPA cases.

Relying on *Gager*, the federal district court in the Southern District of Florida ruled revocation of consent was sufficiently alleged for purposes of bringing suit for violating the TCPA. The consumer initially signed up for text message alerts but later took steps to stop them by following the company's instructions for unsubscribing to text messages.

In another text message alert case, *Baird v. Sabre, Inc.*, a California federal district court ruled that a consumer gave consent under the TCPA when she entered her cell phone number while booking an online airline ticket. In reaching this decision, the Baird court concluded that this situation was covered by the FCC's original rules implementing the TCPA (often referred to in TCPA cases as the 1992 FCC Final Order). Accordingly, based on the 1992 FCC Final Order, **the court found the consumer "knowingly release[d]" her cell phone number to the airlines when she entered it while booking her online reservation.** The court rejected the argument that the number was not voluntarily released simply because the airline required a contact telephone number to make the reservation.

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