

TCPA Developments: Consumer's Attempt to Revoke Consent to Text Messages Found to be Unreasonable

1 min read

May 1, 2018

In [*Nicole Rando v. Edible Arrangements, International, LLC*](#), a consumer sued Edible Arrangements under the [*Telephone Consumer Protection Act*](#) (TCPA) arguing that the company sent her text messages after she had revoked her consent. The New Jersey federal court granted Edible's Motion to Dismiss, finding that the consumer's revocation was not "reasonable." The consumer was prompted to text "STOP" if she wished to revoke her consent, but the consumer responded instead with long sentences such as "Thank you. I'd like my contact info removed" or "I asked to be removed from this service a few times. Stop the messages."

While noting that the consumer's attempted method of revocation "clearly expressed a desire not to receive further messages," and further noting the Federal Communication Commission's guidance that a caller may not designate a method of opting out, the Court nevertheless concluded that the consumer's method of revocation was unreasonable, given the totality of the circumstances. In "the totality of the circumstances, a reasonable person seeking to revoke consent would have tried, at least at some point during the back-and-forth, simply replying 'STOP' to cancel—as instructed, rather than ignoring Defendant's revocation method and sending ten long text messages to that effect, most of which did not include the word 'stop' at all. There can be no question on these factual allegations but that Plaintiff did not comply, nor even attempt to comply, with the apparently simple directions repeatedly given to her: "Reply...STOP to cancel."

This decision is the latest example (for others, see *Epps v. Earth Fare, Inc.*, 2017 U.S. Dist. LEXIS 63439 (C.D. Cal., 2017) and *Viggiano v. Kohl's Dep't Stores, Inc.*, 2017 U.S. Dist. LEXIS 193999 (D. N.J. Nov. 27, 2017)) where courts have denied consumers' revocation claims where it appears they intentionally evaded simple opt-out instructions, in the hopes of manufacturing a TCPA claim. However, this decision stands out for the proposition that a caller may be allowed to dictate the revocation method so long as it is not difficult or impossible to effectuate the revocation.

Hinshaw & Culbertson LLP is a U.S.-based law firm with offices nationwide. The firm's national reputation spans the insurance industry, the financial services sector, professional services, and other highly

regulated industries. Hinshaw provides holistic legal solutions—from litigation and dispute resolution, and business advisory and transactional services, to regulatory compliance—for clients of all sizes. Visit www.hinshawlaw.com for more information and follow @Hinshaw on LinkedIn and X.

Topics

New Jersey, Texting, TCPA, Telephone Consumer Protection Act, Revocation Claims