

→ Telephone Consumer Protection Act (TCPA)

Originally passed in 1991 to stem the rising tide of spam telephone calls and fax advertisements that tied up phone lines, the Telephone Consumer Protection Act (“TCPA”) has become a haven for plaintiffs’ class action attorneys looking to take advantage of the statute’s strict statutory damages provisions—ranging from \$500 to \$1,500 per violation, even when no actual injury is suffered. In recent years, the TCPA’s restrictions have been expanded by the Federal Communications Commission (“FCC”) and the courts to apply to text messages and automated cell phone calls as well. The TCPA thus often leaves defendants exposed to tens of millions of dollars in potential liability in class action lawsuits.

Our litigators have been at the vanguard of defending these claims having served as lead defense counsel in over 50 TCPA class actions. We litigate the full ambit of TCPA telemarketing, fax, and text messaging cases, including so-called “blast fax” cases, “recycled” or wrong number cases, prerecorded telephone call cases, and mobile application text messaging cases.

We have succeeded in advancing truly innovative defenses at all stages of litigation, including forcing individual settlements and obtaining dismissal for lack of subject-matter jurisdiction through Rule 68’s “offer of judgment” mechanism, obtaining outright dismissal of parent corporations and franchisors with no involvement in the underlying violations, obtaining dismissal pursuant to the healthcare-related message exemption, affirmatively moving to deny class certification on grounds such as class representative conflicts of interest, conducting consumer surveys and absent class member discovery to defeat class certification, and advancing novel legal arguments to end cases at the pleading, class certification, and merits stages.

Additionally, our TCPA team includes some of the foremost experts in litigating before the FCC – the agency empowered with interpreting and regulating the TCPA. Our litigators are well-versed in proceeding before and petitioning the FCC for prospective and retroactive relief from the TCPA to save our clients from substantial exposure.

And finally, our TCPA attorneys do much more than litigate. A substantial part of our practice involves proactive counseling on a host of intricate compliance issues. We work with our clients to design and implement marketing campaigns and growth strategies that comply with the statutory language of the TCPA as well as the innumerable accompanying FCC regulations, applicable Federal Trade Commission telemarketing rules, and state-specific telemarketing statutes.