

TCPA + Consumer Litigation

Overview

Munsch Hardt's team offers a wide range of compliance and litigation services in the consumer realm, including for the following types of cases in federal and state courts, as well as at the trial and appellate levels:

- Telephone Consumer Protection Act (TCPA)
- Fair Credit Reporting Act (FCRA)
- Federal Fair Debt Collection Practices Act (FDCPA)
- State Law Debt Collection Claims
- State Law Deceptive Trade Practices Claims
- Telemarketing Sales Rule (TSR)
- National Do Not Call Registry (DNCR)

A significant part of our practice involves proactive counseling on a host of compliance issues in an effort to limit exposure. Our comprehensive compliance counseling includes preparation of consumer and vendor agreements, implementation or review of internal policies and procedures for a company, analyzing marketing campaigns before roll out, guidance with consumer outreach campaigns, employee training efforts and due diligence review.

However, we know that even companies fully in compliance with all laws fall prey to serial litigators, volume filers, and plaintiffs' firms across the country. Our team has a wide range of experience in the court room and in arbitration to defend against these claims and individuals.

One of the hottest areas of litigation at the moment aside from FCRA claims is to sue companies utilizing technology under the TCPA because of the potential for windfall damages. Companies that utilize technology to communicate with people via prerecorded messages, voice phone calls, text messages and/or fax machines for virtually any purpose, be it solicitations, marketing, collections, transactional or even legitimate business purposes risk being sued under the Telephone Consumer Protection Act (TCPA). While this law was originally designed to prevent abusive telemarketing and scatter-shot calls to emergency lines and cell phones, it has been used by plaintiffs as a "get rich quick" scheme due to its steep \$500 to \$1,500 per violating message/call/text statutory damages scheme.

Missteps in this minefield clearly can be costly. In today's landscape, the TCPA covers a broad range of technology and its application is not restricted by any industry, subject matter or content within a communication attempt. Everyone from telecommunication companies to banks and debt collectors have been affected regardless of the company's size or net worth. Recipients of violating contact attempts are regularly claiming and collecting damages between \$500 and \$1,500 per communication. Navigating this complex statute and interpreting the sea of case law alone and without knowledgeable and highly experienced counsel is ill-advised.

Businesses and individuals that are uncertain whether they are exposed to TCPA lawsuits should consult with Munsch Hardt's experienced litigation team. We can assess your company's technology, practices and procedures to assist with compliance efforts and help you avoid litigation. Our team is experienced in developing compliant processes, policies and systems.

Unfortunately, lawsuits in this realm are still all too frequent but our team of experienced litigators is here to assist in efficiently, honestly and vigorously handling these pesky TCPA cases. We have been highly successful in combatting the cottage industry of plaintiffs lawyers by compelling cases to arbitration, winning on summary judgment and winning outright after final hearings on the merits. We have also been successful in driving some of the lowest settlement figures nationwide in active and threatened individual and class cases.

Munsch Hardt's Litigation team is one of the strongest in the country, continually delivering successful outcomes to businesses – whether in one-off cases or through cohesive, national litigation strategies. Not only does our team focus on TCPA and consumer finance-related matters, but we also have the depth and flexibility to staff each case with an efficient mix of partners, associates and paralegals, depending on the potential exposure and particular circumstances involved. We further have a sophisticated appellate team that is capable of ensuring a clean record through trial and securing appellate rights post-judgment or final arbitration award. We have litigated cases from inception through the Fifth Circuit and can appeal to the United States Supreme Court as well.

We also know the plaintiffs' firms bringing these cases, and equally as important, they know Munsch Hardt. Our team has been in the courtroom, and across the negotiation table, from these attorneys in numerous TCPA cases involving a wide range of issues and allegations from "ATDS", "no express consent", "wrong number", "full and partial revocation" and "do not call" cases for more than 10 years. Like the TCPA and case law that dictates your company's success, our knowledge is not limited to Texas or any one state. We are well versed in the national landscape as we routinely serve as national counsel and outside general counsel for companies doing business across the United States.

Finally, our attorneys regularly track developments and trends in this dynamic area of law, striving to keep our clients abreast of important developments in consumer compliance and litigation as they unfold. And, as consumer compliance thought leaders, our attorneys frequently publish or present on consumer-related issues.

Experience

Consumer Compliance

Represent and advise wide range of clients across all consumer related industries with legal compliance with consumer laws, as well as review of internal policies, procedures, contracts, documents, telephone systems, credit reporting practices and more.

Consumer Litigation

Represents and advises retailers, financial services companies, sales, telemarketers/advertisers, communication platform companies, lead generators, digital marketing, policy/plan administrators, insurance companies and medical services/distributors with respect to consumer litigation, including federal district, appellate and state courts in TCPA, FCRA, DNCR, FDCPA; state trade practices acts; state debt collection acts; and class and individual cases across the country.

Consumer Arbitration

Represented an American furniture, mattress, electronics and appliance store chain in multiple TCPA, FCRA, collection, trade practices act, etc. cases across the United States. The Firm has successfully compelled and defended client's arbitration agreement across the country. The Firm has obtained over 35 complete defense verdicts in arbitration to date.

Class Action Defense: TCPA Voice Call

Represented a specialty retailer of consumer goods and related services in a TCPA class action case in the United States District Court for the Western District of Texas. The Firm conducted the defense of a class action TCPA claim, which resulted in the Court upholding and enforcing the client's class action waiver and arbitration provision.

Class Action Defense: TCPA Voice Call/Prerecorded Message

Represented a retailer in a TCPA voice call and prerecorded message class action case in the United States District Court for the Southern District of Texas. Secured favorable outcome and dismissal for client before certification after successfully combatting national consumer plaintiffs' firm.

Class Action Defense: TCPA Text Message

Represented a client in a TCPA text message class action case in the United States District Court for the Western District of Texas. Secured favorable outcome and dismissal for client before certification after successfully combatting national consumer plaintiffs' firm.

Class Action Defense: TCPA, National DNC Registry and Nevada Trade Practices

Represented a client in a TCPA, National DNC Registry and Nevada Trade Practices Act class action case in the United States District Court for the District of Nevada. Secured favorable outcome and dismissal for client before certification after successfully combatting national consumer plaintiffs' firm. In addition, secured fee indemnification and contribution from co-defendant for our client.

FCRA Defense

Represent clients accused of violating the FCRA. Successfully enforce arbitration agreements and class waivers and secure favorable outcome and dismissal for client for merit based defense as well as favorable early resolution of potentially costly claims.

DTPA and FDCPA Defense

Represented a client in the District Court of Tulsa County in the State of Oklahoma. The Firm conducted a defense of DTPA and FDCPA claims against the plaintiff at a trial on the merits, which resulted in a take nothing verdict.

State Debt Collection/Harassment Defense

Represented a client in multiple different arbitrations and secured favorable awards in client's favor dismissing opponents' claims and denying opponents' attorneys' fees while requiring plaintiff/claimant to pay client's arbitration costs.

Practice Leaders



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Director & Officer Litigation
Financial Institution Litigation
Insolvency Litigation
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Retail
Technology & Telecommunications
Transportation
Restaurants

Newsroom

Speech: Legal Education: Getting the Most Bang for Your Buck in Litigation Strategy

Article: Texas Tackles the TCPA

In The News: Talking TCPA: What is the Best-Case Scenario for Mitigating Illegal Robocalls?

Article: Telemarketers, and Scammers and Robocallers, Oh My!

In The News: Former Conn's In-House Lawyer Booted From Case 'Substantially Related' to Her Old Job

In The News: Retailer Conn's Says Ex-Counsel's New TCPA Suit Improper