

One of These Things Is Not Like The Other: Emails Are Not Subject To The TCPA, Even If You Get Them On Your Smartphone.

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Common sense prevails: a Texas federal court holds that an email is not the same thing as a text message and is not subject to the TCPA. See *McCarrell v. Offers*, No. 1:19-CV-00112-LY, 2019 U.S. Dist. LEXIS 118806, at *1-2 (W.D. Tex. July 16, 2019). In *McCarrell*, the plaintiff sued Offers.com, which provides free access to coupons, after he allegedly opted out of its email list but continued to receive emails from it, which he accessed on his smartphone. So he sued. Talk about really, really hating coupons.

On a motion to dismiss, the magistrate judge sent the Plaintiff's TCPA claim right to the spam folder: "As Offers rightly argues, *McCarrell's* Second Amended Complaint ("SAC") does not allege that a call was made to a cellular telephone number using an automatic telephone dialing system, but rather alleges that Offers sent an email to an email address. The TCPA does not regulate email messages, but rather regulates telephone calls and facsimile messages." *Id.*, at *8. The court also kicked the Plaintiff's other claims—Texas Deceptive Trade Practice Act, the Texas Business Commercial Code and "Do Not Call Laws"—out as well since the Plaintiff never alleged he was a "consumer" and because, again, email isn't the same thing as a text message.

Finally, the Court warned the Plaintiff, who'd filed two other cases that had been dismissed as frivolous in the same division, that he would be subject to imposition of sanctions, including a monetary assessment, and a bar to future filings if he filed another frivolous case and recommended the District Court do the same.

One important point here—courts have long held that e-mails that are converted to text message because they are sent to a wireless carrier for delivery to a handset as an sms (e.g. to xxx-xxx-xxxx@verizon.com) are "calls" subject to the TCPA. *McCarrell* does not change this line of cases so watch out.

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