

FTSA FLOOD CONTINUES: Shutterfly Sued for Alleged Auto-Generated Texts

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How's it going TCPA World, Count Kay here wishing you all a happy Monday! Today we have another class action under the Florida Telephone Solicitation Act (FTSA) to discuss – SHOCKER!

This FTSA class-action was initially filed in Florida Superior Court against Shutterfly LLC, a California LLC with all of its member entities operating in either California or Delaware. The named class representative is a Florida citizen that alleges receiving three different text messages from an automated system operated and utilized by Shutterfly. As usual, Plaintiff alleges that neither she nor any of the proposed class ever consented to such text messages and that the messages were formed and delivered through Shutterfly's "Platform" – a non-human system that automatically generates numbers for marketing outreach.

Under the FTSA, a seller is in violation of the FTSA when they make or knowingly allow a telephonic sales call to be made via an automated system for selection or dialing of telephone numbers or playing recorded messages when a connection is completed to a number called without prior express written consent of the called party – let's unpack this. A "telephonic sales call" under the FTSA is defined as a call, text message, or voicemail transmission to a consumer for the purpose of soliciting a sale of any consumer good or service. Applying the facts as alleged, the text messages sent by or on behalf of Shutterfly fit squarely within this definition. As for consent, while all of the text messages received by Plaintiff included an "opt-out" option, the FTSA requires. "Prior Express Written Consent" from any consumer in order to make these "telephonic sales calls" (or in this instance, telephonic sales texts). Here, the "opt-out" language in the text would likely not meet the FTSA's Prior Express Written Consent requirement, even if the consumer never exercised their ability to "opt-out" of the text messages.

Following Plaintiff's complaint in Florida Superior Court, Shutterfly filed a motion to remove the case to Florida Federal Court – citing Shutterfly and its members being either citizens of Delaware or California, all proposed class members being citizens of Florida, and the amount in controversy being likely exceeding the statutory minimum of \$5,000,000. Specifically, in Shutterfly's motion to remove to Florida Federal Court, it details that at least 30,000 texts have been made to Florida consumers since the inception of the FTSA in July of 2021 and that Plaintiffs seek the maximum statutory damages of \$500 per FTSA violation.

So, where does this leave us? Well, this is a case that will need to be followed up on as we don't have many facts about how the text messages sent to the proposed class were made – were they made using an automated system utilized by Shutterfly; did Shutterfly utilize a third-party marketing affiliate that delivers these messages using an automated system; etc. We will be sure to provide an update on this one once the case picks up speed! TAKEAWAY – if you are a seller implementing direct outreach to consumers across the country, you need to make sure to comply with the state-specific TCPA requirements. Here at TCPA World, we are experts in these state-specific TCPA requirements and can help you ensure such compliance!

Helly v. Shutterfly Lifetouch, Inc., Case No. CACE22008252

[Complaint Helly v Shutterfly SDFL2022](#)

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