

## **ITS YOUR SUIT: Promotional Texts Land Avis in Hot Water with TCPA Class Action**

Article By:

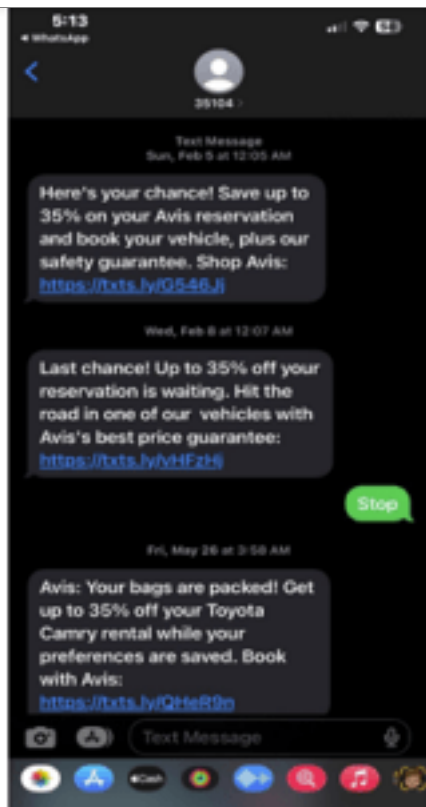
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Avis used to be the “We try harder” rental company. But they’ve lost their sense of identity of late and are apparently now relying on promotional text messages to sell rentals, this according to a new lawsuit filed in Florida last week.

In the suit, a Florida resident claims Avis continued to send promotional text messages even after being told to stop. As a result, a consumer named ABDERRAOUF BOUKARDOUGHA has filed a class action under the Telephone Consumer Protection Act (TCPA) seeking millions of dollars in damages on behalf of a nationwide class of individuals who received the same texts.

In the suit—available here [Avis Complaint](#)—the Plaintiff claims the car rental giant sent him messages soliciting him and offering promotions to his cell phone via a shortcode 35104. The complaint includes screenshots of a “stop” notification followed by additional text messages, seemingly suggesting Avis ignored his opt out request.



Interestingly, however, while the first two messages in the string are obviously promotional in nature, the last text appears to be more specific—focused on a Toyota Camry rental. It seems possible, therefore, that Avis has assigned mixed use messages to its shortcode—sending both marketing and informational messages through one channel. This can lead to serious problems where a consumer texts stop, but then enters into a new transaction resulting in further (different) messages on the same shortcode.

While it is not clear what happened in the Avis circumstance, businesses should be cautious to keep shortcode and 10DLC channels separated for only one kind of communication so they are not shut out from sending critical informational/transactional messages to consumers who have opted out of marketing messages.

**Back to the Avis complaint, the Plaintiff seeks to represent a DNC class consisting of:**

*DNC Class: All persons in the United States who from four years prior to the filing of this action through the date of class certification (1) Defendant, or anyone on Defendant's behalf, (2) place more than one text message call within any 12-month period; (3) where the person's telephone number that had been listed on the National Do Not Call Registry for at least thirty days; (4) regarding Defendant's property, goods, and/or services; (5) who did not purchase or transact business with Defendant during the eighteen months immediately preceding the date of the first message; and (6) who did not contact Defendant during the three months immediately preceding the date of the first message with an inquiry about a product, good, or service offered by Defendant.*

Avis has not yet responded to the lawsuit. We'll keep an eye on it.

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