

## **JUICY: Court Denies TCPA Defendant's Effort to Sue Text Message Platform For Negligence Finding Platform Owed No Duty**

Article By:

Eric J. Troutman

---

Super interesting one this morning.

So Juicy's Vapor Lounge was sued in a TCPA class action in connection with texts it sent to consumers. This was part of that "sue the dispensaries" trend from a **couple years back**.

Well Juicy's turned around and sued the platform that was used to send the messages at issue—EyeRate—for breach of contract in connection with sending the messages.

Eyerate claims on its website it is "The #1 Employee-Driven Growth Platform for Customer Feedback" but it also claims it did not have a contract with Juicy's so.... I don't know what to make of that.

Juicy's—apparently agreeing it did not have a contract with the company that was used to send the message (bad!) tried to amend its complaint to sue Eyerate for negligence. And this is where things get really fascinating.

In *Schmitendorf v. Juicy's Vapor*, 2023 WL 6313199 (D. Ks. Sept. 27, 2023) the Court held that in the absence of a contract, a platform does not owe a duty of care to a user, at least where the user is responsible for uploading the numbers to the platform to be texted.

---

In *Shmitendorf* the Plaintiff claimed that Juicy's never had consent to text him and ignored the fact that his number was on the DNC list. The Court reasoned that in light of these facts it would not be Eye Rate's fault if Juicy's uploaded the number to text Plaintiff—it would be Juicy's fault. And Eye Rate owes Juicy no duty to protect it from itself:

*The Court determines EyeRate could not foresee that Juicy's would completely ignore the mandates of the TCPA and use EyeRate's platform to send promotional text messages to the telephone number of a person who never consented to the receipt of such marketing texts and whose telephone number is registered on the national "do not call" list.*

*[Further], those messages could not have been sent without Juicy's uploading Plaintiff Schmitendorf's telephone number at the outset. There is no moral blame to be attributed to EyeRate*

Ouch.

So the Court refused to allow the amendment.

This case is weird for a bunch of reasons. Rather obviously the fact that Eye rate is letting someone use its platform without a contract is bizarre. And the fact that this actually *helped* Eye Rate in this case is absurd.

In terms of take aways, parties should always have a clear understanding as to who is taking responsibility for what aspects of a text campaign. If EyeRate really was not tasked with anything but the transmission of the messages than I agree with this ruling. But without a contract—how is one to tell?

Regardless, given the lack of a contract and the allegations of the complaint the court was not going to allow Juicy's to bring Eye Rate in.

It also surprises me, however, is that the Plaintiff made no effort to sue EyeRate directly. Since EyeRate sent the messages it may have been the "initiator" of the texts.

Bottom line: Juicy's is stuck facing a class action and EyeRate is mostly out of the suit.

© 2025 Troutman Amin, LLP

---

National Law Review, Volume XIII, Number 275

Source URL: <https://natlawreview.com/article/juicy-court-denies-tcpa-defendants-effort-sue-text-message-platform-negligence>