

# **BARTON GOES DOWN AGAIN: Big Win For Walmart As Barton's TCPA Claim Related to Informational Text Messages Ends in Summary Judgment**

Article By:

Eric J. Troutman

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Repeat litigator Nathan Barton just lost a case against Walmart, and it is noteworthy in a couple of respects.

**First, Barton claimed the following messages constituted telephone solicitations:**

- “Walmart: Part of your order is ready for curbside pickup until Sat, Sep 03. Check in before you go: <https://w-mt.co/g/3908R1> Reply HELP for info; STOP to opt out.”
- “As requested, we’ve canceled your Walmart order. View updated order details: <https://w-mt.co/g/391Zfv> Reply HELP for info; STOP to opt out.”
- “Sorry, some items in your Walmart order weren’t available. Review your order: <https://w-mt.co/g/4GXMnv> Reply HELP for help; STOP to opt out.”
  - An October 29, 2022 message that read: “Your Walmart order has substitutions. Anything you don’t want? Please let us know soon: <https://w-mt.co/g/4KyLN4> Reply HELP for info; STOP to opt out.”

Barton claimed these messages were telephone solicitations and that Walmart sending these messages without consent violated the TCPA’s DNC provisions as a result.

The Court disagreed.

Approaching the issue with “common sense” the court concluded none of the messages were intended to encourage the purchase of any good or service and they were simply transactional/informational messages sent to inform the consumer about an order status.

Since the messages weren’t solicitations the TCPA DNC claim failed and the alleged lack of consent didn’t matter.

Nonetheless the court paused to recognize that Walmart’s decision to treat “stop” requests as ORDER SPECIFIC—i.e. they would continue texting the consumer on future transactions even after a stop was sent—was reasonable and enforceable in context. The Court found Walmart’s decision to advise the consumer after each message that the stop was only sufficient for that order was

permissible and informed Barton of the scope of the stop.

This last piece is REALLY interesting in light of the FCC's new TCPA guidance on the BROAD scope of consent revocation.

Under the FCC's new ruling the STOP would operate to bar Walmart from ever texting again for any purpose either informational or marketing!! But this court found "common sense" tells us the stop only prevented further messages on THAT SINGLE ORDER.

Holy smokes what a disconnect.

The error of the FCC's logic is really clear from this fact pattern. Can you imagine a company like Walmart (or Uber, or DoorDash) never being able to text again because a consumer says "stop" on time? That could be business ending—and terrible for consumers.

Regardless this is a great win for Walmart and another loss for Mr. Barton.

Somehow I think we'll hear from him again, however.

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