

Mobile App Operator Not Liable Under TCPA

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In an important decision applying the **Federal Communications Commission's** July 2015 Declaratory Ruling, a district court recently dismissed **TCPA** claims against Life360, a mobile application operator. See *Cour v. Life360, Inc.*, Case No. 16-cv-00805-TEH (N.D. Cal. July 28, 2016). The decision provides critical guidance as to when users of a mobile app – rather than the mobile app provider – will be deemed to initiate the text messages, for purposes of assessing TCPA compliance.

The TCPA's prohibitions apply only to persons who “make any call” without otherwise specifying who is deemed the maker of a call. As for text messages, there is even less guidance in the statute as to whom is deemed to initiate the text. The lack of clear rules has been problematic for mobile developers seeking to deploy in-app text messaging as part of the app's features or functionality.

In last year's Declaratory Ruling, the FCC provided some clarity as to mobile applications that send invitational text messages. In ruling on the petitions of app providers Glide and TextMe, it focused on the “affirmative choices made by the app user,” and particularly the user's ability within the app to select recipients of the invitational text, and to initiate the invitational text. These “affirmative choices by the app user” led the FCC to conclude that the user of the app, rather than TextMe, was “the maker of the invitational text message” for TCPA purposes. *Id.* at ¶ 37.

Last month, the district court in *Cour* adopted a similar analysis in granting a motion to dismiss an action alleging that the Life 360 initiated text messages sent from its mobile app. The court concluded that the Life360 app was sufficiently similar to the TextMe app, in that the Life360 app required the user to select (from the user's contacts) the recipients of the invitational text, and further required that the user press an “invite” button to send text messages.

The district court also rejected plaintiff's arguments that the app was the initiator of the text because the app did not inform users that invitations would be sent by text message, and also pre-selected certain contacts to receive the invitational text. Because invitations were not sent until the user pressed the “invite” button – and then only to those contacts selected by the user – Life360 did not initiate the text. Life360 therefore could not be liable to plaintiff *Cour*, who had alleged that the invitational text from Life360 was unsolicited and violated the TCPA.

The *Cour* decision provides helpful guidance to application designers and other providers of text messaging services who wish to utilize invitational text messages without being subject to the TCPA prohibitions. Designers can include invitational text messages as one of the app's features, leaving

for app users to control both who receives the text and when the texts will be sent. The inclusion of such features should assist mobile app providers in assessing whether and when the application should be evaluated for compliance with the TCPA.

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