

Well-Funded Cannabis Startups Create Attractive Targets for Class Actions

Article By:

William F. McDevitt

Kara Thorvaldsen

Eaze Solutions, Inc. (Eaze), which touts itself as the “Uber of Weed,” has been sued in a putative class action in the Northern District of California for alleged violations of the federal Telephone Consumer Protection Act (TCPA). Eaze provides a web- and app-based delivery service for medical patients and recreational marijuana customers.

Background

According to the complaint, the company has amassed more than \$50 million in venture funding, making it one of the fastest-growing startups in the cannabis industry. Plaintiff Farrah Williams claims Eaze “growth hacked” its way to the top by “relentlessly bombarding existing and prospective customers with text ... messages without their consent.” The complaint accuses Eaze of using a third-party company to send “bulk” messages to people across the United States, including the named plaintiff, without their express written consent, or providing a mechanism to opt out of receiving the messages. Williams seeks to represent a nationwide class of people who received unwanted text messages from Eaze between 2014 and the time the suit was filed.

The TCPA limits the use of computerized auto-dialers and “robo-calls” in communications made to an individual’s cell phone. The purpose of the statute is to prevent consumers from paying fees or incurring data usage when receiving unauthorized, unsolicited or repetitive cell phone communications. Williams alleges that texts sent through Short Message Service (SMS) or Multimedia Message Service (MMS) fall within the robo-call prohibitions of the TCPA. She further alleges that Eaze was required to obtain her written consent before sending advertising or promotional text messages, but failed to do so.

Analysis

The outcome of this newly filed litigation is unclear. Eaze may have obtained cell phone numbers through contacts with customers or prospective customers who may have visited the Eaze website, downloaded the Eaze app or used its service. Currently, the Terms of Service on the Eaze website provide that by accessing the site, users consent to receiving messages. In addition, the Eaze app

requires users to consent to receive communications when setting up an account. Electronic consent to receive marketing messages may satisfy the TCPA consent requirement, to the extent that the statute applies.

Williams's complaint incorporates screen shots of text messages from other people who allegedly received texts from Eaze. Many of those texts imply that the recipients were not Eaze customers. Traditionally, a proposed class representative must establish his/her own harm and then show how a defined group may have incurred the same type of harm from the same practice. The use of text messages, apparently taken from message boards, as a means of alleging a common practice affecting a certain number of people is a noteworthy use of applied social media.

However the suit shakes out, the filing of this action drives home the point that cannabis businesses are just like any other business and should be vigilant about complying with state and federal regulations, including consumer protection laws that govern advertising. Startups flush with venture capital will be tempting targets to self-styled consumer advocates.

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