

Spam Text Message Claims May Proceed Against Franchisee and its Marketing Firm

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In September 2011, a group of consumers filed a class action lawsuit in federal court in California against Heartland Automotive Services, Inc. (Heartland) and marketer TextMarks, Inc. (TextMarks) for alleged violations of the TCPA. Heartland is a Jiffy Lube franchisee that operates in several hundred locations. The plaintiffs alleged that Heartland hired Textmarks to run a marketing campaign that included sending text messages offering discounted services. Plaintiffs also alleged that in sending the text messages, TextMarks used equipment that “had the capacity to store or produce telephone numbers to be called, using a random or sequential number generator” and that the messages were made “en masse” and without plaintiffs’ prior express consent.

Heartland filed a motion to dismiss on several grounds, including that the plaintiffs did not allege that Heartland sent the messages but only that it had engaged TextMarks to do so. The court rejected this argument holding that “Heartland can be held liable even if it did not physically send the messages at issue.” The court also held that plaintiffs’ allegation that “[d]efendants and their agents directed the mass transmission of wireless spam to the cell phones nationwide” was sufficient to plead vicarious liability against Heartland. In denying the motion, the court allowed the class action against Heartland to proceed. To review the court’s decision, [go here](#).

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