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Ninth Circuit Disconnects Best Buy's "Dual Use" Robocall Argument

The U.S. Court of Appeals for the Ninth Circuit On October 17, 2012 ruled that Best Buy Stores, L.P. violated the Telephone Consumer Protection Act (TCPA) and Washington state law by failing to obtain consumers' consent before placing prerecorded calls urging the consumers to redeem their rewards points. The ruling reversed a lower court decision that Best Buy's "robocalls" did not violate the TCPA or a Washington telemarketing statute.

The plaintiff filed a class action alleging that Best Buy sent multiple prerecorded calls to its rewards program members providing information about the program, advising members to update their rewards program account information, and encouraging them to visit Best Buy stores and redeem their rewards points. Best Buy argued that the calls were informational in nature, as opposed to unsolicited advertisements, and thus were not barred by the TCPA. The company further argued that the plaintiff consented to the rewards program privacy policy, which authorizes Best Buy to contact members regarding the program.

The TCPA prohibits, with some exceptions, prerecorded and artificial voice calls to residential telephone lines without the prior express consent of the call recipient; Federal Communications Commission (FCC) rules implementing the TCPA were amended in February of this year to require prior express *written* consent, but that requirement does not go into effect until October 16, 2013. Under the FCC's regulations, robocalls that do not include an advertisement may be placed without the recipient's prior consent.

Citing FCC policy regarding "dual purpose" calls (calls with both advertising and informational content), the Ninth Circuit found that Best Buy's prerecorded calls violated the TCPA because the calls urged consumers to shop at Best Buy, notwithstanding the informational components of the calls. Noting that the plaintiff received robocalls from Best Buy after repeatedly requesting not to receive such calls, the court further determined that the plaintiff did not give prior consent to the calls by agreeing to the rewards program privacy policy.

[Click here](#) to read the Ninth Circuit's decision.