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Jurisdiction and Procedure

Florida Federal Court Dismisses TCPA Class Action Suit Against Franchisor for Lack of Personal Jurisdiction

In a recent win for franchisors, a Florida federal court dismissed a Telephone Consumer Protection Act ("TCPA") complaint against Jiffy Lube based upon a lack of personal jurisdiction. *Turizo v. Jiffy Lube Int'l, Inc.*, 2019 WL 4737696 (S.D. Fla. Sept. 24, 2019). The TCPA is a federal statute enacted to protect consumers from unsolicited telemarketing calls and messages, including text messages. Notably, the TCPA imposes harsh penalties for noncompliance, allowing class action plaintiffs to recover as much as \$1,500 for each call or message that violates the Act. This has special implications in the franchise context, as plaintiffs seek to hold franchisors vicariously liable for unsolicited calls or messages sent by franchisees.

The plaintiff in *Turizo v. Jiffy Lube* alleged that Jiffy Lube violated the TCPA when one of its franchisees sent the plaintiff a text message requesting survey feedback. Jiffy Lube moved to dismiss, arguing that the court lacked personal jurisdiction because Jiffy Lube did not have any presence in Florida and did not direct or control the franchisee's text message marketing campaign. Jiffy Lube supported its factual contentions with affidavits substantiating its position. In response, the plaintiff attempted to rely upon the allegations in the complaint; the plaintiff did not submit any contrary evidence and did not seek to obtain discovery while the motion was pending. The plaintiff argued that the messages were sent at Jiffy Lube's direction pursuant to an overarching marketing scheme it controlled and directed, making Jiffy Lube liable for its franchisee's alleged violations of the TCPA. However, the court found no facts to support the plaintiff's allegations, especially in light of Jiffy Lube's evidence establishing that it is a distinct entity and did not authorize or even know about the message campaign. Without any actual or apparent control over its franchisee's text message marketing efforts, the court held that Jiffy Lube did not have sufficient contacts with Florida to confer jurisdiction.

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