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Mitigating TCPA Liability in Wake of Mantha: A Guide for Businesses on Standing and Class Certification Risks

The recent decision in *Mantha v. QuoteWizard.com, LLC*, 347 F.R.D. 376 (D. Mass. 2024), sheds light on critical issues surrounding class certification and Article III standing under the Telephone Consumer Protection Act (TCPA). The TCPA landscape is shifting, and businesses must adapt to evolving challenges, including class certification, standing, and compliance risks.

Background

In certifying a class under 47 U.S.C. 227(c)(5), the court in *Mantha* evaluated a TCPA claim involving 314,828 telemarketing text messages sent to 66,693 telephone numbers. It concluded that recipients who received at least two texts to a residential number listed on the National Do Not Call Registry (NDNCR) met Article III standing requirements—assuming no consent was proven by the defendant—finding that "so long as the remaining Class members received at least two telemarketing texts to a residential number on the NDNCR, they satisfy the Article III requirements, just as Mantha does—in the absence of QuoteWizard establishing the affirmative defense of consent."

While this interpretation aligns with prior decisions recognizing unsolicited telemarketing as a concrete harm given its intrusion upon privacy and that a plaintiff need not prove that each individual class member has standing at the certification stage, U.S. Supreme Court precedent is clear that statutory violations alone do not confer standing. For example, in *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021), the Court held that even where Congress creates a statutory right to sue, plaintiffs must demonstrate concrete harm resulting from a statutory violation in order to satisfy Article III and prevail on their claim.

Under this framework, *Mantha* raises questions about its apparent conclusion that class members who received the requisite number of texts automatically have standing. If a class member never accessed their phone or was otherwise unaware of the telemarketing messages, their privacy may not have been disturbed. In such instances, they arguably would not have suffered the kind of concrete harm the TCPA was designed to prevent and therefore would lack Article III standing. Despite these potential limitations, TCPA plaintiffs may attempt to use *Mantha* to sidestep the concrete harm requirement under Article III.

Key Takeaways for Businesses Navigating TCPA Compliance

The *Mantha* decision underscores several key considerations for businesses facing TCPA liability:

1. **Heightened Scrutiny of Class Definitions:** If in litigation, companies should critically examine class definitions, especially in highlighting potential issues with class members demonstrating concrete harm. Raising challenges to standing at the certification stage can potentially reduce exposure by preventing class certification or excluding ineligible class members.
2. **Proactive Consent Management:** Establishing consent as an affirmative defense is crucial. Before litigation is threatened, maintaining detailed records and obtaining explicit, verifiable consent from consumers can be a powerful strategy for countering TCPA claims.

3. **Enhanced Compliance Practices:** Robust compliance measures are the best way to avoid litigation and, if sued, to defend your company in TCPA litigation. This includes maintaining up-to-date do-not-call lists, auditing telemarketing campaigns, monitoring vendor relations, and ensuring all outreach adheres to TCPA regulations.

Businesses navigating the TCPA landscape must be prepared to address challenges to class certification and standing, as well as to proactively manage compliance to mitigate risk.

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