



Recent Court Ruling Restricts Automatic Telephone Dialing System Calls to Cellphones

A recent federal appeals court decision will significantly enhance consumers' ability to protect themselves from unwanted calls initiated by automatic telephone dialing systems to their cell phones. On August 22, 2013, the United States Court of Appeals for the Third Circuit issued a ruling in the case of *Gager v. Dell Financial Services, Inc.* (No. 12-2823). The court held that the Telephone Consumer Protection Act (47 U.S.C. § 227) (TCPA) allows consumers to revoke their prior consent to be contacted via such calls to their cell phones; and there is no time limit on consumers' rights to revoke such prior consent. Significantly, these protections are not limited to so-called "telemarketing calls" (that is, calls made for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services).

The plaintiff had applied for a line of credit in order to acquire computer equipment. As part of the application process, she provided a telephone number – her cell phone number. When the plaintiff fell behind in payments on the line of credit, she began to receive calls to her cell phone number regarding the unpaid debt. Those calls were initiated by automatic telephone dialing systems. She requested that she no longer be called on that number. When the calls did not cease, she filed a law suit.

The relevant provision of the TCPA makes it unlawful to make **any** call (other than emergency calls or calls made with prior express consent of the called party) using any automatic telephone dialing system or artificial or prerecorded voice to any telephone number assigned to (among other things) a cellular telephone service. Importantly, that provision prohibits any automatic telephone system calls absent called party consent. The prohibition on such calls to cellphones is not limited to telemarketing calls. The appeals court overruled a district court and held that prior consent to receive calls from automatic telephone dialing systems could be revoked even though nothing in the TCPA expressly permits such revocation. The court further held that there was no time limit on when such consent may be revoked. The court based its determination on three factors: 1) under common law, consent is revocable; 2) the

TCPA is a consumer protection statute and that it should be construed in a manner consistent with its statutory purpose – to protect consumers; and 3) that a relatively recent Federal Communications Commission decision in an unrelated matter embraced the concept of consent revocation under the TCPA. As one of the federal government agencies with TCPA enforcement authority (the Federal Trade Commission is the other), the court gave considerable weight to the FCC’s analysis and conclusion.

This decision is important to companies who use automatic telephone dialing systems to contact consumers for any purpose other than for emergency purposes. As consumers increasingly utilize their cell phone numbers rather than their landline home phone numbers (assuming they still have home landline phones) as their primary means of telephone contact, telemarketing firms and other firms that use automatic telephone dialing systems should take steps to determine whether any telephone number provided by a consumer is a cell phone number. Furthermore, they should not place calls initiated by automatic telephone dialing systems to such numbers absent explicit consumer consent, and they must remain mindful of the fact that consent may be revoked at any time and that revocation requests must be honored. Companies who use automatic telephone dialing systems for debt collection purposes should be especially mindful of the requirements spawned by the recent *Gager* decision. As noted by the appeals court, the ruling does not prohibit debt collection calls to cell phones. It only prohibits automatic telephone dialing system calls to cell phones. Companies who want to call consumers’ cell phone numbers to collect debts may still do so. However, such calls must be manually dialed.

This *GT Alert* was prepared by **Mitchell Brecher**. Questions about this information can be directed to:

- > [Mitchell F. Brecher](#) | 202.331.3152 | brechem@gtlaw.com
- > Or your [Greenberg Traurig](#) attorney

Albany 518.689.1400	Denver 303.572.6500	New York 212.801.9200	Silicon Valley 650.328.8500
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Austin 512.320.7200	Las Vegas 702.792.3773	Philadelphia 215.988.7800	Tel Aviv[^] +03.636.6000
Boca Raton 561.955.7600	London* +44 (0)203 349 8700	Phoenix 602.445.8000	Tysons Corner 703.749.1300
Boston 617.310.6000	Los Angeles 310.586.7700	Sacramento 916.442.1111	Warsaw[~] +48 22 690 6100
Chicago 312.456.8400	Mexico City⁺ +52 55 5029.0000	San Francisco 415.655.1300	Washington, D.C. 202.331.3100
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