



LOEB & LOEB adds Knowledge.

Sports Law

ALERT

JUNE 2012

Text Message Complaint Against Sports Team Highlights Risks Associated with Using New Media to Interact with Fans

Most major sports teams invite fans to receive text message alerts about breaking news, player trades, scores, etc. Teams often use these services to collect information about their fans and to promote products and events. However, promotional text messages are heavily regulated and are frequent targets of class action plaintiffs.

Just last week a California resident filed a complaint against the Pittsburgh Penguins hockey team, claiming that the Penguins violated the federal telemarketing law that regulates promotional text messages by sending more text messages per week than the Penguins stated it would send. The plaintiff claimed that he signed up to receive hockey news and special offers from the Penguins and its affiliates in the form of text messages sent to his mobile device. The terms and conditions of the subscription stated "Maximum of 3 messages a week."

The plaintiff claims that in the first week after subscribing he received five text message alerts from the Penguins, and four the following week. The plaintiff filed suit, claiming that any promotional text messages sent in excess of the agreed-upon three-per-week were unsolicited text messages and therefore violated the Telephone Consumer Protection Act (TCPA). The TCPA requires that marketers obtain prior express consent before sending promotional text messages. The plaintiff claimed that he granted consent to receive three text messages per week, but there was no consent for any text messages in excess of three per week. The plaintiff also included a claim for breach of contract.

The TCPA provides a private right of action, including class actions; state Attorneys General can also enforce the Act. Plaintiffs can sue for actual damages or \$500 per violation, with penalties tripled for willful violations. In the last year, there have been several other class action complaints involving promotional text messages: in these cases, plaintiffs claimed marketers failed to obtain express consent or that consent had been revoked.

This complaint serves as a reminder that using new media to interact with fans carries certain risks. For more information about these issues, or for other questions involving sports teams and players, please contact Brian Socolow at 212.407.4872 or Douglas Masters at 312.464.3144.

This alert is a publication of Loeb & Loeb and is intended to provide information on recent legal developments. This alert does not create or continue an attorney client relationship nor should it be construed as legal advice or an opinion on specific situations.

Circular 230 Disclosure: To ensure compliance with Treasury Department rules governing tax practice, we inform you that any advice contained herein (including any attachments) (1) was not written and is not intended to be used, and cannot be used, for the purpose of avoiding any federal tax penalty that may be imposed on the taxpayer; and (2) may not be used in connection with promoting, marketing or recommending to another person any transaction or matter addressed herein.

© 2012 Loeb & Loeb LLP. All rights reserved.

This publication may constitute "Attorney Advertising" under the New York Rules of Professional Conduct and under the law of other jurisdictions.

Sports Group

SUNNY BRENNER	SBRENNER@LOEB.COM	310.282.2284
---------------	-------------------	--------------

KENNETH R. FLORIN	KFLORIN@LOEB.COM	212.407.4966
-------------------	------------------	--------------

KEVIN GARLITZ	KGARLITZ@LOEB.COM	310.282.2392
---------------	-------------------	--------------

ARASH KHALILI	AKHALILI@LOEB.COM	310.282.2282
---------------	-------------------	--------------

DOUGLAS N. MASTERS	DMASTERS@LOEB.COM	312.464.3144
--------------------	-------------------	--------------

NERISSA COYLE MCGINN	NMCGINN@LOEB.COM	312.464.3130
----------------------	------------------	--------------

BRIAN R. SOCOLOW	BSOCOLOW@LOEB.COM	212.407.4872
------------------	-------------------	--------------

SCOTT ZOLKE	SZOLKE@LOEB.COM	310.282.2299
-------------	-----------------	--------------
