Super interesting case for you this morning.

In ANNA GILL, Plaintiff, v. ALIGN TECHNOLOGY INC, Defendant, 2022 WL 1540016 (E.D. Wisc. May 16, 2022) a court held that a phone call made within ONE HOUR of a stop text request might violate the TCPA’s internal DNC rules.
Let’s take that in for a moment.

First, although a caller is given a “reasonable” timeframe—up to 30 days—to honor a stop request, the Gill court holds that failing to honor a request within one delicate hour might be sufficiently “unreasonable” depending on all of the facts and circumstances. Troubling.

Second, notice that the caller is being hung up for calling the consumer after only receiving a “stop” text message—and not actually being told to stop calling. This is only the second case I’m aware of holding that such cross-channel revocation is effective—but both arise in the context of DNC requests.

While Gill might be viewed as a stunning expansion of the TCPA’s DNC rules, there is more going on here.

The alleged facts tell an interesting tale.

Apparently the Invisalign folks (allegedly) deployed a contact strategy where as soon as someone opts out of an email campaign they would be sent a text message. If someone then had the audacity to request texts to stop, they would receive a phone call. Here is how the court framed it:

"In support of this claim, Plaintiff alleges that she initially requested information about Align and received it via email. After four months, she unsubscribed from receiving such information, and promptly received a text message doing the exact opposite of what she requested. When she formally requested to be placed on a do-not-call list, she received a phone call. This escalation in contact, seemingly in direct response to Plaintiff’s requests to stop contact, plausibly indicates that Align violated the TCPA’s regulations by failing to honor Plaintiff’s do not-call requests within a reasonable amount of time."

Interesting, no?

Pretty clear take away here: anyone who thinks it would be clever or fun to keep pestering someone who asks not to be contacted by merely switching contact channels is in for trouble. Now I am not saying that every “stop” message automatically requires all contact to cease—for instance a “Stop” in response to a marketing campaign shouldn’t—in my view—constitute a revocation for servicing voice channel calls—but marketers should never “escalate” their contact efforts in response to an opt out.

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