



Stay Out of Trouble!

LEGAL COMPLIANCE WITH TEXT MARKETING

When used correctly, text messaging can have not only a huge positive impact on the business relationship with your customers, but it can drive significant incremental revenue in the process. Building a positive relationship with your customers through text is dependent on clearly communicating the instructions, terms and conditions, benefits and your privacy policy related to the program you're offering. The Federal Communications Commission released a ruling in support of the Mobile Marketing Association's efforts to preserve "consumer preference and choice" through its [US Consumer Best Practices](#) (MMA CBP) guidelines.

SMS Messaging Regulations

The FCC has taken the position that text messages sent by automated broadcast systems are 'automated calls' and are therefore best covered under the [Telephone Consumer Protection Act \(TCPA\) of 1991](#). Under the original Act, implied consent through a pre-existing business relationship and not opt-in consent was the standard for commercial telephonic communications and robo-calls. On February 15, 2012 the FCC amended the TCPA to remove any ambiguity surrounding consent requirements for SMS, making it *mandatory for businesses to receive "prior express written consent" before auto-dialing or texting consumers*. This means that you must have documented approval before sending any text to consumers. Utilizing 5STAR keywords and the associated opt-in database, is the single best way to stay out of trouble.

Industry self-regulation background

In 2003 the MMA published its first set of ethical guidelines for mobile marketers. Now a global-facing document, the [MMA Code of Conduct](#) can be distilled into the following privacy principles:

- 1 **Notice.** Whenever requesting a mobile phone number, businesses should inform consumers that they will be receiving SMS messages from a specific shortcode-based program.
- 2 **Opt-in consent.** Consumers must first give their express (opt-in) consent by knowingly volunteering their mobile number or using a handset-originating command to join the program.
- 3 **Opting out.** Users should also know the ways to opt-out of a program, how to get help from their handset and where to reference terms and conditions, as well as the fact that *message and data rates may apply* when participating in an SMS program. 5STAR allows for all of these options.

We suggest you ask yourself the following questions when reviewing your mobile program: (HINT - If the answer is no, it might be time to take another look)

- Are you only sending mobile messages to individuals that provided consent through an opt-in promotion?
- As part of that consent, are all programs identified and are the instructions, charges (message and data rates), program terms and privacy policies clearly displayed anywhere opt-ins are promoted?
- Are you ensuring that a user's consent only applies to the specific program for which they opted-in, and not treated as a blanket approval for other programs?
- Are you maintaining opt out (STOP) and assistance (HELP) mechanisms and communicating their use at the time opt-ins are collected?
- Are all opt-out requests honored no later than 72 hours after receipt?

If the answer to all of the above is YES, then you are well on your way to establishing a mutually beneficial relationship with your subscribers.

5Star makes staying in full compliance with the law simple. The system automatically builds and manages your opt-in list, provides user STOP and HELP functions, and completes any opt-out request immediately. 5STAR makes staying in full compliance easy so you can concentrate on business!

Further reading:

US Federal Communications Commission

Telephone Consumer Protection Act 47 U.S.C. § 227
FCC Official Website
www.fcc.gov/document/tcpa-omnibus-declaratory-ruling-and-order

Relevant Public Articles

TCPA Compliance for Mobile Marketers: A Whole New Ball Game
Neustar Blog, November 7, 2013
www.neustar.biz/blog/tcpa-compliance-mobile-marketers

TCPA Do's and Don'ts: Lessons Learned
Bloomberg Legal, July 2, 2015
www.bna.com/tcpa-dos-donts-n17179929013