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TCPA & Consumer Privacy Alert

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A loud decision on TCPA quiet hours

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Federal Court holds TCPA quiet hours claims can't proceed where consumer voluntarily provided phone number.

What's the impact?

- Court held voluntary opt-in constitutes prior express consent, removing texts from "telephone solicitation" and invalidating quiet hours claims.
- Quiet hours rules lack the stricter written consent standard used for Do-Not-Call claims, creating a key legal distinction that shaped the outcome.
- Do-Not-Call claim survived because written consent wasn't on the record, signaling ongoing litigation risk despite dismissal of quiet hours allegations.

A federal district court in Delaware has dismissed a TCPA quiet hours claim, holding that a consumer who voluntarily shares her phone number to subscribe to marketing messages has given "prior express invitation or permission" that removes the communication from the statute's definition of "telephone solicitation." The decision offers meaningful support to companies facing the recent surge in quiet hours litigation, though its practical impact remains limited as a single district court ruling.

The question

In *King v. Bon Charge*, No. 25-cv-00105-SB (D. Del. Apr. 30, 2026), Judge Stephanos Bibas, a Third Circuit judge sitting by designation, addressed TCPA claims brought by a consumer who had subscribed to marketing text messages in exchange for a discount code. After receiving dozens of promotional texts, with some arriving in the middle of the night or early morning, the plaintiff brought a putative class action asserting, among other claims, that the texts violated the "quiet hours" regulation, which prohibits telephone solicitations to residential subscribers before 8:00 am or after 9:00 pm local time.

The consent distinction at the heart of the ruling

Both the quiet hours and Do-Not-Call Registry provisions apply only to "telephone solicitations," which the TCPA defines to exclude calls or messages made with the recipient's "prior express invitation or permission." The regulations implementing the Do-Not-Call Registry, however, impose a heightened consent requirement: a defendant must show that the consumer's invitation or permission was "evidenced by a signed, written agreement" that identifies the subscriber, states that the subscriber agrees to be contacted, and includes the telephone number to which calls may be placed. No such heightened requirement appears in the quiet hours provision.

Because the quiet hours regulation does not incorporate the "signed, written agreement" standard, the court applied the general statutory definition of "prior express invitation or permission," which equates to "express consent." Under Third Circuit precedent, express consent exists when a person "knowingly releases" her phone number to the sender and the sender's subsequent messages are "related to why the number was provided."

The court found that the phone records attached to the plaintiff's own complaint showed she "knowingly released" her phone number to the defendant by texting a keyword to subscribe to marketing messages and receive a discount coupon. That act constituted prior express consent to receive messages advertising the products, messages that were "undisputably related to why the number was provided." The court noted that although the plaintiff had alleged in conclusory terms that she "never consented … to receive telemarketing calls or text messages," that assertion was contradicted by the phone records attached to her own amended complaint and was not entitled to an assumption of truth.

Accordingly, because the plaintiff had given prior express invitation or permission, the texts were not "telephone solicitations," and the quiet hours provision did not apply.

The Do-Not-Call Registry claim survives (for now)

While the court dismissed the quiet hours claim, it allowed the plaintiff's Do-Not-Call Registry claim to proceed. The court reasoned that the heightened "signed, written agreement" standard governing consent in the Do-Not-Call Registry context was not clearly satisfied on the face of the complaint. The amended complaint contained no information about what, if anything, was shown to the plaintiff before she texted the defendant, nor did it describe any written agreement between the parties regarding marketing messages. The court treated consent as an affirmative defense rather than an element of the plaintiff's claim, and concluded it could not dismiss the Do-Not-Call Registry count based solely on the possibility that the defendant might later establish consent in writing.

Why this matters

This decision arrives at a moment of significant litigation activity around the TCPA's quiet hours provision. Plaintiffs' attorneys have increasingly targeted businesses with quiet hours claims, and the question of whether a consumer's voluntary consent to receive marketing messages also permits outreach during restricted hours has remained an open one. *King v. Bon Charge* provides a clear, defense-friendly answer: where a consumer knowingly shares her phone number for marketing purposes, that act constitutes the prior express invitation or permission necessary to remove the communication from the scope of "telephone solicitation" and, by extension, from the quiet hours restriction.

The logic of the decision is straightforward and rooted in the statutory text. "Telephone solicitation" under the TCPA excludes messages sent with the recipient's prior express invitation or permission. The quiet hours regulation, unlike the Do-Not-Call Registry regulation, does not layer on a heightened written-consent requirement. A knowing release of a phone number satisfies the standard. Where the consumer's own records establish that release, the quiet hours claim fails as a matter of law.

Practical considerations

Despite its favorable reasoning, this is a decision from a single federal district court and does not bind other courts. We expect courts to diverge on whether voluntary consent to receive marketing messages also encompasses consent to receive those messages during quiet hours. Some courts may conclude that consent to receive marketing texts does not extend to consent to be contacted at any hour, or may read the quiet hours regulation as imposing its own independent requirements regardless of general consent.

Given the current uncertainty, companies engaged in text-message or telephone marketing should consider the following best practices to minimize risk:

HONOR QUIET HOURS

The time that matters is when the recipient receives the message, not when the sender transmits it. Businesses should work with their messaging vendors and platforms to identify the time zone of each recipient and ensure messages are delivered within permissible windows.

ESTABLISH CONSERVATIVE SEND PARAMETERS

To account for time zone differences and reduce the risk of inadvertent violations, companies may wish to set outbound call or message send times between 11:00 am and 8:00 pm Eastern Time, or adopt similar parameters tailored to their recipient populations.

INCLUDE EXPRESS TIME-OF-DAY CONSENT IN APPLICABLE TERMS

Companies should consider incorporating language in their terms, conditions, or opt-in disclosures that expressly provides the consumer's consent to receive messages at any time of day or night. While *King v. Bon Charge* suggests that general consent to receive marketing messages may suffice to defeat a quiet hours claim, adding explicit time-of-day consent language provides an additional layer of protection, particularly in jurisdictions that may take a narrower view of implied quiet hours consent.

MONITOR THE DEVELOPING CASE LAW

This is an area where the law is in flux. Companies should stay attuned to decisions in other federal and state courts addressing the intersection of consumer consent and quiet hours restrictions, and be prepared to adjust their compliance practices as the case law develops.

King v. Bon Charge is an encouraging development for businesses facing TCPA quiet hours claims, but it is not the final word. Companies should treat it as one favorable data point in an evolving legal landscape and continue to invest in compliance infrastructure that anticipates the possibility of less favorable rulings elsewhere.

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