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## Cannabis Marketing Co. Tossed From Unwanted Calls Suit

By **Sarah Jarvis**

Law360 (October 3, 2019, 6:31 PM EDT) -- A Washington federal court dismissed a cannabis marketing company from a Telephone Consumer Protection Act case, saying the proposed class action failed to show that the company did more than provide a platform that other defendants used to send text messages.

Tuesday's order granted Florida-based Springbig Inc.'s motion to dismiss the case, which was brought by Spokane County resident Roberta Frank, who said she received daily text messages for at least a month after signing up for a loyalty program at Cannabis & Glass LLC's retail store in October 2018. Other defendants named in the suit include the store's owner and another company he allegedly formed, NXNW Retail LLC.

Frank said Cannabis & Glass, NXNW and Springbig jointly operated the loyalty program, and that the "junk texting" violated the TCPA and Washington's Commercial Electronic Mail Act. Frank claimed the texts she received were from two numbers registered to Springbig, and that the messages were sent to thousands of customers, according to her amended complaint.

But U.S. District Judge Stanley A. Bastian said Frank did not allege that the marketing company was involved in initiating the texts.

"Merely alleging that defendant Springbig 'made' or 'initiated' the call is not sufficient to allege a TCPA claim against defendant Springbig," Judge Bastian said. "There are no allegations that defendant Springbig exercised any discernible involvement in deciding whether, when, or to whom the text message is sent, or what the text message said."

Springbig's website, which claims its marketing platform was "designed specifically for the needs of a marijuana dispensary," includes sample text messages for loyalty program members. But the court said Frank's inclusion of the content of those messages in her amended complaint was not sufficient to establish the company's liability under state or federal laws.

"Plaintiff's conclusory allegations that defendant Springbig violated CEMA are not sufficient, given that plaintiff has also alleged that defendant Springbig's role in the alleged violation was providing a programmable platform from which the retail defendants initiate the message," Judge Bastian said.

The court granted Frank leave to file a second amended complaint if she believes she can remedy the issues regarding her allegations against Springbig. Frank sought statutory damages, treble damages, declaratory and injunctive relief and attorney fees, according to the complaint.

The case includes two proposed classes — one under the TCPA and one under Washington's CEMA — both of which consist of Washington residents who received unsolicited text messages from the companies four years prior to class certification.

Brian Cameron of Cameron Sutherland PLLC, counsel for Frank and the proposed classes, said that after being removed from the state court, where recreational marijuana is decriminalized, it's unclear how the federal court will handle civil claims involving "the mass marketing, sale and distribution" of a federally controlled substance and related drug paraphernalia.

"This case was originally filed under the 'notice-pleading' standards of Washington state," Cameron said. "The defendants removed to federal court and almost immediately filed a motion to dismiss based on federal pleading standards."

Counsel for Springbig and a representative of the company did not immediately respond to requests for comment Thursday. Counsel for Cannabis & Glass and the other defendants declined to comment.

Frank and the proposed classes are represented by Brian Cameron of Cameron Sutherland PLLC and Kirk D. Miller.

Springbig is represented by David S. Almeida, Mark S. Eisen and Suzanne M. Alton de Eraso of Benesch Friedlander Coplan & Aronoff LLP, and Medora A. Marisseau of Karr Tuttle Campbell.

Cannabis & Glass, NXNW Retail and Tate Kapple are represented by John S. Devlin III and Taylor Washburn of Lane Powell PC.

The case is Frank v. Cannabis & Glass LLC et al., case number 2:19-cv-00250, in the U.S. District Court for the Eastern District of Washington.

--Editing by Haylee Pearl.

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