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## Abercrombie, Hollister Reach \$10M Deal Over Unwanted Texts

By Steven Trader

Law360, New York (September 11, 2015, 3:07 PM ET) -- Clothing retailers Abercrombie & Fitch Co. and Hollister Co. have reached a \$10 million settlement with a group of consumers who claim the companies violated the federal Telephone Consumer Protection Act by sending unsolicited text messages to their mobile phones, according to a proposal submitted in Florida federal court Thursday.

Under the terms of the proposed deal, the retailers will establish a \$10 million fund that will provide damage relief proportional to the number of claims for an estimated settlement class of more than 3.7 million consumers who received unsolicited text message advertisements without the chance to opt out between August 2010 and the date the settlement is ultimately approved.

The proposed deal would end more than a year of litigation between the retailers and lead plaintiffs Anamaria Chimeno-Buzzi and Lakedrick Reed, the former of which filed a complaint in August 2014 then consolidated a second amended complaint with one filed by Reed earlier this year.

"This was hard-fought but constitutes a great result for the class, and we're very pleased," lead attorney Joseph Siprut of Siprut PC told Law360 via email Thursday night.

In the consolidated, amended complaint filed in May, Chimeno-Buzzi and Reed each alleged to have received a number of text message advertisements from Abercrombie and Hollister between June 2014 and April directing them to the companies' websites, even though neither plaintiff had provided their cellphone number to either defendant or given the retailers prior express written consent, according to the court document.

What's more, the plaintiffs alleged that the mobile advertisements offered no method of opting out, even though the "Text Terms" page found on each of the companies' websites claim that individuals can text "STOP" at any time in response to the messages.

The plaintiffs sought class certification, and claimed violations of the TCPA that would entitle them to statutory damage awards of \$500 per text and treble damages of \$1500 per text because the retailers allegedly knowingly violated the federal law.

The two sides entered into mediation in July and reached a tentative agreement in early August. Under the terms of the proposed settlement filed Thursday, each class member would receive a little more than \$2.50 per text message violation claim, though the amount could increase, as no portion of the settlement fund is to be returned to the defendants.

While the proposal stipulated that a claims website be established for the settlement class, the parties have yet to determine the “best practicable notice” for how to alert potential members, requesting instead that the court appoint a class-action administrator to steer the claims process.

In late August, Abercrombie inched closer to **ending** a separate proposed class action in Illinois federal court accusing the company of not honoring promotional gift cards, when a district judge found that the lead plaintiff requesting summary judgment had not met her burden of proof that a jury wouldn’t side with the clothing retailer.

A representative for the company on Friday declined to comment on the proposed TCPA settlement.

The plaintiffs are represented by David P. Milian and Frank S. Hedin of Carey Rodriguez Milian Gonya LLP; Robert R. Ahdoot and Tina Wolfson of Ahdoot & Wolfson PC; and Joseph J. Siprut of Siprut PC.

The defendants are represented by Daniel O. Mena and Martha R. Mora of Avila Rodriguez Hernandez Mena & Ferri LLP, and Seamus C. Duffy, Michael J. Stortz and Meredith C. Slawe of Drinker Biddle & Reath LLP.

The case is Anamaria Chimeno-Buzzi and Lakedrick Reed v. Abercrombie & Fitch Co. and Hollister Co., case number 14-cv-23120, in the U.S. District Court for the Southern District of Florida.

--Editing by Aaron Pelc.

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