

Uber Drivers Employees or Contractors? Uber Pleadings Say Yes

Are Uber drivers independent contractors or employees? Apparently, the answer depends upon which Uber pleading you read.

In an effort to dismiss a lawsuit alleging violations of the Telephone Consumer Protection Act (TCPA), Uber argues that the text messages were sent for “job recruitment.” The job was to be a driver for Uber.

However, in another federal lawsuit and also before the California Labor Commission, Uber argued that Uber drivers are independent contractors, not employees because the company provides software goods and services to drivers but does not employ the drivers. See our earlier blog on the Labor Commission appeal by Uber.

In the TCPA case, the district court agreed with Uber that the text messages it sent were employment related and thus permissible. “The Court finds that the texts at issue here were more akin to recruiting texts than advertising or telemarketing texts. The latter require the promotion of goods or services, but Uber is primarily a transportation business that provides ride services, not a technology business.”

The court said it agreed with the reasoning by another federal court judge who wrote, “Uber does not simply sell software; it sells riders”; “Uber is no more a ‘technology company’ than Yellow Cab is a ‘technology company’ because it uses CB radios to dispatch taxi cabs”; “Uber’s revenues do not depend on the distribution of its software, but on the generation of rides by its drivers.”

Not only does the TCPA court’s finding that the texts were to potential employees possibly present a challenge to Uber’s position regarding independent contractor status, but it also did not get Uber totally off the hook. The TCPA requires that the party sending the text messages must give prior express consent.

The TCPA case involves three classes: One class never made application to Uber and never gave their cell phone numbers to Uber; the second class started an application process on line, which included providing their cell phone numbers but they never completed the application; and the third class completed the application. The court dismissed the case only as to the class that completed the application process. As to the plaintiffs who never completed the application process, the court said “it is not clear that they intended to ‘make available’ their personal information, including their phone number, to Uber.”

Kerry Reardon v. Uber Technologies, Inc., D.C.Calif. No. 14 CV 5678, issued July 19, 2015.

Balough Law Offices, LLC, is a Chicago-based law firm which focuses on cyberspace, business, and intellectual property law. Our homepage is balough.com.