

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS**

	X	
	:	Civil Action No.
TYLER BAKER, on behalf of himself and others similarly situated,	:	
	:	<b>CLASS ACTION COMPLAINT</b>
	:	
Plaintiff,	:	Jury Trial Demanded
	:	
v.	:	
	:	
ABBVIE INC.,	:	
	:	
Defendant.	:	
	X	

**Nature of the Action**

1. Tyler Baker (“Plaintiff”) brings this class action lawsuit against AbbVie Inc. (“Defendant”) under the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”), and its implementing regulations.

2. Upon information and good faith belief, Defendant routinely and systematically violated 47 C.F.R. pt. 64.1200(c) and, in turn, 47 U.S.C. § 227(c)(5), by delivering more than one advertisement or marketing text message to residential or cellular telephone numbers registered with the National Do-Not-Call Registry (“DNC Registry”) without the prior express invitation or permission required by the TCPA.

**Parties**

3. Plaintiff is a natural person who at all relevant times resided in Underhill, Vermont.

4. Defendant is incorporated under the laws of Delaware but maintains its corporate headquarters in North Chicago, Illinois.

5. Defendant is a global biopharmaceutical company that acquired Allergan plc (“Allergan”) in May 2020.<sup>1</sup>

6. Through the Allergan acquisition, Defendant acquired Allergan’s portfolio of therapeutics, including “RESTASIS” branded eye drops for treatment of Chronic Dry Eye.<sup>2</sup>

### **Jurisdiction and Venue**

7. This Court has subject matter jurisdiction under 47 U.S.C. § 227(c)(5) and 28 U.S.C. § 1331.

8. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b) as Defendant maintains its corporate headquarters in this district.

### **Factual Allegations**

9. Plaintiff is, and has been at all times relevant to this action, the regular and sole user of his cellular telephone number—(802)-XXX-2723.

10. Plaintiff uses, and at all times relevant to this action used, his cellular telephone as his personal residential telephone number.

11. In 2003, the Federal Communications Commission (“FCC”) ruled that cellular telephone numbers that are placed on the DNC Registry are presumed to be residential. *In Re Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 18 F.C.C. Rcd. 14014, 14039 (2003).

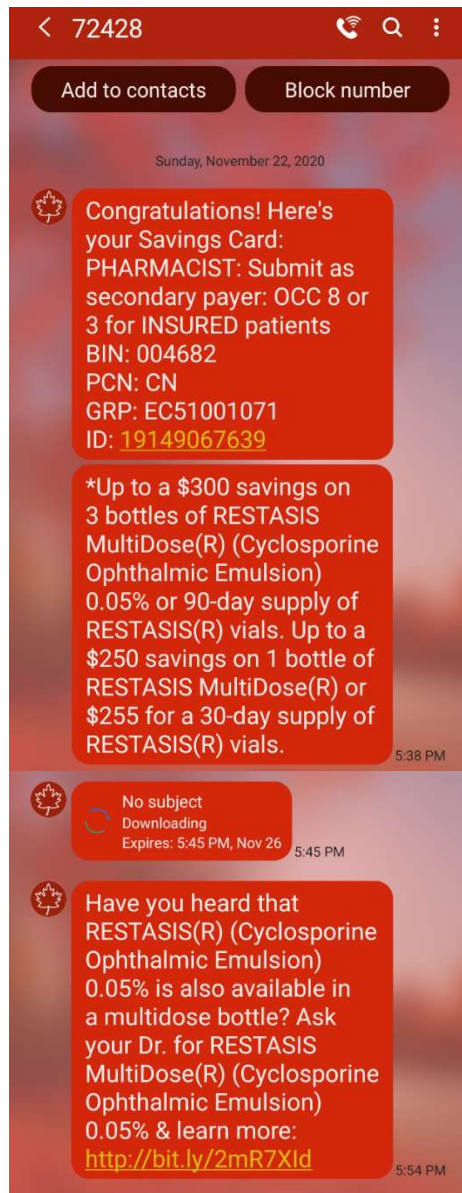
12. Plaintiff registered his cellular telephone number with the DNC Registry on or about November 4, 2004.

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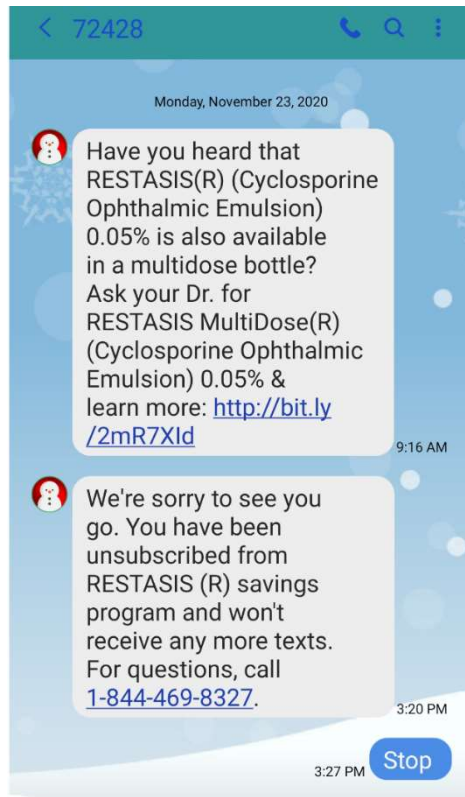
<sup>1</sup> <https://news.abbvie.com/news/press-releases/abbvie-completes-transformative-acquisition-allergan.htm> (last visited Dec. 29, 2020).

<sup>2</sup> <https://www.restasis.com/> (last visited Dec. 29, 2020).

13. On November 22, 2020, Plaintiff received the following four text messages on his cellular telephone from short code 72428:



14. The next day, on November 23, 2020, Plaintiff received a similar text message from short code 72428:



15. Before texting “Stop” to remove himself from Defendant’s marketing list, Plaintiff received at least five text messages in all.

16. All of Defendant’s text messages to Plaintiff advertised savings on RESTASIS (Cyclosporine Ophthalmic Emulsion), one of Defendant’s eye care products.

17. Several of Defendant’s text messages include a hyperlink that redirects to <https://www.restasis.com/getting-started>, which further advertises Defendant’s RESTASIS eye care product.

18. The 72428 short code is a dedicated, vanity short code, registered to “Restasis Alerts” since March 2, 2017.<sup>3</sup>

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<sup>3</sup> See <https://usshortcodedirectory.com/search/?shortcode-number=72428> (last visited Dec. 29, 2020).

19. “A short code is a number with fewer digits than a phone number to which a text message can be sent. The five-or six-digit numbers are often promoted in traditional and digital advertising. Companies use these codes to bring customers into the branded experience through voting, surveys, sweepstakes, coupon offers, information updates, loyalty programs and alerts.”<sup>4</sup>

20. “A dedicated short code is an SMS short code that is used and paid for exclusively by one brand. A dedicated short code is different from a shared short code, because a shared short code is used and paid for by multiple brands.”<sup>5</sup>

21. “A vanity short code, is a 5-6 digit phone number that is specifically selected by a brand, rather than selected at random by the Common Short Code Administration (CSCA).”<sup>6</sup>

22. Plaintiff did not give Defendant prior express consent to send text messages to his cellular telephone number.

23. Plaintiff did not give Defendant prior express written consent to send text messages to his cellular telephone number.

24. Upon information and good faith belief, and in light of the nature and character of the text messages at issue—standardized, impersonal, and consistent in structure and format—the advertisement and marketing text messages at issue were sent by Defendant using an automatic telephone dialing system.

25. The text messages at issue were sent for non-emergency purposes.

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<sup>4</sup> <https://usshortcodes.com/faqs> (last visited Dec. 29, 2020).

<sup>5</sup> <https://usshortcodedirectory.com/faq/what-is-a-dedicated-short-code/> (last visited Dec. 29, 2020).

<sup>6</sup> <https://usshortcodedirectory.com/faq/what-is-a-vanity-short-code/> (last visited Dec. 29, 2020).

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