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\$10M Steve Madden TCPA Deal Gets Judge's OK

By **Scott Flaherty**

Law360, New York (May 10, 2013, 2:58 PM ET) -- A California federal judge on Tuesday approved a settlement worth up to \$10 million that resolves a putative class action alleging shoe retailer Steve Madden Ltd. sent unwanted text message advertisements to cellphone users in violation of a federal privacy law.

U.S. District Judge Philip S. Gutierrez issued a minute order granting final approval of a settlement that resolves a putative class action brought against Steve Madden by named plaintiff Samantha Ellison, who alleged that the shoe retailer violated the Telephone Consumer Protection Act by sending unsolicited text message ads.

"The court approves settlement of the action, as set forth in the settlement agreement as fair, just, reasonable and adequate," the minute order said. "The parties are directed to perform their settlement in accordance with the terms set forth in the settlement agreement."

Under the deal, Steve Madden agreed to initially create a settlement fund of \$5 million that could be increased in increments of \$1 million "as needed," according to the judge's minute order. Every class member who submits a claim would be eligible to receive \$150, unless the total claims exceed \$10 million, in which case each class member would receive a smaller amount.

For serving as class representative, Ellison will take in a \$10,000 incentive award. Ellison's counsel initially sought \$2.4 million in attorneys' fees, but Judge Gutierrez ruled that figure was too high and instead approved class counsel to recover \$1.25 million in fees and another \$140,000 or so in costs. The attorneys' fees and legal costs would come out of the total settlement fund, the order said.

Ellison first lodged the suit in July 2011, claiming Steve Madden violated the TCPA, which prohibits unsolicited calls or text messages to cellphones, according to the complaint. The suit said Steve Madden had sent advertisements as text messages in a promotion effort for a holiday sale on footwear and other products.

"These unauthorized text message calls ... caused consumers actual harm, not only because consumers were subjected to the aggravation that necessarily accompanies wireless spam, but also because consumers frequently have to pay their cell phone service providers for the receipt of such wireless spam," the July 2011 complaint said.

In August 2012, Ellison filed a motion for preliminary approval of a settlement of the suit against Steve Madden and followed that in January with a motion for final approval. Judge Gutierrez on Tuesday granted final approval, with a modification to the proposed attorneys' fee award, according to the order.

An attorney representing the settlement class, Jay Edelson, said he "was very pleased with the court's decision" to grant final approval of the deal.

An attorney for Steve Madden did not immediately respond to a request for comment Friday.

The plaintiffs are represented by Suzanne Havens Beckman and David C. Parisi of Parisi & Havens LLP as well as by Jay Edelson, Ryan D. Andrews and Ari J. Scharg of Edelson LLC.

Steve Madden is represented by David S. Eisen and Gregory K. Lee of Wilson Elser Moskowitz Edelman & Dicker LLP.

The case is Samantha Ellison v. Steve Madden Ltd., case number 2:11-cv-05935, in the U.S. District Court for the Central District of California.

--Editing by Eydie Cubarrubia.

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