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Consumer Protection Cases and Policy to Watch in 2022

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[David N. Anthony](#)

David Anthony, a partner with Troutman Pepper, is quoted in the *Law360* article, "[Consumer Protection Cases and Policy to Watch in 2022](#)."

"Although Facebook endeavored to answer the question of what constitutes an ATDS, it left many other questions unanswered and raised others," said David Anthony, a partner at Troutman Pepper. "These questions include whether a plaintiff may nevertheless survive the pleadings stage on the ATDS question, or whether the device used to place the call need only have the 'capacity' to use a random and sequential number generator or must actually make 'use' of one."

...

This issue is [at the center of *Hall v. Smosh Dot Com*](#), a lawsuit filed in California federal court in October that alleges that minors can never provide the prior express written consent required by the TCPA, an assertion courts have yet to hash out.

"There is currently no case law addressing whether a minor can provide valid consent under the TCPA," Anthony said. "If the court accepts the plaintiff's theory, this could create a difficult compliance challenge for companies engaged in telemarketing that obtain consent via the internet, where it is difficult or impossible to ensure that the individual providing consent is not a minor."

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