

15 November 2022

21 Heshvan 5783

To

Exelot Ltd.

**By email**

Dear Sir/Madam:

**Subject: Claims Report – Exelot Ltd. – Updated to 15 November 2022**

Below are details of the legal proceedings being handled by our office.

**1. Class Action 19771-12-20 (Magistrates – Rishon Lezion) Aviv Matraso vs. Exelot Ltd.**

1. On 8 December 2020, the Plaintiff – Aviv Matraso – filed an application for approval of a legal claim as a class action to the Rishon Lezion Magistrates Court (hereinafter: “**Matraso Application**”). According to the contention of the Applicant, Exelot sent text messages to her mobile phone which included “advertising”, as stated in Section 30A of the Telecommunications Law (Bezeq and Broadcasting), 5742-1982 (“**Telecommunications Law**”) [commonly known as the “spam law”]. The Applicant contends that the text messages were intended to convince her (as well as other recipients to whom the text messages were sent) to purchase “home delivery” service from Exelot, the cost of which is NIS 17.90 (VAT included).
2. The Applicant contends that she never gave her consent to receive SMS messages from Exelot containing “advertising”; that she was not interested in receiving this type of text message from the beginning, and in any event she was not given any opportunity of requesting not to receive additional text messages of this kind from Exelot. In light of the above, the Applicant contends that Exelot committed a breach of the provisions of Section 30A of the Telecommunications Law in a manner which entitles her and the other members of the group represented in the application for approval to monetary compensation.

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1. We believe that there is no real substance in these contentions. On 30 May 2015, we submitted our response to the application for approval, in the framework of which we showed that from the point of view of intention, the text messages which Exelot sends to recipients (including to the Applicant herself) do not constitute “advertising”, as stated in Section 30A of the Telecommunications Law. These are text messages which contain factual information regarding the arrival of the shipment to Israel and the delivery of a reference number for tracking the shipment. This is the central purpose of the text messages, and for this reason they are sent to recipients from the outset. Incidentally, Exelot (also) includes in these text messages service information regarding a “home delivery”service being offered. This service was intended to assist the client in receiving the shipment ordered from abroad during the period of the Coronavirus crisis, without the consumers having to collect the shipment by themselves from dedicated points of delivery.
2. In addition, in the framework of the response we contended that these were not texts which were distributed to the general public, but rather only to clients who were to receive the package they had ordered via Exelot, and therefore these are not messages which constitute “advertising” as this is defined in the Telecommunications Law, and the provisions of the Telecommunications Law are not directed at this type of text messages. Moreover, these texts in any case do not cause any harm to the recipients. In other words, the reading of a few additional lines of service content text (which are in fact intended to assist the recipient) at most costs the recipient a fraction of a second, and so this is not damage which justifies the conducting of a class action suit in the matter (even if we say that damage was in fact caused, it falls within the category of “trivial”).
3. Our response here is also supported by the position of the Ministry of Communications in the case Class Action 15112-08-18 **Bashan vs. Israel Postal Company Ltd.**, from which it appears that text messages of the kind which Exelot sends do not constitute “advertising” as stated in the Telecommunications Law (in this case, these are text messages sent by the Israel Postal Company which are similar in nature to the texts which Exelot is sending).
4. After a preliminary hearing held on 22 November 2021, the parties in the case spoke with one another and decided to turn to a mediation procedure to clarify the dispute between them. On 22 December 2021, the court approved a procedural arrangement between the parties according to which the case would be transferred for clarification in the framework of a mediation and that if the mediation did not succeed, the procedure would continue to be clarified in court.
5. After several mediation meetings, the parties failed to reach an agreement and it was decided to return the discussion of the case to the court. The Applicants were given the possibility of amending the application for approval and join additional litigants to it from a different application for approval which had been stricken out – Class Action 43181‑12‑20 (Magistrates – Rishon Lezion) **Ziv Glassberg et al. vs Exelot Ltd.**, up to 29 October 2022, but they did not do so.
6. It should be pointed out that for the sake of the mediation that Exelot ordered a consumer survey and expert opinion to clarify the position of its customers regarding the manner in which they understand the text messages they received as well as to examine the position of the consumers regarding the filing of the application for approval itself regarding the contended damage, in light of the developments in case law which had occurred after the submission of the original response to the application for approval.
7. Thus, on 4 July 2021, about two months after the submission of the response of the Respondent to the application for approval, a ruling was given in the framework of Additional Civil Hearing 4960/18 **Shulamit Seligman vs. The Phoenix Insurance Company Ltd.** (published in *Nevo* 4 July 2021) (hereinafter: “**Seligman Case**”). This ruling, in an expanded composition of seven judges, among other things analyzed the question of the applicability of the protection of trivial issues in class actions. Despite the fact that the judges disagreed with regard to the manner of implementation of the rule, it clearly appears that the protection of trivial issues can be applied in a class action suit, and the incident must be examined from the point of view of the entire group.
8. The conclusion from the above-mentioned ruling is that when the group itself regards anything as a trivial and petty matter or one for which they would not have filed a personal claim or joined a class action, then it can be determined that this is a damage incident which, even if it was caused, is a trivial matter, and if so, a class action suit is not the most effective and fair way to clarify it, pursuant to Section 8(A)(2) of the Class Action Law, 5766-2006.
9. The expert opinion proves the position of the group beyond a shadow of a doubt. Thus, in the framework of the survey, the consumers were asked a direct question:

***“In the end, the company organizing the delivery of the package in Israel sent you a text message notifying you of the arrival of the package in Israel and also attached to this text an offer permitting you to receive the package at your home by courier at a cost of NIS 17.90. In light of this, would you have filed a legal claim against this company arguing that this text message that the company sent you caused you discomfort, frustration and harassment?”***

1. In response to this question, **96.3%** (!!) of the consumers replied that they would not have filed or joined a claim against the company for the text, and only **0.7%** would have filed or joined the claim because they view the text message as advertising. Moreover, about 95% of the consumers even responded that they view the text message as a notice of an important and vital service and a supplementary and desirable service of the courier company during the period in which the Corona pandemic and the quarantines began.
2. We are considering filing an application to amend the written response on behalf of Exelot in this case, by adding the results of the survey and the expert opinion prior to the decision being given in the application for approval of the claim as a class action.
3. In light of the above, we believe that the chances of the lawsuit are less than 50%.
4. An additional pretrial hearing in this case has been fixed for 22 February 2023.

Respectfully,

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**C. Fruchter, Adv.**