

Federal Missouri Court Continues To Rein In Expansive TCPA Interpretation

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The Telephone Consumer Protection Act case law interpreting the definition of an “automatic telephone dialing system” (“ATDS”) is changing under plaintiffs’ feet and coalescing against the definition set forth in *Marks v. Crunch San Diego, LLC*, 904 F.3d 1041 (9th Cir. 2018). The Western District of Missouri provides the most recent example of this trend in *Beal v. Outfield Brew House, LLC*, No. 2:18-CV-4028-MDH, 2020 WL 618839 (W.D. Mo. Feb. 10, 2020).

The defendant, Outfield Brew House, sent the plaintiff two text messages over the course a year, informing him that he had won a free happy hour. The plaintiff sued under the TCPA, alleging that he never consented to the text messages, and that the text messages were sent using an ATDS. In granting Outfield Brew House summary judgment, the District Court concluded that, even if the plaintiff did not consent, the text messages were not made using an ATDS. Specifically, the Court held that the text message systems used--Send Smart and Txt Live!--were not an ATDS because an Outfield Brew House employee had to log into the system, select a message, and then had to manually hit “send” to deliver a message.

But the Court did not stop at concluding that the messages were not sent using an ATDS simply because they were manually made. The Court also joined the growing number of courts in holding that dialing equipment does not constitute an ATDS unless the telephone number themselves are randomly or sequentially generated--dialing from a “stored list” is not sufficient. This answer is in unison with the Third Circuit, Sixth Circuit, and Eleventh Circuit. Under these principles, the court in *Colby* held that defendant’s dialing equipment is not an ATDS because the system “did not generate telephone numbers, it merely stored them.”

The plaintiff argued that his number was “randomized” and “shuffled” from the list of telephone numbers before his number was chosen--a common argument made that stored lists still have a “sequential” or “random” number generation component. But the Court concluded that, even if the software would “randomize” a list of telephone contacts, it is “not the same as generating them.” Without the ability to “generate, or create, numbers,” the dialing equipment is not in violation of the Telephone Consumer Protection Act. *Id.*

While most courts have held that the definition of an ATDS requires random or sequential number generation - not merely automatic dialing - one circuit stands alone. The Ninth Circuit has held that “the statutory definition of ATDS ... includes [all] devices with the capacity to dial stored numbers automatically.” *Marks*, 904 F.3d at 1052. For good reason, the court in *Colby* is the latest to reject *Marks* and the Ninth Circuit’s expansive interpretation of an ATDS.

The District Court Opinion can be found [here](#).

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