

Seventh Circuit Deals Another Critical Blow to TCPA Litigation

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Following the Eleventh Circuit's opinion a few weeks ago, the Seventh Circuit just held that dialing equipment must be capable of storing or producing telephone numbers using a random or sequential number generator in order to qualify as an "automatic telephone dialing system" (ATDS) under Telephone Consumer Protection Act. *Gadelhak v. AT&T Servs., Inc.*, No. 19-1738, 2020 WL 808270 (7th Cir. Feb. 19, 2020). In doing so, the Seventh Circuit became the most recent court and Circuit to reject the Ninth Circuit's overly expansive interpretation in *Marks*, which held that any equipment that stores telephone numbers and "automatically" dials them qualifies as an ATDS.

An ATDS is defined as equipment which has the capacity to "store or produce telephone numbers to be called, using a random or sequential number generator; and to dial such numbers." The Seventh Circuit began its analysis by noting the common sense proposition that at the time the TCPA was enacted in 1991, "telemarketers primarily used systems that randomly generated numbers and dialed them, and everyone agrees that such systems meet the statutory definition." But now, decades later, many modern dialing systems do not generate telephone numbers of any kind, and instead dial "numbers from an existing database."

In *Marks*, the Ninth Circuit latched on to perceived ambiguity in the statute--how could equipment "store" telephone numbers using a random or sequential number generator?--to essentially re-write the statute to encompass any equipment capable of storing telephone numbers and automatically dialing them. The Seventh Circuit rejected this quasi-legislative re-write masquerading as judicial interpretation, concluding that "it requires us to contort the statutory text almost beyond recognition." And the Seventh Circuit aptly noted that the Ninth Circuit's "ungrammatical interpretation" creates liability for "every" text message sent from an iPhone. After all, those devices are capable of storing telephone numbers and then automatically sending messages through auto-response features on the phone (such as the "Do Not Disturb" feature while driving).

Instead, the Seventh Circuit concluded that the most "natural" construction "based on sentence construction and grammar" requires an ATDS to be capable of generating random or sequential telephone numbers for dialing. And because the dialing equipment at issue in *Gadelhak* was not capable of generating telephone numbers, but could instead only dial telephone numbers from a stored list, the Seventh Circuit affirmed the district court's entry of summary judgment in the defendant's favor.

The Seventh Circuit's decision is in line with the Third and Eleventh Circuits in rejecting an overly expansive interpretation of an ATDS. And the Seventh Circuit is now the second Circuit to expressly address *Marks*.

and reject it (though not to discount myriad other district courts that have likewise rejected *Marks*), making the Circuit split 3-1 in favor of narrower, proper reading of the ATDS definition. (There is a Sixth Circuit decision that comes out in favor of a narrower reading as well, though it is an unpublished decision.)

Gadelhak is yet another significant decision on the definition of an ATDS, and a critical arrow in the quiver of those fighting against spurious TCPA litigation nationwide. The Seventh Circuit's Opinion can be found [here](#).

For additional information about *Gadelhak* and what it means for defendants, marketing companies, and debt collection activity, please contact:

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