

Judge Upholds TCPA Claim Against Caribbean Cruise Line's Motion to Dismiss

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A federal judge has refused to dismiss a case brought against Caribbean Cruise Line and Economic Strategy Group by plaintiffs alleging violations of the Telephone Consumer Protection Act ("TCPA"). The two plaintiffs alleged that defendants made or caused unsolicited calls on their cellular phones using auto-dialing technology or artificial or prerecorded voices, in violation of TCPA. According to the plaintiffs, the defendants made the calls under the guise of conducting a political survey; but the purported survey was a ruse to gain the opportunity to sell cruises to the recipients. The defendants' motion to dismiss contained three arguments, each of which the judge rejected. First, defendants argued that plaintiffs failed to distinguish the role played by each defendant in the alleged calls. The claim that the companies "acted in concert" was sufficient to dismiss this concern, according to the court. Second, defendants claimed that liability under TCPA can only attach to the party that actually placed the call. On the contrary, the court stated that Congress would not intend to allow a seller of a product or service to insulate itself from liability by hiring a third party to make calls in violation of TCPA. Third, defendants argued that the FCC has exempted political surveys from coverage under TCPA. Calling this argument a "non-starter," the court stated that this exemption includes a prohibition on calls with artificial or prerecorded voices, not on those made with auto-dialers. Even if this exemption applies, the court found that plaintiffs alleged a violation under the auto-dialer prohibition, allowing their claim survives to survive this exemption. The court also allowed plaintiffs' class action allegations to move forward, although the court has not yet ruled on whether plaintiffs can actually establish the basis for class certification.

TIP: Companies should conduct diligence to ensure that vendors acting on their behalf are complying with applicable laws, especially in the area of pre-recorded and auto-dialed calls.

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