



Illinois District Court Dismisses TCPA Claim Because Calls Were Not Unwanted or Unwelcome

Published August 18, 2016

Telephone Science Corp. v. Asset Recovery Solutions, LLC, No. 15-cv-5182, 2016 WL 4179150 (N.D. Ill. Aug. 8, 2016)

Plaintiff operates a service called “Nomorobo” designed to help consumers avoid incoming robocalls by analyzing calls made to its “honeypot” numbers using a specialized algorithm enabling it to distinguish between auto and manual dialed calls. Plaintiff filed suit against Defendant alleging that it received 12,240 robocalls between March 2014, and February, 2016, answering 747 of them. Plaintiff claimed to incur a \$0.0075 charge for all calls answered, constituting a \$5.60 charge for answered calls from Defendant.

Defendant moved to dismiss the Complaint pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction and Rule 12(b)(6) for failure to state a claim upon which relief can be granted. Denying a 12(b)(1) dismissal, the Court did, however, dismiss the complaint for failure to state a claim upon which relief can be granted. Specifically, the Court concluded that Plaintiff lacked statutory standing to assert a TCPA claim because it was outside the “zone-of-interest” regulated by the Act. Interpreting the TCPA as protecting several interests including individual privacy, public safety and interstate commerce, the Court noted that underlying each interest is the principle that a person or business should be free from nuisance robocalls and their associated costs. Looking to the Complaint, the Court dismissed Plaintiff’s TCPA claim for lack of standing, pointing out that Plaintiff:

does not allege any injuries in the form of privacy invasion, nuisance, and/or inconvenience. To the contrary, the sole reason [Plaintiff] subscribes to “thousands” of honeypot numbers is to gather a “large quantity” of data in order to “detect high frequency robocalling patterns” and to “distinguish” between callers for its Nomorobo customer-service offerings. Thus, instead of being “unwanted and unwelcome,” robocalls to [Plaintiff] Numbers provide the analytical basis on which the Nomorobo service operates. “[T]he only reason for this volume of calls,” thus, is due to the nature of [Plaintiff’s] business,

which is providing telecommunications services rather than consuming them.” Furthermore, [Plaintiff] suffered alleged monetary damages because it began to answer – and incur charges for – known robocalls in May 2015. Even construed in the light most favorable to [Plaintiff], these damages “are not of the vexatious and intrusive nuisance nature sought to be redressed by Congress in enacting the TCPA, but rather are indirect, economic and inherent to [its] business.”

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