Equipment Failure: Eastern District of Pennsylvania Denies Certification to TCPA Class Involving Unsolicited Faxes Because TCPA Applies Only to Standalone Fax Machines

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Categories:

Class Action Defense

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In *Fischbein v. IQVIA, Inc.*, a case involving alleged violations of the Telephone C district court in the Eastern District of Pennsylvania denied plaintiff Richard E. F his burden on both ascertainability and predominance requirements.

Fischbein's class action suit alleged that the defendant, IQVIA, Inc., a research o advertisements to Fischbein and more than 25,000 other healthcare professio treatment practices in exchange for points that could be redeemed for reward

IQVIA argued that the proposed class was not ascertainable, because there wa whether putative class members received the faxes at issue on traditional, stan however, argued that the TCPA applies to all faxes, no matter how received.

The court held that the plain language of the TCPA – which prohibits the use of to a telephone facsimile machine, an unsolicited advertisement'" – clearly distin advertisement and the type of equipment that receives it, limiting receipt of th "telephone facsimile machine," the receiving equipment must "(1) receive the fa capacity to print the fax 'onto paper'" (quoting TCPA § 227(a)(3)). Accordingly, who receive unsolicited advertisements on a stand-alone fax machine, which, u

While relying solely on the plain language of the statute, the court noted that nu *Counseling, Inc. v. Amerifactors Fin. Grp., LLC* , whose reasoning the court follow declaratory ruling in *In the Matter of Amerifactors Fin. Grp., LLC*, bolstered its h recent holding in *McLaughlin Chiropractic Assocs. v. McKesson Corp.* – that dis rather, should interpret the TCPA "as courts traditionally do under ordinary prin agency's interpretation."

Because receipt of an unsolicited fax advertisement on a "telephone facsimile m demonstrate that there was a reliable and administratively feasible mechanism on standalone fax machines. Yet, based partly on the testimony of Fischbein's c health care providers received faxes by way of a traditional, stand-alone fax ma finding could not be accomplished through declarations of potential class mem machine, as Fischbein suggested, because the Third Circuit has held that "'[a]ffi to identify class members or a method to weed out unreliable affidavits,' will no determining class membership.'" As a result, Fischbein could not establish asce

For similar reasons, Fischbein failed to satisfy Rule 23(b)'s predominance requir received on a standalone fax machine or through an online fax service predomi type of equipment on which each proposed plaintiff received the faxes at issue

Although the Third Circuit has not yet addressed whether the TCPA's protectio via online fax services, *Fischbein* arms defendants in the Third Circuit with well- matters involving unsolicited faxes.

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