



April 2, 2021

U.S. SUPREME COURT ADOPTS NARROW INTERPRETATION OF AUTODIALER

report on TCPA updates as they occur.

✧ *Mike Tomkies and Lindsay Valentine*

On April 1, 2021, the U.S. Supreme Court held in an unanimous decision that to qualify as an automatic telephone dialing system (“ATDS” or “autodialer”) under the Telephone Consumer Protection Act (“TCPA”), a device must have the capacity either to (i) store a telephone number using a random or sequential number generator or (ii) produce a telephone number using a random or sequential number generator. *Facebook, Inc. v. Duguid*, 592 U.S. ____ (2021).

Under Section 227(a)(1), “ATDS” means equipment which has the capacity (i) to store or produce telephone numbers to be called, using a random or sequential number general and (ii) to dial those numbers. The Court was asked to determine whether the definition of ATDS encompasses equipment that can “store” and dial telephone numbers, even if the device does not “use a random or sequential number generator.” The Court determined that the clause “using a random or sequential number generator” modifies both verbs that precede it, specifying how the equipment must either “store” or “produce” telephone numbers.

In this decision, the Court overruled the Ninth Circuit’s holding that an autodialer need not be able to use a random or sequential generator to store numbers; it need only have the capacity to “store numbers to be called” and “to dial such numbers automatically.” The Court reviewed the statutory context and determined that the TCPA’s prohibitions target a unique type of telemarketing equipment that risks dialing emergency lines randomly or tying up all the sequentially numbered lines at a single entity. The Court emphasized that “[e]xpanding the definition of an autodialer to encompass any equipment that merely stores and dials telephone numbers would take a chainsaw to these nuanced problems when Congress meant to use a scalpel.” The Court noted that the Ninth Circuit’s interpretation of an autodialer would capture virtually all modern cell phones which have the capacity to store telephone numbers to be called and dial such numbers.

This decision is good news for financial service providers and should provide some relief as the decision resolves the Circuit court split and affirms the Eleventh Circuit, D.C. Circuit, Second Circuit and Third Circuit’s interpretation of the ATDS definition. See our prior ALERT dated January 30, 2020. We will continue to monitor and

Darrell L. Dreher
ddreher@dtlaw.com

Elizabeth L. Anstaett
eanstaett@dtlaw.com

Emily C. Cellier
ecellier@dtlaw.com

Susan L. Ostrander
sostrander@dtlaw.com

2750 HUNTINGTON CENTER
41 S. HIGH STREET
COLUMBUS, OHIO 43215
TELEPHONE: (614) 628-8000 FACSIMILE: (614) 628-1600
WWW.DTLAW.COM

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Michael C. Tomkies
mtomkies@dtlaw.com

Susan M. Seaman
sseaman@dtlaw.com

Lindsay P. Valentine
lvalentine@dtlaw.com

Judith M. Scheiderer
jscheiderer@dtlaw.com

Robin R. De Leo
robin@deher-la.com