

Court Applies the Seventh Circuit's Gadelhak Decision and Grants Summary Judgement Against Certified Class

Article By:

Justin O. Kay

Matthew M. Morrissey

The Southern District of Indiana recently entered summary judgment against a certified class of TCPA plaintiffs because it concluded that defendants' SoundBite platform did not qualify as an ATDS under the standard the Seventh Circuit recently established in *Gadelhak v. AT&T Services, Inc.*, 950 F.3d 458, 460 (7th Cir. 2020). [*Lanteri v. Credit Prot. Ass'n, L.P.*](#), No. 13-cv-01501, 2020 WL 3200076, *8 (S.D. Ind. June 15, 2020). Our previous coverage of *Gadelhak* can be found [here](#). The *Lanteri v. Credit Protection Association, L.P.* decision illustrates that *Gadelhak* provides defendants facing TCPA claims in the Seventh Circuit with strong defenses to ATDS allegations.

In *Lanteri*, the named plaintiff filed a putative class action alleging that defendants violated the TCPA and the FDCPA because they attempted to collect debt from consumers "by making unsolicited phone calls and sending unsolicited text messages to cellular phones using prerecorded voices or an [ATDS]." 2020 WL 3200076, *1. After rejecting numerous deficient class certification motions, the court ultimately certified the following TCPA class:

(1) All persons within the United States (2) to whose cellular telephone number (3) [CPA] sent a text message (4) using its vendor RingClear (5) within four years of September 8, 2013, (6) after the cellular phone owner replied with the one-word reply "stop" in any combination of uppercase and lowercase letters other than "STOP" in all uppercase letters.

Id. The parties filed cross motions for summary judgment following the class certification ruling. *Id.* at *2. However, in November of 2019, the parties filed a joint motion to stay the case pending the Seventh Circuit's ruling in *Gadelhak*. *Id.* Interestingly, the attorneys for the plaintiff class in *Lanteri* also represented the *Gadelhak* plaintiff in the trial court and on appeal in the Seventh Circuit.

The Seventh Circuit issued its ruling in *Gadelhak* on February 19, 2020. *Id.* As short time later, the *Lanteri* court directed the parties to submit a status report regarding how to proceed in light

Perhaps realizing that the *Gadelhak* decision was fatal to its ATDS claims, the class proposed that it should be allowed to withdraw its motion for summary judgment so that it could proceed on its “alternate theory” that defendants violated the TCPA by making prerecorded voice calls to cell phones. *Id.* Defendants “vigorously oppose[d]” this proposal and argued that the class should not be allowed to “proceed on a different theory than the one certified because the [c]ourt cannot assume that the same set of people who received the text messages at issue also received calls using prerecorded voice messages.” *Id.* at *3. Moreover, defendants argued that there was “no evidence in the record establishing that the [c]lass received phone calls, or that the ‘stop’ text messages sent by [c]lass members revoked their consent to receive phone calls.” *Id.*

The court agreed with defendants and concluded that the class could not change its theory of liability because the case had “already proceeded through a long and arduous class certification process.” *Id.* Additionally, the court stated that it never considered whether it would be appropriate to certify a class of individuals who allegedly received prerecorded voice messages. *Id.*

Next, the court addressed the parties’ cross motions for summary judgment, which both focused on the ATDS issue. *Id.* at *5-8. Defendants argued that the SoundBite platform they used to send the alleged text messages was not an ATDS because SoundBite calls numbers stored in a database and it does not have the capacity to generate random or sequential numbers. See *id.* at *8.

The undisputed evidence showed that defendants used SoundBite to send text messages to specific phone numbers from stored customer lists. *Id.* The relevant evidence demonstrated that a SoundBite user can “create a list of telephone numbers to be dialed and then transfer that list to the SoundBite platform using an [FTP site].” *Id.* at *5. An individual can transfer the data from the FTP site manually, by dragging the list into the SoundBite platform, or the SoundBite system can automatically search for any lists on the FTP site and transfer them to the SoundBite platform. *Id.* “Transferring the list of phone numbers into the SoundBite platform would automatically initiate the text campaign” and the “text campaign could then run on its own until it was completed.” *Id.* Additionally, the evidence revealed that the SoundBite system has the capacity to text numbers “sequentially or in a random order,” it can store over “100,000 telephone numbers to call as a part of a campaign” and it also has a “predictive dialer function.” *Id.*

The class argued that the SoundBite system qualified as an ATDS because the TCPA’s “phrase ‘using a random or sequential number generator’ applied only to a system’s ability to ‘produce telephone numbers’ but did not apply to a system’s ability to ‘store’ telephone numbers, and therefore, any system that stores numbers—such as SoundBite—is an ATDS.” *Id.* at *8.

The court rejected plaintiffs’ argument and noted that their proposed interpretation of the statutory language was “expressly considered and rejected in *Gadelhak*” *Id.* The court reasoned that “[i]n *Gadelhak*, the Seventh Circuit held that the phrase ‘using a random or sequential number generator’ modifies both ‘store’ and ‘produce,’ which ‘mean[s] that a device must be capable of performing at least one of those functions using a random or sequential number generator to qualify as an [ATDS].’” *Id.* at *7 (quoting *Gadelhak*, 950 F.3d at 460, 463). “Thus, equipment that ‘exclusively dials numbers stored in a customer database’ is not an ATDS, and sending automated text messages with such equipment does not violate the TCPA” because “[t]he capacity to generate random or sequential numbers is necessary to the statutory definition.” *Id.* (quoting *Gadelhak*, 950 F.3d at 460, 469).

The court concluded that the SoundBite technology at issue was similar to the system evaluated in *Gadelhak*, which the Seventh Circuit determined was not an ATDS. See *id.* at *8. Specifically, the court held that the evidence demonstrated that “SoundBite sent text messages to specific phone numbers from stored customer lists” and the class failed to introduce any evidence demonstrating that “SoundBite ha[d] the capacity to either store or produce telephone numbers using a random or sequential number generator.” *Id.* Therefore, the court concluded that the SoundBite system was not an ATDS and granted defendants’ motion for summary judgment. *Id.* The court separately granted plaintiff’s motion for summary judgment on her individual FDCPA claim. *Id.* at *17.

In light of the favorable *Gadelhak* ruling, defendants facing TCPA allegations in the Seventh Circuit should assess whether they can defeat plaintiffs’ claims on the ATDS issue. As the *Lanteri* decision highlights, *Gadelhak* provides defendants with strong and potentially dispositive defenses to ATDS-based allegations.

The definition of an ATDS has become an increasingly perplexing issue for courts across the country and a circuit split has been emerging over the course of the past several years. The Seventh, Third and Eleventh Circuits have interpreted the definition of an ATDS narrowly (which we blogged about [here](#)). However, the Second and Ninth Circuits have adopted an expansive definition. Compare *Glasser v. Hilton Grand Vacations Co.*, 948 F.3d 1301 (11th Cir. 2020) and *Dominguez v. Yahoo, Inc.*, 894 F.3d 116, 119 (3d Cir. 2018), with *Duran v. La Boom Disco, Inc.*, 955 F.3d 279 (2d Cir. 2020) and *Marks v. Crunch San Diego*, 904 F.3d 1041 (9th Cir. 2018). Yesterday, the Supreme Court granted a writ of certiorari in *Facebook, Inc. v. Duguid* and agreed to address the definition of an ATDS to resolve this growing circuit split. Our recent blog post regarding *Duguid* can be found [here](#).

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