

# **We Meant it the First Time!: Seventh Circuit Re-Affirms Gadelhak's Narrow ATDS Reading Even as Facebook Ruling Lingers**

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Well its March, 2020<sup>1</sup> which means only one thing—time to start paying attention to the Supreme Court and its imminent ruling in the huge Facebook ATDS appeal.

The Grand Duchess and I have drawn straws to review opinions on decision days this month, but the Seventh Circuit Court of Appeals just sent a clear message regarding its view of the TCPA's ATDS definition: it has told its story and its stickin to it.

In *Jackson v. Regions Bank*, No. 20-2624 (7th Cir. February 26, 2021) the Seventh Circuit Court of Appeals just emphatically re-affirmed its *Gadelhak* opinion—written by now Supreme Court Justice Barrett—in refusing to overturn a dismissal in favor of a TCPA defendant on ATDA grounds.

In *Jackson*, the Plaintiff argued that the Court ought to follow a N.D. Alabama decision applying an old FCC ruling, rather than binding Seventh Circuit precedent. That's petty ridiculous. Still the Seventh Circuit was respectful in batting down the argument, noting only Plaintiff's argument does not "persuade us" and that he's given "no reason to revisit the issue" decided in *Gadelhak*.

As sometimes happens, however, the most interesting part of the opinion is in a footnote. Footnote 1, reproduced in its entirety below, is just glorious fun:

*We anticipate that the Supreme Court will decide whether the phrase "automatic telephone dialing system" in the Telephone Consumer Protection Act, 47 U.S.C. § 227, encompasses any device that can "store" and "automatically dial" telephone numbers, even if the device does not "us[e] a random or sequential number generator" in Facebook Inc. v. Duguid, 141 S. Ct. 193 (2020). We have considered whether to hold the present case pending the Court's anticipated decision, but like we did in United States v. Nebinger, we believe that the best approach here is to decide the case now and for Jackson "to seek relief in the Supreme Court, should the Justices disagree with the approach we have taken." No. 19-1504, 2021 WL 509604, at \*2 n.1 (7th Cir. Feb. 11, 2021).*

Don't like our ruling? Take it up with the Supremes. We won't even give your argument the respect of holding an opinion for a week or two to see what the Supremes think.

That's a pretty slick judicial burn. I love it.

So there you go folks. The Seventh Circuit Court of Appeals is really really sure they have this one right.

Now for some rank speculation: Think one of ACB's clerks called down and gave 'em a tip on which way SCOTUS was leaning?

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National Law Review, Volume XI, Number 61

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