

AMBULANCE CHASER?: MyPillow and Mike Lindell Facing MASSIVE EXPOSURE Over 236 Million Allegedly Illegal Marketing Text Messages–But This Depo Transcript Is Priceless

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I really truly love the TCPAWorld.

So many incredible stories. And why not? You have a statute regulating speech that threatens up to \$1,500.00 *per call* and allows Plaintiff's lawyers to run hog wild bringing suits against folks seeking uncapped statutory damages.

And the TCPA applies to everybody–*everybody*–and that includes celebrities from A-listers to D-listers and everyone in between.

That brings us to today's story. Mike Lindell. Fascinating character. And I do mean *character*.

So Mike has had some ups and downs in life. I'm not sure if his current streak of trying to overturn the last presidential election is an "up" or a "down" in his book, but I suspect he'd consider this massive TCPA suit he is now facing as a BIG downer.

The allegations in the suit are, essentially, that Mike was setting up this "cool" new social media platform called Frank Speech where, you know, people could say whatever dumb things they wanted to other people who were doing the same thing. Sure. Fine. Whatever.

But here's the wrinkle. According to the lawsuit Mike would take the list of people that signed up to receive information about Frank Speech and then blast away at them with text messages about My Pillow products.

Tons of text messages.

Hundreds of millions of messages.

Now the allegations are a bit vague in terms of how many of the messages were marketing MyPillow and how many were marketing other stuff, but this class certification motion does not mince words:

logs reflect a total of 238,164,322 marketing text messages sent to cellular telephone numbers on behalf of Frank Speech and My Pillow. Of those, 236,541,661 were sent to approximately 1,995,606 unique cellular telephone numbers. And of those text messages, 14,392,670 were successfully sent to 131,947 putative class members who fall within the FTSA Class definition.

My goodness.

And apparently the messages didn't stop after a "stop" request was received. The Plaintiff contends that she received 51 messages after submitting a stop request. That's pretty bad—if true.

And apparently the messages were sent without any form of express written consent:

Defendants maintain that Plaintiffs and the putative Class members visited the Frank Speech website and provided their contact information before receiving text messages. Lindell Dep. at 62:10-17; 115:18 – 116:7. Notably, however, Defendants do not possess a copy of any consent forms they claim were completed by Plaintiffs and the putative Class members. Lindell Dep. at 119:20 – 120:6. The only evidence of purported "consent" Defendants have produced are the Frank Speech website Terms and Conditions. See Frank Speech's Ans. to Int. at Nos. 8 and 9, and Exhibit A attached to the answers. As discussed below, the Terms and Conditions fall well-short of the express "written" consent requirements of the TCPA and its implementing regulations, the FTSA, and the prior express invitation or permission standard required under the applicable DNC regulations, such that there are no individualized issues of consent that would predominate.

So no "Troutman Nine" and the alleged consent was built into an adhesion terms and condition link.

Hmmm.

238,164,322 times \$500.00 per call equals... and my calculator just broke. Smoke emitting from its keys.

Yeah, that's a big number.

Things look pretty grim for Mike, if these facts are true.

But that didn't stop him from taking shots at the Plaintiff's lawyer—everyone's pal Manny Hiraldo—in deposition. Check out this exchange:

Q. Did you, as the CEO —

A. By the way, are you the — are you the actual ambulance-chaser lawyer that — are the actual —

Q. I'm sorry, the what?

A. Are you the ambulance-chasing lawyer or are you the actual lawyer or do you — do you work for the law firm?

Q. I'm one of the lawyers.

A. Okay.

[objections omitted]

BY MR. HIRALDO:

Q. And why are you referring to me as an ambulance chaser?

A. It's my opinion.

Q. What is your opinion based on?

A. Because this, this whole case is frivolous. There is not — this never happened. This was a — I had nothing to do with it. My Pillow had nothing to do with it. FrankSpeech had nothing to do with it. And your — and I believe this was a setup. That's my opinion. Because there's — I believe it's a complete setup.

Q. Setup by who?

A. I don't know, you tell me. You want money? I don't know.

Priceless.

Keep it coming fellas. This is TCPAWorld gold.

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