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THE VALUE OF A FREE LUNCH: Great Ruling Confirms Offering A Free Service is Not Telemarketing Under the TCPA!

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One of the most contentious areas in TCPAWorld is the blurred boundary between telemarketing and informational calling. The notion of a "free lunch" has long been considered a myth. I mean think about those telephone calls promoting complimentary vacations or concert tickets to lure potential customers in with an irresistible sales pitch? They've long been deemed telemarketing under the TCPA. But what happens when a call aims to inform about a genuinely free service tied to an insurance benefit?

In *Edwards v. Signify Health, Inc, et al*., the court granted defendants' motion to dismiss in a case involving calls offering free services. Pro se plaintiff Paul Edwards brought claims against various corporate and individual defendants for phone calls made to his residential landline. The defendants argued that the calls were made on behalf of Edwards's own Medicare provider to schedule a ***free*** medical exam, rather than for telemarketing purposes.

And the U.S.D.C. of Nevada in its refined and clean opinion agreed and dismissed Plaintiff's claims, ruling that an offer of free services is not a solicitation under the TCPA:

> "Put simply, Edwards fails to state a plausible claim because the defendants' phone calls offered him a free healthcare service and thus were not made for the purpose of telemarketing or soliciting the purchase, rental of, or investment in property, goods, or services."

So TCPA claim dismissed!

Edwards's complaint alleged that the defendants were responsible for a series of harassing telemarketing calls to his home phone number – specifically that he received calls as originating from Humana and from representatives of Signify Health. However, the defendants contended that the calls were made to offer free healthcare services, specifically in-home medical check-ups.

The TCPA was enacted to protect the privacy interests of telephone subscribers and restrict the use

of ***unsolicited advertisements*** and telemarketing. The law defines “unsolicited advertisement” as any material advertising the commercial availability or quality of any property, goods, or services transmitted without the recipient’s prior express invitation or permission. Here, the calls were not unsolicited advertisements as they were solely intended to offer free healthcare services and schedule in-home medical exams.

In reaching this outcome, the Nevada court noted several other courts have – correctly – previously dismissed TCPA claims when plaintiffs were offered ***free*** services because such offers do not constitute unsolicited advertisements or telemarketing.

Moving on to further good news, the Court affirmed that “wellness checkup” health calls are exempted under the TCPA’s exemptions. So even if an offer for free services were to be considered an unsolicited advertisement, the calls involved the scheduling of free in-home medical check-ups, and such calls fall within the TCPA’s exemptions for health care entities from certain restrictions.

Edwards speculated that the calls had nefarious purposes – “until discovery is completed, the true purpose of each call to plaintiff remains a question … how are Defendants earning millions of dollars from a supposedly ‘no cost’ (free) service? … Plaintiff knows, from common experience, that ‘free’ / ‘no cost’ offers often come with strings attached” Edwards stated in his opposition to defendants’ motion to dismiss.

But the court noted that Edwards’ opposition largely relies on hypothetical and speculative arguments. Speculation alone is not sufficient to support a lawsuit, and Edwards’s conjecture did not establish that the calls went beyond the offering of free medical services.

And for folks operating in Nevada – the Court also issued another great ruling that since the calls were made to offer free services rather than soliciting, the calls did not violate deceptive trade practices under Nevada law (Nevada Revised Statutes §§598.0918(2) and 598.0923(3).).

Lastly, Edwards’ invasion of privacy claim was also dismissed on the basis that 11 phone calls lasting minutes, offering a free in-home service by his Medicare provider, in a span of three-and-a-half years, do not constitute something “highly offensive to a reasonable person.”

The courts in Nevada consider various factors when determining the offensiveness of an action, including the degree of intrusion, the context and circumstances surrounding the intrusion, the motives and objectives of the intruder, the setting into which the intrusion occurs, and the expectations of those whose privacy is invaded. The mere frequency of phone calls, even if relatively high, does not automatically render the action highly offensive.

Here, the limited intrusion, the context and circumstances surrounding the calls, and the absence of a highly offensive nature collectively undermineded Edwards’ claim for invasion of privacy.

Nicely done.

Happy Tuesday, TCPAWorld and I hope you enjoy your next ***free*** lunch.

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