UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Jordan Marks v. Crunch San Diego, LLC

Jordan Marks v. Crunch San Diego, LLC, 904 F.3d 1041 (9th Cir. 2018) · No. No. 14-56834 · Decided September 20, 2018

SUMMARY

The Ninth Circuit held that the statutory definition of an Automatic Telephone Dialing System (ATDS) under the Telephone Consumer Protection Act (TCPA) includes equipment that stores telephone numbers to be called and dials them automatically, regardless of whether the numbers were generated by a random or sequential number generator. The court vacated summary judgment for the defendant, finding a genuine issue of material fact as to whether the Textmunication system—which sent promotional text messages from a stored list—qualified as an ATDS. The decision relied on the D.C. Circuit's invalidation of FCC interpretations in ACA International v. FCC, and rejected the argument that an ATDS must operate without any human intervention.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	Sandra S. Ikuta; Consuelo M. Callahan; Carlos T. Bea
JURISDICTION	Federal
DECIDED	September 20, 2018
DOCKET	No. 14-56834
DISPOSITION	vacated_and_remanded
PROCEDURAL POSTURE	Appeal from the United States District Court for the Southern District of California's grant of summary judgment to Defendant-Appellee Crunch San Diego, LLC on Plaintiff-Appellant Jordan Marks's claim under the Telephone Consumer Protection Act.
STANDARD OF REVIEW	De novo
PRECEDENTIAL VALUE	Published
PARTIES	Jordan Marks v. Crunch San Diego, LLC

TOPICS

consumer protection · statutory interpretation · summary judgment · appellate procedure · civil procedure

PRACTICE AREAS

Telephone Consumer Protection Act | Consumer Protection

QUESTIONS PRESENTED

1. Whether the Textmunication system qualifies as an automatic telephone dialing system (ATDS) under the Telephone Consumer Protection Act, 47 U.S.C. § 227(a)(1), specifically whether an ATDS requires a random or sequential number generator or includes devices that dial from stored lists.

HOLDINGS

1. The statutory definition of ATDS includes equipment that has the capacity to store numbers to be called and dial them automatically, regardless of whether the numbers were generated by a random or sequential number generator.

KEY QUOTATIONS

> *"we conclude that the statutory definition of ATDS includes a device that stores telephone numbers to be called, whether or not those numbers have been generated by a random or sequential number generator."* (at 1)

> *"we read § 227(a)(1) to provide that the term automatic telephone dialing system means equipment which has the capacity—(1) to store numbers to be called or (2) to produce numbers to be called, using a random or sequential number generator—and to dial such numbers."* (at 23)

> *"There is a genuine issue of material fact as to whether the Textmunication system is an ATDS."* (at 24)

FACTUAL BACKGROUND

Crunch Fitness used the Textmunication system, a web-based marketing platform, to send promotional text messages to stored telephone numbers. Phone numbers were captured by manual entry, customer responses, or website consent forms. The system automatically sent messages to selected numbers at scheduled times. Jordan Marks, a Crunch member, received three text messages from Crunch over eleven months.

PROCEDURAL HISTORY

Marks filed a putative class action alleging Crunch violated the TCPA by sending three text messages using an automatic telephone dialing system. The district court granted summary judgment to Crunch, holding that the Textmunication system was not an ATDS because it lacked a random or sequential number generator. Marks appealed.

DISPOSITION

vacated_and_remanded

REMAND INSTRUCTIONS

The district court should consider whether the Textmunication system is an ATDS under the court's interpretation that storing numbers and dialing them automatically qualifies, and proceed accordingly. The district court's dismissal of Crunch's motion to exclude Hansen's declaration as moot is also vacated.

CASES CITED

- ACA Int'l v. FCC, 885 F.3d 687 (D.C. Cir. 2018)
- Satterfield v. Simon & Schuster, Inc., 569 F.3d 946 (9th Cir. 2009)
- Thomas v. Ponder, 611 F.3d 1144 (9th Cir. 2010)
- Guido v. Mount Lemmon Fire Dist., 859 F.3d 1168 (9th Cir. 2017)
- Negusie v. Holder, 555 U.S. 511 (2009)
- Carcieri v. Salazar, 555 U.S. 379 (2009)
- Ileto v. Glock, Inc., 565 F.3d 1126 (9th Cir. 2009)
- Jonah R. v. Carmona, 446 F.3d 1000 (9th Cir. 2006)
- FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120 (2000)
- Davis v. Michigan Dep't of Treasury, 489 U.S. 803 (1989)
- K Mart Corp. v. Cartier, Inc., 486 U.S. 281 (1988)
- United States v. Lewis, 67 F.3d 225 (9th Cir. 1995)
- Porter v. Bd. of Trs. of Manhattan Beach Unified Sch. Dist., 307 F.3d 1064 (9th Cir. 2002)
- Lorillard v. Pons, 434 U.S. 575 (1978)
- Dominguez ex rel Himself v. Yahoo, Inc., 894 F.3d 116 (3d Cir. 2018)
- Meyer v. Portfolio Recovery Assocs. LLC, 707 F.3d 1036 (9th Cir. 2012)
- King v. Time Warner Cable Inc., 849 F.3d 473 (2d Cir. 2018)
- Biggerstaff v. FCC, 511 F.3d 178 (D.C. Cir. 2007)
- Pub. Citizen v. Nuclear Regulatory Comm'n, 901 F.2d 147 (D.C. Cir. 1990)
- MCI Telecomms. Corp. v. U.S. W. Commc'ns, 204 F.3d 1262 (9th Cir. 2000)
- GTE South, Inc. v. Morrison, 199 F.3d 733 (4th Cir. 1999)