

Even if They Don't Answer, It is Still a Solicitation

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In the case of *Taylor v LeadPoint, Inc.*, the Middle District of Florida denied defendant, LeadPoint's, motion to dismiss finding that even unanswered calls could constitute "telephone solicitations" under the TCPA. LeadPoint, Inc. is a software and information technology services company for the lead generation industry.

In this case, Ms. Taylor received five telephone calls on her cellphone from LeadPoint in one day. After ignoring the first four calls, she answered the fifth call, and LeadPoint allegedly tried to sell her a reverse mortgage. Ms. Taylor filed her complaint alleging that each of the five telephone calls violated the TCPA as she had registered her telephone number on the national do not call registry in January 2009.

Leadpoint moved to dismiss the complaint arguing that the four rejected telephone calls were not "telephone solicitations" because Ms. Taylor did not answer the calls and cannot know that the calls were initiated for the purpose of delivering a sales pitch. LeadPoint further argued that even though she answered the fifth call and listened to the sales pitch, that still does not prove that any other calls were initiated for the same purpose. The Court found this argument "untenable" as "experience and common sense" creates "a plausible inference that, if a company calls a person five times in a day and advertises the company's service when the person finally answers, the company intended by each call to advertise the service."

Unfortunately for LeadPoint, "telephone solicitation," the court reasoned, is a term of art defined by the FCC as "the initiation of a telephone call or message for the purpose of encouraging the purchase [of]...goods[] or services." 47 C.F.R. § 64.1200(f)(15) That is, according to the court, the purpose of the call creates the telephone solicitation, and a plaintiff "receives" a telephone solicitation even if the plaintiff declines to answer the call. The court concluded that if LeadPoint initiated each call to plaintiff intending to advertise a service, the plaintiff received five telephone solicitations (even if no call was answered).

Taylor v. LeadPoint, Inc., NO. 8:23-cv-470-SDM-AEP (M.D. FL Jul. 14, 2023).

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