

TCPA Claim Dismissed for Failing to Allege Random/Sequential Number Generation

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We have [previously discussed](#) how easy it is for a TCPA claim to proceed against a party despite the slim allegations against it. However, we have also [explained](#) how important it is for TCPA defendants to not give up hope and to carefully read over the TCPA complaint that has been filed, as there is quite possibly a missing element, detail, or factual gap upon which the party can challenge the plaintiff's TCPA claim. As the parties in a Northern District of Illinois case recently learned, this is especially the case in today's TCPA landscape, where, depending on the jurisdiction in which the case proceeds, the allegations and details a plaintiff must plead to meet the automatic telephone dialing system (ATDS) requirement may be more heavily scrutinized by the court.

Plaintiff's TCPA Claim

At first glance, the complaint filed in [Bader v. Navient Solutions, LLC](#), is prototypical. The plaintiff alleged he received over 100 phone calls from one of the nation's largest loan servicing companies, wherein a representative asked for a person identified as "Shavon Smith." The plaintiff claimed that on numerous occasions he informed the representative that he was not the person the defendant was trying to reach and asked the representative to stop calling him. The plaintiff also claimed that he mailed a "certified letter" to the defendant's headquarters demanding that the calls stop; but since he continued to receive calls thereafter, he elected to file a TCPA claim.

With respect to the key element of ATDS use, the plaintiff alleged that, when answering the calls at issue, he would be greeted with a "five second pause" before being connected to a live representative, an implicit allegation that he had been called using a predictive dialer – and one that other courts have concluded meets the federal pleading standard. Noticeably absent from the plaintiff's allegations, however, were any statements reflecting the device's ability to randomly or sequentially generate phone numbers.

Defendant's Motion

Over the past year, we've [examined](#) numerous rulings made in the wake of the D.C. Circuit's opinion in *ACA International v. FCC*, in which courts across the country have independently interpreted the TCPA's ATDS definition. Some have decided the ATDS term is limited to devices that have the capacity to randomly or sequentially generate numbers to be dialed. Others, however, have found that the ATDS term also includes devices that dial numbers from a stored list. In almost all instances, the Northern District of Illinois has fallen into this former camp, with several rulings from trial courts within the district holding faithful to the statutory text of the TCPA and determining that the ATDS term requires random or sequential number generation.

The defendant in *Bader* importantly recognized this ATDS distinction that has developed, and if filed a motion asking the court for judgment in its favor based upon the plaintiff's failure to allege that the defendant called him with a device that could randomly or sequentially generate numbers to be dialed.



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The Outcome

The court agreed with the defendant, stating in its ruling that the plaintiff's allegations regarding a five-second pause at best implied the plaintiff was called using a predictive dialer, and that such allegations failed to meet the pleading requirements related to the ATDS term. As the court explained, before *ACA International*, the plaintiff may have been able to establish the use of an ATDS by alleging "only ... that the defendant used a predictive dialer to call it." However, this was no longer the case, as the court determined that the *ACA International* decision and the TCPA's "plain meaning" establish "that [the plaintiff] must assert facts that make it plausible [the defendant] used equipment with the capabilities to generate numbers randomly."

Accordingly, the court determined that the plaintiff could only proceed by plausibly asserting that the defendant had called it using equipment that could generate numbers randomly or sequentially and dial such numbers. The plaintiff, however, had failed to make any such allegations in his complaint, causing the court to rule in favor of the defendant and dismiss the plaintiff's TCPA claim.

When it comes to an initially pleaded TCPA claim, courts will generally conclude that the plaintiff's complaint meets the facial plausibility test established by the Supreme Court. However, just because this is a typical occurrence, it does not automatically preclude a TCPA claim from dismissal, especially given the current legal landscape, where the specifics for pleading use of an ATDS may be more nuanced than before. Thus, parties who face TCPA lawsuits should take the time to carefully read the complaint and review it for missing elements, omitted details, and factual gaps. By putting in the extra time during this initial phase of litigation, TCPA defendants could potentially save themselves hundreds of hours of work (and thousands of dollars) down the road.

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