

No Sale: Court Finds Texts Promoting Speaking Tour Not Dual Purpose Solicitations Under the TCPA



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In *Vallianos v. Schultz*, CASE NO. C19-0464-JCC, 2019 U.S. Dist. LEXIS 174729 (W.D. Wash. Oct. 8, 2019) the court granted a motion to dismiss a TCPA claim on a remarkably robust evidentiary record that included review of video highlights of a promoted speech (how does *that* happen at the pleadings stage?) The case involves a fellow named Howard Shultz who wrote a book, ran for president and ran a coffee chain of some repute.

Apparently as part of his presidential campaign he (or someone he trusted) gleaned phone numbers from voter registration databases and fired off text messages promoting a speaking tour. I have no idea why his campaign thought that would be a good idea.

He was swiftly sued in a TCPA case alleging, *inter alia*, that the texts at issue violated the TCPA's DNC regulations since they qualified as solicitations and the plaintiff's cell number was on the national DNC. The texts at issue read simply enough: "Howard Schultz will be speaking in Miami at 12:30! Watch live: <https://hs.media.mi-a030>."

While this text may seem informational, Plaintiff hypothesized that the speaking gig was actually designed—at least in part—to sell copies of Schultz new and exciting book (that I haven't read). This was so because Schultz was on a book tour at the same time—indeed he had given a speech promoting his book just two days before the texts were sent.

The speech in Miami, however, was a run-of-the-mill political grandstanding event where a politician says a bunch of stuff he thinks people will want to hear. The Court apparently watched video of the event to satisfy itself that was the case. The book was not mentioned and was not sold during the speech. True the candidate stepped down from the podium to gladhand the masses and sign copies of his book—but that is just politician stuff, not book-selling stuff. (Note that the Court chooses to overlook the fact that running for political office is *itself* a dual purpose venture with high-dollar book deals inevitably lining successful-candidates pockets—but that's just me being cynical and accurate.) So the messages were not telemarketing in nature.

Importantly, the court also found that the inclusion of a link to a website where the book and/or other merchandise might be purchased was not, in and of itself, sufficient to convert the text into a solicitation text. And while *Vallianos* is not the first court to so hold, every ruling of this sort is helpful as this issue is a very big deal for Defendants that want to include links to their websites in informational messages.

So there you go. Cold call text messages might not be a good idea—note that the Plaintiff's ATDS claims are still very much in the case—but where the message merely advises of a speaking tour unrelated to any specific sales activity the message lacks a solicitation purpose. Just like this article.

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