Court Holds System Not an ATDS Because It did not Call From a Random List

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Well, folks, the post-Facebook seesaw battle over the scope of the TCPA is on and here’s our latest data point.

In Hufnus v DoNotPay, Case No. 20-cv-08701, Doc. No. __ (N.D. Cal. June 24, 2021) the Court held that a system is not an ATDS if it calls sequentially from a non-random list of numbers. And that’s a pretty nice win. But we know courts are struggling with this, so don’t get too excited just yet.

In Hufnus the Plaintiff alleged Defendant stored “numbers in a random and/or sequential way; uses a random and/or sequential generator to pull from the list of numbers to send targeted text messages; and uses a random and/or sequential generator to determine the sequence in which to send messages.” These sorts of allegations have been deemed sufficient by other courts to allow a case past the pleadings stage. But the Hufnus court wasn’t having it.

Focusing on the fact that “the platform only contacts phone numbers specifically provided by consumers... and not phone numbers identified in a random or sequential fashion” the Court held the platform was not an ATDS.
In getting there the Court specifically rejected the Plaintiff’s new hot FN7 theory: “Hufnus argues that DoNotPay’s platform uses a random number generator to determine the order in which to pick from the preproduced list of consumer phone numbers, such that it does qualify as an autodialer.”

In the Court’s view, however, FN7 only applies if the underlying list was–itself–generated randomly or sequentially:

*That brief makes clear that the “preproduced list” of phone numbers referenced in the footnote was itself created through a random or sequential number generator, differentiating it from the “preproduced list” of phone numbers used by DoNotPay, which was created by consumers providing their numbers while signing up for DoNotPay’s services*

So according to *Hufnus* FN7 only applies where the underlying list of numbers was randomly generated.

Don’t get me wrong—I LOVE this ruling. But I’m also not convinced every court is going to see it the same way. FN7 doesn’t read the way *Hufnus* applies it. So we need to keep an eye on things and caution is still urged.

Another one for the old Facebook Resource Page, for sure.

Decision here btw: [Hufnus](https://www.natlawreview.com/article/court-holds-system-not-atds-because-it-did-not-call-random-list)

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