

Supreme Court Grants Cert to Clarify Autodialer Issue in the Telephone Consumer Protection Act

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The U.S. Supreme Court has granted certiorari in Facebook Inc. v. Duguid, where it will decide what types of telephone dialing systems are prohibited under the Telephone Consumer Protection Act ("TCPA"). The decision in Facebook will be the most important ruling on the TCPA to date. This 30-year-old statute prohibits robocalls to consumers among other practices. Circuit splits on the exact legal definition of an automatic telephone dialing system have led to massive forum shopping by class counsel and inconsistent results.

The TCPA defines an automatic telephone dialing system as "equipment which has the capacity – to store or produce telephone numbers to be called, using a random or sequential number generator; and to dial such numbers." The Ninth and Second Circuit Courts of Appeals have broadly interpreted this language, holding that the TCPA forbids all devices with the capacity to store and automatically dial telephone numbers. But the Seventh and Eleventh Circuits have narrowly interpreted this language, holding that only devices that send messages or make calls to randomly or sequentially generated numbers are prohibited. The D.C. Circuit and the Third Circuit have also issued rulings with narrow interpretations.

The Court will finally decide whether the TCPA prohibits only randomly dialed calls and calls dialed automatically without any human intervention. If the Court sides with Facebook and strikes down the broad interpretation of an automatic telephone dialing system, that could spell the end of consumer-driven litigation that has flooded the courts over the last decade. Importantly, Facebook will be decided at the Rule 12 motion to dismiss stage, which will allow the Court to provide a clear ruling on the TCPA's statutory definition, without having to consider factual nuances on dialing systems.

The Court is slated to hear oral argument on the case in October of this year and will likely render a decision in late spring or early summer 2021.

KD's Consumer Financial Services Practice Group will continue to alert you to important decisions relating to the industry.