

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Philip Charvat on behalf of himself and others)	
similarly situated,)	
Plaintiff,)	1:12-cv-5746
)	
v.)	
)	
Travel Services,)	
Carnival Corporation & PLC,)	
Royal Caribbean International,)	
Norwegian Cruise Line,)	JURY DEMANDED
Defendants.)	

CLASS ACTION COMPLAINT

1. Plaintiff Philip Charvat (“Plaintiff”) brings this action against Travel Services, Carnival Corporation & PLC, Royal Carribean International and Norwegian Cruise Line (“Defendants”) to secure redress for their violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”).

2. In 1991, Congress enacted the TCPA to regulate the explosive growth of the telemarketing industry. In so doing, Congress recognized that “[u]nrestricted telemarketing . . . can be an intrusive invasion of privacy” Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, § 2(5) (1991) (codified at 47 U.S.C. § 227). Specifically, in enacting the TCPA, Congress outlawed telemarketing via unsolicited automated or pre-recorded telephone calls, finding:

Evidence compiled by the Congress indicates that residential telephone subscribers consider automated or prerecorded telephone calls, regardless of the content or the initiator of the message, to be a nuisance and an invasion of privacy.

. . . .

Banning such automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call . . . , is the only effective means of protecting telephone consumers from this nuisance and privacy invasion.

Id. § 2(10) and (12). Telemarketing via pre-recorded phone message is similarly prohibited by the Telemarketing and Consumer Fraud Abuse Prevention Act, 15 U.S.C. § 6101, a law enacted in 2004 and enforced by the Federal Trade Commission (“FTC”) via the Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310.

3. The Defendants have engaged in an impermissible advertising campaign for their services, including the making of prerecorded/artificial message telephone calls.

JURISDICTION AND VENUE

4. The Court has federal question jurisdiction over the TCPA claims. *Mims v. Arrow Financial Services, LLC*, 132 S.Ct. 740 (2012).

5. Venue is proper because one or more of the Defendants reside in this District and are subject to this Court’s jurisdiction.

PARTIES

6. Plaintiff is an individual who currently resides in Ohio.

7. Travel Services is a North Aurora, Illinois business entity that is engaged in selling cruise services for the other Defendants.

8. Carnival Corporation & PLC is a Florida corporation that provides cruise services and is headquartered at 3655 NW 87th Ave. in Doral, FL 33178.

9. Royal Caribbean International is a Florida corporation that provides cruise services and is headquartered at 1050 Caribbean Way in Miami, FL 33132.

10. Norwegian Cruise Line is a Florida corporation that provides cruise services and is headquartered at 7665 Corporate Center Drive in Miami, FL 33126.

FACTS

11. On or about July 9, 2012, the Plaintiff received a telephone call on his residential telephone line.

12. The following automated message was played when the Plaintiff answered his phone:

Congratulations! You filled out a contest entry form for a four or five day cruise with Carnival, Royal Caribbean or Norwegian Cruise Lines and you were selected. Press 1 now to speak to a Travel Service cruise agent or press 2 to decline this offer and be added to our Do Not Call list. Press 1 now.

13. Upon information and belief, this call was dialed by a machine, rather than by a human being, as there was a delay following the time the Plaintiff answered the phone and when the pre-recorded message began.

14. After the Plaintiff pressed 1, he was eventually connected with a Travel Services employee, Joanna Harrison.

15. Ms. Harrison informed the Plaintiff that the Defendants Carnival, Royal Caribbean and Norwegian Cruise Lines “hired” Travel Services “to help them fill up empty cabins.”

16. The Plaintiff does not have a relationship with any of the Defendants and did not fill out any “contest entry form” as indicated in the pre-recorded message. The Plaintiff did not give his written or oral consent to receive the pre-recorded message call from the Defendants.

17. Upon information and belief, based upon the fact that the Defendants are telemarketing via pre-recorded message- a technology specifically designed to call numbers in mass in the cheapest manner possible,- the Plaintiff suspects that the Defendants made thousands of similar calls to individuals nationwide during the four years prior to the filing of this Complaint.

THE LEGAL BASIS OF THE CLAIMS

18. The claims of the Plaintiff, and the class of persons he seeks to represent, arise pursuant to the provisions of the TCPA, a federal statute enacted to prohibit unreasonable invasions of privacy via certain telemarketing practices.

19. The TCPA specifically prohibits the use of an unsolicited pre-recorded phone message to advertise the sale of goods and services. 47 U.S.C. § 227(b)(1)(B); 47 C.F.R. § 64.1200.

20. Under the TCPA, as interpreted by the FCC, a person or entity can be liable for calls made on its behalf even if that person or entity did not directly initiate those calls.

21. The FCC has explained that its “rules generally establish that the party on whose behalf a solicitation is made bears ultimate responsibility for any violations.” See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Memorandum and Order, 10 FCC Rcd. 12391, 12397, ¶ 13 (1995).

22. In 2005, the FCC reiterated that “a company on whose behalf a telephone solicitation is made bears the responsibility for any violation of our telemarketing rules and calls placed by a third party on behalf of that company are treated as if the company itself placed the call.” See Rules and Regulations Implementing the Telephone Consumer Protection Act of

1991; Request of State Farm Mutual Automobile Insurance Company for Clarification and Declaratory Ruling, Declaratory Ruling, 20 FCC Rcd. 13664, 13667 ¶ 7 (2005).

23. Accordingly, an entity can be liable under the TCPA for a call made on its behalf even if the entity did not directly place the call. Under those circumstances, the entity is properly deemed to have initiated the call through the person or entity that actually placed the call.

24. Plaintiff alleges that the phone calls at issue in this case were made for the benefit of Defendants Carnival, Royal Caribbean and Norwegian Cruise Lines. As such calls were made “on behalf” of these Defendants, the Defendants are legally responsible to ensure that such calls comply with applicable telemarketing law, even if they did not physically dial the call.

25. Plaintiff further alleges that the Defendants are responsible for the illegal actions of their agents.

26. Plaintiff further alleges that the Defendants are responsible for any illegal actions conducted in the course of any joint venture with any third party.

27. The TCPA further provides a private right of action as follows:

A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State, — (A) an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation, (B) an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each violation, whichever is greater, or (C) both such actions.

47 U.S.C. § 227(b)(3). Plaintiff brings this action individually and as the representative of all members of a class, nationwide, pursuant to Rule 23 of the Federal Rules of Civil Procedure.

CLASS ALLEGATIONS

28. Plaintiff brings this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of a class of all other persons or entities similarly situated throughout the United States.

29. The class of persons represented by Plaintiff is composed of:

All persons within the United States who Carnival, Royal Caribbean and/or Norwegian Cruise Lines, or an entity or entities acting on their behalf, caused to be initiated prerecorded telemarketing calls to residential or cell phone telephone numbers, promoting their goods or services, at any time after July 23, 2008.

30. The class as defined above is identifiable by phone records and phone number databases, employed by the Defendants, or their agents, in transmitting their unsolicited prerecorded telemarketing calls. On information and belief, the potential class members constitutes a class so numerous that joinder of all class members is impracticable.

31. The Plaintiff is a member of the class.

32. Plaintiff's claims are typical of the claims of the class.

33. Plaintiff is an adequate representative of the class because his interests do not conflict with the interests of the class, he will fairly and adequately protect the interests of the class, and he is represented by counsel skilled and experienced in class actions.

34. The actions of the Defendants are generally applicable to the class as a whole and to Plaintiff.

35. There are questions of law and fact common to Plaintiff and to the proposed class, including but not limited to the following:

- a. Whether the Defendants violated the TCPA by engaging in advertising by unsolicited prerecorded telemarketing calls;
- b. Whether the unsolicited prerecorded telemarketing calls initiated by Travel Services or its agents were made "on behalf of" the remaining Defendants.
- c. Whether the Plaintiff and the members of the class are entitled to statutory damages as a result of the Defendants actions.

36. Common questions of law and fact predominate over questions affecting only individual members of the class and a class action is the superior method for fair and efficient adjudication of the controversy. The only individual question concerns identification of class members, which will be ascertainable from records maintained by Defendants and/or its agents.

37. The likelihood that individual members of the class will prosecute separate actions is remote due to the time and expense necessary to conduct such litigation.

38. Plaintiff is not aware of any litigation concerning this controversy already commenced by others who meet the criteria for class membership described above.

39. Plaintiff is capable of and is willing to represent the other members of the class.

CAUSES OF ACTION

COUNT I – VIOLATION OF THE TCPA

40. The Plaintiff incorporates all paragraphs of its Complaint.

41. The TCPA makes it unlawful to initiate any telephone call to any residential or cell phone telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party.

42. The violations of the TCPA were either willful or negligent.

43. Plaintiff and the class are entitled to have their right, status and legal relations relating to the Defendants' use an automatic dialing system to deliver artificial and/or pre-recorded messages determined under the TCPA.

**COUNT II -- INJUNCTIVE RELIEF
TO BAR FUTURE TCPA VIOLATIONS**

44. Plaintiff incorporates the allegations from all previous paragraphs as if fully set forth herein.

45. The TCPA expressly authorizes injunctive relief to prevent further violations of the TCPA.

46. The Plaintiff, acting on behalf of the Class, respectfully petitions this Court to order all Defendants, including but not limited to their employees, agents or other affiliates, to immediately cease engaging in unsolicited telemarketing in violation of the TCPA.

WHEREFORE, plaintiff requests that the Court enter judgment in favor of himself and the class and against the Defendant that provides the following relief:

- a) Statutory damages of \$500 per violation, and up to \$1,500 per violation if proven to be willful;
- b) A permanent injunction prohibiting the Defendants, including but not limited to, their employees, agents or other affiliates, to immediately cease engaging in unsolicited telemarketing in violation of the TCPA; and
- c) Any other relief the Court finds just and proper.

Respectfully submitted,

/s/ Alexander H. Burke

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JURY DEMAND

The Plaintiff demands a trial by jury.

/s/ Alexander H. Burke

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DOCUMENT PRESERVATION DEMAND

Plaintiff hereby demands that the Defendants take affirmative steps to preserve all recordings, data, emails, documents and all other tangible things that relate to the Plaintiff or the putative class members, or the sending of emails or making of telephone calls, the events described herein, any third party associated with any telephone call, campaign, account, sale or file associated with Plaintiff or the putative class members, and any account or number or symbol relating to any of them. These materials are likely relevant to the litigation of this claim. If Defendants are aware of any third party that has possession, custody or control of any such materials, Plaintiff demands that the Defendants request that such third party also take steps to preserve the materials. This demand shall not narrow the scope of any independent document preservation duties of the Defendants.

/s/ Alexander H. Burke