**Daily Decision** for publication on Tue. June 14, 2022 Thumbs Up

**Title:** *Mina v. Red Robin Int’l:* Court Rejects Consumer’s Technical Description of an ATDS

**Description:** The court rejected a consumer’s assertion that the TCPA's definition of an ATDS includes a device or program that merely randomly or sequentially selects which number to dial, even if such a selection is made from a predetermined list of telephone numbers.

**Tags:** TCPA, Colorado, Autodialer ATDS

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*Mina v. Red Robin International, Inc.*, No. 20-CV-00612 RM, NYW, 2022 WL 2105897 (D. Colo. June 10, 2022)

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**Background:**

A consumer alleged that the Red Robin restaurant violated the Telephone Consumer Protection Act when the restaurant sent him numerous advertising text messages after he provided his cell number to a server at the restaurant. The consumer asserted the restaurant sent the messages using the Twilio platform, which provides customers the ability to send automated text messages to mass lists of recipients. The consumer also alleged he incurred a charge for the text messages and that they caused him inconvenience. The defendant moved to dismiss the consumer’s action.

**Decision:**

The TCPA defines “automatic telephone dialing system” as a piece of equipment which has the capacity to both “store or produce telephone numbers to be called, using a random or sequential number generator” and to dial those numbers. 47 U.S.C. Section 227(a)(1)(A)-(B).

Addressing conflict in the application of the TCPA, the Supreme Court held that the provision’s clause “using a random or sequential number generator” modifies both verbs found in Section 227(a)(1)(A), *Facebook, Inc. v. Duguid*, 141 S. Ct. 1163, 1169 (2021). Thus, a device is not an autodialer under the TCPA unless it “ha[s] the capacity either to store a telephone number using a random or sequential generator or to produce a telephone number using a random or sequential number generator.” *Id.* at 1167.

The court noted that the consumer here attempted to provide the court with a more technical understanding of telephone dialer technology in support of his claims.

Asserting that “very few” attorneys “understand what a random or sequential number generator actually is,” [the consumer] suggests that the term “number generator” as used in the TCPA refers to a term of art in the software engineering field; however, [the consumer] does not provide any precise definition that he believes should be ascribed to a “number generator.” … The consumer’s argument is thus akin to an assertion that the TCPA's definition of “automatic telephone dialing system” includes a device or program that merely randomly or sequentially selects which number to dial, even if such a selection is made from a predetermined list of telephone numbers.

The court stated it was “respectfully not persuaded” by the consumer’s argument because “a device's capacity to randomly or sequentially select, from a prepopulated list, which number to communicate with, does not render it an autodialer under the TCPA.”

Joining the majority of other courts that have reached the same conclusion, the court rejected the consumer’s arguments, finding the consumer did not plausibly allege that the restaurant used an “artificial or prerecorded voice” in sending the subject text messages. Accordingly, the court found that the consumer’s allegations were insufficient to state a TCPA claim under Rule 12(b)(6).

Furthermore, because the consumer expressly alleged that he provided his phone number to the restaurant and that the numbers used by the restaurant were not randomly or sequentially stored or produced, and because the text messages did not fall within the TCPA's proscription of calls using an “artificial or prerecorded voice,” the court concluded that further amendment of the consumer’s claim would be futile.

On this basis, the magistrate judge recommended that the court grant the restaurant’s motion to dismiss with prejudice.

**ACA’s Take:**

While consumers continue to press the limits of the *Duguid* decision, collectors may be able to establish via a motion to dismiss that their calling technology does not violate the TCPA.

For more information on the **TCPA**, see [*ACA International’s TCPA Compliance Guide.*](https://me.acainternational.org/Shop/Products/Product-Details?productid=%7BE3E2E114-8BE9-EB11-BACB-002248042279%7D)

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