MISCELLANEOUS

SURVEY INVITATION DOES NOT CONSTITUTE AN ADVERTISEMENT UNDER TCPA

Katz v. Focus Forward LLC, 22 F.4th 368 (2d Cir. 2022).
https://law.justia.com/cases/federal/appellate-courts/ca2/21-1224/21-1224-2022-01-06.html

FACTS: Bruce Katz, M.D., P.C. ("Plaintiff") provided medical services, and Focus Forward, LLC ("Defendant") was a market research company that conducted market surveys and received payment from its clients for providing them with the information it gathered. Plaintiff alleged that Defendant sent Plaintiff two unsolicited faxes seeking participants in market research surveys and offered financial compensation for recipient's participation in a telephone interview. Plaintiff filed a putative class action alleging violations of the Telephone Consumer Protection Act of 1991 ("TCPA"). The District Court granted Defendant's motion to dismiss. Plaintiff appealed.
HOLDING: Affirmed.
REASONING: Plaintiff argued that a fax offering payments in exchange for market survey participation was an advertisement under the TCPA. The court disagreed and used the plain meaning statutory interpretation and its legislative history to interpret the TCPA. The statute defines "unsolicited advertisement" as "any material advertising the commercial availability or quality of any property, goods, or services" transmitted without express permission or invitation to a person. Because faxes seeking a recipient's survey participation do not advertise the availability of any "property, goods, or services," they are not "advertisements" under the TCPA. The court also stated that Congress did not intend the term "telephone solicitation" to include market surveys and research. Therefore, the faxes in question were insufficient to warrant a TCPA violation and summary judgment for the Defendant was proper.

The court disagreed and used the plain meaning statutory interpretation and its legislative history to interpret the TCPA.

ALLEGATIONS OF A STATE STATUTORY VIOLATION AND RISK OF FUTURE HARM ARE INSUFFICIENT TO ESTABLISH ARTICLE III STANDING ABSENT ALLEGATIONS OF CONCRETE HARM

Maddox v. Bank of N.Y. Mellon Tr. Co., N.A., 19 F.4th 58 (2nd Cir. 2021).
https://www.leagle.com/decision/infco20211117094

FACTS: Plaintiffs-Appellees Sandra Maddox and Tometta Maddox Holley (the "Maddoxes") entered into a mortgage loan later assigned to Defendant-Appellant The Bank of New York Mellon Trust Company ("BNY Mellon"). In 2014, the Loan was fully paid and the debt discharged. However, BNY Mellon failed to file a satisfaction of mortgage with the county clerk's office until nearly one year later. BNY Mellon's failure to record the discharge within thirty days of payment violated New York's mortgage-satisfaction-recording statutes. The Maddoxes brought a class action suit against BNY Mellon for violation of New York's mortgage-satisfaction-recording statutes and risk of future harm.

The district court held that the Maddoxes had Article III standing to sue BNY Mellon for violating the timely recordation requirements. BNY Mellon appealed.
HOLDING: Reversed and remanded.
REASONING: In order to have Article III standing, a plaintiff must show an injury in fact, among other elements. Citing TransUnion LLC v. Ramirez, ___ U.S. ___, 141 S.Ct. 2190 (2021), the court held that the Maddoxes did not suffer the concrete harm required to satisfy the first element of Article III standing. Maddox did not satisfy the Article III injury in fact element because their claims either were not asserted, not materialized, or not supported by enough facts to make plausible an injury giving rise to relief. Because there was no injury, there was no concrete harm and, therefore no Article III standing.

PLAINTIFF WHO DOES NOT ALLEGE OR PRESENT FACTS SUGGESTING THAT ANY ACTUAL PERSON SAW OR READ ANY PRIVATE INFORMATION DOES NOT HAVE ARTICLE III STANDING UNDER *TRANSUNION LLC V. RAMIREZ*

Stewart v. Healthcare Revenue Recovery Grp., ___ F. Supp. 3d ___ (M.D. Tenn. 2022).
https://www.govinfo.gov/content/pkg/USCOURTS-tnmd-3_20-cv-00679/pdf/USCOURTS-tnmd-3_20-cv-00679-1.pdf

FACTS: Plaintiff, Angela Stewart, owed a debt to Defendant, Healthcare Revenue Recovery Group, LLC ("HRRG"), because of two hospital visits for her minor child in 2018. HRRG, a debt collector, had two accounts for Stewart relating to unpaid debts for the medical services resulting from the hospital visits. HRRG used Nordis, a third-party vendor, to send all its letters regarding debt to consumer debtors. HRRG provided Nordis with the data necessary to send letters in connection to the debts. HRRG also used a telephone dialing system called "GC Dialer" to place telephone calls to debtors, which left a prerecorded message on voicemail regarding debt collection attempts. HRRG left 62 voicemails using a prerecorded voice through GC dialer in connection with the collection of her debt.

Stewart filed suit, alleging that HRRG violated the Fair Debt Collection Practices Act ("FDCPA") and the Telephone Consumer Protection Act ("TCPA"). Stewart also filed a Motion for Partial Summary Judgment.
HOLDING: Dismissed.
REASONING: Stewart argued HRRG violated the TCPA by calling and leaving 62 voicemails on her cell phone using an artificial or recorded voice. Stewart also argued HRRG violated the FDCPA by disclosing information regarding her debt to a third party without her consent.

The court focused on Stewart's lack of Article III standing and rejected her arguments. When moving for summary judgment, a plaintiff must set forth specific facts demonstrating his standing and may not "rely on mere allegations." The court, relying on *TransUnion LLC v. Ramirez*, held that Stewart would need to present evidence that the defendant had brought an idea to the perception of another and that the document was actually read and not merely processed. Stewart did not allege or provide evidence that HRRG actually communicated sensitive facts to Nordis, nor did she prove that any real people in general actually read and not merely processed the information sent by HRRG. Thus, the court held that Stewart did not have standing under Article III to bring her claims against HRRG.

PRIVATE STUDENT LOANS ARE DISCHARGEABLE IN BANKRUPTCY

Homaidan v. Sallie Mae, Inc., 3 F.4th 595 (2d Cir. 2021).
https://www.govinfo.gov/content/pkg/USCOURTS-ca2-20-01981/pdf/USCOURTS-ca2-20-01981-0.pdf

FACTS: Plaintiff-Appellee, Hilal K. Homaidan, took out private direct-to-consumer educational loans from Defendant-Appellants, Sallie Mae Inc., Navient Solutions, LLC, and Navient Credit Finance Corporation (collectively, "Navient"), to finance his education, among other expenses. The loans were not made through the school's financial aid office; instead, they went straight to Homaidan's bank account, and the loan proceeds exceeded the cost of tuition. After graduation, Homaidan filed for Chapter 7 bankruptcy and obtained from the bankruptcy court a discharge order that was ambiguous as to whether the loans were discharged. Navient pursued repayment after the discharge order was issued, and Homaidan complied, assuming the Navient loans had not been discharged. Hamaidan moved to reopen his bankruptcy case to seek a determination that the loans were discharged during the original proceeding.

Homaidan commenced an adversary proceeding alleging Navient violated the discharge order. Navient filed a motion to dismiss, arguing that the loans were excepted from discharge under 11 U.S.C. §523(a)(8)(A)(ii). The bankruptcy court rejected that argument and denied the motion. The district court then certified the bankruptcy court's order for interlocutory appeal.
HOLDING: Affirmed.
REASONING: Navient argued that its student loans were excepted from discharge because the loan agreement constitutes an "obligation to repay funds," and Homaidan obtained those funds to advance his education, thereby deriving from them an "educational benefit" under §523(a)(8)(A)(ii).

The court rejected Navient's argument based on the rules of statutory construction. First, it explained that Navient's interpretation was unsupported by plain meaning because student loans were not ordinarily defined as "obligations to repay funds received as an educational benefit." If Congress had intended to exclude all educational loans from discharge under §523(a)(8)(A)(ii), it would have said so clearly. Then, the court reined in Navient's broad reading in light of the canon against surplusage. Because Congress constructed the statute into three separate subsections, it intended each one to target different kinds of debt. Navient's interpretation of §523(a)(8)(A)(ii) would make any loan for educational purposes nondischargable and render the other two subsections superfluous. Lastly, the court employed *noscitur a sociis* to determine the meaning of "educational benefit" by reference to its listed companions: "scholarship" and "stipend." Because both "scholarship" and "stipend" describe conditional grant payments not required to be repaid by the recipient, interpreting "educational benefit" to cover all private student loans and except them from discharge would improperly broaden § 523(a)(8)(A)(ii)'s scope. For these reasons, the court held that the Navient loans were dischargeable in bankruptcy.

SOUTHERN DISTRICT OF TEXAS ENTERS AN INJUNCTION AGAINST A CREDIT REPAIR ORGANIZATION FOR ALLEGED VIOLATIONS OF THE FTC ACT, CROA, AND THE FTC'S TSR

United States v. Turbo Sols. Inc., ___ F. Supp. 3d ___ (S.D. Tex. 2022).
https://www.ftc.gov/system/files/ftc_gov/pdf/Injunction%20Alex%20Miller%20Turbo%20Solutions%2003.18.2022.pdf

FACTS: Defendant Turbo Solutions Inc operated a credit repair scam that claimed they could improve consumers' credit scores for a fee. Defendant routinely solicited and accepted prohibited advanced fees and failed to make required disclosures regarding their services. Plaintiff, the United States of America, alleged that Defendant's scam was unlawful and harmed vulnerable consumers nationwide.

The United States brought multiple charges against Defendant for violations of the Credit Repair Organizations Act, Telemarketing and Consumer Fraud and Abuse Prevention Act, and the Federal Trade Commission Act. The United States also filed for a permanent injunction of Turbo Solutions business activities while final relief was being sought.
HOLDING: Injunction ordered.
REASONING: The United States alleged that Defendant falsely claimed they could improve consumers' credit scores by removing all negative items from their credit reports and adding credit building products, and this should be a violation of the FTC Act. Also, the United States alleged that when Defendants filed fake identity theft reports on the FTC's identitytheft.gov website, Defendants engaged in a violation of CROA; and when Defendant routinely took prohibited advanced fees for their credit repair services and had not made required disclosures regarding those services, Defendants violated the FTC's Telemarketing Sales Rule (TSR).

The court agreed and determined that there was a substantial threat of immediate and irreparable injury to the United States if the court did not enter the injunction, and the entry of this permanent injunction would not disserve the public interest. The court further stated that absent an injunction, Defendant might continue operations or take actions to conceal wrongdoings which would cause immediate and irreparable damage to the court's ability to grant effective final relief. As these risks were greater than the burden imposed on Defendant, it was proper to restrain and enjoin Defendant from continuing operations during the pendency of this action.