

Telecommunications Case of the Month - April 2003

April 25, 2003

Federal Appeals Court Upholds Law Restricting Unsolicited Commercial Faxes

State of Missouri v. American Blast Fax, Inc., 323 F.3d 649 (8th Cir. Mar. 21, 2003)

The United States Court of Appeals for the Eighth Circuit has ruled that restrictions on unsolicited commercial faxes established by the Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227(b)(1)(c) ("TCPA"), do not violate the First Amendment's guarantee of free speech. The TCPA makes it unlawful "to send an unsolicited advertisement to a telephone facsimile machine." The statute defines an "unsolicited advertisement" as "any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without the person's prior express invitation or permission." Thus, commercial advertisers must first obtain consent for their faxes through telephone solicitation, direct mailing, or interaction with customers in their stores. The Federal Communications Commission has found that the TCPA does not prohibit the sending of unsolicited commercial faxes to a recipient with whom a sender has an established business relationship. In *Blast Fax*, the State of Missouri sued two commercial fax companies for violations of the TCPA. The companies argued that the TCPA was an unconstitutional restriction on freedom of speech. The Eighth Circuit disagreed, holding that the TCPA did not violate the First Amendment, because there was a substantial government interest in protecting the public from the cost shifting and interference caused by unwanted fax advertisements. The court found that the regulation directly advanced the government's interest and was not more extensive than necessary to serve that interest. In particular, the court held that the statute's distinction between commercial and noncommercial faxes was constitutional, because noncommercial faxes did not present the same problems as commercial faxes. Comments: Businesses should familiarize themselves with the TCPA's provisions, so they are not charged with violating this relatively new statute by sending out unsolicited commercial facsimile transmissions.

educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.