

Home Depot Contractor Seeks End To TCPA Suit

Law360, New York (June 13, 2017, 8:59 PM EDT) — A home remodeling company has urged a Georgia federal judge to dismiss a proposed class action accusing it of violating the Telephone Consumer Protection Act by calling people who were registered not to receive telemarketing calls, arguing there is no evidence the calls were made for sales purposes.

US Home Center LLC, which does business as 1-800-USA-HOME.com, said Friday that named plaintiff Philip Charvat had failed to show that the company had violated the TCPA when it allegedly placed two calls to his home phone because he failed to describe the content of the calls. Without a description of the calls, there was no way to tell that their purpose was to generate sales for Home Depot, US Home Center said.

“Plaintiff has not alleged any facts that plausibly show that US Home Center’s alleged calls to plaintiff were made for the purpose of encouraging the purchase or rental of, or investment in, any property, goods, or services so as to constitute ‘telephone solicitations’ pursuant to the TCPA,” the motion said.

In a response to both US Home’s motion and an earlier dismissal motion from Home Depot, Charvat reiterated his claim that the calls he received were telemarketing calls whose purpose was to generate business for Home Depot, arguing that he had shown Home Depot used third parties like US Home Center to make marketing calls.

“The plaintiff’s complaint makes sufficiently clear that advertising goods and services was indeed the purpose of the calls, as they were made by 1-800-USA-HOME.COM as part of Home Depot’s ‘Authorized Service Provider’ program, which was created to generate new business for Home Depot,” Charvat said in the response filed Monday.

Charvat filed the suit in April, alleging that even though he is on the Do Not Call Registry, he received calls from 1-800-USA-HOME in which the callers identified themselves as calling “on behalf of Home Depot.” Ohio-based US Home Center is an authorized service provider for Home Depot, according to its website.

Home Depot argued earlier this month that there was not enough evidence to show that it was closely tied to US Home Center, meaning it should not have to face the claim for violation of the TCPA. The retailer also claimed Charvat was a frequent filer of TCPA class actions, indicating that his claims should potentially be taken less seriously.

In his response, Charvat said Home Depot had engaged in an “ad hominem attack” on him. He claimed that filing multiple suits should not be viewed negatively, given that he has been successful in a number of the cases and gained experience that would make him a good class representative.

The proposed class could number tens of thousands and perhaps even millions of individuals, the complaint said. For each call that violates the TCPA, it contends, the class is eligible for up to \$1,500 in statutory damages, making the total potential damages greater than \$5 million.

Representatives and counsel for the parties did not respond to requests for comment on Tuesday.

US Home Center is represented by **Lisa L. Heller, Rachel F. Gage** and **Craig G. Kunkes** of **Robbins Alloy Belinfante Littlefield LLC**.

Charvat is represented by Anthony I. Paronich of Broderick & Paronich PC and Steven H. Koval.

Home Depot is represented by S. Stewart Haskins II and J. Andrew Pratt of King & Spalding LLP.

The case is Philip Charvat v. The Home Depot Inc. et al., case number 1:17-cv-01446, in the U.S. District Court for the Northern District of Georgia.

-Additional reporting by Dave Simpson. Editing by Richard McVay and Jill Coffey.