

EXHIBIT 3

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

CASE NO.: 00-SC-86-4271

ROBERT BIGGERSTAFF,)
)
Plaintiff,)
)
vs.)
)
WEBSITE UNIVERSITY.COM, INC. and)
TERRY HATFIELD individually)
)
Defendants.)

ORDER

Filed in Charleston County
Small Claims Court

MAR 20 2001
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This matter came before the Court on March 5, 2001, on Plaintiff's Motion to Strike. Plaintiff brought suit under the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227(b) alleging that he received an unsolicited advertisement via facsimile, in violation of that statute. Defendants answered, raising a number of affirmative defenses. Plaintiff is now seeking to strike from Defendants' pleadings, certain affirmative defenses as insufficient, pursuant to Rule 12(f), SCRCiv.P, specifically paragraphs 22, 23 and 26 of the Answer. Plaintiff's motion is GRANTED in part and DENIED in part.

Defendants have averred that the TCPA "violates the United States Constitution and/or the Constitution of the State of South Carolina." Answer at 22. In the absence of a controlling decision holding otherwise, we believe Defendants are entitled to a full hearing on the merits of such constitutional defenses. Plaintiff's motion is therefore denied with respect to paragraph 22 of the Answer.

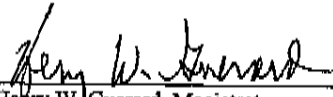
Defendants also aver that "Plaintiff maintained a prior business relationship with defendants..." Answer at 23. Even if true, this does not constitute a valid defense to Plaintiff's cause of action. Congress saw fit to include an "established business relationship" as a defense to a cause of action arising out of telemarketing calls, by including that exception in the definition of "telephone solicitation" in the TCPA. See 47 U.S.C. § 227(a)(3). The unsolicited fax provisions, however, provides for a defense only if the fax advertisement was sent with "prior express invitation or permission." Cf. 47 U.S.C. § 227(a)(4). "Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that

Congress acts intentionally and purposely in the disparate inclusion or exclusion." Rodriguez v. United States, 480 U.S. 522, 525 (1987). By the plain language of the statute, there is no "established business relationship" defense to a cause of action for unsolicited faxes under the TCPA. Paragraph 23 of the Answer is stricken.

Finally, Defendants seek to reserve other unnamed affirmative defenses. Answer at 26. Affirmative defenses must be pled in the Answer. Rule 8(c), SCRCiv.P. There is no provision for reserving them until some future date, and accordingly paragraph 26 is stricken. If Defendants discover additional defenses, they must seek leave of the Court to amend their Answer.

IT IS SO ORDERED.

This the 20 day of March, 2001.


Henry W. Guerard, Magistrate