

EXHIBIT 7

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 1999-020649

07/11/2003

HONORABLE ROBERT L. GOTTSFIELD

CLERK OF THE COURT
M. Johnson
Deputy

FILED: 07/16/2003

ESI ERGONOMIC SOLUTIONS LLC

CHRISTOPHER A LAVOY

v.

UNITED ARTISTS THEATER CIRCUIT INC, et al. LESLIE KEITH BEAUCHAMP

AMERICAN BLAST FAX INC
16200 ADDISON RD
STE 250
ADDISON TX 75001-0000
DEAN D HUNT PRO HAC VICE
BRACEWELL & PATTERSON
711 LOUISIANA #2900
HOUSTON TX 77002-2781
EDWARD MOOMJIAN II

MINUTE ENTRY

9:09 a.m. This is the time of hearing plaintiff's motion for partial summary judgment re established business relationship and the renewal of plaintiff's motion for class certification. Counsel Christopher Lavoy and co-counsel Edward Moomjian are present on behalf of plaintiff. Counsel L. Keith Beauchamp and co-counsel Robert Schaffer and Thomas Gleasom are present on behalf of defendant. All are present in person.

Court Reporter Lorraine Chalkey is present.

Arguments are held.

After extended argument,

IT IS ORDERED taking the matter under advisement.

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10:00 a.m. Matter concludes.

LATER:

After further consideration the court now Finds, Determines and Orders as follows:

Granting plaintiff's motion for partial summary judgment on established business relationship and ordering certification of this matter as a class action.

By way of explanation EBR is not a defense to junk-fax advertising violations under the Telephone Consumer Protection Act (TCPA) which makes the distinction between telephone solicitations, for which there is an EBR defense and do-not-call data base, and facsimile unsolicited advertisements, for which there are neither affirmative defenses nor a do-not-call data base. Contrast 47 U.S.C. Section 227 (a)(3)(telephone solicitations) with 47 U.S.C. Section 227 (b)(1)(C)(fax solicitations). This court notes there is a "a prior express invitation or permission" defense to a TCPA junk-faxing violation because the definition of an "unsolicited advertisement" with respect to junk-faxing contains this language, and the court is now unsure whether this is an issue preserved in this case or not. The court is unsure whether UA concedes the 90,000 faxes were sent without prior express invitation or permission. If it is not conceded than a separate motion for summary judgment should be brought by plaintiff.

With respect to class certification this court realizes that Division One on July 16, 2002 reversed this trial court's ruling that class relief was not the "superior" mode of adjudication under Rule 23 (b)(3) and remanded for further consideration (203 Ariz. 94, 50 P.2d 844). It appears to this court, again in agreement with plaintiff, that ideal predominance exists as required by Rule 23 (b)(3) as each class member is asserting the same claim based on the evidence seeking the same damages and being met with the same legal defenses. Thus liability, damages and defenses are all common and the whole case can be tried as it has so far as a single TCPA claim. Division One found two of the four superiority requirements of the Rule strongly support class certification and this court finds the superiority factor of desirability also supports certification. Remaining issues of adequacy of representation, predominance of common questions of fact and law and manageability also, for reasons stated by plaintiff, support certification. The argument of UA that class relief would be unmanageable because the defendants transmitted the junk-fax to 90,000 persons but the facsimile number data base contains 95,366 numbers or is "over-inclusive" by a margin of 5% can be managed in any of the four ways set forth by plaintiff at pages 11-13 of its Renewal of Motion Brief dated February 18, 2003. The court has found against UA on its arguments in opposition to class certification including that this court allow the bankruptcy court to address whether the claims putative class members are barred by their failure to file individual proofs of claim. This court agrees with plaintiff that manageability, one factor of the superiority requirement, requires a comparative analysis and that a class action is more manageable than 90,000 separate lawsuits under the circumstances as presented in this case. The court is also cognizant of the strong presumption against denying certification based solely on manageability grounds. There is also a possibility,

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although not foreseeable to this court at this stage, that the court would order a decertification at a later date in view of issues or circumstances which should arise. But this does not require a postponement of the certification decision. At this stage the court is of the view even if individualized issues are found it would not necessarily defeat the predominance requirement as long as common issues predominant over individualized ones which they seem to do here. Finally any individualized liability issues can be effectively managed through split-trials (See discussion plaintiff's Reply Brief in support of renewal of motion at 32-35).

The court is not setting forth at this time what issues remain to be tried and will await further motions to narrow such issues which may include, unless already decided by Judge Davis, or stipulated to by the parties, whether UA has a defense of "prior expressed invitation or permission"; whether the fax must be received; whether the fax must be sent to a fax or whether it can be sent to a computer with a fax modem; whether a government entity qualifies as a person under TCPA and the like.

For the court's information the case involves UA's hiring of defendant American Blast Fax, Inc. to send a one-page advertisement intrastate for discount movie tickets to approximately 90,000 Phoenix-area fax numbers in September 1999. Plaintiff seeks up to \$135 million in damages plus attorney's fees on behalf of the 90,000 other alleged recipients. UA contends there are enormous problems preventing identification of class members and that it is unknown how many facsimiles were sent, how many were received, how many were received on a facsimile machine rather than a computer; that the identities of those receiving the ad on a fax machine nearly four years ago are unknown and unascertainable; whether TCPA violates free speech or due process; whether the Act applies solely to intrastate junk faxing; whether defendants' junk faxing was intrastate in character (unless Judge Davis determined this issue); whether Arizona must pass "opt-in" enabling legislation to hear TCPA claims; whether this court has subject matter jurisdiction and whether class relief is available under TCPA as well as other defenses. Individual motions for summary judgment should soon isolate the remaining issues for trial or other disposition.