

Case Summary

CE Design Ltd. v. Cy's Crabhouse North, Inc.

2010 U.S. Dist. LEXIS 59000 (N.D. Ill. June 11, 2010)

Court Orders Supplemental Expert Report on New Hard Drive Evidence

In a case involving an alleged violation of the Telephone Consumer Protection Act (TCPA) due to the use of an automated fax advertisement service, the Northern District of Illinois ordered the defendant's computer expert to issue a supplemental report after the plaintiff disclosed a previously unproduced hard drive.

Plaintiff CE Design sued under the TCPA after receiving an unsolicited fax advertisement for Cy's Crabhouse via a third-party company, Business to Business Solutions (B2B). During discovery, Cy's Crabhouse requested all documents in CE Design's possession relating to other TCPA suits involving B2B. At issue was a list of fax numbers utilized by B2B to send advertisements.

B2B's sole employee, Caroline Abraham, first asserted that she could not provide the requested fax numbers because they had been maintained by B2B's parent company and she had lost any relevant data in a hard drive crash two years before. Counsel for Cy's Crabhouse later learned, however, that Abraham had produced the requested information to CE Design's counsel pursuant to a show cause order in a separate case involving B2B. Abraham had provided CE Design with backup tape data burned to a DVD, as well as the crashed hard drive. Cy's Crabhouse later received a copy of the DVD but had not been granted access to the hard drive.

Cy's Crabhouse moved to dismiss as sanction for CE Design's discovery violations, including the failure to produce the requested hard drive. Shortly after the motion was filed against it, CE Design produced the missing hard drive.

Decision

The court found the failure to disclose the hard drive to be "somewhat more substantial" than the other alleged discovery violations. The court did not, however, find any prejudice to Cy's Crabhouse because the hard drive had eventually been produced. Finding dismissal to be too severe a sanction, the court ordered Cy's Crabhouse to submit a supplemental report from its computer expert based upon a forensic analysis of the hard drive. The court noted that it would assess the costs of the computer expert's new report against CE Design if the hard drive data required material changes to the expert's opinion in the case.