

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

| | |
|-----------------------------------|---|
| ANIMAL MEDICAL CENTER |) |
| OF ORLAND PARK, INC. |) |
| on behalf of Plaintiff and |) |
| the class members defined herein, |) |
| |) |
| Plaintiff, |) |
| |) |
| v. |) |
| |) |
| MERCEDES MEDICAL, LLC |) |
| d/b/a MERCEDES SCIENTIFIC |) |
| and JOHN DOES 1-10, |) |
| |) |
| Defendants. |) |

COMPLAINT – CLASS ACTION

MATTERS COMMON TO MULTIPLE COUNTS

INTRODUCTION

1. Plaintiff, Animal Medical Center of Orland Park, Inc., brings this action to secure redress for the actions of Defendants, Mercedes Medical, LLC d/b/a Mercedes Scientific and John Does 1-10, in sending or causing the sending of unsolicited advertisements to telephone facsimile machines (Exhibits A-B) in violation of the Telephone Consumer Protection Act, 47 U.S.C. §227 (“TCPA”), the Illinois Consumer Fraud Act, 815 ILCS 505/2 (“ICFA”), and the common law.

2. The TCPA expressly prohibits unsolicited fax advertising. Unsolicited fax advertising damages the recipients. The recipient is deprived of its paper and ink or toner and the use of its fax machine. The recipient also wastes valuable time it would have spent on something else. Unsolicited faxes prevent fax machines from receiving and sending authorized

faxes, cause wear and tear on fax machines, and require labor to attempt to identify the source and purpose of the unsolicited faxes.

PARTIES

3. Plaintiff Animal Medical Center of Orland Park, Inc. is an Illinois corporation with offices at 16200 S. LaGrange Road, Orland Park, Illinois, where it maintains a telephone facsimile machine that automatically prints on paper using toner/ ink.

4. Defendant Mercedes Medical, LLC d/b/a Mercedes Scientific (“Defendant” or “Mercedes Scientific”), is a Florida Limited Liability Company with its principal offices at 12210 Rangeland Parkway, Lakewood Ranch, FL 34211. Its registered agent is Troy E. Barnett at that address. It does business in Illinois. Its registered agent and office in Illinois are Registered Agents Inc., 2501 Chatham Road, Ste R., Springfield, IL 62704.

5. Defendants John Does 1-10 are other natural or artificial persons that were involved in the sending of the facsimile advertisements described below. Plaintiff does not know who they are.

JURISDICTION AND VENUE

6. This Court has jurisdiction under 28 U.S.C. §§1331 and 1367. *Mims v. Arrow Financial Services, LLC*, 132 S. Ct. 740, 751-53 (2012); *Brill v. Countrywide Home Loans, Inc.*, 427 F.3d 446 (7th Cir. 2005).

7. Personal jurisdiction exists under 735 ILCS 5/2-209, in that Defendants:
- a. Have committed tortious acts in Illinois by causing the transmission of unlawful communications into the state.
 - b. Have transacted business in Illinois.

8. Venue in this District is proper for the same reason.

FACTS

9. On or about November 20, 2020, Animal Medical Center of Orland Park, Inc., received the unsolicited fax advertisement attached as Exhibit A on its facsimile machine.

10. On or about December 4, 2020, Animal Medical Center of Orland Park, Inc, received the unsolicited fax advertisement attached as Exhibit B on its facsimile machine.

11. Exhibits A-B were sent by Defendant Mercedes Medical, LLC d/b/a Mercedes Scientific and encourage the recipient to purchase goods and services from Mercedes Scientific.

12. Discovery may reveal the transmission of additional faxes as well.

13. Defendant Mercedes Medical, LLC d/b/a Mercedes Scientific is responsible for sending or causing the sending of the faxes.

14. Each fax refers to the trade name, website, address and telephone number of Defendant Mercedes Medical, LLC d/b/a Mercedes Scientific.

15. The website offers goods and services, including goods and services that would be of use to a veterinary practice.

16. Defendants either negligently or wilfully violated the rights of Plaintiff and other recipients in sending the faxes.

17. Plaintiff had no prior relationship with Defendants and had not authorized the sending of fax advertisements to Plaintiff.

18. On information and belief, the faxes attached hereto was sent as part of a mass broadcasting of faxes.

19. On information and belief, Defendants directed the sending of the fax advertisements and have transmitted similar unsolicited fax advertisements to at least 40 other persons in Illinois.

20. There is no reasonable means for Plaintiff or other recipients of Defendants' unsolicited advertising faxes to avoid receiving illegal faxes. Fax machines must be left on and ready to receive the urgent communications authorized by their owners.

21. Furthermore, the "opt out notice" required by the TCPA even when faxes are sent with consent or pursuant to an established business relationship was not provided in the faxes at issue.

COUNT I – TCPA

22. Plaintiff incorporates ¶¶ 1-21.

23. The TCPA makes unlawful the "use of any telephone facsimile machine, computer or other device to send an unsolicited advertisement to a telephone facsimile machine ..." 47 U.S.C. §227(b)(1)(C).

24. The TCPA, 47 U.S.C. §227(b)(3), provides:

Private right of action.

A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State—

(A) an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation,

(B) an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater, or

(C) both such actions.

If the Court finds that the defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under the subparagraph (B) of this paragraph.

25. Plaintiff and each class member suffered damages as a result of receipt of the unsolicited faxes, in the form of paper and ink or toner consumed as a result. Furthermore, Plaintiff's statutory right of privacy was invaded.

26. Plaintiff and each class member is entitled to statutory damages.

27. Defendants violated the TCPA even if its actions were only negligent.

28. Defendants should be enjoined from committing similar violations in the future.

CLASS ALLEGATIONS

29. Pursuant to Fed.R.Civ.P. 23(a) and (b)(3), Plaintiff brings this claim on behalf of a class. The class consists of (a) all persons with Illinois fax numbers (b) who, on or after a date four years prior to the filing of this action (28 U.S.C. §1658), (c) were sent faxes by or on behalf of Mercedes Medical, LLC d/b/a Mercedes Scientific promoting goods or services, (d) with respect to which Defendant did not have evidence of consent or an established business relationship prior to sending the fax.

30. The class is so numerous that joinder of all members is impractical. Plaintiff alleges on information and belief that there are more than 40 members of the class.

31. There are questions of law and fact common to the class that predominate over any questions affecting only individual class members. The predominant common questions include:

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