

Statement of facts

1. On November 12, 2002 at 5:24 a.m., my wife and I were awakened from a sound sleep by a telemarketing call to our home telephone, (202) 544-xxxx. The call, delivering a prerecorded voice message offering home repair/handyman services, was placed from phone number (240) 453-xxxx, according to Verizon's records. Return calls to that number revealed the use of automated dialing equipment placing outbound calls at regular intervals.
2. Telephone number (240) 453-xxxx is registered to defendant A[...] R[...] S[...], [address], Rockville, MD 20850. (Telephone numbers (240) 453-aaaa, -bbbb, -cccc, and -dddd are also registered to the same subscriber and address. The first three numbers were all consistently busy throughout the day on November 12.) Montgomery County real property records show defendant ARS as the owner of the residence at that address.
3. Neither I nor any member of my household has any prior relationship, business-related or otherwise, with defendant ARS or with the home repair/handyman service for which his call solicited business. Neither I nor any member of my household has ever given consent, express or implied, to receive such solicitations from defendant ARS or anyone else.

Basis for suit

4. Under DC Code § 22-3226.08,

[i]t is an abusive telemarketing act or practice ... for a seller or telephone solicitor to ... (3) Engage in telephone solicitation to a consumer's residence at any time before 8:00 a.m. and after 9:00 p.m., local time at the place of the consumer called.

DC Code § 22-3226.11 expressly permits a private party aggrieved by a violation of section 22-3226.08 to maintain an action in Superior Court for, inter alia, fees, costs, and punitive damages.

5. Under 47 USC § 227(b)(1)(B), it is unlawful within the United States **“to initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party....”**
6. 47 USC § 227(b)(2) authorizes the Federal Communications Commission to prescribe regulations implementing the requirements of section 227. Those regulations, set forth at 47 CFR § 64.1200,

- **prohibit making telephone solicitation calls to a residential line using prerecorded voice messages without the called party’s consent (§ 64.1200(a)(2));**
- **prohibit making telephone solicitation calls to a residential subscriber before 8 a.m. or after 9 p.m. at the called party’s location (§ 64.1200(e)(1)); and**
- **prohibit making telephone solicitation calls to a residential subscriber unless the caller has implemented minimum standards (including the creation of a written policy) for creating and maintaining a “do not call” list (§ 64.1200(e)(2)(i)-(vi)).**

7. Under 47 USC § 227(b)(3),

[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, [or]

(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

Further, **“if the court finds that the defendant willfully or knowingly violated this subsection or the regulations . . . , 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 subparagraph (B)”** (Note that under 47 USC § 153, “[t]he term ‘State’ includes the District of Columbia.”)

Specific claims asserted

8. Defendant has violated the foregoing statutes and regulations by placing an unsolicited telephone solicitation call to my residence at an unlawful hour (5:24 a.m.) and by making the call by means of prerecorded voice.

Relief sought

9. I ask the Court to award damages in the minimum statutory amount of \$500, together with costs, interest, and such other and further relief as the Court deems appropriate.