

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2020-002880

05/22/2020

HONORABLE JOSEPH P. MIKITISH

CLERK OF THE COURT  
C. Lacey/S. Brown  
Deputy

STATE OF ARIZONA, et al.

MARK JAMES CIAFULLO

v.

VALLEY DELIVERY L L C, et al.

RICHARD K MAHRLE

EVAN GUY DANIELS  
CAMILA ALARCON  
JUDGE MIKITISH

MINUTE ENTRY

ECB 913

10:32 a.m. This is the time set for a telephonic Oral Argument regarding Defendants' Motion to Dismiss filed March 16, 2020. Plaintiffs, Mark Brnovich and the State of Arizona, are represented by counsel, Mark James Ciafullo and Evan Guy Daniels. Defendants, Valley Delivery LLC, My Home Services LLC, Next Day Delivery LLC, Next Day Holdings, LLC, Matthew Willes, and Kristine Willes, are represented by counsel, Richard K. Mahrle and Camila Alarcon. All parties appear telephonically.

A record of the proceedings is made digitally in lieu of a court reporter.

Argument is presented.

Pursuant to the matters discussed,

**IT IS ORDERED** denying Defendants' Motion to Dismiss.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2020-002880

05/22/2020

For the reasons stated on the record,

**IT IS FURTHER ORDERED** denying Defendants' request to dismiss any request for restitution.

A formal written decision shall be forthcoming.

10:55 a.m. Matter concludes.

**LATER ADDED:**

The Court reviewed the Defendants Valley Delivery, et al.'s, Motion to Dismiss, filed March 16, 2020, the Plaintiff State of Arizona's Response, filed April 6, 2020, and the Defendants' Reply filed April 13, 2020, as well as the arguments noted above.

**Facts**

According to the State, the Defendants Valley Delivery and Next-Day Delivery are telemarketing lead generator companies. These companies leave door tags at homes stating "sorry we missed you," along with the company names, callback numbers, and occasionally a disclaimer that indicates that information provided to the company can be used to solicit services. Given the company names, the door tags appear to be from delivery companies. The companies' websites state that they provide delivery services in Arizona and across the country. However, the Defendants in fact do not provide any delivery services. When consumers call the number on the slip, the Defendants collect the homeowners' names, addresses, and phone numbers and offer gift certificates for services from the Defendant My Home Services and its subsidiaries. The contact information is then given to My Home Services and other companies for marketing purposes. There is no delivery that is connected with the transaction.

The Defendants acknowledge that Valley Delivery and Next Day Delivery leave door tags at homes, receive callbacks from homeowners as a result of those door tags, gather information from those homeowners and then use and provide that information for marketing purposes.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2020-002880

05/22/2020

**Analysis**

The State alleges that these activities violate the Arizona Consumer Fraud Act because the Defendants engage in the sale of merchandise, the door tags are misleading, and the Defendants use false representations on their websites.

In their Motion, the Defendants argue that the door tags are not advertisements and therefore are not subject to the Consumer Fraud Act. Under the statute, an advertisement is an attempt to induce a person to acquire an interest in merchandise. A.R.S. §44-1521.1. Defendants argue that the door tags themselves do not attempt to induce any person to acquire any interest in merchandise. The State responds that the Consumer Fraud Act is not limited to advertisements but only that they are “in connection with” the sale or advertisement of merchandise. A.R.S. 44-1522 (A).

The Court finds that the door tags are in connection with the sale or advertisement of merchandise. They are left for the purposes of gathering information which, in turn, is given to telemarketers for purposes of contacting individuals to buy services or products. While the tags themselves do not advertise a product or service, they are only one step removed.

Therefore,

**IT IS ORDERED**, denying the Motion to Dismiss.