



Telephone spam practiced by telemarketing companies: Recognition of compensation for disturbance of the peace

O spam telefônico praticado por empresas de telemarketing: Reconhecimento da indenização por perturbação ao sossego

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ABSTRACT

Telephone spamming by telemarketing companies has become increasingly common in Brazil and around the world, basically consisting of making unwanted calls to offer products or services to potential customers. The problem, and consequently one of the focuses of this research, is the recognition of this practice as an emulative illicit act, since companies use personal information without proper consent, disrespecting the privacy and intimacy of individuals. To make matters worse, the calls are often made outside of business hours, in a repetitive and insistent manner, thus causing inconvenience, annoyance and even financial losses.

Keywords: Telephone Spam, Peace.

RESUMO

O spamming telefônico praticado por empresas de telemarketing tem se tornado cada vez mais comum no Brasil e no mundo, consistindo basicamente na realização de ligações indesejadas para oferecer produtos ou serviços aos potenciais clientes. O problema e, conseqüentemente um dos focos da presente pesquisa, é o reconhecimento dessa prática como um ato ilícito emulativo, uma vez que as empresas utilizam informações pessoais sem o devido consentimento, desrespeitando a privacidade e intimidade dos indivíduos. Para agravar a questão, as ligações são efetuadas muitas vezes fora do horário comercial, de modo repetitivo e insistente, causando, assim, transtornos, incômodos e até mesmo prejuízos financeiros.

Palavras-chave: Spam Telefônico, Sossego.

1 INTRODUCTION

Telephone spamming by telemarketing companies has become increasingly common in Brazil and around the world, basically consisting of making unwanted calls to offer products or services to potential customers. The problem, and consequently one of the focuses of this research, is the recognition of this practice as an emulative illicit act, since companies use personal information without proper consent, disrespecting the privacy and intimacy of individuals. To make matters worse, the calls are often made outside of business hours, in a repetitive and insistent manner, thus causing inconvenience, annoyance and even financial losses.

Given this scenario, and recognizing disturbance of the peace as an injury to a very personal right, which can be understood as a set of rights recognized to each individual as inherent and inalienable to their



human condition, it is important to define the criteria for setting the quantum of compensation in cases of telephone spamming, i.e. the amount that telemarketing companies must pay consumers as compensation for the damage caused. Therefore, one of the aims of this research is to understand how the courts have acted to classify the illegal act and also to establish objective methods for quantifying the compensation resulting from this practice.

Once these points have been overcome, it is necessary to understand how companies obtain such precise and specific data on their customers, to the point of knowing the times they are available, where they live and which services best serve them. To this end, the specificity comes from the massive disclosure of personal information by the Central Bank to telemarketing companies, which collects data instantly when users access digital platforms related in some way to the Central Bank. At this point, records such as the date and time of access, the pages visited, the type of browser, the IP address, the user's location, the action taken, the gender and age group to which the user belongs, the category and model of the device used for access and other hardware and software characteristics are stored in a database. This situation can be considered a violation of privacy and the protection of personal data, as well as exposing the holders of this information to security and fraud risks.

In short, the practice of telephone spam can cause damage to people's privacy, security and peace of mind, and it is possible to recognize compensation for moral damage in cases of violation of personality rights. Therefore, having seen the relevance of the topic for law and society in general, the theme of the subproject can be related to that of the research in which it is inserted, since it addresses issues of identification of the injury to a very personal right, recognition and definition of the quantum of compensation and how they affect the lives of individuals. In order to solve these problems, it is important to analyze how the Code of Civil Procedure ensures these rights, along with complementary laws and court rulings.

2 OBJECTIVE

In general, the aim is to demonstrate that the indiscriminate practice of telephone spamming by telecommunications companies constitutes a civil unlawful act that damages personality rights. In a subsidiary way, to identify which personality rights are harmed by telephone spamming. Furthermore, to analyze the recognition of civil liability on the part of telemarketing companies. And finally, to identify which criteria for quantifying the amount of compensation can be applied to the moral damage caused by telephone spamming.



3 METHODOLOGY

The main method used to reach the results obtained was deduction, which takes as its starting point the study of a broad context, observing a general scenario and analyzing various views on the same topic in order to reach the specifics of a given subject. In this sense, the main sources used were the vast Brazilian and foreign literature on the subject, together with the interpretation of judgments from the main courts, whose decisions involve the practice of telephone spam. In addition, current legislation regulating such issues, namely the Code of Civil Procedure, the General Data Protection Act and the Consumer Code, as well as analogous foreign standards used as a comparison.

Another relevant material was the use of statistical data, obtained through reports extracted from government institutions, in order to gain a more realistic perception of the proportion attributed to the problem. Thus, the need for effective and comprehensive solutions to deal with imposing limits on the practice of telephone spam by telemarketing companies became even clearer, with the aim of minimizing its impacts and promoting significant improvements for individuals, both individually and collectively.

It was therefore qualitative documentary research, aimed at investigating documents in a broad study, considering the context and social characteristics involved. Due to its subjective nature, concrete cases of application of the theses studied were considered, identifying the effects that the imposition of the respective measures had on daily life.

4 DEVELOPMENT

Based on the methodology adopted, it was possible to obtain some results focused on resolving the proposed claims, as well as understanding the problem as a whole. In the first instance, research was carried out in order to identify the occurrence of moral damage in cases of injury to the personality right of individual privacy, an issue studied and recognized by François Terré, a French professor, in his work "Droit Civil: Les Biens". Terré points out that privacy is a right recognized in various legal systems, aimed at protecting the tranquility and peace of people in their domestic or work environment. According to the author, this protection also covers the telephone sphere, since the right to quiet must also be respected when the individual is in contact with the outside world via the telephone.

In this sense, Terré states that the practice of telephone spam, by pestering the individual with unwanted and insistent calls, can constitute an injury to the right of personality of disturbance to the peace and quiet, generating moral damages due to the anguish, stress and discomfort caused to the individual. With regard to identifying the damage, Terré considers that account should be taken not only of the seriousness of the disturbance to the peace and quiet, but also of the specific circumstances of the case, such as the number of calls received, the intensity of the calls, the time at which they are made and the emotional impact caused to the individual.



As a result, studies have been carried out with the aim of classifying criteria for setting the quantum of compensation for these cases, which are dealt with in an illustrious way by Professor Anderson Schreiber, in his book "Curso de Direito Civil - Responsabilidade Civil" (Civil Law Course - Civil Liability). Schreiber points out that the intensity and frequency of the calls, the duration of the disturbance, the degree of embarrassment and distress caused to the victim, any loss of opportunity due to the calls and the agent's intent or fault must be taken into account. On this point, Professor Flávio Tartuce, in his book "Manual de Direito Civil - Volume Único", agrees that in cases of telephone spam, the amount of compensation should be set proportionally, avoiding the amount of compensation being so high as to generate unjust enrichment for the consumer, but also ensuring that it is sufficient to discourage abusive practices on the part of telemarketing companies.

Another result was obtained by analyzing various court judgments around the world. In general, judges have held that the practice of telephone spam violates consumer rights such as privacy and peace of mind. In the US, for example, rules have been established that prohibit companies from making unsolicited calls to consumers who have registered their numbers on do-not-disturb lists. Anyone who violates this rule can be fined up to 42,530 dollars per call. Similarly, in the European Union, consumers have the right to ask for calls to be stopped at any time. In Brazil, the practice is considered illegal, but the mechanism for resolving disputes, called "do not disturb", is inefficient, as companies need to register voluntarily on the platform beforehand, i.e. if the agent has not signed up to do not disturb, the measure will be of no use. In this sense, several court judgments were collected in which the victims' rights were recognized, leading to the payment of compensation for moral damages.

Another prospect is the massive disclosure of customers' personal information by the Central Bank. In a study carried out in 2021, it was found that the personal information of more than 223 million people was given out, with the aim of fostering competition and encouraging more accessible financial services. However, as well as encouraging the practice of telephone spam, this increases the risk of fraud and financial crime.

5 FINAL CONSIDERATIONS

For now, we can conclude that consumers affected by the practice of telephone spam should seek their rights and demand compensation for the damage caused. It is essential that telemarketing companies respect consumers' privacy and use their personal data only with their consent. However, it is necessary for the Central Bank to adopt security and privacy measures that guarantee the protection of data subjects, in order to impose limits on this indiscriminate disclosure.



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