

889 F.3d 116, *, 2018 U.S. App. LEXIS 11909, **

Classmates International, Inc., FTD Group, Inc., Memory Lane, Inc., Defendants.**No. 16-3292-cv****UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT****889 F.3d 116; 2018 U.S. App. LEXIS 11909****October 27, 2017, Argued
May 7, 2018, Decided**

PRIOR HISTORY: [****1**] Seven former participants in online discount membership programs allege violation of federal privacy statutes and a racketeering conspiracy between online retailers and loyalty club businesses to defraud customers of "membership fees" for rewards programs they unwittingly joined. They allege that Trilegiant Corporation conspired with e-merchant retailers such as Buy.com, Orbitz, and Priceline to enroll the retailers' customers in the discount programs via deceptive post-transaction marketing and datapass techniques. We conclude that, because the appellants fail to raise a material issue of fact as to whether they consented to enrollment in the membership programs, the prohibitions of the Electronic Communications Privacy Act do not apply; and because the appellants identify no actionable fraud, they cannot proceed on a theory of racketeering. In re Trilegiant Corp., 11 F. Supp. 3d 132, 2014 U.S. Dist. LEXIS 42572 (D. Conn., Mar. 28, 2014)

DISPOSITION: Affirmed.

CASE SUMMARY:

OVERVIEW: HOLDINGS: [1]-The district court properly granted summary judgment against participants in online discount membership programs on their claims for violations of the Electronic Communications Privacy Act, 18 U.S.C.S. § 2511, because the consent exception applied where enrollment pages displayed text informing customers that they were authorizing release of their information for enrollment in programs and billing; [2]-The participants' RICO claims also failed because the elements of mail and wire fraud were not pled with sufficiently particularity under Fed. R. Civ. P. 9(b); [3]-Summary judgment was proper on Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110, and unjust enrichment claims because participants freely entered into the membership agreements and were not entitled to refunds of legitimate past fees.

OUTCOME: Judgment affirmed.

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