

United States Court of Appeals,  
Eighth Circuit.  
AMERIGUARD, INC., Appellant,

v.

UNIVERSITY OF KANSAS MEDICAL CENTER RESEARCH INSTITUTE, INC.,  
Appellee.

No. 06-2912.

Submitted: Feb. 12, 2007.

Filed: March 15, 2007.

\*530 Appeal from the United States District Court for the Western District of Missouri.  
Lyle M. Gregory, Raymore, MO, John Richard McEachern, Karl W. Dickhaus,  
McEachern & Dickhaus, argued, St. Louis, MO, for Appellant.

Russell Scarritt Jones, Jr., Travis Lee Salmon, Shughart & Thomson, argued, Kansas  
City, MO, for Appellee.

Before RILEY, MELLOY, and SHEPHERD, Circuit Judges.

[UNPUBLISHED]

PER CURIAM.

\*\*1 Ameriguard, Inc., appeals the district court's FN1 dismissal of its Telephone  
Consumer Protection Act ("TCPA"), 47 U.S.C. § 227, complaint against University of  
Kansas Medical Center Research Institute, Inc., ("Institute").

FN1. The Honorable Ortrie D. Smith, United States District Judge for the Western  
District of Missouri.

Ameriguard alleged that the Institute violated the TCPA by sending an "unsolicited  
advertisement" via telephone facsimile machines and attached a copy of the facsimile to  
its complaint as an exhibit. The complaint was initially filed in Missouri state court but  
was removed by the Institute to federal court. Following removal, the Institute filed a  
motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) alleging that the  
complaint should be dismissed for failure to state a claim upon which relief could be  
granted because the attached facsimile did not meet the statutory definition of an  
"unsolicited advertisement."

The TCPA provides that an "unsolicited advertisement" is "any material advertising the  
commercial availability or quality \*531 of any property, goods, or services which is  
transmitted to any person without that person's prior express invitation or permission, in  
writing or otherwise." 47 U.S.C. § 227(a)(5) (2005). Applying the definition set forth in

the TCPA, the district court found that the facsimile did not meet the definition of an “unsolicited advertisement” and granted the motion to dismiss.

Having carefully reviewed the record, see *Quinn v. Ocwen Fed. Bank FSB*, 470 F.3d 1240, 1244 (8th Cir.2006) (per curiam) (de novo standard of review), we agree with the district court that Ameriguard failed to state a claim upon which relief could be granted because the facsimile attached to the complaint does not constitute an “unsolicited advertisement” pursuant to the TCPA. See 47 U.S.C. § 227(a)(5) (defining unsolicited advertisement); *Abels v. Farmers Commodities Corp.*, 259 F.3d 910, 921 (8th Cir.2001) (materials attached to the complaint may be considered when ruling on a Rule 12(b)(6) motion to dismiss).

Accordingly, we affirm. See 8th Cir. R. 47B.

C.A.8 (Mo.),2007.

*Ameriguard, Inc. v. University of Kansas Medical Center Research Institute, Inc.*  
222 Fed.Appx. 530, 2007 WL 763969 (C.A.8 (Mo.))