



**FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

January 22, 2004

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
AND FACSIMILE**

William T. Ficka, III
The Ficka Companies, Inc.
d.b.a. Ficka Co., Inc.
d.b.a. Nicole, Thomas & Associates
d.b.a. USA Debt Recovery
d.b.a. IDCC Worldwide, Inc.
d.b.a. International Debt Collectors
Consortium, Inc.
7301 Topanga Canyon Boulevard, Suite 205
Canoga Park, California 91303

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Consortium, Inc.
5238 Beckford Avenue
Tarzana, California 91356

William T. Ficka, III
955 Downtowner Boulevard, Suite 117
Mobile, Alabama 36609-5421

RE: EB-04-TC-011

Dear Mr. Ficka:

This is an official **CITATION** and **LETTER OF INQUIRY** issued pursuant to sections 4(i), 403, and 503(b)(5) of the Communications Act, as amended (the Act), 47 U.S.C. §§ 154(i),

403, 503(b)(5), for violations of the Act and the Federal Communications Commission's rules that govern telephone solicitations and unsolicited advertisements.¹

It has come to our attention that you apparently sent one or more unsolicited advertisements to telephone facsimile machines in violation of section 227(b)(1)(C) of the Act and section 64.1200(a)(3) of the Commission's rules. The purpose of this correspondence is (1) to inform you of your potential liability for monetary forfeitures if you continue to send unsolicited fax advertisements, and (2) to gather information regarding your business's corporate structure, business relationships, and involvement in advertising practices that fall under section 227 of the Act and section 64.1200 of the Commission's rules.

As set forth below, we direct you to respond to this Citation and Letter of Inquiry by providing the information and documents specified below no later than 30 days after the date of this correspondence.

I. CITATION FOR APPARENT VIOLATIONS OF THE TCPA

Materials attached to this Citation and Letter of Inquiry indicate that you apparently sent unsolicited advertisements to telephone facsimile machines. Under section 227(b)(1)(C) of the Act and section 64.1200(a)(3) of the Commission's rules it is "unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States . . . to use a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine."²

The term "unsolicited advertisement" is defined in the Act and the Commission's rules as "any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission."³ Under Commission rules and orders currently in effect, the Commission considers

¹ 47 U.S.C. § 227; 47 C.F.R. § 64.1200. A copy of these provisions is enclosed for your convenience. Section 227 was added to the Communications Act by the Telephone Consumer Protection Act of 1991 and is most commonly known as the TCPA. The TCPA and the Commission's parallel rules restrict a variety of practices that are associated with telephone solicitation and use of the telephone network to deliver unsolicited advertisements, including fax advertising.

² 47 U.S.C. § 227(b)(1)(C); 47 C.F.R. § 64.1200(a)(3). Both the TCPA and the Commission's rules define "telephone facsimile machine" as "equipment which has the capacity to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line, or to transcribe text or images (or both) from an electronic signal received over a regular telephone line onto paper." 47 U.S.C. § 227(a)(2); 47 C.F.R. § 64.1200(f)(8). The Commission has stated that "[t]he TCPA's definition of 'telephone facsimile machine' broadly applies to any equipment that has the capacity to send or receive text or images." Thus, "faxes sent to personal computers equipped with, or attached to, modems and to computerized fax servers are subject to the TCPA's prohibition on unsolicited faxes. . . [although] the prohibition does not extend to facsimile messages sent as email over the Internet." *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14014, 14131-32 (2003) (*2003 TCPA Report and Order*).

³ 47 U.S.C. § 227(a)(4); 47 C.F.R. § 64.1200(f)(10).

an established business relationship between a fax sender and recipient to constitute prior express invitation or permission to send a facsimile advertisement.⁴ Mere distribution or publication of a fax number, however, does not establish consent to receive advertisements by fax.⁵

If, after receipt of this citation, you violate the Communications Act or the Commission's rules in any manner described herein, the Commission may impose monetary forfeitures not to exceed \$11,000 for each such violation or each day of a continuing violation.⁶

You may respond to this citation within 30 days from the date of this letter either through (1) a personal interview at the Commission's Field Office nearest to your place of business, or (2) a written statement. Your response should specify the actions that you are taking to ensure that you do not violate the Commission's rules governing telephone solicitation and unsolicited advertisements, as described above.

The nearest Commission field office appears to be either the Los Angeles Office at Cerritos Corporate Towers, 18000 Studebaker Road, Room 660, Cerritos, California 90703-2692 or the Atlanta Office at 3575 Koger Boulevard, Room 320, Duluth, Georgia 30096-4958. You can contact the Los Angeles Office or Atlanta Office by telephone at (562) 860-7474 or (770) 935-3370, respectively. You should schedule any interview to take place within 30 days of the date of this letter. You should send any written statement within 30 days of the date of this letter to the undersigned, as specified below.

Reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need including as much detail as you can. Also include a way we can contact you if we need more information. Please allow at least 5 days advance notice; last minute requests will be accepted, but may be impossible to fill. Send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau:

⁴ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Memorandum Opinion and Order, 10 FCC Rcd 12391, 12405 (1995) (*1995 TCPA Reconsideration Order*). In June 2003, the Commission amended its rules to specify that prior express invitation or permission to receive a facsimile advertisement must be recorded in a "signed written statement that includes the facsimile number to which any advertisements may be sent and clearly indicates the recipient's consent to receive such facsimile advertisements from the sender." *2003 TCPA Report and Order*, 18 FCC Rcd at 14124-28 (adopting new section 64.1200(a)(3)(i). This new provision, which supercedes the established business relationship exception, is scheduled to take effect January 1, 2005. *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Order on Reconsideration, 18 FCC Rcd 16972 (2003); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Order, FCC 03-230 (rel. Oct. 3, 2003). The Commission currently is considering petitions that seek to retain the established business relationship exception or require methods other than a signed written statement to demonstrate prior express consent to receive fax advertising.

⁵ *1995 Reconsideration Order*, 10 FCC Rcd at 12408-09; see also *2003 TCPA Report and Order*, 18 FCC Rcd at 14128 (concluding that publication of a fax number in a trade publication or directory does not demonstrate consent to receive fax advertising).

⁶ See 47 C.F.R. § 1.80(b)(3).

For sign language interpreters, CART, and other reasonable accommodations:
202-418-0530 (voice), 202-418-0432 (tty);

For accessible format materials (braille, large print, electronic files, and audio format): 202-418-0531 (voice), 202-418-7365 (tty).

II. INQUIRY REGARDING CORPORATE STRUCTURE, BUSINESS RELATIONSHIPS, AND ADVERTISING PRACTICES

Instructions

If the Companies request that any information or Documents, as defined herein, responsive to this letter be treated in a confidential manner, they shall submit, along with all responsive information and Documents, as defined herein, a statement in accordance with Section 0.459 of the Commission's rules. 47 C.F.R. § 0.459. Requests for confidential treatment must comply with the requirements of Section 0.459, including the standards of specificity mandated by Section 0.459(b). Accordingly, "blanket" requests for confidentiality of a large set of documents are unacceptable. Pursuant with Section 0.459(c), the Bureau will not consider requests that do not comply with the requirements of Section 0.459.

If the Companies withhold any information or Documents under claim of privilege, they shall submit, together with any claim of privilege, a schedule of the items withheld that states, individually as to each such item, the numbered inquiry to which each item responds and the type, title, specific subject matter, and date of the item; the names, addresses, positions, and organizations of all authors and recipients of the item; and the specific ground(s) for claiming that the item is privileged.

Each requested Document not subject to a claim of privilege shall be submitted in its entirety, even if only a portion of that Document is responsive to an inquiry made herein. This means that the Document shall not be edited, cut, or expunged, and shall include all appendices, tables, or other attachments, and all other Documents referred to in the Document or attachments. All written materials necessary to understand any Document responsive to these inquiries must also be submitted.

If a Document responsive to any inquiry made herein existed but is no longer available, or if the Companies are unable for any reason to produce a Document responsive to any inquiry, identify each such Document by author, recipient, date, title, and specific subject matter, and explain fully why the Document is no longer available or why the Companies are otherwise unable to produce it.

With respect only to Documents responsive to the specific inquiries made herein and any other Documents relevant to those inquiries, the Companies are directed to retain the originals of those Documents for twenty-four (24) months from the date of this letter unless (1) the Companies are directed or informed by the Enforcement Bureau in writing to retain such Documents for some other period of time or (2) the Enforcement Bureau and/or the Commission

releases any item on the subject of this investigation, including, but not limited to, a Notice of Apparent Liability for Forfeiture or an order disposing of the issues in the investigation, in which case, the Companies must retain all such Documents until the matter has been finally concluded by payment of any monetary penalty, satisfaction of *all* conditions, expiration of all possible appeals, conclusion of any collection action brought by the United States Department of Justice or execution and implementation of a final settlement with the Commission or the Enforcement Bureau.

The specific inquiries made herein are continuing in nature. The Companies are required to produce in the future any and all Documents and information that are responsive to the inquiries made herein but not initially produced at the time, date and place specified herein. In this regard, the Companies must supplement its responses (a) if the Companies learn that, in some material respect, the Documents and information initially disclosed were incomplete or incorrect or (b) if additional responsive Documents or information are acquired by or become known to the Companies after the initial production. The requirement to update the record will continue for twenty-four (24) months from the date of this letter unless (1) the Companies are directed or informed by the Enforcement Bureau in writing that the Companies' obligation to update the record will continue for some other period of time or (2) the Enforcement Bureau and/or the Commission releases an item on the subject of this investigation, including, but not limited to, a Notice of Apparent Liability for Forfeiture or an order disposing of the issues in the investigation, in which case the obligation to update the record will continue until the release of such item.

For each Document or statement submitted in response to the inquiries below, indicate, by number, to which inquiry it is responsive and identify the person(s) from whose files the Document was retrieved. If any Document is not dated, state the date on which it was prepared. If any Document does not identify its author(s) or recipient(s), state, if known, the name(s) of the author(s) or recipient(s). The Companies must identify with reasonable specificity all Documents provided in response to these inquiries.

Unless otherwise indicated, the period of time covered by these inquiries begins January 1, 1999 and ends with the date of the Companies' response.

Definitions

For purposes of this Letter of Inquiry, the following definitions apply:

"Any" shall be construed to include the word "all," and the word "all" shall be construed to include the word "any." Additionally, the word "or" shall be construed to include the word "and," and the word "and" shall be construed to include the word "or." The word "each" shall be construed to include the word "every," and the word "every" shall be construed to include the word "each."

"Document" shall mean the complete original (or in lieu thereof, exact copies of the original) and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any taped, recorded, transcribed, written, typed, printed, filmed, punched, computer-stored, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated, or made, including but not limited to any advertisement, book, pamphlet, periodical, contract, correspondence, letter, facsimile, e-mail, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, photograph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, marketing plan, research paper, preliminary drafts, or versions of all of the above, and computer material (print-outs, cards, magnetic or electronic tapes, disks and such codes or instructions as will transform such computer materials into easily understandable form).

"Companies" shall include each company as noted on page 1 of this letter, and any predecessor-in-interest, successor-in-interest, affiliate, parent company, any wholly or partially owned subsidiary, or other affiliated company(s) or business(es), and all owners, including but not limited to, partners or principals, and all directors, officers, employees, or agents, including consultants and any other persons working for or on behalf of the foregoing at any time during the period covered by this letter.

C. Documents and Information to be Provided

1. Provide the following information:

- a. The name, address, and telephone number for each corporate officer, owner, and/or partner of the Companies;
- b. The address and telephone number of each of the Companies' corporate headquarters and any other address and telephone number at which the Companies conduct business;
- c. Any name other than that noted on page 1 of this letter under which the Companies conduct business;

Provide articles of incorporation and any other documents that record or relate to the Companies' registration to conduct business within any state in the United States.

2. Describe in detail any business relationship between, or business activities or transactions that involve, either William T. Ficka, III or the Companies.
3. Describe in detail any business relationship between, or business activities or transactions that involve, either William T. Ficka, III or the Companies and the following entities⁷ or

⁷ Each entity shall encompass, to the extent they are known to you, any affiliate, d/b/a, parent companies, any wholly or partially owned subsidiary, or other affiliated companies or businesses, and all directors, officers, employees, or agents, including consultants and any other persons working for or on behalf of the foregoing at any time during the period covered by this letter.

individuals, including any fictitious entities or individuals operating ordinary business under the following names:

- a. Debt Collectors International, Inc.
- b. Mancini, O'Malley & Cole;
- c. Debt Recovery International, Inc.;
- d. Conlon, Cahill & Murphy;
- e. Thomas, Thomas, Alexis & Lynn;
- f. Campbell, Campbell, Drexler & Gates;
- g. Ashton, Ashton, O'Riley & Schwartz;
- h. Karla Brown
- i. Melissa Midkiff;
- j. Jim W. Zeigler;
- k. Rudolph Stearnes, III;
- l. Kyle Holder;
- m. William "Bill" Thomas;
- n. William G. Jones, III;
- o. Theodore Hust;
- p. Robert Nieto;

Provide any relevant documents that relate to such relationships, activities, or transactions.

4. Describe any information regarding fax advertising, including offers to sell fax numbers, generated by or on behalf of William T. Ficka, III or the Companies.
5. Describe any information regarding fax advertising either received by William T. Ficka, III or the Companies from, or provided by the William T. Ficka, III or Companies to, the entities or individuals listed above in 2(a)-(p). Provide any relevant documents.

We encourage you to furnish any additional documents or provide a statement of any other facts that you believe may be relevant to this inquiry.

Finally, you are directed to provide an affidavit or declaration pursuant to 28 U.S.C. § 1746 and 47 C.F.R. § 1.16, signed by an authorized officer of your company, which states that all of the documents and information requested by this letter which are in your possession, custody, control, or knowledge have been produced, and which certifies that the information produced is true and correct. You should be aware that the knowing and willful making of any false statement, or the concealment of any material fact, in reply to this Citation and Letter of Inquiry is punishable by fine or imprisonment under 18 U.S.C. § 1001.

Your response to this inquiry and any written response to the citation should be submitted no later than 30 days from the date of this letter to:

Kurt A. Schroeder
Deputy Chief
Telecommunications Consumers Division
Enforcement Bureau
Federal Communications Commission
445-12th Street, S.W.
Rm. 3-C366
Washington, D.C. 20554

Reference EB-04-TC-011 when corresponding with the Commission.

Under the Privacy Act of 1974, 5 U.S.C. § 552(a)(e)(3), we are informing you that the Commission's staff will use all relevant material information before it, including information that you disclose in your interview or written statement in response to the Citation and Letter of Inquiry, to determine what, if any, enforcement action is required to ensure your compliance with the Communications Act and the Commission's rules.

The knowing and willful making of any false statement, or the concealment of any material fact, in reply to this citation is punishable by fine or imprisonment under 18 U.S.C. § 1001.

Thank you in advance for your anticipated cooperation. You may contact Mary Romano at (202) 418-0975 or Mr. Schroeder at (202) 418-0966 if you have any questions about this inquiry.

Sincerely,

Kurt A. Schroeder
Deputy Chief, Telecommunications Consumers Division
Enforcement Bureau
Federal Communications Commission

Enclosures