

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Rules and Regulations Implementing the Telephone)	
Consumer Protection Act of 1991)	CG Docket No. 02-278
)	
Junk Fax Prevention Act of 2005)	CG Docket No. 05-338
)	
)	
)	

ANNUAL REPORT ON UNSOLICITED FACSIMILE ADVERTISEMENTS

Adopted: January 4, 2007

Released: January 4, 2007

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this item, the Federal Communications Commission (“FCC” or “Commission”), through the Enforcement Bureau, reports to Congress regarding complaints received and enforcement undertaken with respect to unsolicited facsimile advertisements, as required by the Junk Fax Prevention Act of 2005.¹

II. BACKGROUND

2. On July 9, 2005, President George W. Bush signed the Junk Fax Prevention Act into law, amending section 227 of the Communications Act of 1934 (“the Act”) with respect to unsolicited facsimile advertisements. Section 227 was originally added to the Act in 1991, codifying the Telephone Consumer Protection Act of 1991 (“TCPA”). This section addressed the growing number of telephone marketing calls and certain telemarketing practices thought to be an invasion of consumer privacy, including the sending of unsolicited advertisements to telephone facsimile machines.² Among the provisions contained in the TCPA is section 227(b)(1)(C), which prohibits the use of any telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine. An “unsolicited advertisement” is “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, in writing or

¹ Junk Fax Prevention Act of 2005, Pub. L. No. 109-21, 119 Stat. 359 (2005).

² Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), *codified at* 47 U.S.C. § 227.

otherwise.”³

3. In 1992, the Commission adopted section 64.1200 of the rules to implement the TCPA’s protective telemarketing restrictions.⁴ In section 64.1200(a)(3), the Commission incorporated verbatim the TCPA’s general prohibition on the sending of facsimile advertisements without the recipient’s prior express invitation or permission. The Commission nonetheless determined that an established business relationship (“EBR”) between a fax sender and recipient indicates the necessary invitation or permission for an otherwise unsolicited fax advertisement to be sent.⁵

4. The Junk Fax Prevention Act: (1) mandates the EBR exemption,⁶ (2) provides a definition of an EBR to be used in the context of unsolicited facsimile advertisements⁷ and standards for the application of the EBR to permit the sending of unsolicited facsimile advertisements; (3) requires the sender of a facsimile advertisement to provide specified notice and contact information on the facsimile that allows the recipient to “opt-out” of any future facsimile advertisements from the sender,⁸ and (4) establishes requirements for

³ 47 U.S.C. § 227(a)(5). The Junk Fax Prevention Act added the final phrase “in writing or otherwise” to the definition of “unsolicited advertisement.” Prior to 2005, therefore, the definition did not include that specification regarding prior express invitation or permission to transmit an advertisement. *See* n. 5, *infra*.

⁴ 47 C.F.R. § 64.1200; *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 7 FCC Rcd 8752 (1992) (*1992 TCPA Order*).

⁵ *1992 TCPA Order*, 7 FCC Rcd at 8779, n. 87. In 2003, the Commission reversed this determination, concluding instead that a recipient’s prior express permission must be in writing and include the recipient’s signature. *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14014, 14127-29 (2003). The Commission stayed the effective date of this requirement during reconsideration before the Commission and Congressional consideration of the Junk Fax Prevention Act. *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Order on Reconsideration, 18 FCC Rcd 16972, 16974-75 (2003); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Order, 19 FCC Rcd 20125 (2004); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Order, 20 FCC Rcd 11424 (2005); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 – Junk Fax Prevention Act of 2005*, Notice of Proposed Rulemaking and Order, 20 FCC Rcd 19758, 19772 (2005). Enactment of the Junk Fax Prevention Act, including the revised definition of an “unsolicited advertisement,” effectively overrules the stayed 2003 rule requiring written and signed express permission. Junk Fax Prevention Act, Sec. 2(g); *see* n. 3, *supra*.

⁶ Junk Fax Prevention Act, Sec. 2(a).

⁷ Junk Fax Prevention Act, Sec. 2(b); 47 U.S.C. § 227(b)(2). To implement the statutory requirements, the Commission amended the rules to specify that for purposes of sending of facsimile advertisements, the term “established business relationship” means “a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a business or residential subscriber with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the business or residential subscriber regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party.” 47 C.F.R. § 64.1200(f)(5); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 – Junk Fax Protection Act of 2005*, Report and Order and Third Order on Reconsideration, 21 FCC Rcd 3787, 3812 (2006) (*2006 Junk Fax Prevention Act Report and Order*).

⁸ Junk Fax Prevention Act, Sec. 2(c).

fax recipients who seek to exercise their “opt-out” rights.⁹ On April 5, 2006, the Commission amended section 64.1200 consistent with the requirements of the Junk Fax Prevention Act.¹⁰ The amended rules went into effect on August 1, 2006.

5. Section 3 of the Junk Fax Prevention Act requires the Commission to submit an annual report to Congress regarding enforcement of Commission rules relating to the transmission of unsolicited facsimile advertisements.¹¹ Section 3 states:

(g) JUNK FAX ENFORCEMENT REPORT.--The Commission shall submit an annual report to Congress regarding the enforcement during the past year of the provisions of this section relating to sending of unsolicited advertisements to telephone facsimile machines, which report shall include—

- (1) the number of complaints received by the Commission during such year alleging that a consumer received an unsolicited advertisement via telephone facsimile machine in violation of the Commission's rules;
- (2) the number of citations issued by the Commission pursuant to section 503 during the year to enforce any law, regulation, or policy relating to sending of unsolicited advertisements to telephone facsimile machines;
- (3) the number of notices of apparent liability issued by the Commission pursuant to section 503 during the year to enforce any law, regulation, or policy relating to sending of unsolicited advertisements to telephone facsimile machines;
- (4) for each notice referred to in paragraph (3)--
 - (A) the amount of the proposed forfeiture penalty involved;
 - (B) the person to whom the notice was issued;
 - (C) the length of time between the date on which the complaint was filed and the date on which the notice was issued; and
 - (D) the status of the proceeding;
- (5) the number of final orders imposing forfeiture penalties issued pursuant to section 503 during the year to enforce any law, regulation, or policy relating to sending of unsolicited advertisements to telephone facsimile machines;
- (6) for each forfeiture order referred to in paragraph (5)--

⁹ *Id.*, Sec. 2(d).

¹⁰ *2006 Junk Fax Prevention Act Report and Order*, 21 FCC Rcd 3787.

¹¹ Junk Fax Prevention Act, Sec. 3; 47 U.S.C. § 227(g).

(A) the amount of the penalty imposed by the order;

(B) the person to whom the order was issued;

(C) whether the forfeiture penalty has been paid; and

(D) the amount paid;

(7) for each case in which a person has failed to pay a forfeiture penalty imposed by such a final order, whether the Commission referred such matter for recovery of the penalty; and

(8) for each case in which the Commission referred such an order for recovery--

(A) the number of days from the date the Commission issued such order to the date of such referral;

(B) whether an action has been commenced to recover the penalty, and if so, the number of days from the date the Commission referred such order for recovery to the date of such commencement; and

(C) whether the recovery action resulted in collection of any amount, and if so, the amount collected.

6. This first report covers the one-year period immediately following enactment of the Junk Fax Prevention Act: from July 9, 2005 through July 9, 2006.¹²

III. ENFORCEMENT ACTIONS REGARDING THE SENDING OF UNSOLICITED ADVERTISEMENTS TO TELEPHONE FACSIMILE MACHINES IN VIOLATION OF THE ACT AND THE COMMISSION'S RULES: JULY 9, 2005 – JULY 9, 2006

A. Complaints

7. The Commission is committed to taking effective action to protect consumers from junk fax violators.¹³ Individuals, businesses, and others can submit complaints about the receipt of unsolicited facsimile advertisements, or “junk faxes,” to the Commission by e-mail, postal mail, fax, telephone, or the Internet (using an on-line complaint form – Form 475 – that appears on the Commission’s web site). Complaints submitted to the Commission often refer to the receipt of multiple unsolicited facsimile

¹² Because the rule amendments mandated and authorized by the Junk Fax Prevention Act did not take effect until after this time period, this report covers enforcement actions undertaken under the earlier version of the Commission’s rules.

¹³ See Letter from Kevin J. Martin, Chairman, FCC, to Senator Susan M. Collins, Chairwoman, Committee on Homeland Security & Governmental Affairs (June 2, 2006) (stating that the Commission is taking several actions to improve the efficiency of the junk fax enforcement process).

advertisements from different entities. Thus, a single complaint frequently represents multiple alleged violations of the TCPA and the Commission's rules. In virtually all cases, the telephone numbers used in the advertisements are the only pieces of information that potentially connect the sender to the particular advertisement. Accordingly, these numbers are critical to the Commission's ability to address alleged violations.

8. During the period July 9, 2005 through July 9, 2006, the Commission received 47,704 junk fax complaints representing 102,004 alleged violations. The Commission has fully addressed nearly 85 percent of the 102,004 alleged violations. By "fully addressed," we mean that a citation was issued against the entities responsible for the alleged violations in a complaint; the violations alleged have been found to be non-actionable because the complaint failed to provide any information to identify the alleged violator; or the complaint lacked necessary, corresponding information to support a citation.

B. Citations

9. The Commission, through the Enforcement Bureau's Telecommunications Consumers Division, has issued 125 citations since July 9, 2005. These citations were issued against entities using telephone numbers associated with 59 percent of the potentially actionable violations.

10. The Commission is continuing to process the remaining balance of violations. Because the method employed by the Commission permits enforcement action to be taken first against violators associated with the most frequently occurring telephone numbers, this balance typically reflects complaints often associated with only one alleged violation and a discrete telephone number. The citations that have been issued are listed below.

ENTITY CITED	CITATION DATE
Adventure Marketing d.b.a. Travel Center Corporation d.b.a. Corporate Travel Center d.b.a. Corporate Rate Travel Center	6/16/06
Affordable American Healthcare d.b.a. AHB consulting	7/21/06
All the Best Vacations	9/11/06
Alliance Healthcare LLC	3/16/06
America's Toner a.k.a. American Toner a.k.a. Fiducia, Inc.,	7/21/06
American Designers & Builders	11/30/06
American Insurance	9/11/06
American Life Health Center	11/30/06
American Turf Equipment	9/11/06
Amerilist	11/30/06
Aras Marketing	10/19/06

ENTITY CITED	CITATION DATE
Ariant Solutions	10/24/06
BCJR, Inc.	12/22/05
Blaze Marketing	10/20/06
Blue Networks	9/11/06
Brett Hiatt d.b.a. Ryke	9/11/06
Briar Rose Company d.b.a. 48 Long Stems	11/30/06
Bruce Plastics	9/11/06
Business Payment Systems, LLC	11/8/06
Capital Health & Dental	10/2/06
C.N.A. Mortgage Group d.b.a. 1 st Place Mortgage	11/1/06
COA Networks	9/11/06
Construction Expo, Inc.	10/24/06
Cornerstone Management Enterprises	12/6/06
Cost Crunch, Inc.	9/11/06
Cyberdata, Inc.	2/15/06
D.P. Martin & Associates, Inc.	6/15/06
DAB Sales, Inc. d.b.a. The Engineered Solution	7/29/05
Darin Whitney/Ifkey/Integrity	9/11/06
Debo Oke/Modena Int'l	9/11/06
Diamond Voice Messaging	3/31/06
Didar Khalsa	9/11/06
Digital Business Designs	11/30/06
Doctorplan	11/7/05
E. Speed Mortgage Dot Com, LLC	11/15/06
ELI, Inc. a.k.a. Extreme Leads, Inc.	6/14/06
Emmerich Group	9/11/06
Exectech of Florida, LLC	11/17/06
FastTrack Financial	10/20/06
Fax Marketing Corporation	10/26/05
Fleet Pro, USA	12/5/06
Florida Enterprises, Inc.	5/26/06
Foresight Marketing	5/26/06
Global Business Acquisitions, Inc.	12/20/05
Global Marketing Network, Inc.	11/17/06
GP Marketing, Inc.	7/17/06
Guardian Communications, Inc.	3/16/06
H&H Trading	10/20/06
Home Video Experts	9/11/06

ENTITY CITED	CITATION DATE
Homefield Financial, Inc. a.k.a. Homefield Financial – First Haven, Inc. d.b.a. Pacific Coast Funding d.b.a. Discount Funding	8/30/06
Hosting Svcs/CI Hot.com	9/11/06
Ian Shere	9/11/06
Infasource.com d.b.a. Infasource, Inc.	5/12/06
Intercoast Marketing a.k.a. Corporate, Inc./Intercoast Marketing	3/27/06
J. Riesebeck	9/11/06
JAK Productions	9/11/06
Japheth Paramanandam	9/11/06
Jason Abraham	6/28/06
Jeff Casey	9/11/06
Kenneth London	9/11/06
Kilner Mortgage Group, Inc.	6/2/06
Link Point Marketing, Inc. a.k.a. Capitol Corporate Services, Inc.	11/2/05
Local Point Financial	6/23/06
Lou Schienhoft/A-1 Locks	9/11/06
Mario's Roofing	12/14/05
Matrix LS, Inc.	10/4/05
Meridian Marketing Group	10/20/06
Mexico Marketing LLC	6/30/06
Mike Hatley/LG&D	9/11/06
Modena Mortgage Solutions and Modena Advertising, Inc	8/31/06
Money Warehouse	10/19/06
Mortgage Connection	10/24/06
Mountain Valley Teleservices	9/11/06
Muhlstocker & Holzwanger	9/11/06
N2itivel Innovations	9/11/06
National Business Information Corporation	8/31/05
National Seminars	11/1/06
New Prospect Marketing	5/17/06
Newtech Resources	10/20/06
Nextasys Corporation	5/5/06
Nitt Enterprises, Inc.	1/23/06
NULIFE Resource Development Corporation	10/26/05
Omega Group Healthnetz	9/11/06
On Demand Marketing, LLC	10/26/06

ENTITY CITED	CITATION DATE
OWW Liquidators, LLC a.k.a. Case Furniture & Design, LLC	8/28/06
Pacific Shores Realty	9/11/06
Pacific West	9/11/06
PATLive, Inc.	12/5/06
Performance Roofing	2/10/06
Peter Roberto	9/11/06
Pinnacle Surety	11/7/06
Premiere Global Services, Inc.	8/29/06
Prime Communications	8/1/05
Private Page, Inc.	10/24/06
Progressive Business	9/11/06
Promotional Marketing	2/1/06
Promotions International LTD	4/21/06
R & M Marketing d.b.a. BCS Debt Collection Services	11/17/06
Red Rose International LTD d.b.a. Blue Jay, Inc.	6/12/06
Response Card Marketing	9/11/06
Rick Seargent/Digital Call	9/11/06
RMG Communications	9/11/06
Shielding Steel	10/19/06
SMC, LLC	10/12/05
SNIC Travel	5/5/06
The Hot Lead LLC a.k.a. The Hot Lead Company	5/5/06
The Phoenix Lending Group, Inc. a.k.a. Phoenix Lending Group, Inc.	4/14/06
TJS Brokerage	9/11/06
Today's Choice Marketing	9/11/06
Trinity Marketing	9/11/06
Troescher Typing Service	1/6/06
Turner Mortgage	9/11/06
U.S. Steel and Aluminum a.k.a. Steel Building and Structure Systems	10/25/06
United Commercial Mortgage	9/11/06
United Copy Systems	9/11/06
Universal Roofing	9/11/06
Ureach Tech	9/11/06
US Marketing, Inc.	10/20/06
US Seminar a.k.a. U S Seminar Corporation	3/31/06
VacuVent	9/11/06

ENTITY CITED	CITATION DATE
Venali, Inc./VL.Net Technology	9/11/06
Victory Star Realty	9/11/06
Vox Systems	6/15/06
West Fax, Inc. d.b.a. Smart voice.	8/29/06
Wholesale Connection Company a.k.a. WCC Services a.k.a. Call Centers of America Corporation	7/14/06

C. Notices of Apparent Liability for Forfeiture

11. During the period of July 9, 2005 through July 9, 2006, the Commission issued one Notice of Apparent Liability for Forfeiture (NAL), proposing a civil forfeiture penalty of \$776,500 against First Choice Healthcare, Inc. (First Choice),¹⁴ for violations of section 227(b)(1)(C) of the Act and section 64.1200(a)(3) of the rules. The NAL addresses 98 unsolicited facsimile advertisements sent by First Choice to 37 businesses and individuals without either the recipients' prior express invitation or permission or an EBR. The Commission received complaints from these 37 fax recipients between 138 and 364 days prior to issuance of the First Choice NAL on February 28, 2006. First Choice filed a response to the NAL on April 24, 2006. In addition, shortly after the end of the period covered by this report, on September 20, 2006, the Commission issued a \$153,000 NAL against the National Business Information Corporation (NBIC). This NAL addresses 34 unsolicited facsimile advertisements sent by NBIC to 8 consumers without either the recipients' prior express invitation or permission or an EBR. The NBIC NAL was based, in part, on complaints received during the reporting period.

D. Forfeiture Orders

12. During the period July 9, 2005 through July 9, 2006, the Commission issued one Forfeiture Order on March 10, 2006, imposing a civil forfeiture penalty of \$22,500 on Elf Painting and Wallpapering (Elf)¹⁵ for sending five unsolicited facsimile advertisements to five consumers in violation of section 227(b)(1)(C) of the Act and section 64.1200(a)(3) of the rules. Elf has neither paid the forfeiture penalty nor responded to the Forfeiture Order. By letter dated July 31, 2006, the Commission's Office of General Counsel requested that the Department of Justice initiate a proceeding against Elf to collect the forfeiture penalty.¹⁶

¹⁴ First Choice is headquartered at 1055 F Street, San Diego, California 92101.

¹⁵ Elf operates out of two locations: 10309 Cherry View Court, Oakton, Virginia 22124-2530 and 1835 Monroe Street, N.W., Washington, DC 20010-1014.

¹⁶ On August 3, 2006, the Department of Justice informed the Commission that the claim was forwarded to the United States Attorney's Office in the Eastern District of Virginia. This referral to the Department of Justice occurred outside the time period covered by this report.

E. Referrals to the Department of Justice of Unpaid Forfeiture Penalties

13. During the period July 9, 2005 through July 9, 2006, the Commission did not refer any unpaid forfeiture penalties to the Department of Justice for collection. As indicated above, the Commission referred the sole unpaid forfeiture penalty that was imposed during this period shortly after July 9, 2006.¹⁷

IV. ORDERING CLAUSES

14. Accordingly, this report is issued pursuant to the Junk Fax Prevention Act of 2005, Pub. L. No. 109-21, 119 Stat. 359, and section 227 of the Communications Act of 1934, as amended, 47 U.S.C. § 227, and under authority delegated by sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311.

15. IT IS ORDERED that the Secretary SHALL SEND copies of this report to the appropriate committees and subcommittees of the United States House of Representatives and the United States Senate.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau

¹⁷ Elf Painting and Wallpapering, *see* para. 18, *supra*.