

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

In the Matter of)	
)	
)	
TRI-STATE PRINTER & COPIER SUPPLY)	File No. EB-04-TC-102
CO., INC.)	
)	
Apparent Liability for Forfeiture)	NAL/Acct. No. 200732170059
)	FRN: 0016644700

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: June 26, 2007**Released: June 27, 2007**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* ("NAL"),¹ we find that Tri-State Printer & Copier Supply Co., Inc. ("Tri-State")² apparently willfully or repeatedly violated section 227 of the Communications Act of 1934, as amended ("Act"), and the Commission's related rules and orders, by delivering at least two unsolicited advertisements to the telephone facsimile machines of at least two consumers.³ Based on the facts and circumstances surrounding these apparent violations, we find that Tri-State is apparently liable for a forfeiture in the amount of \$9,000.

¹ See 47 U.S.C. § 503(b)(1). The Commission has the authority under this section of the Act to assess a forfeiture against any person who has "willfully or repeatedly failed to comply with any of the provisions of this Act or of any rule, regulation, or order issued by the Commission under this Act" See also 47 U.S.C. § 503(b)(5) (stating that the Commission has the authority under this section of the Act to assess a forfeiture penalty against any person who is not a common carrier so long as such person (A) is first issued a citation of the violation charged; (B) is given a reasonable opportunity for a personal interview with an official of the Commission, at the field office of the Commission nearest to the person's place of residence; and (C) subsequently engages in conduct of the type described in the citation).

² According to publicly available information, Tri-State has offices at several locations: 930 Briars Bend, Alpharetta, Georgia, 30004; 16 Court Street, Brooklyn, New York, 11241-0102; 71 N. Franklin Street, Hempstead, New York, 11550-3049; and 660 2nd S. Place, Garden City, New York, 11530-5204. For all the foregoing locations, John Smith is listed as the owner; Domenica Gambino, as the Chairman, and Harry Samuel as a contact person. Accordingly, all references in this NAL to "Tri-State" encompass the foregoing individuals, and all other principals and officers of this entity, as well as the corporate entity itself.

³ See 47 U.S.C. § 227(b)(1)(C); 47 C.F.R. § 64.1200(a)(3); see also *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order*, 18 FCC Rcd 14014, 14124, para. 185 (2003) (*TCPA Report and Order*) (stating that section 227 of the Act prohibits the use of telephone facsimile machines to send unsolicited advertisements).

II. BACKGROUND

2. Section 227(b)(1)(C) of the Act makes it “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 any telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine.”⁴ 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.”⁵ Under the Commission’s Rules, an “established business relationship”⁶ exception permits a party to deliver a message to a consumer if the sender has an established business relationship with the recipient *and* the sender obtained the number of the facsimile machine through the voluntary communication by the recipient, directly to the sender, within the context of the established business relationship, or through a directory, advertisement, or a site on the Internet to which the recipient voluntarily agreed to make available its facsimile number for public distribution.⁷

3. On June 4, 2004, in response to consumer complaints alleging that Tri-State had faxed unsolicited advertisements, the Commission staff issued a citation⁸ to Tri-State, pursuant to section 503(b)(5) of the Act.⁹ The staff cited Tri-State for using a telephone facsimile machine, computer, or other device, to send unsolicited advertisements to a telephone facsimile machine, in violation of section 227 of the Act and the Commission’s related rules and orders. According to the complaints, the unsolicited advertisements offered printer and copier supplies.¹⁰ The citation, which the staff served by facsimile and by certified mail, return receipt requested, warned Tri-State that subsequent violations could result in the imposition of monetary forfeitures of up to \$11,000 per violation, and included a copy of the consumer complaints that formed the basis of the citation.¹¹ The citation informed Tri-State that within 30 days of the date of the citation, it could either request a personal interview at the nearest Commission office, or could provide a written statement responding to the citation. Tri-State did not request an interview or otherwise respond to the citation.

4. Despite the citation’s warning that subsequent violations could result in the imposition of monetary forfeitures, we have received additional consumer complaints indicating that Tri-State continued to engage in such conduct after receiving the citation. We base our action here specifically on complaints from two consumers who contend that Tri-State continued to send unsolicited advertisements

⁴ See 47 U.S.C. § 227(b)(1)(C); 47 C.F.R. § 64.1200(a)(3).

⁵ See 47 U.S.C. § 227(a)(4); 47 C.F.R. § 64.1200(f)(13).

⁶ An “established business relationship” is defined as a prior or existing relationship formed by a voluntary two-way communication “with or without the 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).

⁷ See 47 C.F.R. § 64 (a)(3)(i), (ii).

⁸ Citation from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, File No. EB-04-TC-102, issued to Tri-State on June 4, 2004.

⁹ See 47 U.S.C. § 503(b)(5) (authorizing the Commission to issue citations to non-common carriers for violations of the Act or of the Commission’s rules and orders).

¹⁰ See, e.g., Complaint from Ginnine Fried, IC # 03-W5924843, dated May 16, 2003, which was attached to the Citation (stating that Ms. Fried received an unwanted fax advertisement from Tri-State at 2:31 a.m.).

¹¹ Commission staff mailed the citation to all of Tri-State’s known addresses.

to their telephone facsimile machines after the date of our citation.¹²

5. Section 503(b) of the Act authorizes the Commission to assess a forfeiture of up to \$11,000 for each violation of the Act or of any rule, regulation, or order issued by the Commission under the Act by a non-common carrier or other entity not specifically designated in section 503 of the Act.¹³ In exercising such authority, we are to take into account “the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹⁴

III. DISCUSSION

A. Violations of the Commission’s Rules Restricting Unsolicited Facsimile Advertisements

6. We find that Tri-State apparently violated section 227 of the Act and the Commission’s related rules and orders by using a telephone facsimile machine, computer, or other device to send at least two unsolicited advertisements to the two consumers identified in the Appendix. This NAL is based on evidence that these two consumers received unsolicited fax advertisements from Tri-State *after* the Bureau’s citation. Each of those facsimile transmissions advertises printer and copier supplies.¹⁵

7. A prime example of Tri-State’s facsimile advertisements is one that begins with a page-long joke entitled “A Bad Day,” followed by the phrase, “Hope this brought a smile to your day. Give us a call we will give you another smile!” The advertisement then proceeds to list the name and number of Tri-State, followed by an offer for copier and printer toner at low prices. Neither complainant ordered copier or printer toner from Tri-State.¹⁶ The above-described facsimile, which is representative of the other facsimile on which this NAL is based, falls within the definition of an “unsolicited advertisement” in effect at the time of the alleged violations.

8. Further, according to the information provided by the complainants, they neither had an established business relationship with Tri-State nor gave Tri-State permission to send the facsimile transmissions.¹⁷ Tri-State did not respond to the Commission’s citation and thus has offered no evidence or arguments to defend or justify its faxing practices. Based on the entire record, including the

¹²See Appendix for a listing of the consumer complaints requesting Commission action. We note that evidence of additional instances of unlawful conduct by Tri-State may form the basis of subsequent enforcement action.

¹³ Section 503(b)(2)(C) provides for forfeitures up to \$10,000 for each violation in cases not covered by subparagraph (A) or (B), which address forfeitures for violations by licensees and common carriers, among others. See 47 U.S.C. § 503(b). In accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, Pub. L. 104-134, Sec. 31001, 110 Stat. 1321, the Commission implemented an increase of the maximum statutory forfeiture under section 503(b)(2)(C) to \$11,000. See 47 C.F.R. § 1.80(b)(3); *Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 15 FCC Rcd 18221 (2000); see also *Amendment of Section 1.80(b) of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 19 FCC Rcd 10945 (2004) (this recent amendment of section 1.80(b) to reflect inflation left the forfeiture maximum for this type of violator at \$11,000).

¹⁴ 47 U.S.C. § 503(b)(2)(D); *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, Report and Order*, 12 FCC Rcd 17087, 17100-01 para. 27 (1997) (*Forfeiture Policy Statement*), *recon. denied*, 15 FCC Rcd 303 (1999).

¹⁵The complaints and associated information are set forth in the Appendix to this Order.

¹⁶ See, e.g., Palumbo Complaint, dated Jan. 29, 1997.

¹⁷See Palumbo Complaint and associated information, dated Jan. 29, 2007 and June 12, 2007; Zelik Complaint and associated information, dated Oct. 26, 2006 and June 12, 2007.

consumers' complaints, we conclude that Tri-State apparently violated section 227 of the Act and the Commission's related rules and orders by sending at least two unsolicited advertisements to at least two consumers' facsimile machines.

B. Proposed Forfeiture

9. We find that Tri-State is apparently liable for a forfeiture in the amount of \$9,000. Although the *Commission's Forfeiture Policy Statement* does not establish a base forfeiture amount for violating the prohibition against using a telephone facsimile machine to send unsolicited advertisements, the Commission has previously considered \$4,500 per unsolicited fax advertisement to be an appropriate base amount.¹⁸ We apply that base amount to each of the two apparent violations, for a total proposed forfeiture of \$9,000. Tri-State will have the opportunity to submit evidence and arguments in response to this NAL to show that no forfeiture should be imposed or that some lesser amount should be assessed.¹⁹

IV. CONCLUSION AND ORDERING CLAUSES

10. We have determined that Tri-State Printer & Copier Supply Co., Inc. apparently violated section 227 of the Act and the Commission's related rules and orders by using a telephone facsimile machine, computer, or other device to send at least two unsolicited advertisements to the two consumers identified in the Appendix. We have further determined that Tri-State Printer & Copier Supply Co., Inc. is apparently liable for a forfeiture in the amount of \$9,000.

11. Accordingly, IT IS ORDERED, pursuant to section 503(b) of the Act, 47 U.S.C. § 503(b), and section 1.80 of the Rules, 47 C.F.R. § 1.80, and under the authority delegated by sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, that Tri-State Printer & Copier Supply Co., Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of \$9,000 (nine thousand dollars) for willful or repeated violations of section 227(b)(1)(C) of the Communications Act, 47 U.S.C. § 227(b)(1)(C), sections 64.1200(a)(3) of the Commission's rules, 47 C.F.R. § 64.1200(a)(3), and the related orders described in the paragraphs above.

12. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission's rules,²⁰ within thirty (30) days of the release date of this *Notice of Apparent Liability for Forfeiture*, Tri-State Printer & Copier Supply Co., Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment by check or money order, payable to the order of the "Federal Communications Commission," may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251. Payment by overnight mail may be sent to Mellon Client Service Center, 500 Ross Street, Room 670, Pittsburgh, PA 15262-0001, Attn: FCC Module Supervisor. Payment by wire transfer may be made to: ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6229. The payment should note NAL/Acct. No. 200732170059.

14. The response, if any, must be mailed both to the Office of the Secretary, Federal

¹⁸ See *Get-Aways, Inc.*, Notice of Apparent Liability For Forfeiture, 15 FCC Rcd 1805 (1999); *Get-Aways, Inc.*, Forfeiture Order, 15 FCC Rcd 4843 (2000); see also *US Notary, Inc.*, Notice of Apparent Liability for Forfeiture, 15 Rcd 16999 (2000); *US Notary, Inc.*, Forfeiture Order, 16 FCC Rcd 18398 (2001); *Tri-Star Marketing, Inc.*, Notice of Apparent Liability For Forfeiture, 15 FCC Rcd 11295 (2000); *Tri-Star Marketing, Inc.*, Forfeiture Order, 15 FCC Rcd 23198 (2000).

¹⁹ See 47 U.S.C. § 503(b)(4)(C); 47 C.F.R. § 1.80(f)(3).

²⁰ 47 C.F.R. § 1.80.

Communications Commission, 445 12th Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau – Telecommunications Consumers Division, and to Colleen Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, and must include the NAL/Acct. No. referenced in the caption.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. Requests for payment of the full amount of this *Notice of Apparent Liability for Forfeiture* under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, SW, Washington, DC 20554.²¹

17. IT IS FURTHER ORDERED that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by Certified Mail Return Receipt Requested to Mr. John Smith, Mr. Domenica Gambino and Mr. Harry Samuel, Tri-State Printer & Copier Supply Co., Inc., at the following addresses: 930 Briars Bend, Alpharetta, Georgia, 30004; 16 Court Street, Brooklyn, New York, 11241-0102; 71 N. Franklin Street, Hempstead, New York, 11550-3049; and 660 2nd S. Place, Garden City, New York, 11530-5204.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau

²¹47 C.F.R. § 1.1914.

APPENDIX

Complainant	Violation Date
Andrew R. Palumbo, Paradigm Network, Inc.	1/29/07
Joseph Zelik, Joseph Real Estate	10/25/06