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

In the Matter of	)	
	)	
	)	
Mario's Roofing	)	File No. EB- 05-TC-079
	)	
Apparent Liability for Forfeiture	)	NAL/Acct. No. 200832170002
	)	FRN: 0017020017
	)	
	)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: October 16, 2007 **Released: October 16, 2007**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* ("NAL")[1], we find that Mario's Roofing[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 three unsolicited advertisements to the telephone facsimile machines of at least three consumers.[3] Based on the facts and circumstances surrounding these apparent violations, we find that Mario's Roofing is apparently liable for a forfeiture in the amount of $13,500.

II. BACKGROUND

2. Section 227(b)(1)(C) of the Act makes it "unlawful for any person within the United

[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 does not hold a license, permit, certificate or other authorization issued by the Commission or an applicant for any of those listed instrumentalities 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, Mario's Roofing has offices at 1168 Dixwell Avenue, Fl. 2, Hamden, CT 06514-4732. Mario Stevens is listed the contact person for Mario's Roofing. Accordingly, all references in this NAL to "Mario's Roofing" also encompass the foregoing individual 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 and Third Order on Reconsideration*, 21 FCC Rcd 3787 (2006).

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, to a telephone facsimile machine, an unsolicited advertisement."[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 in writing or otherwise."[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 December 14, 2005, in response to one or more consumer complaints alleging that Mario's Roofing had faxed unsolicited advertisements, the Commission staff issued a citation[8] to Mario's Roofing, pursuant to section 503(b)(5) of the Act.[9] The staff cited Mario's Roofing 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. The citation, which the staff served by certified mail, return receipt requested, warned Mario's Roofing 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.[10] The citation informed Mario's Roofing that within thirty (30) days of the date of the citation, it could either request an interview with Commission staff, or could provide a written statement responding to the citation. Mario's Roofing did not request an interview but counsel for Mario's Roofing did respond to the citation on January 3, 2006.[11] In the response, counsel for Mario's Roofing indicated that the company would not violate the Commission's rules governing telephone solicitation and unsolicited advertisements and that it had disconnected the telephone line in question.

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 Mario's Roofing continued to engage in such conduct after receiving the citation.[12] We base our action here specifically on complaints filed by three consumers establishing that Mario's Roofing continued to send three unsolicited

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

[5] 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 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).

[7] *See* 47 U.S.C. § 227(b)(1)(C); 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-06-TC-265, issued to Mario's Roofing on December 14, 2005.

[9] *See* 47 U.S.C. § 503(b)(5) (authorizing the Commission to issue citations to persons who do not hold a license, permit, certificate or other authorization issued by the Commission or an applicant for any of those listed instrumentalities for violations of the Act or of the Commission's rules and orders).

[10] Commission staff mailed the citation to 1168 Dixwell Avenue, Hamden, CT 06514 and 1021 Asylum Ave. 218, Hartford, CT 06105. *See* n. 2, *supra.*

[11] Response from Richard C. Marquette, counsel for Mario's Roofing, dated January 3, 2006.

[12] *See* Appendix for a listing of the consumer complaints against Mario's Roofing requesting Commission action.

advertisements to telephone facsimile machines after the date of the citation.[13]

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.[14] 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."[15]

III. DISCUSSION

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

6. We find that Mario's Roofing 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 three unsolicited advertisements to the three consumers identified in the Appendix. This NAL is based on evidence that three consumers received unsolicited fax advertisements from Mario's Roofing *after* the Commission staff's citation. The facsimile transmissions advertise roofing services. Further, according to the complaints, the consumers neither had an established business relationship with Mario's Roofing nor gave Mario's Roofing permission to send the facsimile transmissions.[16] The faxes at issue here therefore fall within the definition of an "unsolicited advertisement."[17] Based on the entire record, including the consumer complaints, we conclude that Mario's Roofing apparently violated section 227 of the Act and the Commission's related rules and orders by sending three unsolicited advertisements to three consumers' facsimile machines.

B. Proposed Forfeiture

7. We find that Mario's Roofing is apparently liable for a forfeiture in the amount of $13,500. 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

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[13] We note that evidence of additional instances of unlawful conduct by Mario's Roofing may form the basis of subsequent enforcement action.

[14] 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).

[15] 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).

[16] *See, e.g.*, complaint dated April 23, 2007, from Brian Maley (stating that he has never purchased anything from the company being advertised in the fax or made an inquiry or application to the company or given consent for the company to send the fax). The complainants involved in this action are listed in the Appendix below.

[17] *See* 47 U.S.C. § 227(a)(4); 47 C.F.R. § 64.1200(f)(13) (definition previously at § 64.1200(f)(10)).

an appropriate base amount.[18] We apply that base amount to each of three of the apparent violations. Thus, a total forfeiture of $13,500 is proposed. Mario's Roofing 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

8. We have determined that Mario's Roofing, 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 three unsolicited advertisements to the three consumers identified in the Appendix. We have further determined that Mario's Roofing, Inc. is apparently liable for a forfeiture in the amount of $13,500.

9. 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 Mario's Roofing is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of $13,500 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.

10. 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*, Mario's Roofing SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. 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. 200832170002.

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

13. 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)

[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.

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.

14. 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]

15. 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 Mario's Roofing, Attention: Mario Stevens, 1168 Dixwell Avenue, Fl. 2, Hamden, CT 06514-4732.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau

[21] 47 C.F.R. § 1.1914.

APPENDIX

Complainant received facsimile solicitations	Violation Date(s)
Gary Ackerman	10/30/06
Brian Maley	4/2/07
Van Wood	3/1/07