

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

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In the matter of)	File No. EB- 07-TC-640
)	File No. EB- 07-TC-3638
So Clean Inc.)	
)	NAL/Acct. No. 200832170050
Apparent Liability for Forfeiture)	FRN: 0017839390
)	
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NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: June 6, 2008

Released: June 6, 2008

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”)¹ we find that So Clean Inc. (“So Clean”)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 four unsolicited, prerecorded advertising messages to at least four consumers.³ Based on the facts and circumstances surrounding these apparent violations, we find that So Clean is apparently liable for a forfeiture in the amount of \$18,000.

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 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, So Clean has offices at 42400 Mound Road, Sterling Heights, MI 48314-3149 and 43428 Goldberg Drive, Sterling Heights, MI 48313-1865. Tracy Kupke and Luke Will, are listed as the contact persons for So Clean. Accordingly, all references in this NAL to “So Clean” also 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)(B); 47 C.F.R. § 64.1200(a)(2).

II. BACKGROUND

2. Section 227(b)(1)(B) prohibits any person from initiating “any telephone call to any residential telephone line using any artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes or is exempted by rule or order by the Commission.”⁴ Section 64.1200(a)(2) of the Commission's rules provides exemptions to the prohibition for calls: 1) made for emergency purposes; 2) not made for a commercial purpose; 3) made for a commercial purpose but “not including or introducing an unsolicited advertisement⁵ or constituting a telephone solicitation”;⁶ 4) to any person “with whom the caller has an established business relationship⁷ at the time the call is made”; or 5) “made by or on behalf of a tax-exempt nonprofit organization.”⁸

3. On March 6, 2007, in response to one consumer complaint alleging that So Clean had delivered an unsolicited, prerecorded advertising message, the Commission staff issued a citation⁹ to So Clean, pursuant to section 503(b)(5) of the Act.¹⁰ The staff cited So Clean for delivering one or more unsolicited, prerecorded advertising messages to a residential telephone line for carpet cleaning, 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 So Clean 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 complaint that formed the basis of the citation.¹¹ The citation informed So Clean that within 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. So Clean replied to the citation by letter, stating

⁴ 47 U.S.C. § 227(b)(1)(B); 47 C.F.R. § 64.1200(a)(2).

⁵ An “unsolicited advertisement” is defined 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.” 47 U.S.C. § 227(a)(4); 47 C.F.R. § 64.1200(f)(13).

⁶ A “telephone solicitation” is defined as “the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include a call or message (A) to any person with that person's prior express invitation or permission, (B) to any person with whom the caller has an established business relationship, or (C) by a tax-exempt nonprofit organization.” 47 U.S.C. § 227(a)(3); 47 C.F.R. § 64.1200(f)(12). We have previously found that “prerecorded messages containing free offers and information about goods and services that are commercially available are prohibited to residential telephone subscribers, if not otherwise exempt.” *TCPA Revisions Report and Order*, 18 FCC Rcd 14097-98 (2003).

⁷ An “established business relationship” is defined as “a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of the subscriber's purchase or transaction with the entity within the eighteen (18) months immediately preceding the date of the telephone call or on the basis of the subscriber's inquiry or application regarding products or services offered by the entity within the three months immediately preceding the date of the call, which relationship has not been previously terminated by either party.” 47 C.F.R. § 64.1200(f)(4).

⁸ 47 U.S.C. § 227(b)(1)(B); 47 C.F.R. § 64.1200(a)(2).

⁹ Citation from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, File No. EB-07-TC-640 issued to So Clean on March 6, 2007.

¹⁰ 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).

¹¹ Commission staff mailed the citation to So Clean Inc., 42400 Mound Road, Sterling Heights, MI 48314-3149 and So Clean, Inc., 43428 Goldberg Drive, Sterling Heights, MI 48313-1865. See n. 2, *supra*.

that the complainant's phone number "must have been entered into our system by mistake" and that it "has been completely removed and will not be called again."¹²

4. Further, on July 2, 2007, in response to one additional consumer complaint alleging that So Clean had delivered an unsolicited, prerecorded advertising message, the Commission staff issued a further citation¹³ to So Clean, pursuant to section 503(b)(5) of the Act.¹⁴ The staff cited So Clean for delivering one or more unsolicited, prerecorded advertising messages to a residential telephone line for an unstated business, 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 So Clean 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 complaint that formed the basis of the citation.¹⁵ The citation informed So Clean that within 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. So Clean replied to the citation by letter, stating that "it seems the same error has occurred for" the second complainant and that "we can assure you that he will not be called again."¹⁶

5. Despite the two citations' warnings that subsequent violations could result in the imposition of monetary forfeitures, we have received four additional consumer complaints indicating that So Clean continued to engage in such conduct after receiving the first citation.¹⁷ We base our action here specifically on four complaints filed by four consumers establishing that So Clean continued to deliver four unsolicited, prerecorded advertising messages to four consumers after the date of the first citation.¹⁸

6. 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.¹⁹ In

¹² Letter from Tracey, So Clean to Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, dated March 30, 2007.

¹³ Citation from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, File No. EB-07-TC-3638, issued to So Clean on July 2, 2007. The citation also inadvertently included the complaint in the March 30, 2007 citation to So Clean.

¹⁴ 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).

¹⁵ Commission staff mailed the citation to So Clean, Inc., Attn: Tracy Kupke and Luke Will, 42400 Mound Road, Sterling Heights, MI 48314-3149 and 43428 Goldberg Drive, Sterling Heights, MI 48313-1865. See n. 2, *supra*.

¹⁶ Letter from Tracey, So Clean to Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, dated August 1, 2007.

¹⁷ See Appendix for a listing of the consumer complaints against So Clean requesting Commission action.

¹⁸ We note that evidence of additional instances of unlawful conduct by So Clean may form the basis of subsequent enforcement action.

¹⁹ 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).

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.”²⁰

III. DISCUSSION

A. Violations of the Commission’s Rules Restricting Unsolicited Prerecorded Messages

7. We find that So Clean apparently violated section 227 of the Act and the Commission’s related rules and orders by delivering at least four unsolicited, prerecorded advertising messages to the four consumers identified in the Appendix. This NAL is based on evidence that four consumers received unsolicited prerecorded messages from So Clean after the Commission staff’s citation. The prerecorded messages advertise cleaning services. Further, we find that the unsolicited, prerecorded messages at issue here were not made for any emergency or non-commercial purposes, and were not on behalf of a tax-exempt, nonprofit organization, but were commercial in nature and included unsolicited advertisements or constituted telephone solicitations. In addition, according to the complaints, the consumers neither had an established business relationship with So Clean nor gave So Clean permission to deliver the unsolicited, prerecorded messages.²¹ The prerecorded messages at issue here therefore fall within the definition of an “unsolicited advertisement.”²² Based on the entire record, including the consumer complaints, we conclude that So Clean apparently violated section 227 of the Act and the Commission’s related rules and orders by delivering four unsolicited, prerecorded advertising messages to four consumers.

B. Proposed Forfeiture

8. We find that So Clean is apparently liable for a forfeiture in the amount of \$18,000. Although the Commission’s Forfeiture Policy Statement does not establish a base forfeiture amount for violating the prohibition on delivering unsolicited, prerecorded advertising messages to a residential telephone line, the Commission’s Enforcement Bureau has found these violations to be similar in nature to violating the prohibition against using a telephone facsimile machine to send unsolicited advertisements.²³ The Commission has previously considered \$4,500 per unsolicited fax advertisement to be an appropriate base amount.²⁴ We apply that base amount to each of the four apparent unsolicited, prerecorded advertising message violations. Thus, a total forfeiture of \$18,000 is proposed. So Clean will have the opportunity to submit evidence and arguments in response to this NAL to show that no

²⁰ 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).

²¹ See, e.g., complaint dated June 15, 2007, from Tom Speight (stating that he had never done any business with the company, never made an inquiry or application to the company, and never gave permission for the company to make the call). The complainants involved in this action are listed in the Appendix.

²² See 47 U.S.C. § 227(a)(4); 47 C.F.R. § 64.1200(f)(13).

²³ See *Warrior Custom Golf, Inc.*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 23648, 23652 (Enf. Bur. 2004) (“*Warrior Custom Golf*”) (first NAL to address pre-recorded advertising messages); see also *Septic Safety, Inc.*, Apparent Liability for Forfeiture, 21 FCC Rcd 6868 (Enf. Bur. 2006); *1 Home Lending Corporation, d/b/a Capital Line Financial, LLC.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 11852 (Enf. Bur. 2006).

²⁴ 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).

forfeiture should be imposed or that some lesser amount should be assessed.²⁵

IV. CONCLUSION AND ORDERING CLAUSES

9. We have determined that So Clean Inc. apparently violated section 227 of the Act and the Commission's related rules and orders by delivering at least four unsolicited, prerecorded advertising messages to the four consumers identified in the Appendix. We have further determined that So Clean Inc. is apparently liable for a forfeiture in the amount of \$18,000.

10. 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 So Clean Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of \$18,000 for willful or repeated violations of section 227(b)(1)(B) of the Communications Act, 47 U.S.C. § 227(b)(1)(B), sections 64.1200(a)(2) of the Commission's rules, 47 C.F.R. § 64.1200(a)(2), and the related orders described in the paragraphs above.

11. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission's rules,²⁶ within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture, So Clean Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). SOS Marketing will also send electronic notification on the date said payment is made to Johnny.drake@fcc.gov. Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

13. 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/Act. No. referenced in the caption.

14. 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

²⁵ See 47 U.S.C. § 503(b)(4)(C); 47 C.F.R. § 1.80(f)(3).

²⁶ 47 C.F.R. § 1.80.

financial documentation submitted.

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 So Clean Inc., Attention: Tracy Kupke and Luke Will, 42400 Mound Road, Sterling Heights, MI 48314-3149 and 43428 Goldberg Drive, Sterling Heights, MI 48313-1865.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau

APPENDIX

Complainants and Violation Dates

Complainant received unsolicited prerecorded messages	Violation Date(s)
Tom Speight	June 14, 2007
Charles Larkin	June 27, 2007
Jessica Draper	June 28, 2007
Greg Driskell	June 23, 2007