

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

In the Matter of
So Clean, Inc.
File No. EB-07-TC-640
File No. EB-07-TC-3638
NAL/Acct. No. 200832170050
FRN: 0017839390

FORFEITURE ORDER

Adopted: July 15, 2009

Released: July 16, 2009

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order ("Order"), we issue a monetary forfeiture in the amount of \$18,000 against So Clean, Inc. ("So Clean") for willful or repeated violations of 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.

II. BACKGROUND

1. The facts and circumstances surrounding this case are set forth in the Commission's Notice of Apparent Liability for Forfeiture and need not be reiterated at length.

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." 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)

1 47 U.S.C. § 227.

2 See also 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).

3 So Clean, Inc., Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 8782 (Enf. Bur. 2008).

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

made for a commercial purpose but “not including or introducing an unsolicited advertisement<sup>5</sup> or constituting a telephone solicitation”,<sup>6</sup> 4) to any person “with whom the caller has an established business relationship<sup>7</sup> at the time the call is made”; or 5) “made by or on behalf of a tax-exempt nonprofit organization.”<sup>8</sup>

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 citation<sup>9</sup> to So Clean, pursuant to section 503(b)(5) of the Act.<sup>10</sup> 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 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.<sup>11</sup> 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 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.”<sup>12</sup>

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

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<sup>5</sup> 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).

<sup>6</sup> 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).

<sup>7</sup> 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).

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

<sup>9</sup> 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.

<sup>10</sup> 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).

<sup>11</sup> 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*.

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

further citation<sup>13</sup> to So Clean, pursuant to section 503(b)(5) of the Act.<sup>14</sup> 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 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.<sup>15</sup> 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."<sup>16</sup>

5. Following the issuance of the citation, the Commission received at least four complaints from consumers alleging that So Clean continued to engage in such conduct after receiving the first citation. These violations, which occurred after the Bureau's first citation, resulted in the issuance of a Notice of Apparent Liability for Forfeiture against So Clean on June 6, 2008 in the amount of \$18,000.<sup>17</sup> The *NAL* ordered So Clean to either pay the proposed forfeiture amount within thirty (30) days or submit evidence or arguments in response to the *NAL* to show that no forfeiture should be imposed or that some lesser amount should be assessed. So Clean did not respond to the *NAL* or pay the proposed forfeiture amount.

### III. DISCUSSION

6. Section 503(b) of the Act authorizes the Commission to assess a forfeiture 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. The maximum penalty for such a violation is \$11,000 for a violation occurring before September 2, 2008, and \$16,000 for a violation occurring on or after September 2, 2008.<sup>18</sup> 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,

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<sup>13</sup> 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.

<sup>14</sup> 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).

<sup>15</sup> 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*.

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

<sup>17</sup> See n.3, *supra*; see also 47 U.S.C. § 503(b)(1).

<sup>18</sup> Section 503(b)(2)(C) provides for forfeitures of 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) first to \$11,000 and more recently to \$16,000. 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) (forfeiture maximum for this type of violator set at \$11,000); *Amendment of Section 1.80(b) of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 19 FCC Rcd 10945 (2004) (amendment of section 1.80(b) to reflect inflation left the forfeiture maximum for this type of violator at \$11,000); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, 23 FCC Rcd 9845 (2008) (amendment of section 1.80(b) to reflect inflation increased the forfeiture maximum for this type of violator to \$16,000).

the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”<sup>19</sup>

7. 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.<sup>20</sup> The Commission has previously considered \$4,500 per unsolicited fax advertisement to be an appropriate base amount.<sup>21</sup> We apply that base amount to each of four apparent violations.

8. So Clean did not respond to the NAL or pay the proposed forfeiture amount. So Clean has failed to identify facts or circumstances to persuade us that there is a basis for modifying the proposed forfeiture, and we are not aware of any further mitigating circumstances sufficient to warrant a reduction of the forfeiture penalty. For these reasons, and based on the information before us, we hereby impose a total forfeiture of \$18,000 for So Clean’s willful or repeated violation of section 227 of the Act and the Commission’s related rules and orders, as set forth in the *NAL*.

9. Accordingly, IT IS ORDERED, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and section 1.80(f)(4) of the Commission’s rules, 47 C.F.R. § 1.80(f)(4), and under 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 LIABLE FOR A MONETARY FORFEITURE to the United States Government in the sum of \$18,000 for willfully and repeatedly violating section 227(b)(1)(c) of the Communications Act, 47 U.S.C. § 227(b)(1)(c), section 64.1200(a)(3) of the Commission’s rules, 47 C.F.R. § 64.1200(a)(3), and the related orders as described in the paragraphs above.

10. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission’s rules within thirty (30) days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to section 504(a) of the Act, 47 U.S.C. § 504(a). 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). So Clean will also send electronic notification on

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<sup>19</sup> See 47 U.S.C. § 503(b)(2)(D); see also *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).

<sup>20</sup> 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); *I Home Lending Corporation, d/b/a Capital Line Financial, LLC.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 11852 (Enf. Bur. 2006).

<sup>21</sup> 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).

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.

11. IT IS FURTHER ORDERED that a copy of the Forfeiture Order shall be sent by First Class mail and 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