

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

In the Matter of )
Venali, Inc. ) File No. EB-06-TC-265
) File No. EB-07-TC-777
) NAL/Acct. No. 200732170077
) FRN: 0016966624

ORDER

Adopted: August 4, 2009

Released: August 6, 2009

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Order, we cancel a proposed forfeiture issued by the Enforcement Bureau ("Bureau") to Venali, Inc. ("Venali") for apparent willful and repeated violation of Section 227 of the Communications Act of 1934, as amended ("Act"), and the Commission's related rules and orders. The proposed forfeiture was contained in a Notice of Apparent Liability for Forfeiture ("NAL") issued on September 28, 2007 in the amount of \$18,000 to Venali for apparently delivering at least four unsolicited advertisements to the telephone facsimile machines of at least three customers. Venali filed a response to the NAL on October 26, 2007. Based on our review of the record, we find that Venali did not willfully and repeatedly violate a Commission order or rule. Consequently, we conclude that no forfeiture should be imposed.

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, to a telephone facsimile machine, an

1 Venali, Inc., Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200732170062, 22 FCC Rcd 13131 (Enf. Bur. 2007).

2 Letter from Douglas L. O'Keefe, counsel to Venali, Inc. to Office of the Secretary, FCC and Colleen Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, File No. EB-06-TC-265, dated October 26, 2007 (Oct. 2007 Response). Venali also requested confidential treatment for its Oct. 2006 and Apr. 2007 Responses to two Bureau citations and its Oct. 2007 Response to the NAL (see, n. 7, infra), pursuant to 5 U.S.C. § 552 and 47 C.F.R. § 0.459. This Order discusses only the nature of Venali's defense to the NAL, and does not make public any specific facts or information in Venali's Responses. We need not rule on Venali's requests at this time and, until we do, we will honor Venali's requests for confidential treatment. See 47 C.F.R. § 0.459(d)(1). See also, In the Matter of Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, GC Docket No. 96-55, 13 FCC Rcd 24816, 24853 ¶ 64 (1998).

unsolicited advertisement.”<sup>3</sup> 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.”<sup>4</sup>

3. On September 9, 2006 and March 9, 2007, in response to one or more consumer complaints alleging that Venali had apparently faxed unsolicited advertisements, the Bureau issued two citations<sup>5</sup> to Venali, pursuant to section 503(b)(5) of the Act.<sup>6</sup> The Bureau cited Venali for apparently using a telephone facsimile machine, computer, or other device, to send unsolicited advertisements for mortgage financing and refinancing, as well as debt consolidation, to a telephone facsimile machine, in violation of section 227 of the Act and the Commission’s related rules and orders. The citations warned Venali 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. The citations informed Venali 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. Venali did not request an interview but did respond in writing to the citations.<sup>7</sup> In its Responses to the citations, Venali indicated that the faxes at issue were not transmitted by Venali or customers utilizing Venali services. On September 28, 2007, in response to three additional consumer complaints concerning unsolicited facsimile advertisements, the Bureau issued the *NAL* to Venali in the amount of \$18,000. In its Oct. 2007 Response to the *NAL*, Venali again claimed that the faxes that form the basis for the *NAL* were not delivered by Venali.<sup>8</sup>

4. Upon review of the record, including Venali’s Oct. 2006 Response<sup>9</sup>, Apr. 2007 Response<sup>10</sup>, and Oct. 2007 Response<sup>11</sup>, we conclude that Venali has presented a reasonable showing that neither Venali nor customers using Venali services in fact transmitted the faxes involved in the complaints or *NAL*. We therefore conclude that the *NAL* issued to Venali should be cancelled.

### III. ORDERING CLAUSES

5. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”), and Sections 0.111, 0.311 and 1.80(f) (4) of the Commission’s Rules, that the proposed forfeiture in the amount of \$18,000 issued to Venali, Inc. in the September 28, 2007 Notice of Apparent Liability for Forfeiture **IS CANCELLED**.

<sup>3</sup> 47 U.S.C. § 227(b)(1)(C); *see also* 47 C.F.R. § 64.1200(a)(3).

<sup>4</sup> 47 U.S.C. §227(a)(4); 47 C.F.R. § 64.1200 (f)(13).

<sup>5</sup> Citation from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, File No. EB-06-TC-265, issued to Venali, Inc. on September 9, 2006; Citation from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, File No. EB-06-TC-777, issued to Venali, Inc. on March 9, 2007.

<sup>6</sup> *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).

<sup>7</sup> Response from Mark Toschek, CEO, Venali, Inc. dated October 18, 2006 (Oct. 2006 Response); Response from John Poncy, CEO, Venali, Inc. dated April 6, 2007 (Apr. 2007 Response) .

<sup>8</sup> Oct. 2007 Response.

<sup>9</sup> Oct. 2006 Response at 1-2.

<sup>10</sup> Apr. 2007 Response at 1-2.

<sup>11</sup> Oct. 2007 Response at 1-2 and Exhibits A and B.

6. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Venali, Inc., at its address of record, One Alhambra Plaza, Ste 800, Coral Gables, FL 33134 and to its attorney, Douglas L. O'Keefe, Esq., Carey Rodriguez Greenberg Paul, 1395 Brickell Avenue, Suite 700, Miami, FL 33131.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief, Enforcement Bureau