

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

In the Matter of)	File No.: EB-07-TC-262
)	
General Equipment & Supply)	NAL/Acct. No.: 200832170056
)	
)	FRN: 0017890450
)	

FORFEITURE ORDER

Adopted: December 1, 2010

Released: December 2, 2010

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of \$4,500 against General Equipment & Supply (“General Equipment”) for willful violation of section 227 of the Communications Act of 1934, as amended (“Act”),¹ and the Commission’s related rules and orders,² by delivering one unsolicited advertisement, or “junk fax,” to the telephone facsimile machine of one consumer.

II. BACKGROUND

2. The Telephone Consumer Protection Act of 1991 (TCPA) was enacted by Congress to address problems of abusive telemarketing, in particular junk faxes.³ As Congress recognized, unsolicited faxes often impose unwanted burdens on the called party, including costs of paper and ink, and making fax machines unavailable for legitimate business messages.⁴ Section 227(b)(1)(C) of the Act generally 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 unsolicited advertisement.”⁵

¹ 47 U.S.C. § 227.

² *See, e.g.*, 47 C.F.R. § 64.1200.

³ Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394, *codified at* 47 U.S.C. § 227. *See also* Junk Fax Prevention Act of 2005, Pub. L. No. 109-21, 119 Stat. 359 (2005).

⁴ *See, e.g.*, S. Rep. No. 1462, 102d Cong., 1st Sess. 2 (1991); H. Rep. No. 102-317, 102d Congress, 1st Sess. 10 (1991).

⁵ 47 U.S.C. § 227(b)(1)(C). The prohibition is subject to certain exceptions, such as if the sender has an “established business relationship” (“EBR”) with the recipient; or the sender obtained the facsimile number from the recipient through voluntary communication in the context of an EBR, or from a directory, advertisement, or site on the Internet to which the recipient voluntarily agreed to make available its facsimile number for public distribution. In addition, the unsolicited ad must notify the recipient how to opt-out of receiving future such ads, subject to certain requirements. The Commission has adopted implementing rules. 47 C.F.R. § 64.1200(a)(3).

3. The Enforcement Bureau (“Bureau”) issued a citation⁶ to General Equipment on January 29, 2007, in response to a consumer complaint that General Equipment had faxed an unsolicited advertisement to the consumer in violation of the TCPA and the Commission’s implementing rules. General Equipment did not respond to this citation. Subsequently, the Commission received another complaint from a consumer alleging that General Equipment faxed at least one unsolicited advertisement to her. This violation, which occurred after the Bureau’s citation, resulted in the Bureau, pursuant to section 503(b) of the Act, issuing a *Notice of Apparent Liability for Forfeiture* (“NAL”) against General Equipment on June 23, 2008, in the amount of \$4,500.⁷ Thereafter, General Equipment responded to the NAL by letter, stating that it “cannot locate that the Company sent a facsimile to the complainant . . . on 6/25/07.” General Equipment requested “all documentation, including any letter of complaint . . . in order to properly assess whether a violation existed.” General Equipment also asked that the forfeiture be waived or reduced, citing a sales slowdown and “an ongoing risk of bankruptcy.” In support of its claim that “an assessment of \$4,500 is a significant sum,” General Equipment submitted financial statements for fiscal years 2005 through 2008 and “Z factor calculations” for the years 2003 through 2007, which it says “indicate an ongoing risk of bankruptcy.”⁸ Bureau staff then sent a copy of the complaint to General Equipment and allowed additional time for General Equipment to respond.⁹ General Equipment did not file an additional response.

III. DISCUSSION

4. We conclude that the \$4,500 forfeiture proposed in the NAL should stand, and not be canceled or reduced. While General Equipment initially claimed it could not locate a record of the complained-of fax, it did not deny sending it, or submit any further response after the Bureau granted its request and provided General Equipment with a copy of the complaint. Based on this record, including the complaint and the response, we find that General Equipment did send the complained-of fax and has not presented a valid defense for doing so.

5. 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, as proposed in the NAL.¹⁰ With respect to General Equipment’s request for waiver or reduction of the \$4,500 forfeiture based on financial difficulties, we note that the Commission generally looks to a company’s gross revenues as reasonable and appropriate

⁶ Citation from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, File No. EB-06-TC-262, issued to General Equipment on January 29, 2007.

⁷ *General Equipment & Supply*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 9951 (Enf. Bur. 2008) (“NAL”).

⁸ Letter from Rocky Mankins, Controller, General Equipment and Supply, to Office of the Secretary, FCC, dated July 14, 2008.

⁹ Letter from Daniel Grosh, Telecommunications Consumers Division, Enforcement Bureau, to Rocky Mankins, Controller, General Equipment and Supply, dated March 25, 2009.

¹⁰ 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).

yardsticks to determine its ability to pay an assessed forfeiture.¹¹ The Commission has held that if gross revenues are substantial, the fact that the business is operating at a loss will not necessarily preclude forfeiture liability.¹² In this case, General Equipment's financial statements demonstrate substantial gross revenues in comparison to the \$4,500 forfeiture. Under these circumstances, General Equipment's Z factor calculations and claims of a sales slowdown fail 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 \$4,500 for General Equipment'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*.

IV. ORDERING CLAUSES

6. 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, 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, that General Equipment & Supply **IS LIABLE FOR A MONETARY FORFEITURE** to the United States Government in the sum of \$4,500 for willfully or 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.

7. 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. 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). General Equipment & Supply 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

¹¹ See, e.g., *Alpha Ambulance, Inc.*, Order, 19 FCC Rcd 2547, 2548-49 para. 5 (2004); *Long Distance Direct, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 3297, 3305 (2000); *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 para. 8 (1992); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17106-07 para. 43.

¹² See *Forfeiture Policy Statement*, 12 FCC Rcd 17087, 17106 para. 43 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (stating that "[i]f gross revenues are sufficiently great . . . the mere factor that a business is operating at a loss does not itself mean that it cannot afford to pay a forfeiture."); see also *Independent Communications, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 16060, 16060 para. 2 (2000); *Small Town Radio, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 7187, 7188 para. 9 (Enf. Bur. 2004).

Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

8. **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 General Equipment & Supply, Attn: Robert Hall, President, 3423 Fork Shoals Road, Simpsonville, South Carolina 29680-6815; and General Equipment & Supply, Attn: Robert Hall, President, P.O. Box 17408, Greenville, South Carolina 29606.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau