

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

In the Matter of	)	File No.: EB-07-TC-12684
	)	
Western Aviation, Inc.	)	NAL/Acct. No.: 200932170005
	)	
	)	FRN: 0018235283

**FORFEITURE ORDER**

**Adopted: September 20, 2011**

**Released: September 21, 2011**

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 Western Aviation, Inc. (“Western Aviation”) for willful violation of section 227(b)(1)(C) of the Communications Act of 1934, as amended (“Act”)<sup>1</sup> and section 64.1200(a)(3) of the Commission’s rules,<sup>2</sup> by delivering an unsolicited advertisement, or “junk fax,” to the telephone facsimile machine of a consumer.

**II. BACKGROUND**

2. The Telephone Consumer Protection Act of 1991 (“TCPA”) was enacted by Congress to address problems of abusive telemarketing, including junk faxes.<sup>3</sup> 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. 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 unsolicited advertisement.”<sup>4</sup>

3. Pursuant to section 503(b)(5) of the Act,<sup>5</sup> the Enforcement Bureau (“Bureau”) issued a junk fax citation<sup>6</sup> to Western Aviation on July 6, 2007, in response to a consumer complaint alleging that

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<sup>1</sup> 47 U.S.C. § 227(b)(1)(C).

<sup>2</sup> 47 C.F.R. § 64.1200(a)(3).

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

<sup>4</sup> 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; and the sender obtained the facsimile number from the recipient through voluntary communication in the context of an EBR, or from a directory, advertisement, or website on which the recipient voluntarily and publicly provided its facsimile number. In addition, the unsolicited ad must notify the recipient how to opt out of receiving future such ads, and do so in compliance with certain requirements. The Commission has adopted implementing rules. 47 C.F.R. § 64.1200(a)(3).

<sup>5</sup> 47 C.F.R. § 503(b)(5) (requiring the Commission to issue a citation to, before imposing a forfeiture against, a person who does not hold a license, permit, certificate or other authorization issued by the Commission, who is not (continued....))

Western Aviation had faxed an unsolicited advertisement. Western Aviation responded by letter that the company only sends faxes to its customers and that the fax in the complaint “had to be sent in error.”<sup>7</sup>

4. Thereafter, the Commission received an additional complaint alleging that Western Aviation continued to engage in the same conduct, and thus continued to violate section 227(b)(1)(C) of the Act and section 64.1200(a)(3) of the rules. This violation, which occurred after the citation, resulted in the Bureau, pursuant to section 503(b)(4) of the Act, issuing a Notice of Apparent Liability for Forfeiture (“NAL”) to Western Aviation on November 3, 2008 in the amount of \$4,500.<sup>8</sup> The NAL ordered Western Aviation either to pay the proposed forfeiture amount within thirty days or to 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.

5. Western Aviation replied that “the advertisements received by anyone was [sic] not sent out by our organization” and that there is “no proof that we send out such faxes . . . .”<sup>9</sup> On November 19, 2009, Bureau staff responded by sending Western Aviation a copy of the complaint associated with the NAL and allowed Western Aviation additional time to submit any further response, including any supporting information and documents.<sup>10</sup> In a November 30, 2009 letter, Western Aviation again asserted that it “does not send out faxes to customers other than [with] those which we have a business relationship that specifically request a fax from us” and requested that “this matter be dropped because there can be no proof that we are sending out unsolicited faxes.”<sup>11</sup>

### III. DISCUSSION

6. In this Order, we now assess the \$4,500 forfeiture penalty proposed in the NAL. While Western Aviation suggests that it did not send the fax upon which the penalty is based, the fax itself identifies Western Aviation as the sender, and indicates that it came from a telephone number assigned to Western Aviation. Moreover, while Western Aviation also suggests that it sends faxes only to persons who request them and with whom it has a business relationship, the complaint cited in the NAL states that the recipient never did business with Western Aviation, did not make an inquiry or application to Western Aviation, and did not give permission to fax an advertisement. Western Aviation did not provide any documentation to negate these claims, *e.g.*, it did not provide any billing records to show that it had an established business relationship with the complainant.<sup>12</sup> Western Aviation thus fails to provide any basis

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applicants for any such instrumentality, and who is not engaged in any activities for which such instrumentality is necessary, for violations of the Act or the Commission’s rules and orders).

<sup>6</sup> Citation from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, File No. EB-07-TC-12684, to Western Aviation (July 6, 2007).

<sup>7</sup> Letter from David Fisher, President, Western Aviation, File No. EB-07-TC-12684, to Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau at 1 (dated July 16, 2007).

<sup>8</sup> *Western Aviation, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 16422 (2008).

<sup>9</sup> Letter from David Fisher, President, Western Aviation at 1 (dated Nov.17, 2008).

<sup>10</sup> Letter from Daniel Grosh, Telecommunications Consumers Division, Enforcement Bureau, to David Fisher, President, Western Aviation (Nov. 19, 2009).

<sup>11</sup> Letter from David Fisher, President, Western Aviation, to Enforcement Bureau at 1 (dated Nov.30, 2009) (Western Aviation Nov. 2009 Letter).

<sup>12</sup> The Commission has made clear that the sender has the burden of demonstrating the existence of an established business relationship, for example through relevant business records. *Rules and Regulations Implementing the* (continued....)

for concluding either that it did not send the fax or that it had an established business relationship with the complainant.<sup>13</sup>

7. Western Aviation has failed to identify facts or circumstances to persuade us that there is a basis for modifying the proposed forfeiture. For these reasons, and based on the information before us, we hereby impose a total forfeiture of \$4,500 for Western Aviation's willful or repeated violation of section 227(b)(1)(C) of the Act and section 64.1200(a)(3) of the Commission's rules for the reasons set forth in the NAL and herein.

#### IV. ORDERING CLAUSES

8. 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 Western Aviation, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** to the United States Government in the sum of \$4,500 for willfully violating section 227(b)(1)(C) of the Communications Act, 47 U.S.C. § 227(b)(1)(C), and section 64.1200(a)(3) of the Commission's rules, 47 C.F.R. § 64.1200(a)(3).

9. 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 enforcement 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 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). Western Aviation shall also send electronic notification on the date said payment is made to [Johnny.Drake@fcc.gov](mailto: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](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures.

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*Telephone Consumer Protection Act of 1991, Junk Fax Recovery Act of 2005*, CG Docket Nos. 02-278, 05-338, Report and Order and Third Order on Reconsideration, 21 FCC Rcd 3787, 3793-94 para. 12 (2006).

<sup>13</sup> Western Aviation also comments at one point that it has "heard of competitors sending out faxes with other companies names on them specifically to people who would contact the FCC, just to stir up trouble but I have never been able to verify such accusations." Western Aviation Nov. 2009 Letter at 1. Western Aviation provides no evidence or reason for believing any such anti-competitive deception occurred in this case.

10. **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 Western Aviation, Inc., Attention: David L. Fisher, President, 6701 Highway Blvd., Suite 105, Katy, TX 77494.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison  
Chief, Enforcement Bureau