

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

In the Matter of
MHJP, Inc. f/k/a BCJR, Inc.
Apparent Liability for Forfeiture
File No. EB-05-TC-078, EB-07-TC-1270
NAL/Acct. No. 200732170071
FRN: 0016773517

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: June 19, 2008

Released: June 20, 2008

By the Commission:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL")¹, we find that MHJP, Inc. f/k/a BCJR, Inc. ("MHJP")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 six unsolicited advertisements to the telephone facsimile machines of at least six

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, MHJP, Inc. was formerly known as BCJR, Inc. Therefore, all references in this NAL to MHJP encompass MHJP as well as BCJR. Matt Hubbard, President, is listed as the contact person for MHJP. Accordingly, all references in this NAL to MHJP also encompass the foregoing individual and all other principals and officers of this entity, as well as the corporate entity itself. In response to a previous Notice of Apparent Liability against MHJP, see n.2, infra, MHJP provided us with information indicating that the company has ceased operations. See Letter from MHJP, Inc. dated August 17, 2007 (stating MHJP, Inc. has dissolved as of August 17, 2007, including copies of the Notice of Corporate Dissolution and Articles of Dissolution, submitted to Department of Corporations for the State of Florida). At the time of the unsolicited advertisements violations addressed herein, MHJP operated out of the following offices: P.O. Box 161759, Altamonte Springs, FL 32716; 180 N. Westmonte Drive, Altamonte Springs, FL 32714-3342 and 3059 Autumn Court, Winter Park, FL 32792-1738. BCJR had offices at 180 N. Westmonte Drive, Altamonte Springs, FL 32714-3342. The registered agent for MHJP, who was also the registered agent for BCJR, is Traci Reagan, 513 Balsawood Court, Altamonte Springs, FL 32714.

consumers.³ Based on the facts and circumstances surrounding these apparent violations, we find that MHJP is apparently liable for a forfeiture in the amount of \$27,000.

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 unsolicited advertisement.”⁴ 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.”⁵ Under the Commission’s rules, an “established business relationship”⁶ exception permits a party to deliver a message to a consumer if the sender has an established business relationship with the recipient *and* the sender obtained the number of the facsimile machine through the voluntary communication by the recipient, directly to the sender, within the context of the established business relationship, or through a directory, advertisement, or a site on the Internet to which the recipient voluntarily agreed to make available its facsimile number for public distribution.⁷

3. On December 22, 2005, in response to one or more consumer complaints alleging that BCJR, MHJP’s predecessor, had faxed unsolicited advertisements, the Enforcement Bureau (“Bureau”) issued a citation⁸ to BCJR, pursuant to section 503(b)(5) of the Act.⁹ The Bureau cited MHJP¹⁰ for using a telephone facsimile machine, computer, or other device, to send unsolicited advertisements for vacation

³ See 47 U.S.C. § 227(b)(1)(C); 47 C.F.R. § 64.1200(a)(3); see also *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order and Third Order on Reconsideration*, 21 FCC Rcd 3787 (2006).

⁴ 47 U.S.C. § 227(b)(1)(C); 47 C.F.R. § 64.1200(a)(3).

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

⁶ An “established business relationship” is defined as a prior or existing relationship formed by a voluntary two-way communication “with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the business or residential subscriber regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party.” 47 C.F.R. § 64.1200(f)(5).

⁷ See 47 U.S.C. § 227(b)(1)(C); 47 C.F.R. § 64.1200(a)(3)(i), (ii).

⁸ Citation from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, File No. EB-05-TC-078 issued to BCJR, Inc. on December 22, 2005. The Commission staff subsequently issued a citation to the same entity under the name “MHJP.” See Citation from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, File No. EB-07-TC-1270 issued to MHJP, Inc. f/k/a BCJR, Inc. on May 25, 2007.

⁹ 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).

¹⁰ Bureau staff issued the December 22, 2005 citation to BCJR, Inc., because MHJP formerly operated under the corporate name BCJR, Inc. See n.2, *supra*. In a letter dated November 13, 2006 responding to a Commission request for information, TouchTone Communications provided previous billing information for MHJP indicating that BCJR was the predecessor to MHJP. Letter from Neil DeRiggi, Customer Service Manager, TouchTone Communications, to Federal Communications Commission, Enforcement Bureau, Telecommunications Consumers Division, dated November 13, 2006. The toll-free number at issue in this NAL, 1-800-215-3132, was listed as a number “associated” with the toll-free number that Commission staff had inquired about at that time. The letter indicated that Matt Hubbard was the contact person for both BCJR and MHJP. As of June 14, 2007, Matt Hubbard was still listed as the contact person for MJHP in TouchTone’s billing records. Letter from Neil DeRiggi, Customer Service Manager, TouchTone Communications, to Federal Communications Commission, dated June 14, 2007.

packages to a telephone facsimile machine, in violation of section 227 of the Act and the Commission's related rules and orders. The citation, which was served by certified mail, return receipt requested, warned MHJP 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.¹¹ The citation informed MHJP 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. MHJP did not request an interview or otherwise respond to the citation.¹²

4. Despite the citation's warning that subsequent violations could result in the imposition of monetary forfeitures, we have received additional consumer complaints indicating that MHJP continued to engage in such conduct after issuance of the citation.¹³ We base our action here specifically on complaints filed by six consumers establishing that MHJP continued to send six unsolicited advertisements to telephone facsimile machines after the date of the citation.¹⁴

5. 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.¹⁵ 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, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."¹⁶

III. DISCUSSION

A. Violations of the Commission's Rules Restricting Unsolicited Facsimile Advertisements

¹¹ Bureau staff mailed the citation to the following address: BCJR, Inc., 180 N. Westmont Drive, Altamonte Springs, FL 32714. On May 25, 2007, Bureau staff also mailed the citation to the following addresses: MHJP, Inc. f/k/a BCJR, Inc., 3059 Autumn Court, Winter Park, FL 32792-1738; and P.O. Box 161759, Altamonte Springs, FL 32716. See n.2 and n.8, *supra*.

¹² Following the issuance of the citation, the Commission continued to receive complaints from multiple consumers alleging that MHJP faxed unsolicited advertisements to them. These complaints, received after the Commission's citation, resulted in the issuance of a Notice of Apparent Liability for Forfeiture against MHJP on August 1, 2007 in the amount of \$87,500. *MHJP, Inc. f/k/a BCJR, Inc., Notice of Apparent Liability for Forfeiture, FCC-07-135* (August 1, 2007).

¹³ See Appendix for a listing of the consumer complaints against MHJP requesting Commission action.

¹⁴ We note that evidence of additional instances of unlawful conduct by MHJP Company may form the basis of subsequent enforcement action.

¹⁵ 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).

¹⁶ 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).

6. We find that MHJP apparently violated section 227 of the Act and the Commission's related rules and orders by using a telephone facsimile machine, computer, or other device to send at least six unsolicited advertisements to the six consumers identified in the Appendix. This NAL is based on evidence that six consumers received six unsolicited fax advertisements from MHJP *after* the Bureau's citation. The facsimile transmissions advertise vacation packages. Further, according to the complaints, the consumers neither had an established business relationship with MHJP nor gave MHJP permission to send the facsimile transmissions.¹⁷ The faxes at issue here therefore fall within the definition of an "unsolicited advertisement."¹⁸ Based on the entire record, including the consumer complaints, we conclude that MHJP apparently violated section 227 of the Act and the Commission's related rules and orders by sending six unsolicited advertisements to six consumers' facsimile machines.

B. Proposed Forfeiture

7. We find that MHJP is apparently liable for a forfeiture in the amount of \$27,000. 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.¹⁹ We apply that base amount to the six apparent violations. Thus, a total forfeiture of \$27,000 is proposed. MHJP will have the opportunity to submit evidence and arguments in response to this NAL to show that no forfeiture should be imposed or that some lesser amount should be assessed.²⁰

IV. CONCLUSION AND ORDERING CLAUSES

8. We have determined that MHJP, Inc. f/k/a BCJR, Inc. apparently violated section 227 of the Act and the Commission's related rules and orders by using a telephone facsimile machine, computer, or other device to send at least six unsolicited advertisements to the six consumers identified in the Appendix. We have further determined that MHJP, Inc. f/k/a BCJR, Inc. is apparently liable for a forfeiture in the amount of \$27,000.

9. 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, that MHJP, Inc. f/k/a BCJR, Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of \$27,000 for willful or repeated violations of section 227(b)(1)(C) of the Communications Act, 47 U.S.C. § 227(b)(1)(C), sections 64.1200(a)(3) of the Commission's rules, 47 C.F.R. § 64.1200(a)(3), and the related orders described in the paragraphs above.

10. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission's rules,²¹ within thirty (30) days of the release date of this *Notice of Apparent Liability for Forfeiture*,

¹⁷ See, e.g., complaint dated June 1, 2007, from Gary Stacharowski (stating that he has never purchased anything from the company being advertised in the fax or made an inquiry or application to the company or given consent for the company to send the fax.). The complainants involved in this action are listed in the Appendix.

¹⁸ See 47 U.S.C. § 227(a)(4); 47 C.F.R. § 64.1200(f)(13) (definition previously at § 64.1200(f)(10)).

¹⁹ 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).

²⁰ See 47 U.S.C. § 503(b)(4)(C); 47 C.F.R. § 1.80(f)(3).

²¹ 47 C.F.R. § 1.80.

MHJP, Inc. f/k/a BCJR, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. 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). MHJP, Inc. f/k/a BCJR, Inc. 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.

12. 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/Acct. No. referenced in the caption.

13. 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 financial documentation submitted.

14. IT IS FURTHER ORDERED that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by Certified Mail Return Receipt Requested and First Class mail to MHJP, Inc. f/k/a BCJR, Inc., Attention: Matt Hubbard, MHJP, Inc. f/k/a BCJR, Inc., 3059 Autumn Court, Winter Park, FL 32792-1738, 180 N. Westmonte Drive, Altamonte Springs, FL 32714-3342 and P.O. Box 161759, Altamonte Springs, FL 32716; and c/o MHJP, Inc. f/k/a BCJR, Inc., Traci Reagan, 513 Balsawood Court, Altamonte Springs, FL 32714.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

Complainants and Violation Dates

Complainant received facsimile solicitations	Violation Date(s)
Nicolais, Robert	6/21/07
Davis, Warren	6/21/07
Sanders, Ronald	6/21/07
Hall, Joe	6/22/07
Long, Carl	6/26/07
Moran, Dan	6/26/07