

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

In the Matter of
Hot Lead LLC
d/b/a The Hot Lead Company
Apparent Liability for Forfeiture
File No. EB- 06-TC-120
NAL/Acct. No. 200932170001
FRN: 0016773533

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: November 5, 2008

Released: November 5, 2008

By the Commission:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL")<sup>1</sup>, we find that The Hot Lead LLC ("Hot Lead")<sup>2</sup> 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 eight unsolicited advertisements to the telephone facsimile machines of at least seven consumers.<sup>3</sup> Based on the facts and circumstances surrounding these apparent violations, we find that Hot Lead is apparently liable for a forfeiture in the amount of \$47,000.

<sup>1</sup> 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).

<sup>2</sup> According to publicly available information, Hot Lead is also doing business as The Hot Lead Company. Therefore, all references in this NAL to "Hot Lead" encompass Hot Lead as well as The Hot Lead Company. Hot Lead has offices at 16901 Dallas Parkway, Addison, Texas 75001. The Hot Lead Company has offices at 1400 Preston Road #300, Plano, Texas 75903. Mr. Greg Horne, is listed as the contact person for both Hot Lead and The Hot Lead Company. Hot Lead also lists as a principal Mike Horne, Manager, PO Box 12057, Las Vegas, NV 89112. Accordingly, all references in this NAL to "Hot Lead" also encompass the foregoing individuals and all other principals and officers of the entity noted herein, as well as the corporate entities themselves.

<sup>3</sup> 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).

## 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.”<sup>4</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>5</sup> Under the Commission’s rules, an “established business relationship”<sup>6</sup> 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.<sup>7</sup>

3. On May 5, 2006, in response to one or more consumer complaints alleging that Hot Lead had faxed unsolicited advertisements, the Enforcement Bureau (“Bureau”) issued a citation<sup>8</sup> to Hot Lead, pursuant to section 503(b)(5) of the Act.<sup>9</sup> The Bureau staff cited Hot Lead for using a telephone facsimile machine, computer, or other device, to send unsolicited advertisements for mortgage financing, health and life insurance, credit and debit card services, interior shutters, custom-logo shirts/T-shirts, fax advertising and sales leads to telephone facsimile machines, in violation of section 227 of the Act and the Commission’s related rules and orders. The citation warned Hot Lead 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.<sup>10</sup> The citation informed Hot Lead 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. Hot Lead did not request an interview or otherwise respond to the citation.<sup>11</sup>

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

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

<sup>6</sup> 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).

<sup>7</sup> See 47 U.S.C. § 227(b)(1)(C); 47 C.F.R. § 64 (a)(3)(i), (ii).

<sup>8</sup> Citation from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, File No. EB-06-TC-120 issued to Hot Lead on May 5, 2006.

<sup>9</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>10</sup> Commission staff mailed the citation to 16901 Dallas Parkway, Addison, Texas 75001 and 1400 Preston Road #300, Plano, Texas 75903. See n.2, *supra*.

<sup>11</sup> Following the issuance of the citation, the Commission continued to receive complaints from multiple consumers alleging that Hot Lead faxed unsolicited advertisements to them. These complaints, received after the Commission’s citation, resulted initially in the issuance of two Notices of Apparent Liability for Forfeiture against Hot Lead: on August 14, 2007 in the amount of \$2,168,500, *The Hot Lead LLC*, Notice of Apparent Liability For Forfeiture, 22 FCC Rcd 15924 (2007), and on December 26, 2007 in the amount of \$423,000, *The Hot Lead LLC*, Notice of Apparent Liability For Forfeiture, 22 FCC Rcd 22212 (2007). Accordingly, on March 19, 2008, the Commission issued a Forfeiture Order to Hot Lead based on these NALs in the amount of \$2,591,500, *The Hot Lead LLC*, Forfeiture Order, 23 FCC Rcd 5282 (2008) Subsequent additional complaints resulted in the issuance of two additional Notices of Apparent Liability for Forfeiture against Hot Lead: in the amount of \$695,000, *The Hot Lead*

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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 Hot Lead continued to engage in such conduct.<sup>12</sup> We base our action here specifically on complaints filed by seven consumers establishing that Hot Lead continued to send eight unsolicited advertisements to telephone facsimile machines after the date of the citation.<sup>13</sup>

5. 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>14</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, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."<sup>15</sup>

### III. DISCUSSION

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

6. We find that Hot Lead 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 eight unsolicited advertisements to the seven consumers identified in the Appendix. This NAL is based on evidence that seven consumers received unsolicited fax advertisements from Hot Lead *after* the Bureau's citation. The facsimile transmissions advertise commercial loans and shirts. Further, according to the complaints, the consumers neither had an established business relationship with Hot Lead nor gave Hot Lead permission to send the facsimile transmissions.<sup>16</sup> The faxes at issue here therefore fall within

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*LLC*, Notice of Apparent Liability For Forfeiture, 23 FCC Rcd 8982 (2008), and in the amount of \$739,500, *The Hot Lead LLC*, Notice of Apparent Liability For Forfeiture, 23 FCC Rcd 11674 (2008). To date, Hot Lead has not filed a response to any of these NALs or to the Forfeiture Order.

<sup>12</sup> See Appendix for a listing of the consumer complaints against Hot Lead requesting Commission action.

<sup>13</sup> We note that evidence of additional instances of unlawful conduct by Hot Lead may form the basis of subsequent enforcement action.

<sup>14</sup> 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) 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).

<sup>15</sup> 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).

<sup>16</sup> See, e.g., complaint dated November 19, 2007, from Allan Gelbard (stating that he has never done any business with the fax advertiser, never made an inquiry or application to the fax advertiser, never gave permission for the

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the definition of an “unsolicited advertisement.”<sup>17</sup> Based on the entire record, including the consumer complaints, we conclude that Hot Lead apparently violated section 227 of the Act and the Commission’s related rules and orders by sending eight unsolicited advertisements to seven consumers’ facsimile machines.

## B. Proposed Forfeiture

7. We find that Hot Lead is apparently liable for a forfeiture in the amount of \$47,000. 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.<sup>18</sup> We apply that base amount to each of six of the apparent violations. In addition, where the consumer requests the company to stop sending facsimile messages, and the company continues to send them, the Commission has previously considered \$10,000 per unsolicited fax advertisement the appropriate forfeiture for such egregious violations.<sup>19</sup> Here, one consumer specifically requested that Hot Lead cease sending facsimiles. Notwithstanding these requests, an additional two facsimiles were sent to this consumer. We therefore apply the \$10,000 amount to each of these two apparent violations. Thus, a total forfeiture of \$47,000 is proposed. Hot Lead 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.<sup>20</sup>

## IV. CONCLUSION AND ORDERING CLAUSES

8. We have determined that The Hot Lead LLC 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 eight unsolicited advertisements to the seven consumers identified in the Appendix. We have further determined that The Hot Lead LLC is apparently liable for a forfeiture in the amount of \$47,000.

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 The Hot Lead LLC is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of \$47,000 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.

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company to send the fax, and requested the company not to fax an advertisement). The complainants involved in this action are listed in the Appendix.

<sup>17</sup> See 47 U.S.C. § 227(a)(4); 47 C.F.R. § 64.1200(f)(13) (definition previously at § 64.1200(f)(10)).

<sup>18</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).

<sup>19</sup> See *Carolina Liquidators, Inc.*, Notice of Apparent Liability for Forfeiture, 15 FCC 16837, 16842 (2000); *21<sup>st</sup> Century Fax(es) Ltd., AKA 20<sup>th</sup> Century Fax(es)*, 15 FCC Rcd 24406, 24411 (2000).

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

10. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission's rules,<sup>21</sup> within twenty (20) days of the release date of this *Notice of Apparent Liability for Forfeiture*, The Hot Lead LLC 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). The Hot Lead LLC 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 12<sup>th</sup> 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 12<sup>th</sup> 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 by regular mail to: The Hot Lead LLC, Attention: Mr. Greg Horne, 16901 Dallas Parkway, Addison, Texas 75001; The Hot Lead Company, Attention: Mr. Greg Horne, 1400 Preston Road #300, Plano, Texas; and The Hot Lead Company, Attention: Mike Horne, Manager, PO Box 12057, Las Vegas, NV 89112.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>21</sup> 47 C.F.R. § 1.80.

## APPENDIX

## Complainants and Violation Dates

<b>Complainant received facsimile advertisements</b>	<b>Violation Date(s)</b>
Jan Deswik, D&A Infotech	11/06/2007
Albert Chi	11/06/2007
Janice Nicolosi	11/19/2007
Kathryn Han	11/19/2007
Gayle Teufel	11/23/2007
Denneth Furuta	11/27/2007

<b>Complainant received facsimile advertisements after requesting no more be sent</b>	<b>Violation Date(s)</b>
Allan Gelbard	11/19/2007; 11/23/2007