

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

In the Matter of)	File No. EB-09-TC-048
)	
Media Synergy Group, LLC)	NAL/Acct. No. 201032170004
)	
Apparent Liability for Forfeiture)	FRN: 0020071932
)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 27, 2010

Released: July 28, 2010

By the Commission:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“*NAL*”)¹, we find that Media Synergy Group, LLC (“Media Synergy”)² apparently willfully and 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 15 unsolicited, prerecorded advertising messages to at least six consumers.³ Based on the facts and circumstances surrounding these apparent violations, we find that Media Synergy is apparently liable for a forfeiture in the amount of \$67,500. Media Synergy 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.

II. BACKGROUND

2. Section 227(b)(1)(B) prohibits any person from initiating “any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes or is exempted by

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 Media Synergy has offices at 720 Moorefield Park Dr., Ste 200, Richmond VA 23236. Charles Anton, CEO, Vincent Grebas, and Lou Anton are listed as contact persons for Media Synergy. Accordingly, all references in this *NAL* to “Media Synergy” also encompass the foregoing individuals and all other principals and officers of this entity, as well as the corporate entity itself.

³ See 47 U.S.C. § 227(b)(1)(B); 47 C.F.R. § 64.1200(a)(2).

rule or order by the Commission.”⁴ Section 64.1200(a)(2) of the Commission's rules provides exemptions to the prohibition not only for emergency calls, but also for calls: 1) not made for a commercial purpose; 2) made for a commercial purpose but “not includ[ing] or introduc[ing] an unsolicited advertisement⁵ or constitut[ing] a telephone solicitation,”⁶ 3) to any person “with whom the caller has an established business relationship⁷ at the time the call is made,” or 4) “made by or on behalf of a tax-exempt nonprofit organization.”⁸

3. On February 11, 2009, in response to one or more consumer complaints alleging that Media Synergy had delivered unsolicited, prerecorded advertising messages, the Enforcement Bureau (“Bureau”) issued a citation⁹ to Media Synergy, pursuant to section 503(b)(5) of the Act.¹⁰ The Bureau cited Media Synergy for delivering one or more unsolicited, prerecorded advertising messages for hair treatments to a residential telephone line in violation of section 227 of the Act and the Commission’s related rules and orders. The citation warned Media Synergy that subsequent violations could result in the imposition of monetary forfeitures of up to \$16,000 per violation, and included a copy of the consumer complaint that formed the basis of the citation.¹¹ The citation informed Media Synergy that within 30 days of the date of the citation, it could either request an interview with Commission staff, or provide a written statement responding to the citation. Media Synergy did not request an interview or otherwise respond to the citation.

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 Media Synergy continued to engage in such conduct after issuance of the citation.¹² We base our action here specifically

⁴ 47 U.S.C. § 227(b)(1)(B); 47 C.F.R. § 64.1200(a)(2).

⁵ An “unsolicited advertisement” is defined 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.” 47 U.S.C. § 227(a)(5); 47 C.F.R. § 64.1200(f)(13).

⁶ A “telephone solicitation” is defined as “the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include a call or message (A) to any person with that person’s prior express invitation or permission, (B) to any person with whom the caller has an established business relationship, or (C) by a tax-exempt nonprofit organization.” 47 U.S.C. § 227(a)(4); 47 C.F.R. § 64.1200(f)(12). We have previously found that “prerecorded messages containing free offers and information about goods and services that are commercially available are prohibited to residential telephone subscribers, if not otherwise exempt[.]” *TCPA Revisions Report and Order*, 18 FCC Rcd 14097-98 (2003).

⁷ An “established business relationship” is defined as “a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of the subscriber’s purchase or transaction with the entity within the eighteen (18) months immediately preceding the date of the telephone call or on the basis of the subscriber’s inquiry or application regarding products or services offered by the entity within the three months immediately preceding the date of the call, which relationship has not been previously terminated by either party.” 47 C.F.R. § 64.1200(f)(4).

⁸ 47 U.S.C. § 227(b)(1)(B); 47 C.F.R. § 64.1200(a)(2).

⁹ Citation from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, File No. EB-09-TC-048, issued to Media Synergy on February 11, 2009.

¹⁰ 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).

¹¹ Commission staff mailed the citation to the following address: Media Synergy Group, Attn: Charles Anton, CEO, Vincent Grebas, Lou Anton, 720 Moorefield Park Dr., Ste 200, Richmond, VA 23236. See n.2, *supra*.

¹² See Appendix for a listing of the consumer complaints against Media Synergy requesting Commission action.

on complaints filed by six consumers establishing that Media Synergy sent at least 15 unsolicited, prerecorded advertising messages to consumers after the date of the citation.¹³

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 \$16,000.¹⁴ 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.”¹⁵

III. DISCUSSION

A. Violations of the Commission’s Rules Restricting Unsolicited Prerecorded Messages

6. We find that Media Synergy apparently violated section 227 of the Act and the Commission’s related rules and orders by delivering at least 15 unsolicited, prerecorded advertising messages to the six consumers identified in the Appendix. This *NAL* is based on evidence that six consumers received unsolicited prerecorded messages from Media Synergy advertising travel services *after* the Commission staff’s citation. Further, according to the complaints, the unsolicited, prerecorded messages at issue here were not made for any emergency or non-commercial purposes, and were not on behalf of a tax-exempt, nonprofit organization, but were commercial in nature and included unsolicited advertisements or constituted telephone solicitations. In addition, according to the complaints, the consumers neither had an established business relationship with Media Synergy nor gave Media Synergy permission to deliver the unsolicited, prerecorded messages.¹⁶ Therefore, the prerecorded messages at issue here fall within the definition of an “unsolicited advertisement.”¹⁷ Based on the entire record, including the consumer complaints, we conclude that Media Synergy apparently violated section 227 of the Act and the Commission’s related rules and orders by delivering 15 unsolicited, prerecorded advertising messages to six consumers.

¹³ We note that evidence of additional instances of unlawful conduct by Media Synergy may form the basis of subsequent enforcement action.

¹⁴ 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 at \$16,000).

¹⁵ 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).

¹⁶ *See, e.g.*, complaint dated August 21, 2009 from C. Lowrie (stating that complainant had never done any business with the company, never made an inquiry or application to the company, and never gave permission for the company to make the call). The complainants involved in this action are listed in the Appendix below.

¹⁷ *See* 47 U.S.C. § 227(a)(5); 47 C.F.R. § 64.1200(f)(13).

B. Proposed Forfeiture

7. We find that Media Synergy is apparently liable for a forfeiture in the amount of \$67,500. Although the *Commission's Forfeiture Policy Statement* does not establish a base forfeiture amount for violating the prohibition on delivering unsolicited, prerecorded advertising messages to a residential telephone line, the Commission's Enforcement Bureau has found these violations to be similar in nature to violating the prohibition against using a telephone facsimile machine to send unsolicited advertisements.¹⁸ The Commission has previously considered \$4,500 per unsolicited fax advertisement to be an appropriate base amount.¹⁹ We apply that base amount to each of 15 apparent unsolicited, prerecorded advertising message violations. Thus, we propose a total forfeiture of \$67,500. Media Synergy 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 Media Synergy Group, LLC apparently violated section 227 of the Act and the Commission's related rules and orders by delivering at least 15 unsolicited, prerecorded advertising messages to the six consumers identified in the Appendix. We have further determined that Media Synergy Group, LLC is apparently liable for a forfeiture in the amount of \$67,500.

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 Media Synergy Group, LLC is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of \$67,500 for willful and repeated violations of section 227(b)(1)(B) of the Communications Act, 47 U.S.C. § 227(b)(1)(B), sections 64.1200(a)(2) of the Commission's rules, 47 C.F.R. § 64.1200(a)(2), 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*, Media Synergy Group, 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

¹⁸ See *Warrior Custom Golf, Inc.*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd. 23648, 23652 (Enf. Bur. 2004) ("*Warrior Custom Golf*") (first *NAL* to address pre-recorded advertising messages); see also *Septic Safety, Inc.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd. 2179 (Enf. Bur. 2005); *Septic Safety, Inc.*, Forfeiture Order, 21 FCC Rcd. 6868 (Enf. Bur. 2006); *1 Home Lending Corporation, d/b/a Capital Line Financial, LLC.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd. 11852 (Enf. Bur. 2006); *1 Home Lending Corporation, d/b/a Capital Line Financial, LLC.*, Forfeiture Order, 24 FCC Rcd 2888 (Enf. Bur. 2009).

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.

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). Media Synergy will also send electronic notification to Johnny.Drake@fcc.gov on the date said payment is made. 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: Marlene H. Dortch, Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau – Telecommunications Consumers Division; and to Kurt Schroeder, Acting 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. Documents sent by overnight mail (*other than* United States Postal Service Express Mail) must be addressed to: Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary, 9300 East Hampton Drive, Capitol Heights, MD 20743. Hand or messenger-delivered mail should be directed, without envelopes, to: Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554 (deliveries accepted Monday through Friday 8:00 a.m. to 7:00 p.m. only). See www.fcc.gov/osec/guidelines.html for further instructions on FCC filing addresses.

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 Media Synergy Group, LLC, Attention: Charles Anton, CEO, Vincent Grebas, Lou Anton, 720 Moorefield Park Dr., Ste 200, Richmond, VA 23236.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

Complainants Who Received Unsolicited Prerecorded Messages	Violation Date(s)
D. Ballard	8/3/2009; 8/4/2009; 8/6/2009; 8/8/2009
D. Stephens	8/11/2009
J. McKay	8/6/2009 (3 calls); 8/8/2009
M. Sigmon	8/4/2009
C. Lowrie	8/12/2009; 8/20/2009; 8/21/2009
D. Jackson	8/3/2009; 8/4/2009