

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

In the Matter of)	File No. EB-07-TC-13259
)	
Clean Credit, Inc.)	NAL/Acct. No. 201032170007
)	
Apparent Liability for Forfeiture)	FRN: 0018140178
)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 1, 2010

Released: September 2, 2010

By the Commission:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”),¹ we find that Clean Credit, Inc. (“Clean Credit”)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 33 unsolicited advertisements to the telephone facsimile machines of 15 consumers.³ The Commission has previously issued two other NALs to Clean Credit for “junk fax” violations, in a total amount of \$139,000.⁴ Clean Credit did not respond to those earlier NALs and apparently continued to send

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, Clean Credit is also doing business as Kleen Credit, Inc., American Business Lending, and Oklahoma Lending Tree. Therefore, all references in this NAL to “Clean Credit” encompass Clean Credit as well as Kleen Credit, Inc., American Business Lending, and Oklahoma Lending Tree. Clean Credit has offices at 5332 S. Memorial Drive, #100, Tulsa, OK 74145. Christopher Parks is listed as the contact person for Clean Credit. Accordingly, all references in this NAL to “Clean Credit” also encompass the foregoing individual 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)(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 *Clean Credit, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 13866 (Enf. Bur.2008) (“NAL 1”); *Clean Credit, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 18506 (2008) (“NAL 2”) (jointly “NALs”).

unlawful, unsolicited junk faxes. Based on the facts and circumstances surrounding these most recent complaints, we find that Clean Credit is apparently liable for a forfeiture in the amount of \$528,000.⁵

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.⁶ 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.⁷ Section 227(b)(1)(C) of the Act thus 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” unless the sender has an established business relationship with the recipient.⁸

3. The Commission has already taken action against Clean Credit for sending junk faxes on three separate occasions. On August 29, 2007, in response to consumer complaints, the Enforcement Bureau (“Bureau”) issued a citation to Clean Credit, pursuant to section 503(b)(5) of the Act.⁹ Clean Credit did not respond to the citation, and the Commission continued to receive complaints alleging that Clean Credit had sent junk faxes. Based on those continuing complaints, the Commission issued two NALs against Clean Credit: one on September 26, 2008 in the amount of \$13,500, and one on December 19, 2008 in the amount of \$126,000.¹⁰ As with the citation, Clean Credit did not respond to the NALs.

4. Despite the multiple enforcement actions described above, we have continued to receive complaints indicating that Clean Credit continues to send junk faxes.¹¹ We base our action here specifically on complaints filed by 15 consumers establishing that Clean Credit sent 33 more unsolicited advertisements to telephone facsimile machines between September 4, 2009 and March 24, 2010.¹²

⁵ Clean Credit 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.

⁶ 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).

⁷ *See, e.g.*, S. Rep. No. 1462, 102d Cong., 1st Sess. 2 (1991); H. Rep. No. 102-317, 102d Congress, 1st Sess. 10 (1991).

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

⁹ Citation from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, File No. EB-07-TC-13259, issued to Clean Credit on August 29, 2007. For further details, *see NAL 2*, 23 FCC Rcd at 18507, ¶ 3. *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 *NAL 1*, *NAL 2*.

¹¹ *See* Appendix for a listing of the consumer complaints against Clean Credit requesting Commission action.

¹² Additional complaints or any other evidence of additional instances of unlawful conduct by Clean Credit will result in additional enforcement action.

III. DISCUSSION

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

5. We find that Clean Credit 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 33 unsolicited advertisements to the 15 consumers identified in the Appendix.¹³ Further, according to the complaints, the consumers neither had an established business relationship with Clean Credit nor gave Clean Credit permission to send the facsimile transmissions.¹⁴ The faxes at issue here therefore fall within the definition of "unsolicited advertisements."¹⁵ Based on the entire record, including the consumer complaints, we conclude that Clean Credit apparently violated section 227 of the Act and the Commission's related rules and orders on 33 separate occasions.

B. Proposed Forfeiture

6. 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 for a violation occurring on or after September 2, 2008, as is the case here.¹⁶ 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."¹⁷

7. We find that Clean Credit is apparently liable for a forfeiture in the amount of \$528,000. The Commission has previously considered \$4,500 per unsolicited fax advertisement to be an appropriate base amount.¹⁸ In this case, however, we have evidence of 33 additional violations by Clean Credit *after* the issuance of a citation *and* two separate NALs to the company. Clean Credit has exhibited a flagrant disregard for the TCPA and the Commission's rules and orders, with a lengthy history of violations, and an ongoing pattern of violations extending to as recently as a few months ago. The fact that Clean Credit has apparently continued to send unlawful junk faxes even after the Commission's earlier enforcement actions shows that the company was not deterred by the forfeiture amounts proposed in the earlier NALs.

¹³ The facsimile transmissions advertise commercial loans.

¹⁴ See 47 C.F.R. § 64.1200(f)(5). See also 47 U.S.C. § 227(a)(2). See, e.g., complaint dated November 25, 2009 from M. Anzalone (stating that he has never done any business with the fax advertiser, never made an inquiry or application to the fax advertiser, and never gave permission for the company to send the fax.). The complainants involved in this action are listed in the Appendix.

¹⁵ See 47 U.S.C. § 227(a)(4); 47 C.F.R. § 64.1200(f)(13) (definition previously at § 64.1200(f)(10)).

¹⁶ Section 503(b)(2)(C) provides for forfeitures of up to \$10,000, which the Commission may adjust for inflation. 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). The Commission has made such inflation adjustments and the current maximum statutory forfeiture in this case is \$16,000. See 47 C.F.R. § 1.80(b)(3).

¹⁷ See 47 U.S.C. § 503(b)(2)(D); see also *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).

¹⁸ 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).

In determining the amount of a forfeiture penalty, section 503(b)(2)(D) of the Act directs us 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.”¹⁹ Here, taking into account Clean Credit’s history of prior offenses,²⁰ the company’s ongoing pattern of violations, the important purposes of the TCPA, and the need to impose a penalty that will actually deter future violations, we propose the statutory maximum penalty -- \$16,000 per violation. Applying that amount to each of the 33 apparent violations, we propose a total forfeiture of \$528,000. Clean Credit 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.²¹

8. We note here that Clean Credit’s continuing pattern of violations of section 227 of the Act may subject the company to action in other forums as well. Section 227(b)(3) of the Act creates a private right of action that permits a recipient of unsolicited facsimile advertisements to bring an action in state court (if otherwise permitted by the laws of the state or rules of the court) to seek an injunction or to recover actual damages, or \$500 for each violation, whichever is greater. Moreover, that amount may be tripled if the court finds that the defendant “willfully or knowingly violated” the ban on unsolicited facsimile advertisements. In addition, pursuant to section 227(f) of the Act, if the attorney general of a state has reason to believe that any person “has engaged or is engaging in a pattern or practice of transmissions to residents of that State” in violation of section 227, the state may bring a civil action on behalf of its residents to enjoin the behavior, recover damages, or both.

IV. CONCLUSION

9. We have determined that Clean Credit, 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 33 unsolicited advertisements to the 15 consumers identified in the Appendix. We have further determined that Clean Credit, Inc. is apparently liable for a forfeiture in the amount of \$528,000.

V. ORDERING CLAUSES

10. 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 Clean Credit, Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of \$528,000 for willful and repeated violations of 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 described in the paragraphs above.

11. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission’s rules,²² within thirty (30) days of the release date of this *Notice of Apparent Liability for Forfeiture*, Clean Credit, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. 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

¹⁹ 47 U.S.C. §503(b)(2)(D).

²⁰ In this regard, we note that we are not using the issuance of the prior NALs to Clean Credit’s prejudice (see 47 U.S.C. § 504(c)), but rather are appropriately considering “the underlying facts of a prior violation that shows a pattern of non-complaint behavior.” See *Forfeiture Policy Statement*, 12 FCC Rcd at 17103, para. 34.

²¹ See 47 U.S.C. § 503(b)(4)(C); 47 C.F.R. § 1.80(f)(3).

²² 47 C.F.R. § 1.80.

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). Clean Credit 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, SW, 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.

13. 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 Josh Zeldis, Assistant Division 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.

14. 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.

15. 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 Clean Credit, Inc., Attn: Christopher Parks, 5332 S. Memorial Drive, #100, Tulsa, OK 74145.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

Complainants and Violation Dates

Complainant received facsimile solicitations	Violation Date(s)
O. Jimenez, Southwest Sign Company	9/20/2009; 10/9/2009; 11/10/2009
K. Richardson, Classic Personalized Offline Services	10/9/2009; 11/1/2009; 11/7/2009; 11/10/2009; 1/8/2010; 1/20/2010; 2/13/2010; 2/19/2010
D. McDaniel, Capital Commercial Investments	10/12/2009
J. Ciulik, Fullerton University Village	10/13/2009; 11/09/2009
R. Nunes, Ron Nunes Enterprises	11/09/2009
M. Anzalone, Precisionsigns.com	11/25/2009
S. Patterson	9/28/2009; 12/26/2009; 3/23/2010
J. Sgroi	10/23/2009; 12/16/2010
T. Hollon, Northside Insurance Agency	2/9/2010
D. Brunjes, Bay Hardware	2/24/2010
R. Bunt, Synerlink Corporation	2/21/2010; 3/1/2010
B. Pinsonneault, Community of Christ	3/19/2010
L. Oyakawa, Brian Lewis & Company	3/24/2010
Dr. S. Goldman, Goldman Health Center	12/17/2010
C. Stein, Surplus City	9/4/2009; 9/14/2009; 10/4/2009; 10/14/2009; 11/23/2009