

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

In the Matter of)	File No.: EB-06-TC-2630
)	
Laser Technologies)	NAL/Acct. No. 201132170028
dba Laser Tech)	
)	FRN: 0011158425
Apparent Liability for Forfeiture)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 18, 2011

Released: July 18, 2011

By the Commission:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find that Laser Technologies dba Laser Tech¹ apparently willfully and repeatedly violated section 227(b)(1)(C) of the Communications Act of 1934, as amended (the “Communications Act” or “Act”), and section 64.1200(a)(3) of the Commission’s rules, by delivering 40 unsolicited advertisements, or “junk faxes,” to the telephone facsimile machines of 28 consumers.² Based on the facts and circumstances surrounding these apparent violations, we find that Laser Technologies is apparently liable for a forfeiture in the amount of \$252,000.

II. BACKGROUND

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

¹ According to publicly available information, Laser Technologies is also doing business as Laser Tech. Therefore, all references in this NAL to “Laser Technologies” also encompass “Laser Tech.” Laser Technologies has offices at 11693 San Vincente Boulevard, Suite 388, Los Angeles, CA 90049. Pablo Ciolfi, owner and CEO, is listed as the contact person for Laser Technologies. Accordingly, all references in this NAL to Laser Technologies also encompass the foregoing individual and all other principals and officers of this entity, as well as the corporate entity itself.

² 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).

³ 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).

⁴ 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
(continued....)

3. On December 28, 2006, in response to a consumer complaint alleging that Laser Technologies had faxed an unsolicited advertisement, the Enforcement Bureau (“Bureau”) issued a citation to Laser Technologies, pursuant to section 503(b)(5) of the Act.⁵ The Bureau cited Laser Technologies for using a telephone facsimile machine, computer, or other device, to send an unsolicited advertisement for ink and toner supplies to a telephone facsimile machine, in violation of section 227(b)(1)(C) of the Act and section 63.1200(a)(3) of the Commission’s rules.⁶ The citation informed Laser Technologies 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. Laser Technologies did not respond.

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 Laser Technologies continued to send unsolicited facsimiles after the date of the citation.⁷ Specifically this NAL is based on complaints filed by 28 consumers establishing that Laser Technologies continued to send 40 unsolicited advertisements to telephone facsimile machines between July 20, 2010 and January 26, 2011.⁸

III. DISCUSSION

A. Apparent Violations of Section 227(b)(1)(C) of the Act and the Commission’s Rules Restricting Unsolicited Facsimile Advertisements

5. Each of the consumers listed in the Appendix has provided evidence that Laser Technologies used a telephone facsimile machine, computer, or other device to send the consumer at least one unsolicited advertisement. The facsimile transmissions at issue advertise ink and toner supplies. The faxes therefore fall within the definition of an “unsolicited advertisement.”⁹ Further, according to the complaints, the consumers did not have an established business relationship with Laser Technologies, and the complainants did not give Laser Technologies permission to send the facsimile transmissions. We conclude that Laser Technologies apparently violated section 227(b)(1)(C) of the Act and section 64.1200(a)(3) of the Commission’s rules by sending 40 unsolicited advertisements to 28 consumers’ facsimile machines.

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through voluntary communication in the context of an EBR, or from a directory, advertisement, or site on the Internet to which the recipient voluntarily agreed to make available its facsimile number for public distribution. In addition, the unsolicited ad must notify the recipient of how to opt out of receiving future such ads, subject to certain requirements. The Commission has adopted implementing rules. *See* 47 C.F.R. § 64.1200(a)(3). *See also Junk Fax Prevention Act*, Report and Order, 21 FCC Rcd 3787, 3793-96 (2006), *modified on other grounds*, 23 FCC Rcd 15059 (2008).

⁵ *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 who are not applicants for any of those listed instrumentalities for violations of the Act or of the Commission’s rules and orders).

⁶ Citation from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, File No. EB-06-TC-2630, issued to Laser Technologies on December 28, 2006.

⁷ *See* Appendix for a listing of the consumer complaints against Laser Technologies requesting Commission action.

⁸ We note that evidence of additional instances of unlawful conduct by Laser Technologies may form the basis of subsequent enforcement action.

⁹ *See* 47 U.S.C. § 227(a)(5); 47 C.F.R. § 64.1200(f)(13). The term “unsolicited advertisement” means “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.” *Id.*

B. Proposed Forfeiture

6. After we have first issued a citation to an entity, as we have in this case, section 503(b) of the Act authorizes the Commission to propose a forfeiture for each subsequent violation of the Act, or of any rule, regulation, or order issued by the Commission under the Act.¹⁰ Section 503(b)(2)(E) mandates that, “[i]n determining the amount of such a forfeiture penalty, the Commission or its designee shall 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.”¹¹ Our forfeiture guidelines set forth the base amount for penalties for certain kinds of violations, and identify criteria, consistent with the section 503(b)(2)(E) factors, that may influence whether we adjust the base amount downward or upward.¹² For example, we may adjust a penalty upward for “[e]gregious misconduct,” or where the subject of an enforcement action has engaged in a “[r]epeated or continuous violation.”¹³ Currently, the maximum penalty that the Commission may impose against an entity such as Laser Technologies is \$16,000 per violation.¹⁴

7. The Commission has generally considered \$4,500 per unsolicited fax advertisement to be an appropriate base amount for violating the prohibition against sending them.¹⁵ 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.¹⁶ Consistent with this approach, we apply the \$4,500 base forfeiture to 36 of the apparent violations at issue in this NAL, and a \$10,000 forfeiture for four of the apparent violations in this NAL where the consumer received a facsimile from Laser Technologies after specifically requesting that Laser Technologies cease sending them. Based on the application of these standards, the total forfeiture proposed in this case would be \$202,000.

8. Recently, we have begun to impose upward adjustments for multiple, repeated violations of our junk fax rules. For example, in another NAL we issued recently against a company that had

¹⁰ 47 U.S.C. § 503(b)(5).

¹¹ 47 U.S.C. § 503(b)(2)(E).

¹² 47 C.F.R. § 1.80(b)(4) note. The absence of a particular type of violation from the forfeiture guidelines must “not be taken to mean that the violation is unimportant or nonexistent,” and “the Commission retains discretion to impose forfeitures for other violations.” *Commission’s Forfeiture Policy Statement*, Report & Order, 12 FCC Rcd 17,087, 17,110 (1997).

¹³ 47 C.F.R. § 1.80(b)(4) note.

¹⁴ 47 U.S.C. § 503(b)(2)(C). Section 503(b)(2)(C) provides for forfeitures of up to \$10,000 for each violation in cases, as in the instant case, where the violation does not involve a Commission licensee, common carriers, among others. See 47 U.S.C. § 503(b)(2)(C). 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). See also *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 an increase in the maximum forfeiture for this type of violator to \$16,000).

¹⁵ 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 FCC 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).

¹⁶ See *Carolina Liquidators, Inc.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 16,837, 16,842 (2000); *21st Century Fax(es) Ltd., AKA 20th Century Fax(es)*, 15 FCC Rcd 24,406, 24,411 (2000).

engaged in a total of 104 apparent violations, we proposed an upward adjustment of \$150,000;¹⁷ in a second NAL we issued against another company that had engaged in a total of sixty-two apparent violations, we proposed an upward adjustment of \$75,000.¹⁸ We proposed these upward adjustments because we concluded that application of our base forfeitures “has failed to deter the more persistent wrongdoers,” and thus that “different and harsher penalties than we have imposed in the past are appropriate for entities who engage in a significant number of violations.”¹⁹

9. Based on the number of Laser Tech’s apparent violations – 40 – we propose an upward adjustment of \$50,000, for a total proposed forfeiture of \$252,000. (\$202,000 + \$50,000 = \$252,000). The primary basis for the upward adjustment is Laser Tech’s repeated violations; as indicated above, the forfeiture guidelines explicitly identify “repeated or continuous violation” among the criteria for adjusting a forfeiture upward.²⁰ The magnitude of the adjustment is proportionate to the number of Laser Tech’s violations, and to the adjustments we applied in recent enforcement actions relative to the number of violations involved in those actions.

IV. CONCLUSION

10. We have determined that Laser Technologies apparently violated section 227(b)(1)(C) of the Act and section 64.1200(a)(3) of the Commission’s rules, by using a telephone facsimile machine, computer, or other device to send 40 unsolicited advertisements to the 28 consumers identified in the Appendix. We have further determined that Laser Technologies is apparently liable for a forfeiture in the amount of \$252,000.

V. ORDERING CLAUSES

11. 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 of the Commission’s rules, 47 C.F.R. § 1.80, that Laser Technologies is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of \$252,000 for willful and repeated violations of 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).

¹⁷ See *Presidential Who’s Who*, Notice of Apparent Liability for Forfeiture, FCC 11-95 (June 13, 2011)(“*Presidential Who’s Who NAL*”).

¹⁸ See *The Street Map Company*, Notice of Apparent Liability for Forfeiture, FCC 11-85 (June 1, 2011)(“*Street Map NAL*”).

¹⁹ *Id.* at 4-5.

²⁰ The upward adjustment of \$50,000 amounts to approximately \$1,400 for each of 36 of the violations at issue in this NAL that are not already subject to upward adjustment (*i.e.*, all of the violations except the four for which we assess a \$10,000 penalty). The combination of the base forfeiture and the upward adjustment for each of the 36 violations is therefore approximately \$5,900. This is in the range of the approximate \$6,000 per-violation forfeiture we proposed in the *Street Map NAL*, which involved a number of apparent junk fax violations subject to upward adjustment (49) that is similar to the number involved here. The upward adjustment in both the instant NAL and the *Street Map NAL* is, appropriately, less than that we proposed in the recent *Presidential Who’s Who NAL*, which, as indicated in the text, involved a considerably higher number of violations. Our approach in these cases indicates that we will tailor the adjustment to the facts of each case, taking into account our obligations under section 503(b)(2)(E) of the Act. In this respect, we may apply a higher forfeiture amount, such as the \$16,000 statutory maximum per-violation forfeiture, if the facts of a particular case warrant.

12. **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*, Laser Technologies **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. 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). Laser Technologies shall 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.

14. 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 Richard A. Hindman, 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.

15. 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.

²¹ 47 C.F.R. § 1.80.

16. **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 Laser Technologies dba Laser Tech, 11693 San Vincente Boulevard, Suite 388, Los Angeles, CA 90049, Attention: Pablo Ciolfi.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

Complainants and Apparent Violation Dates

Complainant received facsimile solicitations	Violation Date(s)
Ashley-Wurtmann, B.	10/11/10
Berg, D.	8/12/10
Botti, D.	10/5/10
Carman, P.	9/5/10
Ervin, A.	7/21/10
Holmes, J.	8/11/10, 12/15/10, 1/17/11, 1/26/11
Lasdon, A.	7/20/10
Latta, R.	8/18/10
Maone, J.	10/5/10
Marquis, T.	7/28/10
Messir, L.	12/2/10
McDaniel, D.	8/11/10, 8/19/10, 9/2/10, 10/6/10, 10/11/10, 10/20/10, 12/15/10
Pavia-Zawacki, A.	10/21/10
Person, A.	12/10/10
Piechota, J.	11/4/10
Shorten, T.	1/26/11
Sparks, S.	10/11/10
Spurrier, A.	8/23/10
Stinnett, C.	8/19/10, 10/21/10
Taddei, R.	1/27/11
Taylor, T.	9/16/10
Walton, E.	7/20/10, 8/11/10
Zelik, J.	7/28/10
Zeigler, D.	9/23/10, 11/18/10

Complainant received facsimile solicitations after requesting no more be sent	Violation Date(s)
McDonald, S.	9/29/10
Phillips, P.	10/13/10
Roberts, B.	10/14/10
Skoniecke, J.	7/22/10