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

In the Matter of	)	File No.: EB-07-TC-13323
Five Star Advertising, Inc.	)	NAL/Acct. No.: 20093217006
	)	FRN: 0018271494

FORFEITURE ORDER

Adopted: January 4, 2012 **Released: January 5, 2012**

By the Commission:

I. INTRODUCTION

1. In this *Forfeiture Order* ("*Order*"), we issue a monetary forfeiture in the amount of $64,000 against Five Star Advertising, Inc. ("Five Star") for willful and repeated violations of section 227(b)(1)(C) of the Communications Act of 1934, as amended ("Act"),[1] and section 64.1200(a)(3) of the Commission's rules,[2] by delivering 13 unsolicited advertisements, or "junk faxes," to the telephone facsimile machines of 12 consumers.

II. BACKGROUND

2. The facts and circumstances surrounding this case are set forth in the Commission's *Notice of Apparent Liability for Forfeiture* ("*NAL*")[3] and need not be reiterated at length.

3. The Telephone Consumer Protection Act of 1991 (TCPA) was enacted by Congress to address problems of abusive telemarketing, in particular junk faxes.[4] 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 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."[5]

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[1] 47 U.S.C. § 227(b)(1)(C).

[2] 47 C.F.R. § 64.1200(a)(3).

[3] *Five Star Advertising, Inc.,* Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 17699 (2008).

[4] 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.

[5] 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 through voluntary communication in the context of an EBR, or from a directory, advertisement, or website where the recipient voluntarily and publicly provided its facsimile number. In addition, the unsolicited ad must notify the recipient how to opt out of receiving future such ads, and do so in compliance with certain requirements. The Commission has adopted implementing requirements. 47 C.F.R. § 64.1200(a)(3).

4. Pursuant to section 503(b)(5) of the Act,[6] the Enforcement Bureau ("Bureau") issued a junk fax citation[7] to Five Star on October 30, 2007 in response to one or more consumer complaints alleging that Five Star had faxed unsolicited advertisements. Five Star did not respond to this citation.

5. Subsequently, the Commission received 12 additional complaints from consumers alleging that Five Star had faxed 13 unsolicited advertisements to them. These violations, which occurred after the Bureau's citation, between December 3, 2007 and March 26, 2008, resulted in the issuance of an *NAL* against Five Star on November 26, 2008 in the amount of $64,000.[8] The *NAL* ordered Five Star either to pay the proposed forfeiture amount within thirty (30) days or to submit evidence or arguments in response to the *NAL* to show that no forfeiture should be imposed or that some lesser amount should be assessed.

6. On December 16, 2008, Five Star responded to the *NAL* by letter, requesting an opportunity to demonstrate that it did not violate section 227(b)(1)(C) of the Act, and arguing that the "few isolated and unsubstantiated complaints over a multiple year time period do not justify the [*NAL*] or any payment."[9] Five Star also requested copies of the complaints.[10] On November 5, 2009, Bureau staff sent copies of the Commission's citation, the *NAL*, and the complaints associated with each of these actions.[11] The Bureau directed that Five Star submit any further response, including any supporting information and documents, no later than December 10, 2009.[12] Five Star did not respond to this letter or pay the proposed forfeiture amount.

III. DISCUSSION

7. After we first issue a citation to an entity, as we have in this case, section 503(b) of the Act authorizes the Commission to assess a forfeiture for each subsequent violation of the Act or of any rule, regulation, or order issued by the Commission under the Act.[13] 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."[14]

8. We find Five Star has presented no basis for reducing or eliminating the $64,000 forfeiture proposed in the *NAL*. Although the Bureau provided Five Star with copies of the complaints

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[6] 47 U.S.C. § 503(b)(5) (requiring the Commission, before assessing a forfeiture against any person who does not hold, or is not an applicant for, a license, permit, certificate, or other authorization issued by the Commission, to issue a citation to such person for any violation of the Act or of the Commission's rules).

[7] Citation from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, File No. EB-07-TC-13323, issued to Five Star on October 30, 2007.

[8] *See supra* note 3. The NAL was sent to Five Star's address of record.

[9] Letter from William B. Hayes, Esq., counsel for Five Star Advertising, Inc., to Office of the Secretary, dated December 16, 2008.

[10] *Id.*

[11] Letter from Daniel Grosh, Telecommunications Consumers Division, to William B. Hayes, Esq., counsel for Five Star Advertising, Inc., November 5, 2009.

[12] *Id.*

[13] 47 U.S.C. § 503(b).

[14] *See* 47 U.S.C. § 503(b)(2)(E); *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).

against it and allowed additional time to respond to the specific allegations contained in those complaints, Five Star failed to take advantage of the opportunity it requested to demonstrate that it did not violate the Commission's junk fax rules. Further, Five Star's argument that it should not be penalized because its violations were few, isolated, and unsubstantiated is unpersuasive. Five Star effectively concedes that it sent the complained-of faxes, and the complaints indicate that Five Star continued to send multiple junk faxes over a period of about four months even after it was expressly warned by the citation of the penalties for such unlawful acts. Accordingly, we affirm our proposed findings in the *NAL* that Five Star violated the Act and our rules on 13 separate occasions.

9. Further, Five Star presents no legal or factual reason for reducing or eliminating the standard base forfeiture amounts proposed in the *NAL*. For example, it makes no showing of any relevant factors such as inability to pay. We therefore impose a total forfeiture of $64,000 for Five Star's willful and repeated violation of section 227(b)(1)(C) of the Act and section 64.1200(a)(3) of the Commission's rules, as set forth in the *NAL*.

III. ORDERING CLAUSES

10. 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(f)(4) of the Commission's rules, 47 C.F.R. § 1.80(f)(4), that Five Star Advertising Inc. **IS LIABLE FOR A MONETARY FORFEITURE** to the United States Government in the sum of $64,000 for willfully and repeatedly violating 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).

11. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules within thirty (30) days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to section 504(a) of the Act.[15] 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). Five Star 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.

[15] 47 U.S.C. § 504(a).

12. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Five Star Advertising, Inc., Attention: Jane Eunsook Lee, 6247 El Diente Peak Place, Castle Rock, CO 80108-9470.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary