

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

In the Matter of )
Tim Gibbons ) File No.: EB-TCD-12-00000234
United Employee Benefits Group, United ) NAL/Acct. No.: 201232170005
Employee Benefits, United Benefits, f/k/a )
Benchmark Mortgage, National Employee ) FRN: 0021538509
Benefits Group )
United Employee Benefits, LLC )

FORFEITURE ORDER

Adopted: May 3, 2013

Released: May 7, 2013

By the Commission: Commissioner McDowell not participating.

I. INTRODUCTION

1. In this Forfeiture Order (Order), we issue a forfeiture of \$2,187,000 against Tim Gibbons, operating as United Benefits, United Employee Benefits (UEB) (including United Employee Benefits, LLC), and United Employee Benefits Group (UEBG), all formerly known as Benchmark Mortgage or National Employee Benefits Group (NEBG) for willful and repeated violations of Section 227(b)(1)(C) of the Communications Act of 1934, as amended (Act), and Section 64.1200(a)(4) of the Commission’s rules, by delivering 196 unsolicited advertisements, or “junk faxes,” to the telephone facsimile machines of 156 consumers.

II. BACKGROUND

2. Congress enacted the Telephone Consumer Protection Act of 1991 (TCPA) to address problems of abusive telemarketing, including unsolicited facsimile advertisements or “junk faxes. As a result of the TCPA, 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.”

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

2 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 which the recipient voluntarily agreed to make its facsimile number available for public distribution. 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 adopted implementing rules. See also 47 C.F.R. § 64.1200(a)(4).

3. Pursuant to Section 503(b)(5) of the Act,<sup>3</sup> the Enforcement Bureau (Bureau) issued a junk fax citation<sup>4</sup> to NEBG and Benchmark Mortgage d/b/a NEBG on October 22, 2010 in response to a consumer complaint alleging that NEBG had faxed unsolicited advertisements. The citation was directed to the attention of Tim Gibbons, president and contact person for NEBG, and expressly warned him that future violations of the Act and the Commission's rules governing telephone solicitations and unsolicited advertisements "may subject you and your company to monetary forfeitures."<sup>5</sup> The Commission never received any response.<sup>6</sup>

4. Subsequently, between March and September 2011, the Commission received numerous complaints from consumers alleging that they had received unsolicited facsimile advertisements from NEBG. Based on these violations, which occurred after the Bureau's citation, the Commission issued a Notice of Apparent Liability of Forfeiture (NAL) on February 29, 2012 for \$603,000 against NEBG, and Mr. Gibbons in his personal capacity, based on 79 consumer complaints alleging 97 violations of our junk fax rules.<sup>7</sup>

5. As the Commission neared the release of the *February 2012 NAL*, the Bureau determined that it had received complaints against UEB and UEBG. On September 4, 2012, the Commission issued another NAL for \$1,584,000 against Mr. Gibbons, as well as UEB and UEBG, among others, based on 87 consumer complaints alleging 99 violations of our junk fax violations from September 2011 through June 2012.<sup>8</sup> The NAL found that Benchmark Mortgage, NEBG, UEB, and UEBG appeared to use different names for the same business.

6. Both the *February 2012 NAL* and *September 2012 NAL* ordered the respondents either to pay the proposed forfeiture amount within 30 days or to submit evidence or arguments to show that no forfeiture should be imposed or that some lesser amount should be assessed.<sup>9</sup> On March 29, 2012, on

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<sup>3</sup> 47 U.S.C. § 503(b)(5).

<sup>4</sup> Citation from Joshua P. Zeldis, Assistant Division Chief, Telecommunications Consumers Division, Enforcement Bureau, File No. EB-10-TC-478, issued to National Employee Benefits Group and Benchmark Mortgage dba National Employee Benefits Group, on October 22, 2010. (The File No. in this case was formerly EB-10-TC-478. In January 2011, The Telecommunications Consumers Division reassigned this case the number set forth in the caption.)

<sup>5</sup> *Id.*

<sup>6</sup> National Employee Benefits Group acknowledged receipt of the citation, as evidenced by a signed United States Postal Service return receipt, Article Number 7008 0500 0000 9339 3528 (National Employee Benefits Group, Attn.: Tim Gibbons, President, 795 Folsom Street, 1<sup>st</sup> Floor, San Francisco, CA 94107).

<sup>7</sup> *National Employee Benefits Group*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 2734 (2012) (*February 2012 NAL*).

<sup>8</sup> *Tim Gibbons, United Employee Benefits Group, United Employee Benefits, United Benefits, f/k/a Benchmark Mortgage, National Employee Benefits Group*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 11432 (2012) (*September 2012 NAL*). (The faxes referred to UEB and UEBG, but identified Tim Gibbons and the same contact number for NEBG.)

<sup>9</sup> National Employee Benefits Group acknowledged receipt of the *February 2012 NAL*, as evidenced by a signed United States Postal Service return receipts: Article Number 7007 2560 001 6093 7751 (2800 Post Oak Blvd., Suite 4100, Houston, TX 77056), and Article Number 7007 2560 001 7744 (8871 West Flamingo Road, Suite 202, Las Vegas, NV 89147). Our records also indicate that National Employee Benefits Group acknowledged receipt of the *September 2012 NAL*, as evidenced by a signed United States Postal Service return receipts: Article Number 7007 2560 001 6093 7898 (2800 Post Oak Blvd., Suite 4100, Houston, TX 77056); Article Number 7007 2560 001 6093 7904 (8871 West Flamingo Road, Suite 202, Las Vegas, NV 89147), Article Number 7007 2560 001 6093 7881 (United Employee Benefits, LLC c/o Registered Agent for Service: Silver Shield Services, Inc., P.O. Box 3540, 3315 Highway 50, Silver Springs, NV 89429); and Article Number 7007 2560 0001 6093 7874 (Attorney Robert Ungar, 14724 Ventura Boulevard, Penthouse, Sherman Oaks, CA 91403).

behalf of his client, Tim Gibbons, Robert Ungar requested an extension of time within which to file a response to the *February 2012 NAL*.<sup>10</sup> The Bureau granted the extension of time to respond to the *NAL*.<sup>11</sup> Subsequently, Attorney Ungar informed the Bureau that despite the request for an extension of time to respond to the *NAL*, a formal response would not be submitted.<sup>12</sup> The Bureau, in fact, never received a substantive response to the *February 2012 NAL*, nor did it receive a response of any kind to the *September 2012 NAL*.<sup>13</sup>

### III. DISCUSSION

7. Section 503(b)(2)(D) authorizes the Commission to assess a maximum forfeiture of \$16,000 per violation against an entity such as Tim Gibbons and UEB/UEBG.<sup>14</sup> In exercising such authority, the Commission must consider “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>

8. Tim Gibbons and UEB/UEBG did not respond to either the *February 2012 NAL* or the *September 2012 NAL*.<sup>16</sup> We, therefore, are unaware of any mitigating circumstances that warrant a cancellation or reduction of the forfeiture penalty. For the reasons described in the *September 2012 NAL*,<sup>17</sup> we find that the names Benchmark Mortgage, National Employee Benefits Group, United Employee Benefits (including United Employee Benefits, LLC), and United Employee Benefits Group, are one and the same business operated by Tim Gibbons. Accordingly, we find that Tim Gibbons, United Benefits, United Employee Benefits (including United Employee Benefits, LLC), and United Employee Benefits Group, all formerly known as Benchmark Mortgage or National Employee Benefits Group willfully and repeatedly violated Section 227(b)(1)(C) of the Act<sup>18</sup> and Section 64.1200(a)(4)<sup>19</sup> of the Commission’s rules on 196 separate occasions, and impose a forfeiture penalty of \$2,187,000 as a result. In imposing the penalty, we emphasize that for the reasons articulated in the *September 2012 NAL*, the forfeiture penalty attaches to Mr. Gibbons personally.<sup>20</sup>

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<sup>10</sup> See Letter from Robert M. Ungar, attorney representing Tim Gibbons, to Marlene H. Dortch, Secretary, Federal Communications Commission (March 29, 2012) (on file in EB-10-TC-478).

<sup>11</sup> See e-mail from Rosemary Cabral, Staff Attorney, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, to Attorney Robert M. Ungar (April 11, 2012, 2:19 p.m. E.D.T.).

<sup>12</sup> See e-mail from Attorney Robert Ungar to Rosemary Cabral, Staff Attorney, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission (May 9, 2012, 11:01 a.m. E.D.T.).

<sup>13</sup> See *supra* note 9, noting acknowledged receipt of the *September 2012 NAL*.

<sup>14</sup> 47 U.S.C. § 503(b)(2)(D). Section 503(b)(2)(D) provides for forfeitures of up to \$10,000 for each violation if the violation does not involve a Commission licensee or 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. No. 104-134, Sec. 31001, 110 Stat. 1321, the Commission increased the maximum statutory forfeiture under Section 503(b)(2)(C) to \$16,000. See 47 C.F.R. § 1.80(b). 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 violation to \$16,000).

<sup>15</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>16</sup> See *supra* note 13.

<sup>17</sup> 27 FCC Rcd at 11437, para. 12.

<sup>18</sup> 47 U.S.C. § 227(b)(1)(C).

<sup>19</sup> 47 C.F.R. § 64.1200(a)(4).

<sup>20</sup> See *February 2012 NAL*, 27 FCC Rcd at 2734, n.1; *September 2012 NAL* 27 FCC Rcd at 11433, para. 4.

#### IV. ORDERING CLAUSES

9. 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 Tim Gibbons, operating as United Benefits, United Employee Benefits, or United Employee Benefits Group, all formerly known as Benchmark Mortgage or National Employee Benefits Group, independently and together with United Employee Benefits, LLC, **ARE JOINTLY AND SEVERALLY LIABLE FOR A MONETARY FORFEITURE** to the United States Government in the sum of \$2,187,000 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)(4) of the Commission's rules, 47 C.F.R. § 64.1200(a)(4).

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Forfeiture Order.<sup>21</sup> If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.<sup>22</sup> Tim Gibbons shall send electronic notification of payment to Johnny Drake at [Johnny.Drake@fcc.gov](mailto:Johnny.Drake@fcc.gov), Rosemary Cabral at [Rosemary.Cabral@fcc.gov](mailto:Rosemary.Cabral@fcc.gov), and Phillip Priesman at [Phillip.Priesman@fcc.gov](mailto:Phillip.Priesman@fcc.gov) on the date said payment is made.

11. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>23</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>24</sup> If you have questions regarding payment procedures, please contact the

<sup>21</sup> 47 C.F.R. § 1.80.

<sup>22</sup> 47 U.S.C. § 504(a).

<sup>23</sup> FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>24</sup> See 47 C.F.R. § 1.1914.

Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

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 Tim Gibbons and United Employee Benefits, LLC, 8871 West Flamingo Road, Suite 202, Las Vegas, NV 89147; National Employee Benefits Group, United Employee Benefits Group, and Tim Gibbons, 2800 Post Oak Blvd, Suite 4100, Houston, TX 77056; Registered Agent for Service: Silver Shield Services, Inc., United Employee Benefits, LLC, P.O. Box 3540, 3315 Highway 50, Silver Springs, NV 89429, and Tim Gibbons and United Benefits, 101 California Street, Suite 2710, San Francisco, CA 94111-5818; and Attorney Robert Ungar, counsel for Mr. Gibbons, 14724 Ventura Boulevard, Penthouse, Sherman Oaks, CA 91403.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary