

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

In the Matter of
Worldwide Industrial Enterprises, Inc.
File No. EB-TCD-12-00000254
NAL/Acct. No.: 201132170018
FRN: 0020765145

FORFEITURE ORDER

Adopted: January 26, 2015

Released: January 27, 2015

By the Commission:

I. INTRODUCTION

1. Consumers have a well-established right to be free from the nuisance of unsolicited fax advertisements in their homes and businesses. Today, we assess a forfeiture of \$87,500 against Worldwide Industrial Enterprises, Inc. (Worldwide or Company) for faxing 17 advertisements to consumers who did not request them, did not want them, and had no established business relationship with the Company.

II. BACKGROUND

2. Worldwide sells sealants for floors, garages, and driveways. Worldwide is owned and operated by Frank Tantalo. In 2009, Worldwide contracted with a marketing firm to send out advertisements by fax.

3. The Enforcement Bureau (Bureau) first took action against Worldwide on November 9, 2009 by issuing a citation to the Company pursuant to section 503(b)(5) of the Act. The citation was based on a consumer complaint indicating that Worldwide had faxed unsolicited advertisements to the consumer. Worldwide did not respond to the citation.

4. Despite the citation's warning that subsequent violations could result in the imposition of monetary forfeitures, the Commission received additional consumer complaints indicating that Worldwide continued to send junk faxes after issuance of the citation. Based on these subsequent violations, the Commission issued a Notice of Apparent Liability on April 7, 2011, finding that Worldwide apparently willfully and repeatedly violated section 227 of the Communications Act of 1934, as amended (Act), and section 64.1200(a)(4) of the Commission's rules (Rules) and the Commission's related orders. In determining the proposed forfeiture, the Commission noted that it had previously considered \$4,500 per unsolicited fax advertisement to be an appropriate base amount for violating the

1 Citation from Joshua P. Zeldis, Assistant Division Chief, Telecommunications Consumers Division, Enforcement Bureau, File No. EB-09-TC-452, issued to Worldwide on November 9, 2009.

prohibition against sending unsolicited fax advertisements.² The Commission applied that amount to 15 of the violations.³ The Commission also noted that it had previously assessed a penalty of \$10,000 per violation when a company sent faxes to consumers who had specifically asked that they not receive any more faxes from the company.⁴ The NAL alleged that Worldwide sent another fax to two consumers who had asked that Worldwide cease sending them, and applied the \$10,000 penalty to those two violations.⁵ Thus, the Commission proposed a total monetary forfeiture of \$87,500.

5. The NAL gave Worldwide an opportunity to file a written response seeking to reduce or cancel the proposed forfeiture.⁶ On May 6, 2011, counsel for Worldwide submitted a response questioning the reliability and veracity of the complaints, and indicating that the Company was unable to pay the proposed forfeiture. Worldwide submitted tax returns to support its claim.

III. DISCUSSION

6. In determining the amount of a forfeiture, 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.”⁷ As discussed above, the Commission issued an NAL to Worldwide and proposed a total forfeiture of \$87,500.

7. We have reviewed Worldwide’s response to the NAL and find its arguments unpersuasive. We find, by a preponderance of the evidence,⁸ that the complaints are sufficient to establish Worldwide’s violations. Worldwide questioned the veracity of the complaints upon which the NAL was based, both because the complaints did not on their face indicate to Worldwide that the consumers attested to the truth of them, and because one complaint was inconsistent as to whether the faxed ad included the requisite information on how to opt-out of receiving further faxes. All of the complainants, however, did, in fact, attest to the veracity of the content of their complaints.⁹ Moreover, we do not believe that the nature of the inconsistency in the lone complaint “cast[s] doubt on the veracity of the complaint,” as Worldwide asserts.¹⁰ Worldwide has not otherwise denied that it is legally responsible for the faxes at issue.

² *Worldwide Industrial Enterprises, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd. 5737, para 6 (2011).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*, para 9.

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ *See, e.g., SBC Commc’ns, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, para. 4 (2002) (setting forth the standard of proof in a forfeiture proceeding).

⁹ When Worldwide prepared its defense it appeared that none of the consumers who submitted complaints online at www.fcc.gov in this matter had checked the box on the complaint form attesting to the facts in their complaints. However, for a brief period, a technical glitch prevented electronic versions of complaints from indicating whether the complainant checked the attestation box. This has since been fixed, and a recent review of the complaints that were the subject of the NAL indicated that all of the consumers checked the attestation box.

¹⁰ Since none of the other complaints suggested that Worldwide failed to include the opt-out information, as required by 47 C.F.R. § 64.1200(a)(3)(iii), the NAL did not allege that Worldwide violated this provision.

8. Worldwide also claimed that it could not afford to pay \$87,500, and submitted tax returns to support its claim. However, this amount is consistent with Commission precedent in similar cases.¹¹ Thus, Worldwide's request to reduce the forfeiture amount is denied.

IV. CONCLUSION

9. We affirm our finding in the NAL against Worldwide and find no reason to adjust the forfeiture proposed in the NAL. We therefore impose a forfeiture of \$87,500 against Worldwide for willful and repeated violations of Section 227(b)(1)(C) of the Act and Section 64.1200(a)(4) of the Commission's rules.

V. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, 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), Worldwide **IS LIABLE FOR A MONETARY FORFEITURE** to the United States Government in the sum of \$87,500 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).

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within fifteen (15) calendar days after the release date of this Forfeiture Order.¹² 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.¹³ Worldwide shall send electronic notification of payment to Johnny Drake at Johnny.Drake@fcc.gov, and Phillip Priesman at Phillip.Priesman@fcc.gov on the date said payment is made.

12. 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.¹⁴ 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 Worldwide should follow based on the form of payment it selects:

- 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.

¹¹ See *Presidential Who's Who, Inc.*, Forfeiture Order, 29 FCC Rcd 3451, paras. 14-15 (2014) (declining to reduce forfeiture amount and denying inability-to-pay claim); *Kevin W. Bondy*, Forfeiture Order, 26 FCC Rcd 7840, para.16 (Enf. Bur. 2011); *General Equipment and Supply*, Forfeiture Order, 25 FCC Rcd 16928, para. 5 (Enf. Bur. 2010); *Hodson Broadcasting*, Forfeiture Order, 24 FCC Rcd 13699, para. 19 (Enf. Bur. 2009).

¹² 47 C.F.R. § 1.80.

¹³ 47 U.S.C. § 504(a).

¹⁴ FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

- 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.

13. 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. 20554.¹⁵ If Worldwide has questions regarding payment procedures, it should contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

14. **IT IS FURTHER ORDERED** that a copy of the Forfeiture Order shall be sent by mail and certified mail return receipt requested to Worldwide Industrial Enterprises, Inc., Attention: Frank Tantalo, Chief Executive Officer, 656 North Wellwood Avenue, Suite C, Lindenhurst, NY 11757, and John Heitmann, Kelley, Drye & Warren, LLP, 3050 K Street, NW, Suite 400, Washington, DC 20007.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁵ See 47 C.F.R. § 1.1914.