

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY**

**Plaintiff**

**Erik T. Robinson**

**V.**

**Defendants**

**Ameritoner.com**

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**Case # 080401654**

**Complaint**

- 1- This is an action under the Junk Fax Prevention Act, 47 USC §227(b)(1)(C)
- 2- Jurisdiction in this case is founded upon 47 USC §227(b)(3)(C) which grants the appropriate courts of the State jurisdiction to hear this action.

**Parties:**

- 3- The Plaintiff is Erik T. Robinson, an individual filing on his own behalf.
- 4- Defendant is Ameritoner.com, a firm headquartered in Illinois and conducting business in Pennsylvania.

**Background**

- 5- On February 25<sup>th</sup>, 2008 Plaintiff received an unsolicited fax from Defendant promoting their various printer cartridge products. (see attached exhibit "A"- copy of fax received by Plaintiff on February 28, 2008)
- 6- On that day Plaintiff called the "opt-out" number on the fax: 866-787-0752. Although these faxes should never have happened because the fax number is on the National Do-Not-Call list, this extra effort should have removed the Plaintiff from the call list and prevented further faxes.
- 7- On March 31<sup>st</sup> , 2008 Plaintiff received another of the same faxes. This fax is using a new "opt-out" number to prevent effective removal from their fax lists (see attached "B"- copy of fax received by Plaintiff on March 31, 2008)

Claim of Relief

- 8- On April 16<sup>th</sup>, 2008 Plaintiff filed the original version of this complaint
- 9- On April 30<sup>th</sup>, 2008 Plaintiff received another unsolicited fax from Defendant promoting their products (attached "E")
- 10- On June 10<sup>th</sup>, 2008 Plaintiff received another unsolicited fax form Defendant promoting their products (attached "F")
- 11- Defendant has violated 47 USC §227(b)(1)(C) by sending 4 unsolicited faxes to the Plaintiff without an EBR- Established Business Relationship.
- 12- As a result of the above violations, the Defendants are liable to the Plaintiff for declaratory judgment that Defendant's conduct violated the law, as well as Plaintiff's actual damages, statutory damages, costs and attorney's fees.

Wherefore, Plaintiff respectfully prays that judgment be entered against the Defendants for the following:

- A. Declaratory judgment that Defendant's conduct violated 47 USC § 227 (b)(1)(C).
- B. Statutory damages of \$6,000 pursuant to 47 USC § 227(b)(3)(B)  
(see Plaintiff's Motion to Treble Damages)
- C. For such other and further relief as the court may deem to be just and proper.

Respectfully Submitted,

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Erik T. Robinson Plaintiff/Attorney Pro Se

Date

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**Plaintiff's Motion to Treble Damages**

1- 47 USC § 227(b)(3)(B) Allows for standard Statutory damages of \$500 per offense. The section also allows the court the discretion to treble this to \$1,500 if it can be shown that the Defendant knowingly and/or willingly violated the statute.

2- Plaintiff requests that the court, when evaluating damages in this matter, consider the following points in favor of trebling the damages:

- 3- In April of 2007 Plaintiff registered the fax number with the National Do-Not-Call Registry. This registration is valid until 2012 and was well before the date of Defendant's transmissions. (see attached "C", copy of e-mail received by Plaintiff confirming enrollment in the service). This is a service provided by the Federal Government to prevent just this sort of annoying advertising. A firm whose main form of business is done by telemarketing or facsimile must subscribe to the Federal Trade Commission's service to receive regular updates of persons who do not wish to receive these forms of advertisement. (47 CFR Section 64.1200)
  - 4- Because the Defendants have neither enrolled in this service nor followed it's policies, they cannot be considered a legitimate business and therefore any fax from these firms is, by definition, in violation. As the senders of the faxes knew or were sufficiently negligent to willingly allow this lack of compliance, they should be held accountable to the fullest extent of the law.
- 5- The court should consider the repetitive nature of the offenses. The Plaintiff has made all reasonable efforts to prevent these faxes without resorting to legal action. In addition to enrolling the fax number on the National Do-Not-Call list as mentioned above, he has used the "opt-out" number to attempt to be taken off of the circulation list for their faxes. However, the second fax uses a new "opt-out" number, which is an attempt to prevent effective removal from their faxes list\*. In summary, Plaintiff has done all he could to protect himself from these annoying advertisements.

- 6- The Court should consider that the Defendant has previously been cited for this conduct by the FCC and as a result have been fined \$63,000 by the FCC. (see attached "D", copy of citation issued against the Defendant by the FCC)

7- As the Defendants behavior was both knowingly/willingly in violation of the law by not adhering to the rules of telemarketing/use of facsimile machine, and because of the repetitive nature of the offenses, and because of there violations of FCC orders/citation, Plaintiff Motions for this court, as per 47 USC § 227(b)(3)(B), to award the statutory damages of \$500 per fax trebled to \$1,500 for all 4 faxes for a total of \$6,000.

Respectfully Submitted

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Erik T. Robinson Plaintiff/Attorney Pro Se

Date

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Motion To Amend

Plaintiff hereby motions for this court to allow him to amend his complaint in order to add 2 more offenses under 47 USC §227 that occurred after the original filing date. Plaintiff has attached the amended complaint with new exhibits and motions.

Respectfully Submitted,

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Erik T. Robinson      Plaintiff/Atty ProSe                      Date

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Motion For Default Judgment

Plaintiff hereby motions for this court to enter a Default Judgment against the Defendant; Ameritoner, for their failure to respond to his complaint as required by law.

On May 21st, 2008 Defendant was served with the complaint by Federal Express. (see attached "A"-copy of online record of delivery)

Whereas Defendant has failed to return a plea or answer of any kind and is therefore liable for all damages as requested in the complaint, Plaintiff asks this court to grant this Motion for Default Judgment and award him \$6,000.

Respectfully Submitted,

Erik T. Robinson    Plaintiff/Atty ProSe

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**Plaintiff's Attached Exhibits**

- Attached-A Copy of fax received by Plaintiff on February 28<sup>th</sup>, 2008
- Attached-B Copy of fax received by Plaintiff on March 31<sup>st</sup>, 2008
- Attached-C Copy of e-mail from US FTC indicating enrollment in National Do-Not-Call List
- Attached-D Copy of Citation against the Defendant by the FCC
- Attached-E Copy of fax received by Plaintiff on April 30<sup>th</sup>, 2008
- Attached-F Copy of fax received by Plaintiff on June 10<sup>th</sup>, 2008