

Asking, Demanding, Suing, and Learning- My Failed Attempts to Get Fax.com to Stop Junk-Faxing Me

I would think that there is not much incentive for Fax.com to send junk faxes to someone who has sued them and their junk fax clients on seven previous occasions, but apparently Fax.com believes otherwise. Eight months after I filed my first junk fax lawsuit¹, Fax.com is still helping its clients send me ads for junk I don't want or need (and making me pay for the paper and the ink, to boot). This, despite the fact that their Vice President, Charles Martin, personally promised me almost a year ago that Fax.com would no longer send me junk faxes.² Give them credit for their persistence.

My struggle is now about to enter Year 2, and the faxes keep coming.³ I've spent almost 800 hours fighting the junk faxers in the past year, and here's what I've learned:

In July of 2001, I read about the lawsuit against the Hooters restaurant chain, and I decided that maybe taking legal action would stop the faxes, since calling the 1-800 "opt-out" numbers had no effect whatsoever (That is, ASKING to be removed from the call lists had no effect). As a third year law student, I thought that the exercise of getting involved in a legal cause would be a good practical learning tool.⁴

In September of 2001, I began calling the numbers on the junk faxes and asking around as to how the companies got my number. Surprisingly, there was NO ONE at the various companies that could explain where they got my number, or where they get fax numbers at all. It appeared that these fax numbers were falling from the sky, or perhaps pulled out of a magic, privacy-invading hat.

Then in October, I got fax from Creative Solutions in Mission Hills, CA, and an employee there told me that they got my fax number from a company called Fax.com.⁵

I called Fax.com and spoke with a man named Charles Martin, who stated that he was the VP of the company. I asked if he was aware that the TCPA made unsolicited fax ads unlawful and he assured me that, "the TCPA doesn't apply in California because we opted out." I pushed him for additional info, and he started to get very nervous when he realized I knew my stuff and wasn't just any-old consumer. He tried changing the subject frequently when I quoted him the parts of the TCPA that conflicted with his assertions.⁶

¹ See Torrance Small Claims Court records for case # 01s04580, which can be accessed at www.lasuperiorcourt.org.

² See "Notes of conversation with Charles Martin on 10/22/01."

³ See attached faxes from Cambridge Home Loans, a Fax.com client based in Solano Beach, California. When I pursued my first case against Cambridge Home Loans, an employee of Fax.com (named Darrell Smiley) attended the hearing to represent Cambridge Home Loans. This practice by Fax.com of representing its clients in small claims actions is under investigation by the Attorney General and the Department of Consumer Affairs.

⁴ I've since graduated and taken the bar, but my fight against Fax.com continues.

⁵ See the attached fax from Creative Solutions, which includes my notes of my conversations with that company.

⁶ See "Notes of conversation with Charles Martin on 10/22/01."

He assured me I wouldn't get any more faxes from Fax.com. He said I could be sure of it, because if they did send me any more faxes, they'd be in big trouble because it would be a criminal violation.⁷

I used my legal education to determine whether Mr. Martin was correct in his claim that California "opted-out" of the TCPA. It didn't take long before I realized that Martin's analysis of the California law was designed merely to discourage me from suing his company. He could not have been any more wrong on the law, and he knew it.

My legal research was aided immensely by such experts as Robert Biggerstaff in South Carolina, Robert Braver in Oklahoma, the Foundation for Taxpayer and Consumer Rights in Santa Monica, James Kinder in San Diego, and Wayne Strang here in Redondo Beach.

But the most helpful source of info was Steve Kirsch's website dedicated to fighting the junk faxers. His site gave me the legal language I needed, explained the case law that was most important, and most importantly, told me who the major players were in the seedy world of junk faxing. (This information was important because the junk faxers know that they need to be difficult to locate, in order to make it as difficult as possible for a victim to sue them). Mr. Kirsch's site also included links to other websites with information on junk-fax-fighting, and told me about news articles on the topic with links that allowed me to download many articles and TV news reports. Finally, Mr. Kirsch personally helped me by keeping me informed of pending legislation in California that helped our cause.

From all of these sources of information I was able to piece together my legal analysis that clearly showed that junk faxers could not hide behind the California law which Fax.com CLAIMED pre-empted the TCPA.

After losing my first two small claims cases, I finally put together the legal arguments necessary to be able to convince a judge that the TCPA applied in California. So at my next three cases I won judgments from Fax.com clients including IDC Solutions, Inc. of Aliso Viejo, America's Toner, Inc. of Anaheim, and I even won a judgment against Fax.com itself.⁸

THREATS AGAINST ME

Throughout all of my cases, I've had physical and legal threats lobbed at me by Fax.com or its clients. An employee of one Fax.com client (IDC Solutions, Inc.) even threatened to "come up there [my home] and rape your wife."⁹

⁷ See "Notes of conversation with Charles Martin on 10/22/01."

⁸ See Torrance Small Claims Court records for case #s 02s00971, 02s01860, and 02s01868 which can be accessed at www.lasuperiorcourt.org.

⁹ See attached, my notes jotted down on the junk fax I received from IDC Solutions, Inc., or my "Summary of Communications with IDC."

Charles Martin himself threatened to file frivolous civil lawsuits against me¹⁰, and in one letter he even claimed that he would file CRIMINAL charges against me if I pursued my claims.¹¹ It made me wonder what a person without legal training would do in the face of such threats. These kinds of threats are more than most people would be willing to tolerate when defending their privacy rights.

More troubling still was the way my home telephone provider (Verizon) began receiving troubling calls from people setting up phone service at my address (which happened twice¹²), and from other people trying to get my personal information by pretending to be my brother (which happened once).¹³ Although I can't prove that Fax.com was responsible, I believe that it is not a mere coincidence that these disturbing practices started one week before my first junk fax case went to trial, and the culprit ONLY knew my FAX number.¹⁴

WHAT WILL STOP THE FAXES?

My most recent junk fax just came on August 9, 2002. So apparently, even filing seven lawsuits, and winning three of them is not enough to make Fax.com stop. My question is: when WILL Fax.com stop? What EXACTLY has to be done to make them honor a consumer's request to be taken off their database? Is there ANY right to privacy left in this country? If Fax.com is taken down, will another junk fax criminal take its place?

I think that the Attorney General Lockyer's pursuit of these criminals is a step in the right direction. The same can be said for the FCC's enforcement actions. New, stronger California Legislation will help if it is done correctly. But what is most urgently needed is for the California judiciary to understand the TCPA. At this point, judges are woefully uneducated on the subject of the TCPA. Many judges do not understand the clear intent of the U.S. Congress to create a private right of action in the state courts. It is difficult for lay persons to adequately educate a judge on the law in the time allowed in a small claims hearing.

I think the most effective tool for fighting the junk faxers is for honest consumers who value their privacy to stop grousing about the problem and to do something about it. File a claim in small claims. Mr. Kirsch's website will get you up to speed on the legal arguments very quickly.

Or put up a few dollars and hire a lawyer to bring a claim in Superior Court. Or best of all, save your faxes, and send copies to Mr. Kirsch's organization, to be included in the class action.

Fax.com is a powerful menace in this state, but it is nothing compared to a determined group of angry California consumers.

¹⁰ See attached "Transcript of VM threat from C Martin on 7/15/02."

¹¹ See attached document: "Martin - Threat of Civil & Criminal Chgs 1-29-02."

¹² See attached "Joseph Salinas account setup letter", which I received from Verizon, and also "Transcript of VM from Vanessa with Verizon."

¹³ See "Transcript of VM from Vanessa with Verizon."

¹⁴ See "Transcript of VM from Vanessa with Verizon."

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VERIFICATION OF THE INFORMATION IN THIS DOCUMENT

Information contained in this piece can be confirmed by the attached documents **(plus I have the audio recordings of all calls from Fax.com if requested)**, and by looking at the court files for the following cases, all of which are in the Small Claims division of the Torrance, CA Courthouse:

Case #'s

01s04580
02s00389
02s00971
02s01720
02s01806
02s01868
02s01972