

of action for monetary and injunctive relief to redress, the sending of unsolicited advertisements to a person or business by facsimile (“fax”). To carry out its purpose, the TCPA explicitly vests state courts with exclusive subject matter jurisdiction over the causes of action it creates.

2. During the week of June 4, 2001, defendants sent 1,634 unsolicited fax advertisements to the law offices of Covington & Burling, despite its verbal and written requests that the faxes cease and desist. Defendants’ illegal conduct disrupted plaintiff’s business operations for a week by tying up plaintiff’s fax lines and clogging the computer fax server that routes faxes internally, thereby delaying the receipt and distribution of faxes pertaining to important firm business. Accordingly, plaintiff hereby seeks relief pursuant to the TCPA.

Jurisdiction

3. This court has subject matter jurisdiction pursuant to D.C. Code § 11-921 and 47 U.S.C. § 227(b)(3), and personal jurisdiction over defendants pursuant to D.C. Code §§ 13-334, 13-423(a)(1), (4). The allegations herein relate to defendants’ purposeful transaction of business in the District of Columbia, and their infliction of tortious injury on plaintiff in the District of Columbia through such transactions and attempted transactions. Through their conduct at issue, defendants also purposefully availed themselves of the District of Columbia.

Parties

4. Plaintiff Covington & Burling is an unincorporated law partnership with its principal place of business located at 1201 Pennsylvania Avenue, N.W., Washington, D.C. 20004. Plaintiff received the unsolicited fax advertisements at issue at that office.

5. On information and belief, defendant International Marketing & Research, Inc. (“IMR”) is a Delaware corporation with its registered office at 2700 Westnall Lane, # 110, Maitland, FL 32751.

6. On information and belief, defendants John Repede and Harry Williams are officers or directors of IMR and have the same business address as IMR.

7. On information and belief, defendant Fax I.D., Inc. does business as “Fax.Com” through the internet website www.fax.com, and is a California corporation with its principal place of business at 30872 South Coast Highway, Suite 201, Laguna Beach, CA 92651.

8. On information and belief, defendants Kevin Katz and Eric Wilson are officers or directors of Fax I.D, Inc., and have the same business address as Fax I.D., Inc.

9. Plaintiff obtained the information recited in paragraphs 5-8 by calling a telephone number listed on the bottom of one of defendants’ unsolicited fax advertisements, learning the names of the responsible companies, then using public sources to find the defendant corporations’ locations and to identify their officers.

Nature of Claim

10. Plaintiff brings this suit under the TCPA, 42 U.S.C. § 227(b)(1)(C), which provides that “[i]t shall be unlawful for any person within the United States to use any telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine.” The TCPA, 42 U.S.C. § 227(b)(3), further provides a private right of action exclusively in state court, as follows:

A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State, (A) an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation, (B) an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater, or (C) both such actions.

Moreover, the TCPA also provides for treble damages. “If the court finds that the defendant willfully or knowingly violated this subsection or the regulations prescribed under this

subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B) of this paragraph.” Id.

11. The federal regulations implementing the TCPA similarly provide that no person may “[u]se a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine.” 47 C.F.R. § 64.1200(a)(3).

12. By sending 1,634 unsolicited fax advertisements to plaintiff, all of which were sent in a short span of time despite plaintiff’s several requests that they cease, defendants knowingly and willfully violated the TCPA and its implementing regulations. Accordingly, defendants are liable for at least \$500, and up to \$1,500, for each of their unsolicited fax advertisements to plaintiff.

Statement of Facts

13. Covington & Burling is an international law firm of over 400 lawyers, with offices in the District of Columbia, New York, San Francisco, London, Brussels, and Paris. In its main office in the District of Columbia, the firm has approximately 300 lawyers whose varied practices involve them in disputes and transactions worldwide. Firm lawyers all rely heavily on speedy and reliable fax communications to and from clients, opposing counsel, government agencies, and courts.

14. Plaintiff maintains two distinct methods of receiving faxes. First, the firm has a central fax number, (202) 662-6291, that routes incoming faxes to a bank of fax machines dedicated to telephone lines that share the central number. Second, the firm has personalized fax numbers for each employee of the firm with a direct-dial telephone number -- attorneys, paralegals, secretaries, and administrative staff. These fax numbers range from (202) 778-5000 to -5999, and from (202) 778-6500 to -6799. Faxes sent to these numbers are received by a

central fax server, which then routes them to networked laser printers throughout the office that correspond to the specific recipient. Thus, an attorney can receive a fax in one of two ways: (a) through the firm's general fax number, with the document hand-delivered to the attorney from the fax room; or (b) through the attorney's personal fax number, with the document routed by the fax server directly to the laser printer located in the attorney's office suite. These "server faxes" are monitored by the firm's Information Technology Services ("ITS") department.

15. When the volume of incoming server faxes is high, the system's responses are slowed and faxes take longer to be routed electronically. Very high volume of faxes can cause backlogs and significant delays, and in certain circumstances can overload the server, requiring its shutdown and re-start, and the electronic retrieval of each individual undelivered fax in the system's memory. This shutdown and re-start process can delay the delivery of faxes by hours, and potentially days. In light of the time-sensitive matters in which firm lawyers are involved, delays of such magnitude substantially interfere with the work of the firm and can mean the difference between meeting a deadline and missing one, sealing a deal or losing one.

16. On the morning of Monday, June 4, 2001, plaintiff's ITS department detected an abnormally high volume of faxes being sent to the server. Upon investigation, ITS determined that the volume was caused by defendants' unsolicited fax advertisements for discount vacation packages to Florida and the Bahamas. A sample of this advertisement dated June 4 is attached as Exhibit A hereto.

17. Defendants' unsolicited fax advertisements on June 4 were sent to fax numbers within the ranges noted in paragraph 14, above. During the morning of June 4, from 9:03 AM to 11 AM, defendants sent, and plaintiff received via its fax server, 163 faxes of the unsolicited vacation advertisement.

18. Recognizing that the fax advertisements were unsolicited and disruptive, and upon receiving complaints from attorneys at the firm, plaintiff's Chief Information Officer ("CIO"), Stephen Roberts, called the telephone number provided at the bottom of defendants' vacation fax "to have your number removed from our database." During this phone conversation, Mr. Roberts learned the identity of the defendant corporations responsible for the faxes. Mr. Roberts separately explained to the operator and a manager that the fax advertisements were unsolicited and unwanted, and that they threatened the stability of the firm's fax server. Mr. Roberts further demanded that the faxes cease and desist immediately. Defendants' representatives told Mr. Roberts that plaintiff's fax numbers would be removed from their fax database.

19. On June 5, however, the day after Mr. Roberts' phone call and verbal demand that the faxes cease and desist, defendants again bombarded plaintiff's fax server with more of the unsolicited vacation advertisements, a June 5 sample of which is attached as Exhibit B hereto. Adding insult to injury, defendants simultaneously sent plaintiff faxes for laser printer toner, a sample of which is attached as Exhibit C hereto. On June 5, between 9:19 AM and 12:03 PM, defendants sent plaintiff 104 unsolicited fax advertisements for printer supplies; between 11:19 AM and 1:40 PM, defendants sent plaintiff 172 unsolicited fax advertisements for vacation packages.

20. Mr. Roberts again called defendants' telephone number on June 5, and spoke with another supervisor, reiterating that the vacation and printer-toner faxes were unsolicited and unwanted, and demanding that they cease and desist immediately. Defendants' representatives again indicated that plaintiff's fax numbers would be removed from their database.

21. On June 6, however, the very day after Mr. Roberts' second phone call and verbal demand that the faxes cease and desist, defendant sent plaintiff yet more of the fax advertisements for a vacation package, a June 6 sample of which is attached as Exhibit D hereto. On June 6, between 9:10 AM and 11:14 AM, defendants sent plaintiff 147 unsolicited fax advertisements.

22. As defendants continued to send plaintiff fax after unwanted fax on June 6, Mr. Charles Martin of Fax I.D., Inc. (d/b/a/ "Fax.Com") left a phone message for Mr. Roberts, indicating that plaintiff's fax numbers had been removed from the pertinent database.

23. Despite this assurance from Mr. Martin, on June 7, defendants' unsolicited faxes for a vacation package resumed, totaling 140 between 9:14 AM and 11:06 AM on that day. A June 7 sample is attached as Exhibit E hereto.

24. In response, on June 7, plaintiff sent by overnight mail a cease and desist letter to Jose Silva, who by information and belief is an agent for defendant IMR, and to Kevin Katz, who by information and belief is the President of defendant Fax I.D., Inc. Plaintiff also faxed the cease and desist letter on June 8. A copy of the letter to Mr. Katz is attached as Exhibit F hereto. The cease and desist letter advised defendants that their conduct violated the TCPA and subjected them to penalties of at least \$500, and up to a maximum of \$1,500, for each of their unsolicited fax advertisements, and warned that plaintiff was prepared to bring suit to stop defendants' unlawful conduct and to recover appropriate damages.

25. In the meantime, on June 8, defendants apparently intensified their efforts and sent plaintiff 908 more unsolicited fax advertisements in one day. A sample vacation advertisement dated June 8 is attached as Exhibit G hereto, and a sample cellular phone advertisement is attached as Exhibit H. From 9:16 AM until 1 PM on June 8, defendants sent

plaintiff 768 cellular phone advertisements; during the same time period on the same day, defendants also sent plaintiff 140 fax advertisements for the vacation package.

26. Defendants continued to send unsolicited faxes on June 8, despite the fact that Mr. Martin on that day again left a phone message for Mr. Roberts and also one for Gerard Waldron, a partner at Covington & Burling, stating that plaintiff's fax numbers had been removed from defendants' database.

27. In total, over the time period of June 4 - June 8, 2001, defendants sent plaintiff 1,634 unsolicited fax advertisements, as documented by plaintiff's ITS department. Many more related faxes may have preceded or otherwise eluded the efforts of plaintiff's ITS department to capture and preserve them.

First Cause of Action:
Statutory Damage Claim for Violation of the TCPA

28. Plaintiff hereby incorporates all of the allegations of paragraphs 1-27 as set forth herein.

29. Defendants' 1,634 faxes to plaintiff constitute "unsolicited advertisements," as defined by the TCPA, 47 U.S.C. § 227(a)(4): "any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission." Defendants' 1,634 faxes advertised the commercial availability of vacation packages, laser printer toner, and cellular telephones.

30. Plaintiff did not provide defendants with any "prior express invitation or permission" to send the fax advertisements at issue. Id.

31. Through their conduct, defendants violated the TCPA, which prohibits the sending of unsolicited fax advertisements. 47 U.S.C. § 227(b)(1)(C).

32. Accordingly, defendants are liable to plaintiff in the statutory amount of \$500 per unsolicited fax advertisement sent. 47 U.S.C. § 227(b)(3)(B). From June 4 - June 8, 2001, plaintiff documented the receipt of 1,634 unsolicited faxes from defendants.

Second Cause of Action:
Statutory Treble Damage Claim for Violation of the TCPA

33. Plaintiff hereby incorporates all of the allegations of paragraphs 1-32 as set forth herein.

34. Pursuant to the TCPA, if defendants “willfully or knowingly” sent their unsolicited fax advertisements, the Court may increase the statutory penalty up to the amount of \$1,500 per unsolicited fax advertisement sent. 47 U.S.C. § 227(3)(C).

35. As of June 4, 2001, and on several occasions thereafter during the week of June 4, plaintiff expressly informed defendants that their unsolicited fax advertisements were unwelcome and undesired, and plaintiff further demanded that the faxes cease and desist. In response, defendants’ representatives falsely stated that the faxes would stop. Indeed, each such assurance was soon followed by hundreds of additional unsolicited fax advertisements.

36. Through their conduct, defendants “willfully or knowingly” violated the provisions of the TCPA.

37. Accordingly, defendants are liable to plaintiffs in the statutory treble damage amount of \$1,500 per unsolicited fax advertisement sent. 47 U.S.C. § 227(3)(C). To date, plaintiff has documented the receipt of 1,634 unsolicited faxes from defendants.

Third Cause of Action:
Statutory Claim for Injunctive Relief from Violations of the TCPA

38. Plaintiff hereby incorporates all of the allegations of paragraphs 1-37 as set forth herein.

39. In addition to monetary damages, the TCPA provides for injunctive relief to enjoin violations of its provisions. 47 U.S.C. §§ 227(3)(A), (C).

40. By their conduct, defendants have willfully and knowingly violated the provisions of the TCPA by sending a documented total of 1,634 unsolicited fax advertisements to plaintiff.

41. Accordingly, defendants should be enjoined from sending any unsolicited fax advertisements to plaintiff in the future.

Jury Demand

42. Plaintiff hereby demands a trial by jury of this matter.

Prayer for Relief

43. WHEREFORE, plaintiff prays that this Court:

- a) Award plaintiff the statutory sum of \$500 per unsolicited fax advertisement sent to plaintiff by defendants, as documented herein, for an award of \$817,000;
- b) Award plaintiff statutory treble damages per unsolicited fax advertisement knowingly and willfully sent to plaintiff by defendants, as documented herein, for an additional award of \$1,634,000;
- c) Assign plaintiff's damages against defendants jointly and severally;
- d) Issue a writ of injunction enjoining defendants from committing future violations of the TCPA, by ordering defendants to cease and desist from sending unsolicited fax advertisements to plaintiff;
- e) Award plaintiff the costs of this action; and

- f) Award plaintiff all such other and further relief to which it may be justly entitled.

Respectfully submitted,

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