

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

In the Matter of)	File No. EB-07-TC-502
)	
Sunstar Travel and Tours, Inc.)	NAL/Acct. No. 200832170065
)	
)	FRN: 0017724774
)	

FORFEITURE ORDER

Adopted: September 16, 2010

Released: September 28, 2010

By the Commission:

I. INTRODUCTION

1. In this *Forfeiture Order* (“Order”), we issue a monetary forfeiture against Sunstar Travel and Tours, Inc. (“Sunstar”)¹ for willful and repeated violations of section 227 of the Communications Act of 1934, as amended (“Act”)² and the Commission’s related rules and orders, by delivering at least 63 unsolicited advertisements to the telephone facsimile machines of at least 56 consumers.³ Because Sunstar has demonstrated an inability to pay the full forfeiture amount that we originally proposed, we have reduced the forfeiture being assessed herein to \$50,000.

II. BACKGROUND

2. The facts and circumstances surrounding this case are set forth in the Commission’s two Notices of Apparent Liability for Forfeiture⁴ and need not be reiterated at length.

3. 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

¹ As in the *NAL*, *see supra* note 4, giving rise to this *Forfeiture Order*, references herein to “Sunstar” refer not only to Sunstar Travel and Tours, Inc., but also to other names through which it does business, including SS Travel and Tours, S-Star Travel and Tour, Vacation Clearinghouse, Vacation Clearance Center, and Travel Clearance Center, as well as Joseph Hanna and all other principals and officers of any entity doing business by any of the listed names.

² 47 U.S.C. § 227.

³ *See* 47 U.S.C. § 503(b)(1). The Commission has the authority under this section of the Act to assess a forfeiture against any person who has “willfully or repeatedly failed to comply with any of the provisions of this Act or of any rule, regulation, or order issued by the Commission under this Act . . .”; *see also* 47 U.S.C. § 503(b)(5) (stating that the Commission has the authority under this section of the Act to assess a forfeiture penalty against any person who does not hold a license, permit, certificate, or other authorization issued by the Commission or an applicant for any of those listed instrumentalities so long as such person (A) is first issued a citation of the violation charged; (B) is given a reasonable opportunity for a personal interview with an official of the Commission, at the field office of the Commission nearest to the person’s place of residence; and (C) subsequently engages in conduct of the type described in the citation).

⁴ *Sunstar Travel and Tours, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Red 8976 (2008) (proposed forfeiture of \$169,500) (*NAL 1*); *Sunstar Travel and Tours, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Red 13193 (2008) (proposed forfeiture of \$136,000) (*NAL 2*) (collectively “*NALs*”).

unsolicited advertisement.”⁵ On May 17, 2008, the Enforcement Bureau (“Bureau”) issued a citation⁶ to Sunstar, pursuant to section 503(b)(5) of the Act.⁷ The citation informed Sunstar that within 30 days of the date of the citation, it could either request an interview with Commission staff, or provide a written statement responding to the citation. Sunstar did not request an interview or otherwise respond to the citation.

4. Following the issuance of the citation, the Commission received at least 56 complaints from consumers alleging that Sunstar faxed at least 63 unsolicited advertisements to them. These violations, which occurred after the date of the Bureau’s citation, resulted in the issuance of two *NALs* against Sunstar: one on May 28, 2008, in the amount of \$169,500 (“*NAL 1*”), and another on August 26, 2008, in the amount of \$136,000 (“*NAL 2*”), for a total of \$305,500.⁸ The *NALs* ordered Sunstar, within thirty days, either to pay the proposed forfeiture amounts or submit evidence or arguments in response to the *NALs* to show that no forfeiture should be imposed or that some lesser amount should be assessed. Sunstar did not respond to *NAL 1* or pay the proposed forfeiture amount. Sunstar responded to *NAL 2* by letter dated September 3, 2008, saying that it had not seen the complaints associated with the *NALs*. In addition, Sunstar claimed that it faxes to Canada and the United Kingdom, not the United States, and that a former agent had “been maliciously sending out faxes to try and damage and attack our company.”⁹ Sunstar also said that the company was unable to pay the proposed forfeiture.

5. In response, the Bureau sent Sunstar copies of the consumer complaints that were the subject of the Commission’s *NALs* and allowed additional time for Sunstar to address those complaints. Sunstar responded in two further letters.¹⁰ Sunstar asserted generally that, while some complaints included copies of faxes, including faxes “that had our number on them and represented our company . . . these were only copies of a document that advertises our product and company. These are not the original documents.”¹¹ Sunstar also claimed that “[t]here are a couple of websites that have our name on the site and there are people out there who want to place the blame of every document on someone.”¹² In discussing individual complaints, Sunstar again claimed it did not send unsolicited faxes within the U.S., and suggested that complainants may not be “aware of every document that they have ever filled out and know who exactly our associates are that we obtain our information from.”¹³

⁵ 47 U.S.C. § 227(b)(1)(C); *see also* 47 C.F.R. § 64.1200(a)(3).

⁶ Citation from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, File No. EB-07-TC-502, issued to Sunstar on May 17, 2007.

⁷ *See* 47 U.S.C. § 503(b)(5) (authorizing the Commission to issue citations to persons who do not hold a license, permit, certificate, or other authorization issued by the Commission, or who are applicants for any of those listed instrumentalities, for violations of the Act or of the Commission’s rules and orders).

⁸ *See supra* note 4.

⁹ Letter from Joseph Hanna, President, Sunstar, to Office of Secretary, FCC, File No. EB-07-TC-502, dated Sept. 3, 2008 (Sept. 2008 Response).

¹⁰ Letter from Joseph Hanna, President, Sunstar to Office of Secretary, FCC, File No. EB-07-TC-502, dated October 24, 2008 (Oct. 2008 Response); Letter from Joseph Hanna, President, Sunstar, to Office of Secretary, FCC, File No. EB-07-TC-502, dated April 13, 2009 (Apr. 2009 Response).

¹¹ Oct. 2008 Response at 1; *also* Apr. 2009 Response at 1-2.

¹² Oct. 2008 Response at 1; *also* Apr. 2009 Response at 1.

¹³ *See, e.g.*, Oct. 2008 Response at 3 and *passim*; Apr. 2009 Response at 3 and *passim*.

III. DISCUSSION

6. Section 503(b) of the Act authorizes the Commission to assess a forfeiture for each violation of the Act or of any rule, regulation, or order issued by the Commission under the Act by a non-common carrier or other entity not specifically designated in section 503 of the Act. The maximum penalty for such a violation is \$11,000 for a violation occurring before September 2, 2008, and \$16,000 for a violation occurring on or after September 2, 2008.¹⁴ In exercising such authority, we are to take into account “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.”¹⁵

7. The record in this case, as discussed in the *NALs*, includes numerous complaints based on faxes that list Sunstar telephone numbers and were sent during the period of June 2007 through October 2007. Complainants claim that they received unwanted and unsolicited faxes from Sunstar advertising vacations. Many of the complainants also attached copies of the unwanted faxes. These faxes are almost uniformly advertisements for vacation packages in Florida, the Bahamas, and Mexico. As the complaints allege, these faxes identify the sender as S-Star or SS Travel and Tours,¹⁶ and ask that the recipient respond by calling telephone numbers that our research reveals are assigned to Sunstar. Many of these faxes include headers that list the date and time the fax was sent and the recipients’ phone numbers. These headers confirm that the faxes were sent to the telephone numbers listed in the complaints, and those telephones are within the United States. In addition, Sunstar acknowledges that it sends faxes advertising Florida vacation packages (including faxes similar to those attached to many of the complaints), and that it uses the telephone numbers and trade names identified in the complaints and listed on the example faxes. We have carefully reviewed the complaints and Sunstar’s responses. It is not clear that Sunstar sent seven faxes associated with three complaints, because they advertise products other than vacations or do not include a Sunstar business name or telephone number.¹⁷ Otherwise, however, the remaining complaints present a prima facie case that Sunstar did violate the Act and our rules on numerous occasions. Sunstar nonetheless denies that it violated the Act and our orders, and raises several defenses.

¹⁴ Section 503(b)(2)(C) provides for forfeitures of up to \$10,000 for each violation in cases not covered by subparagraph (A) or (B), which address forfeitures for violations by licensees and common carriers, among others. *See* 47 U.S.C. § 503(b). In accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, Pub. L. 104-134, Sec. 31001, 110 Stat. 1321, the Commission implemented an increase of the maximum statutory forfeiture under section 503(b)(2)(C) first to \$11,000 and more recently to \$16,000. *See* 47 C.F.R. § 1.80(b)(3); *Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 15 FCC Rcd 18221 (2000) (forfeiture maximum for this type of violator set at \$11,000); *Amendment of Section 1.80(b) of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 19 FCC Rcd 10945 (2004) (amendment of section 1.80(b) to reflect inflation left the forfeiture maximum for this type of violator at \$11,000); *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 inflation increased the forfeiture maximum for this type of violator to \$16,000).

¹⁵ 47 U.S.C. § 503(b)(2)(D); *see also* *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, Report and Order*, 12 FCC Rcd 17087, 17100-01 para. 27 (1997) (*Forfeiture Policy Statement*), *recon. denied*, 15 FCC Rcd 303 (1999).

¹⁶ Sunstar also does business through these names. *See supra* note 1.

¹⁷ In *NAL 1*, the fax attached to the complaint from Complainant Bergin does not appear to have been sent by Sunstar and the complaint from Complainant Taylor does not clearly identify Sunstar as the sender. *See NAL 1* Appendix. In *NAL 2*, none of the four faxes listed in the complaint by Complainant Groves are clearly linked to Sunstar, for example by the sender’s name or telephone number. *See NAL 2* Appendix.

8. As an initial matter, we note that Sunstar has not submitted any documents or similar evidence in support of these defenses, such as transmission logs that could show that Sunstar had not in fact sent faxes to the complainants, or records of contacts from customers that could demonstrate an established business relationship (EBR).¹⁸ Sunstar relies solely on the unsupported, uncorroborated, and unsworn statements in its letters. We have, nonetheless, reviewed those defenses and discuss them below.

9. *Whether Sunstar exclusively faxes to Canada and the U.K.* Although Sunstar claims in some of its letters that it faxes only to Canada and the U.K., at other times it says that “[w]e normally do not fax to the USA unless the document has been requested by the client in some way, shape, or form.”¹⁹ It also explains that “[t]he only USA numbers that we have in any of our systems or any sales that we have had come from leads that were purchased from a couple different companies that do Box leads and internet leads. We also had many inquiries from our website as well.”²⁰ These statements clearly indicate that Sunstar did, in fact, send faxes within the United States, and lend support to the numerous U.S. complainants who say they received them. Sunstar does not demonstrate for any of the complaints how it in fact obtained the recipient’s fax number, let alone that the number was communicated in the context of an EBR. Nor does Sunstar demonstrate that it took reasonable steps to verify that the recipient voluntarily agreed to make the number available for public distribution, as required by the Act and our rules.²¹ Consequently, we are unconvinced of Sunstar’s argument that the company faxes exclusively to Canada and the U.K., and we conclude based on the record evidence that Sunstar sent unsolicited facsimile advertisements to U.S. consumers.

10. *Whether some faxes were “sent maliciously by another competitor in an effort to destroy our company.”* Sunstar presents no evidence for this claim, which appears unlikely in view of the fact that the unwanted faxes promote Sunstar products and solicit calls to Sunstar telephone numbers. A specific individual that Sunstar seeks to implicate also seems unlikely to have sent the faxes at issue here. According to Sunstar, “an independent agent that was working under our license” left Sunstar on September 5, 2007 and then opened his own office sending faxes. Sunstar presents no supporting evidence of these claims. Even assuming Sunstar is correct, however, all of the complaints cited in the April 2008 *NAL* involved faxes sent during the period of June 2007 through August 2007, before the date that Sunstar says the independent agent left Sunstar. The faxes cited in the August 2008 *NAL* were received after September 5, 2007, but represent a continuing flow of faxes similar to the earlier ones. We find no basis in the record for concluding that these faxes were sent by anyone other than Sunstar.

11. *Whether the complaints are based on “some documents that were on the internet that anyone can copy and send in.”* Sunstar does not identify any of these purported internet sites or any specific documents that were available on them at the time these complaints were filed. We therefore cannot conclude that Sunstar’s assertion is anything more than speculation.

¹⁸ An “established business relationship” is defined as a prior or existing relationship formed by a voluntary two-way communication “with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the business or residential subscriber regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party.” 47 C.F.R. § 64.1200(f)(5). *See also* 47 U.S.C. § 227(a)(2).

¹⁹ *See, e.g.*, October Response at 3 and *passim*.

²⁰ September 2008 Response at 2.

²¹ 47 U.S.C. § 227(b)(1)(C)(i), (ii); *see also Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Junk Fax Prevention Act of 2005*, Report and Order and Third Order on Reconsideration, 21 FCC Rcd 3787, 3795-96 ¶ 15 (2006) (*Junk Fax Prevention Act R&O*); *modified on other grounds*, 23 FCC Rcd 15059 (2008).

12. *Whether the person filing the complaint was unaware of requests for information from sources such as other family members or company employees.* Sunstar appears to be suggesting that an EBR may have existed for many of the complainants, based on requests for information that complainants forgot, or requests that were made by others in their households or businesses. It is highly unlikely that so many complainants would be in this situation, and in any event, the Commission has made clear that the entity sending a fax ad is responsible for demonstrating the existence of the EBR, and must be prepared to provide clear and convincing evidence of permission to send faxes.²² Sunstar presents no evidence whatsoever of EBRs with, or consent from, any of the complainants, and therefore, we are not persuaded by this argument.

13. *Whether some of the faxes cited in the complaints could not have been from Sunstar because they differ from those Sunstar sends.* Sunstar claims that complaints that state that there was no date of transmission or telephone number in the header are not from Sunstar, because Sunstar includes the date of transmission and its fax number in the headers of all documents that leave its offices. In other cases, Sunstar claims that the style and content of some of the faxes attached to the complaints do not match Sunstar's own faxes. Here again, Sunstar provides no evidence in support of these claims. In our review, as discussed above, we have removed those faxes from our consideration of the violations here. But the remaining complaints present a compelling case that the complained-of faxes were, in all other cases, sent by Sunstar. Further, the numerous complaints supported by numerous actual examples of faxes advertising Sunstar's vacation package business, and using Sunstar's business names and phone numbers, clearly outweigh Sunstar's unsupported denials.

14. *Inability to pay.* Sunstar says it cannot afford to pay the total forfeiture of \$305,500 proposed in the two NALs and provides its tax returns for 2005, 2006, and 2007. The Commission generally considers a company's gross revenues as reasonable and appropriate yardsticks to determine their ability to pay assessed forfeitures.²³ After considering the financial information submitted by Sunstar, we conclude that its gross revenues are sufficient to enable it to pay a \$50,000 forfeiture,²⁴ and we hereby impose a total forfeiture of \$50,000 for Sunstar's willful and repeated violations of section 227 of the Act and the Commission's related rules and orders, as set forth in the NALs.

IV. ORDERING CLAUSES

15. 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 Sunstar IS LIABLE FOR A MONETARY FORFEITURE to the United States Government in the sum of \$50,000 for willfully or repeatedly violating section 227(b)(1)(c) of the Communications Act, 47 U.S.C. § 227(b)(1)(c), section 64.1200(a)(3) of the Commission's rules, 47 C.F.R. § 64.1200(a)(3), and the related orders as described in the paragraphs above. Payment of the

²² *Junk Fax Prevention Act R&O*, 21 FCC Rcd 3787, 3793-95 ¶ 12 (2006).

²³ See, e.g., *Alpha Ambulance, Inc.*, 19 FCC Rcd 2547, 2548-49 ¶ 5 (2004); *Long Distance Direct, Inc.* 15 FCC Rcd 3297, 3305 (2000); *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 ¶ 8 (1992); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17106-07 ¶ 43.

²⁴ See *PJB Communications*, 7 FCC Rcd at 2089 (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, 16 FCC Rcd at 10025 (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640, 8641 (Enf. Bur. 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues). In this case, the forfeiture represents a smaller percentage than in the *Local Long Distance, Inc.*, and *Hoosier Broadcasting Corp.*, cases, but a higher percentage than the forfeiture issued in *PJB Communications of Virginia, Inc.*

forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules within thirty (30) days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to section 504(a) of the Act, 47 U.S.C. § 504(a).

16. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Sunstar will also send electronic notification to Johnny.Drake@fcc.gov on the date said payment is made. Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

17. IT IS FURTHER ORDERED that a copy of the Forfeiture Order shall be sent by First Class mail and certified mail return receipt requested to Sunstar Travel and Tours, Inc., Attention: Joseph Hanna, President, 1123 E. Altamonte Dr., Altamonte Springs, FL 32701.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary