

Fax Advertising: What You Need to Know

FCC Consumer Facts

Background

The Telephone Consumer Protection Act (TCPA) and Federal Communications Commission (FCC) rules generally prohibit most unsolicited facsimile (fax) advertisements. In addition, the Junk Fax Prevention Act, passed by Congress in 2005, directs the FCC to amend its rules adopted pursuant to the TCPA regarding fax advertising. The FCC's revised rules: (1) codify an established business relationship (EBR) exemption to the prohibition on sending unsolicited fax advertisements; (2) define EBR for unsolicited fax advertisements; (3) require the sender of fax advertisements to provide specified notice and contact information on the fax that allows recipients to "opt-out" of any future faxes from the sender; and (4) specify the circumstances under which a request to "opt-out" complies with the Act.

Definitions

To understand the revised rules, you must first understand the meaning of the terms "unsolicited advertisement" and "established business relationship." As defined in FCC rules, an "unsolicited advertisement" is "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, in writing or otherwise."

Also as defined in FCC rules, an "established business relationship" or EBR is "a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a business or residential subscriber with or without an exchange of consideration [payment], 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."

Amended Fax Rules and Established Business Relationship Exemption

The rules provide that it is unlawful to send unsolicited advertisements to any fax machine, including those at both businesses and residences, without the recipient's prior express invitation or permission. Fax advertisements, however, may be sent to recipients with whom the sender has an EBR, as long as the fax number was provided voluntarily by the recipient. Specifically, a fax advertisement may be sent to an EBR customer if the sender also:

- obtains the fax number directly from the recipient, through, for example, an application, contact information form, or membership renewal form; or
- obtains the fax number from the recipient's *own* directory, advertisement, or site on the Internet, unless the recipient has noted on such materials that it does not accept unsolicited advertisements at the fax number in question; or
- has taken reasonable steps to verify that the recipient consented to have the number listed, if obtained from a directory or other source of information compiled by a third party.

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Amended Fax Rules and Established Business Relationship Exemption (cont'd.)

If the sender had an EBR with the recipient and possessed the recipient's fax number before July 9, 2005 (the date the Junk Fax Prevention Act became law), the sender may send the fax advertisements without demonstrating how the number was obtained.

Opt-out Notice Requirements

Senders of permissible fax advertisements (those sent under an EBR or with the recipient's prior express permission) must provide notice and contact information on the fax that allows recipients to "opt-out" of future faxes. The notice must:

- be clear and conspicuous and on the first page of the advertisement;
- state that the recipient may make a request to the sender not to send any future faxes and that failure to comply with the request within 30 days is unlawful; and
- include a telephone number, fax number, and cost-free mechanism (including a toll-free telephone number, local number for local recipients, toll-free fax number, Web site address, or e-mail address) to opt-out of faxes. These numbers and cost-free mechanism must permit consumers to make opt-out requests 24 hours a day, seven days a week.

Senders who receive a request not to send further faxes that meets the requirements listed in the next section must honor that request within the shortest reasonable time from the date of the request, not to exceed 30 days. They are also prohibited from sending future fax advertisements to the recipient unless the recipient subsequently provides prior express permission to the sender.

Opt-out Requests By Consumers

To stop unwanted fax advertisements, your "opt-out" request must:

- identify the fax number or numbers to which it relates; and
- be sent to the telephone number, fax number, Web site address, or e-mail address identified on the fax advertisement.

If you change your mind about receiving fax advertisements, you can subsequently grant express permission to receive faxes from a particular sender, orally or in writing.

Fax Broadcasters

Often fax advertisements are sent in bulk on behalf of a business or entity by separate professional fax broadcasters. Generally, the person or business on whose behalf a fax is sent or whose property, goods, or services are advertised is liable for a violation of the junk fax rules, even if the person or business did not physically send the fax. A fax broadcaster also may be liable if it has a "high degree of involvement" in the sender's fax message, such as supplying the fax numbers to which the message is sent, providing a source of fax numbers, making representations about the legality of faxing to those numbers, or advising about how to comply with the junk fax rules. Also, if a fax broadcaster is "highly involved" in the sender's fax messages, the fax broadcaster must provide its name on the fax.

Fax Numbers and the National Do-Not-Call List

Registering a home phone number on the national Do-Not-Call list prevents only telephone solicitations directed to that number, not fax advertisements to your home or business fax number. For more information on our telephone solicitation rules, see our consumer fact sheet at www.fcc.gov/cgb/consumerfacts/tpa.html or visit our Web site at www.fcc.gov/cgb/donotcall. The FCC's junk fax rules nevertheless prohibit fax advertisements unless you have an EBR with the sender or have given your prior express permission to receive the fax advertisements.

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How the FCC Can Help

The FCC can issue warning citations and impose fines against companies violating or suspected of violating the junk fax rules, but does not award individual damages. If you have received a fax advertisement from someone who does not have an EBR with you or to whom you have not provided prior express permission to send fax advertisements, you can file a complaint with the FCC. The easiest way to file your complaint is to go to the FCC's on-line complaint forms found on the FCC Web site at esupport.fcc.gov/complaints.htm. You will be asked to check a box that will take you to the correct form, Form 1088A. You can also file your complaint with the FCC Consumer Center by e-mailing fccinfo@fcc.gov; calling 1-888-CALL-FCC(1-888-225-5322) voice or 1-888-TELL-FCC (1-888-835-5322) TTY; faxing 1-866-418-0232; or writing to:

Federal Communications Commission
Consumer & Governmental Affairs Bureau
Consumer Inquiries and Complaints Division
445 12th Street, SW
Washington, DC 20554.

What to Include in Your Complaint

The best way to provide all the information needed for the FCC to process your junk fax complaint is to complete fully the on-line complaint Form 1088A. If you do not use the on-line complaint Form 1088A, your complaint, at a minimum, should indicate:

- your name, address, e-mail address, and phone number where you can be reached;
- the home or business number where you received the unsolicited fax advertisement;
- date and time of the fax;
- whether the fax advertised or sold any property, goods, or services;

What to Include in Your Complaint (cont'd.)

- the sender's name, phone number, or number of the sending fax machine, and whether this information was provided on the first page or in a margin at the top or bottom of each page;
- any other information such as Web site or e-mail address to help identify the sender or individual or company whose property, goods, or services were being advertised or sold;
- any number, Web site, or e-mail address provided to allow you to "opt-out" of future faxes;
- whether you or anyone else in your household or business gave the sender permission to fax an advertisement to you;
- whether you have an EBR with the sender (specifically, whether you or anyone else in your household or business made any purchases of property, goods, or services from the sender, or made any inquiry or filed an application with the individual or company prior to receiving the fax); and
- whether you or anyone in your household or business previously asked the sender or individual or company whose property, goods, or services are being advertised or sold **NOT** to fax, and when and how (call, e-mail, or Web site) you made the request.

You may also submit a copy of the fax with your complaint, either electronically or by fax or mail using the Consumer Center contact information above.

Additional Places to Go for Help

You can file TCPA-related complaints with your state authorities, including your local or state consumer protection office or your state Attorney General's office. Contact information for these organizations should be in the blue pages or government section of your local telephone directory.

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Additional Places to Go for Help (cont'd.)

You can also bring a private suit against the violator in an appropriate court of your state. Through a private suit, you can either recover the actual monetary loss that resulted from the TCPA violation, or receive up to \$500 in damages for each violation, whichever is greater. The court may triple the damages for each violation if it finds that the defendant willingly or knowingly committed the violation. Filing a complaint with the FCC does not prevent you from also bringing a suit in state court.

For More Information

For information about other telecommunications issues, visit the FCC's Consumer & Governmental Affairs Bureau Web site at www.fcc.gov/cgb, or contact the FCC's Consumer Center using the information provided for filing a complaint.

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To receive information on this and other FCC consumer topics through the Commission's electronic subscriber service, visit www.fcc.gov/cgb/contacts/.

This fact sheet is for consumer education purposes only and is not intended to affect any proceedings or cases involving this subject matter or related issues.

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