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SUPERIOR COURT

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF LOS ANGELES

13 THE FOUNDATION FOR TAXPAYER
14 AND CONSUMER RIGHTS,

15 Plaintiff,

16 vs.

17 COMMUNICATIONS 2000, INC.;
18 KENNETH D. OWEN, a/k/a KEN OWEN,
19 individually and as a principal of
20 COMMUNICATIONS 2000, INC.;
21 TEC NETWORKS;
22 and DOES 1 through 50, inclusive,

23 Defendants.

Case No. _____

BC247812

COMPLAINT

Violations of 47 U.S.C. § 227(b) (Restrictions on the use of automated telephone equipment), and 47 C.F.R. § 64.1200 (Delivery restrictions).
Trespass to chattel.
Trespass to personal property.
Violations of unfair competition law (Cal. Business and Professions Code §§ 17200 through 17210).

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1 **GENERAL ALLEGATIONS**

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3 **THE PARTIES**

4 1. Plaintiff THE FOUNDATION FOR TAXPAYER AND CONSUMER RIGHTS
5 (FTCR) is a nonprofit public benefit corporation duly organized and existing under and by virtue of
6 the laws of this State. FTCR deploys an in-house team of public interest lawyers, policy experts,
7 strategists, public educators, and grassroots activists to advance and protect the interests of
8 consumers and taxpayers. FTCR brings this action on behalf of itself and the general public.

9 2. Defendant COMMUNICATIONS 2000, INC. is, and at all relevant times was, a
10 California corporation. Its registered office and mailing address is 3830 Del Amo Blvd., Suite #101,
11 Torrance, CA 90503. It has additional offices in northern California and Florida. It does business
12 under the name "TEC Networks."

13 3. Defendant KENNETH D. OWEN, a/k/a KEN OWEN, is President and the registered
14 agent of defendant COMMUNICATIONS 2000, INC, and the registrant of tec-networks.com, an
15 Internet domain and Internet domain name registered to him at 3830 Del Amo Blvd., Suite #101,
16 Torrance, CA 90503.

17 4. Defendant TEC NETWORKS is a business organization that, *inter alia*, offers phone
18 systems and computer networks. Plaintiff is informed and believes and thereupon alleges that TEC
19 NETWORKS is a fictitious name or "doing business as" form of defendant COMMUNICATIONS
20 2000, INC.

21 5. Plaintiff is ignorant of the true names or capacities of the defendants sued herein
22 under the fictitious names DOE ONE through FIFTY inclusive.
23

24
25 **STATEMENT OF FACTS**

26 6. FTCR has, and at all relevant times had, telephone service at (310) 392-8874 and
27 (310) 392-8423. FTCR receives facsimile transmissions ("faxes") at those numbers, using telephone
28 facsimile machines ("fax machines").

1 7. On or about January 3, 2001, FTCR received on one of its fax machines (at (310) 392-
2 8874 or (310) 392-8423) a fax that, *inter alia*, advertises TEC Networks, tec-networks.com and
3 products offered by TEC Networks. This fax was wholly unsolicited. A copy of this fax
4 advertisement is attached hereto as Exhibit A.

5 8. On or about January 16, 2001, FTCR received on one of its fax machines (at (310)
6 392-8874 or (310) 392-8423) a fax that, *inter alia*, advertises TEC Networks, tec-networks.com, and
7 products offered by TEC Networks. This fax was wholly unsolicited. A copy of this fax
8 advertisement is attached hereto as Exhibit B.

9
10 **FIRST CAUSE OF ACTION, AGAINST ALL DEFENDANTS, FOR**
11 **VIOLATION OF 47 U.S.C. § 227 AND 47 C.F.R. § 64.1200**

12 9. Plaintiff repeats each and every allegation contained in the paragraphs above and
13 incorporates such allegations by reference.

14 10. Copies of the federal statute and regulations discussed below are attached for the
15 Court's convenience as Exhibit C.

16 11. The Telephone Consumer Protection Act of 1991, Pub.L. 102-243, § 3(a), added
17 Section 227 to Title 47 of the United States Code. 47 U.S.C. § 227 was last amended in 1994.

18 12. In pertinent part, 47 U.S.C. § 227(b) provides "It shall be unlawful for any person
19 within the United States . . . to use any telephone facsimile machine, computer, or other device to
20 send an unsolicited advertisement to a telephone facsimile machine[.]"

21 13. In pertinent part, 47 C.F.R. § 64.1200(a), a regulation prescribed under 47 U.S.C. §
22 227(b) and effective as of December 20, 1992, provides that "No person may . . . [u]se a telephone
23 facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone
24 facsimile machine."
25

26 14. As used in both 47 U.S.C. § 227 and 47 C.F.R. 64.1200, "[t]he term 'unsolicited
27 advertisement' means any material advertising the commercial availability or quality of any property,
28

1 goods, or services which is transmitted to any person without that person's prior express invitation or
2 permission." (47 U.S.C. § 227(a)(4); 47 C.F.R. § 64.1200(f)(5).)

3 15. Paragraph (3) of 47 U.S.C. § 227(b) provides:

4 (3) Private right of action

5 A person or entity may, if otherwise permitted by the laws or rules of court of
6 a State, bring in an appropriate court of that State--

7 (A) an action based on a violation of this subsection or the regulations
8 prescribed under this subsection to enjoin such violation,

9 (B) an action to recover for actual monetary loss from such a violation, or to
10 receive \$500 in damages for each such violation, whichever is greater, or

11 (C) both such actions.

12 If the court finds that the defendant willfully or knowingly violated this
13 subsection or the regulations prescribed under this subsection, the court may,
14 in its discretion, increase the amount of the award to an amount equal to not
15 more than 3 times the amount available under subparagraph (B) of this
16 paragraph.

17 16. Plaintiff alleges that on or about January 3, 2001, and again on or about January 16,
18 2001, defendants used a telephone facsimile machine, computer, or other device to send unsolicited
19 advertisements for TEC Networks and tec-networks.com to telephone facsimile machines including a
20 telephone facsimile machine owned by plaintiff.

21 17. Plaintiff further alleges that in each instance defendants did so willfully or knowingly.

22 18. Plaintiff further alleges on information and belief that in each instance defendants had
23 actual notice of participation, or a high degree of involvement, in a plan to transmit unsolicited
24 advertisements to telephone facsimile machines (by, for example, knowing the that the transmitted
25 faxes were advertisements or participating in preparing their content, providing or obtaining the fax
26 telephone numbers of FTCR or other recipients, and knowing that FTCR or other recipients had not
27 authorized the faxes' transmission by prior express invitation or permission).

28 19. Plaintiff therefore alleges that defendants violated 47 U.S.C. § 227 and
47 C.F.R. § 64.1200.

1 **SECOND CAUSE OF ACTION, AGAINST ALL DEFENDANTS, FOR**
2 **TRESPASS TO CHATTEL**

3 20. Plaintiff repeats each and every allegation contained in the paragraphs above and
4 incorporates such allegations by reference.

5 21. Plaintiff alleges that on or about January 3, 2001, and again on or about January 16,
6 2001, defendants moved or caused the movement or asportation of a piece of paper owned and
7 possessed by FTCR from the input tray of a telephone facsimile machine owned and possessed by
8 FTCR to the output tray of such fax machine. In the process, defendants seized or caused the caption
9 of said paper by remote control. At those times defendants also caused the movement of a quantity
10 of toner or ink owned and possessed by FTCR from a reservoir in such fax machine to said paper.
11 The toner or ink became imprinted upon the paper, and FTCR could no longer use the toner or ink, or
12 the paper, as FTCR wished.

13 22. Plaintiff further alleges that defendants intended to do as alleged above.

14 23. Plaintiff further alleges that defendants either foresaw that their actions would have
15 the effects described above or would have foreseen those effects had they been people using ordinary
16 care.

17 24. Plaintiff further alleges that defendants had no justification for their actions.

18 25. Plaintiff never consented to the behavior alleged above.

19 26. Plaintiff alleges that in each instance defendants committed trespass to chattel.

20
21 **THIRD CAUSE OF ACTION, AGAINST ALL DEFENDANTS, FOR**
22 **TRESPASS TO PERSONAL PROPERTY**

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24 27. Plaintiff repeats each and every allegation contained in the paragraphs above and
25 incorporates such allegations by reference.

26 28. Plaintiff alleges that on or about January 3, 2001, and again on or about January 16,
27 2001, defendants used or caused use of a telephone facsimile machine (fax machine) owned and
28 possessed by FTCR, thereby interfering with FTCR's possession and use of such fax machine and

1 temporarily dispossessing plaintiff (FTCR) of its lawful right of possession of such fax machine. In
2 so doing, defendants also caused plaintiff to consume, involuntarily and at some cost, a quantity of
3 electrical energy as well as some paper and toner or ink.

4 29. Plaintiff further alleges that defendants intended to do as alleged above.

5 30. During the fax machine use alleged above, said fax machine was unavailable to
6 receipt of any other transmission and could not readily be used to send a fax or make a phone call.

7 31. Plaintiff further alleges that defendants either foresaw that their actions would have
8 the effects described above or would have foreseen those effects had they been people using ordinary
9 care.

10 32. Plaintiff further alleges that defendants had no justification for their actions.

11 33. Plaintiff never consented to the behavior alleged above. FTCR did not solicit any fax
12 transmission from defendants. The fax machine use alleged above was unauthorized.

13 34. Plaintiff alleges that in each instance defendants committed trespass to personal
14 property.

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16 **FOURTH CAUSE OF ACTION, AGAINST ALL DEFENDANTS, FOR**
17 **VIOLATION OF UNFAIR COMPETITION LAW**

18 35. Plaintiff repeats each and every allegation contained in the paragraphs above and
19 incorporates such allegations by reference.

20 36. Cal. Bus. & Prof. Code §§ 17200 through 17210 constitute Chapter 5 of Part 2 of
22 Division 7 of the Business and Professions Code, which is California's "unfair competition law."

23 37. Cal. Bus. & Prof. Code § 17204 provides *inter alia* that "[a]ctions for any relief
24 pursuant to this chapter" may be prosecuted in a court of competent jurisdiction "by any person
25 acting for the interests of itself, its members or the general public."

26 38. In pertinent part, Cal. Bus. & Prof. Code § 17200 defines "unfair competition" to
27 "mean and include," *inter alia*, "any unlawful, unfair or fraudulent business act or practice and
28 unfair, deceptive, untrue or misleading advertising. . . ."

1 39. In pertinent part, Cal. Bus. & Prof. Code § 17203 provides that

2 "[a]ny person who . . . has engaged . . . in unfair competition may be enjoined
3 in any court of competent jurisdiction. The court may make such orders or
4 judgments . . . as may be necessary to prevent the use or employment by any
5 person of any practice which constitutes unfair competition . . . or as may be
6 necessary to restore to any person in interest any money or property, real or
7 personal, which may have been acquired by means of such unfair
8 competition."

9 40. In pertinent part, Cal. Bus. & Prof. Code § 17202 provides that "specific or
10 preventative relief may be granted to enforce a penalty, forfeiture, or penal law in a case of unfair
11 competition."

12 41. Plaintiff alleges on information and belief that at or about the time when defendants
13 violated 47 U.S.C. § 227(b) and 47 C.F.R. § 64.1200, committed trespass to chattel or committed
14 trespass to personal property, as alleged above with regard to FTCR, defendants also did so with
15 regard to other members of the general public.

16 42. By violating 47 U.S.C. § 227(b) and 47 C.F.R. § 64.1200, by committing trespass to
17 chattel, or by committing trespass to personal property, as alleged above, defendants engaged in
18 unfair advertising or unlawful business acts or practices, and therefore engaged in unfair competition
19 in violation of California's unfair competition law, Cal. Bus. & Prof. Code §§ 17200-17210. FTCR
20 so alleges on behalf of its own interests and those of the general public.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff prays for judgement against defendants and relief as follows:

23 A. Jointly and severally against all defendants, the statutory award available under 47
24 U.S.C. § 227(b)(3)(B) of \$1,000 for two violations against plaintiff of 47 U.S.C. § 227(b) or the
25 regulations prescribed thereunder.

26 B. An increase by the Court of the award prayed for in the preceding paragraph to three
27 times the amount available under 47 U.S.C. § 227(b)(3)(B), as authorized by 47 U.S.C. § 227(b)(3)
28 for willful or knowing violation. Here, an increase from an award of \$1,000 to an award of \$3,000.

1 C. Jointly and severally against all defendants, an award of damages for trespass to
2 chattel.

3 D. Jointly and severally against all defendants, an award of damages for trespass to
4 personal property.

5 E. Against all defendants, an injunction against violation of 47 U.S.C. § 227(b) or 47
6 C.F.R. 64.1200(a), as authorized by 47 U.S.C. § 227(b)(3)(A).

7 F. Against all defendants, an injunction, as authorized by Cal. Bus. & Prof. Code §
8 17203, to prevent the use or employment of fax practices which constitute unfair competition, and to
9 restore to persons in interest any money or property which was acquired by means of such unfair
10 competition. Such injunction, or accompanying orders or judgments, shall require payment by
11 defendants to all recipients of defendants' unsolicited faxes a sum of money sufficient (a) to
12 compensate said recipients for their time acquired by means of defendants' unfair competition, (b) to
13 pay for paper, toner or ink, and electrical energy to replace that acquired by means of such unfair
14 competition, and (c) to provide enough time to effectuate such purchases.

15 G. Jointly and severally against all defendants, an award of attorney fees, costs and
16 expenses of bringing and prosecuting this action, pursuant to, *inter alia*, Cal. Code Civ. Proc.
17 § 1021.5.

18 H. Such other and further relief as the Court may deem just and proper.
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20 Dated: March ____, 2001

Respectfully Submitted,
THE FOUNDATION FOR TAXPAYER
AND CONSUMER RIGHTS
Harvey Rosenfield
Pamela M. Pressley
David A. Holtzman

26 by: _____
27 David A. Holtzman
28 ATTORNEYS FOR PLAINTIFF
THE FOUNDATION FOR TAXPAYER
AND CONSUMER RIGHTS