

UNSOLICITED COMMERCIAL



BULK FAX

(UCBF)

by

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Technology over the last 20 years has introduced more new terms into the world's vocabulary than have been created since man's invention of the written word. Whether this is a blessing or a curse is reserved for another book and author.

This ebook's focus is Unsolicited Commercial Bulk Fax (UCBF). It is the forerunner to Unsolicited Commercial Bulk Email (UCBE). Given the fax machine was in wide use long before the computer, that only stands to reason.

The computer came along and, if you believed some talking heads, the fax machine was relegated to the status of dinosaur technology. Wrong! Wrong! Wrong!

Businesses did not throw away their fax machines nor abandon the technology. Why should/would they? Faxing is an important means of getting document A to person or business B. It is important because it remains inexpensive and is quite fast. Two elements businesses, and probably you, find extremely helpful.

However, there exists a negative side to the faithful fax machine just like there exists a negative side to the faithful computer. If you have an email account, you have undoubtedly experienced UCBE, a.k.a. SPAM. It is irritating, frustrating and could drive a sane person mad.

Unfortunately with spam, you can not be remunerated even if you know who spammed you. Let's say you researched a piece of spam and found the culprit sending it.

All you can do is report this information to the FCC and they go after the bloke. They are the ones who prosecute and fine and if they collect any money, the U.S. treasury gets it.

Not so with UCBF. Junk faxes (what we call spam in email) was such a horrendous problem Congress actually passed an act prohibiting the practice unless certain restrictive conditions were met. That is, business A could not indiscriminately send you, me or anyone else a fax unless the sender had express permission or an invitation from the receiver or an "established business relationship" (EBR) existed between the parties.

This EBR is the kicker and it is the clause allowing anyone to sue and collect up to \$500 in damages per occurrence. It makes no difference if the fax machine is located in your business or your residence. As long as it is an "unsolicited advertisement", it is a junk fax.

An unsolicited advertisement is defined as 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. That is all encompassing.

The Federal Communications Commission is the federal agency with oversight authority for the act prohibiting junk faxes. The act, The Telephone Consumer Protection Act of 1991 (TCPA), has seen numerous rules and amendments thereto since its passage.

The latest amendment states:

- **Beginning January 1, 2005, it is unlawful to send an unsolicited advertisement to a facsimile machine without the prior written permission of the recipient of the advertisement;**
- **The business or entity on whose behalf the fax is being sent must identify itself in the top or bottom margin of each page or on the first page of the fax message, and must include its telephone number and the date and time the fax is sent;**
- **If a facsimile broadcaster (the person or entity transmitting messages to a fax machine on another person's behalf) demonstrates a "high degree of involvement" in the sender's facsimile messages, such as supplying the facsimile numbers to which a message is sent, the facsimile broadcaster must provide its name on the fax;**
- **A facsimile broadcaster may be liable if it supplies facsimile numbers to a business or entity sending unlawful fax advertisements; and**
- **Faxes sent to fax servers and personal computers are covered by the faxing rules.**

The FCC through its Consumer & Governmental Affairs Bureau said:

"It is also possible to 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."

Wow, the FCC's own legal eagles just said you can sock it to them for each violation – this means if they faxed you 15 times you now have 15 separate violations – and you can ask for \$500 for each of the 15 and you can even ask the judge to make it \$1500 instead of \$500.

They also said you can sue in your state and don't have to sue in the state from which the fax originated. For me, that meant I could sue in Nevada and not have to travel to Texas (more on my situation later).

Go back to the amended rules and you will see you are also allowed to sue the entity who gave the sender your fax number. So, theoretically, you can sue two or more entities for the same 15 violations and ask for \$1500 for each violation from each party.

A law with teeth for the consumer is always a good thing. However, don't get prematurely excited because in order to collect you not only have to learn the identity of the offender(s), [which isn't too hard in most cases](#), but you have to initiate the suit and serve process on the offenders (this may present a degree of difficulty).

This ebook isn't about how to learn the identity of the offenders or how to properly serve process although I do show you how to do it in the example detailing what I did against a slime ball in Texas. Why I don't go into any greater detail is your state and/or court system may have different rules and procedures. Always start with your own court system for information of this nature.

Oh, if you want to file a complaint with the FCC online, go to:

<http://www.fcc.gov/cgb/complaints.html>

Or, call them at 1-888-225-5322 or their TTY number: 1-888-835-5322.

Their snail mail address is:

**Federal Communications Commission
Consumer & Government Affairs Bureau
Consumer Inquiries and Complaints Division
445 12th Street, SW
Washington, D.C. 20554**

The rest of this ebook details my action against a slime puppy trying to sell me a health plan by using UCBF.

Their fax did not comply with the TCPA but it did have a toll free number I could call for information on their health plan. When I called the number, I told the lady I received a fax from their company but it lacked some information and I don't buy anything from a business that doesn't list its address and full name.

She was very apologetic and gave me the full business name and full business address. Tadah, I had all of the information I needed to send them a document I titled - NOTICE OF HARM AND DAMAGES.

Without a long winded legal treatise, suffice it to say when you title a document a NOTICE, you have told the receiving party they are on Notice. This is important when you sue because if you don't notice the other party, they can say they never knew.

Next, the HARM AND DAMAGES phrase tells them they have harmed you and caused you damage(s). This too is important as you have placed a liability upon

them which means they may be required to provide you a remedy. Remedy is a good thing from where you sit.

The actual NOTICE OF HARM AND DAMAGES I sent to the offender

My Name
My Street Address
My City, State, Zip Code

Date of Notice

Their Name
Their Street Address
Their City, State, Zip Code

[Note: I have intentionally omitted their mailing information.]

NOTICE OF HARM AND DAMAGES

Customer Service: (if the fax had a name, use it.)

I received the attached fax on 9-06-04. (Always attach the offending document.) As you know, we DO NOT have an “established business relationship” which is the only way you are allowed to fax me without violating the Telephone Consumer Protection Act of 1991. Notice the use of the EBR phrase and the name of the law they violated. This sets the stage for your demands and, if you actually go to court, is what gives you what’s called “standing” to sue.

You also are aware the act of providing me a toll free number to call to opt out of your faxing scheme does not relieve you of the liability imposed by the TCPA. The act makes no provision for the offender to allow you to opt out so as to avoid liability. The moment they sent the fax, they put themselves on the proverbial hook.

Your actions have caused me harm and damages. Therefore, this is a notice to:

1. Stop faxing me
2. Reimburse me the \$500 in damages I suffered

By telling them to stop their illegal behavior could open them up to criminal sanctions should they continue to fax you. Stating a specific amount, it may be argued, is not a good idea. However, the next paragraph will tell you why I did it.

Payment should be mailed to me at the above address. As you are aware, the TCPA provides for court action that could triple the damages as well as providing a means and avenue of complaint.

I shall consider restitution as remedy. Notice I what I say. I’m telling them if they mail the \$500, I will be satisfied and we won’t go to court.

Sincerely,

My Name

All of the above is worthless if the offender isn't served. This is called service of process and is accomplished several ways. The first is once the paper work is filed with the court, you can pay your local sheriff's office a fee to serve the party.

In my case, the offender was located in Texas and I was in Nevada. The sheriff would not drive to Texas to serve the offender nor did I want them to send the paper work to the Texas sheriff as it could get lost, delayed or sent to the wrong county.

Had I wanted the sheriff to serve the paperwork, I would have called the sheriff in Texas and asked how much they charge for service of process, how they accept payment (some only accept money orders or cashier check from non county residents) and once they received paperwork and fee, how long before the party was served.

I elected not to use the sheriff's office. I used one of the only two ways you should mail a service of process. The first is to use certified return receipt requested mail. This form consists of two postal documents. One is white and the other is green.

You put the name of the offender on the white one and fill out only one side. The green card is filled out on both sides. On the side - I'll call it side one - on which the offender will have to sign, there are three blocks which must be completed. You must put in their address, check the CERTIFIED block and put in the 20 digit number of the certified slip.

This twenty digit number is found in three places at the top of the white slip. You peel off the very top number and place it in the bottom block of side one of the green card. On side two of the green card, you write your name and address in the big block.

I didn't do this either. Instead, I elected to use a Certificate of Service. The federal courts use this one all the time so I figured if it was good enough for the Supreme Court it was good enough for me.

Here is mine with names and addresses omitted:

CERTIFICATE OF SERVICE

I, name of sender, (you cannot be the sender because you are a party to the action. Never ever be the one who serves process in your own suit. It'll be tossed out.) over the age of 21 and not a party to the above action, (in this situation the above action refers to the letter to which this certificate is attached. Had you filed a lawsuit, you would have been given a case number and would have put that case number on the

document being served. If I have a case number, I always place it in the body of the certificate of service by substituting, and not a party to case number 33-9999 for: and not a party to the above action.) do declare I put into the mail under first class postage in the U.S. Post Office located in Reno, NV a copy of:

NOTICE OF HARM AND DAMAGES

to:

**Offender's name
Offender's address
Offender's city, state, zip code**

on the date below.

I declare under the penalty of perjury and the laws of the State of Nevada the foregoing is true and correct to the best of my knowledge.

**Signature of server
Printed name of server**

Date: 9-07-04

The above Certificate of Service is taken directly from court documents in which I was a litigant in federal court. You have to remember to substitute your city and state for Reno, NV and have the server physically sign the certificate.

By the way, I always use someone over the age of 21 because ALL jurisdictions recognize 21 as a legal age. I don't want to bump up against any jurisdictional age issues thereby relegating my service of process to the ash pile meaning I have to start from day one.

There you have it. The three documents you will put in the envelope that will be mailed to the offending party for only the cost of first class postage. Just so you know, the Certificate of Service is PROOF POSITIVE the offending party was served. The federal court system even has a rule saying it is that way.

I almost always use this method because it is inexpensive and can withstand any challenge the offender may wish to put up about my service of process.

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