

## FOR IMMEDIATE RELEASE

**December 30, 2004, Dallas, Texas.** MSI Marketing, Inc., a Dallas provider of marketing services, admitted in its bankruptcy case to employing Fax.com during the period January 2001 to May 2002 for the purpose of sending unsolicited facsimile advertisements for its business. The bankruptcy court has set a bar date of March 31, 2004, for claims arising from fax advertising. In addition, MSI's principals consented to a decree restraining them, and various entities under their management or control, from sending unsolicited facsimile advertisements in the future.

Transmission of unsolicited advertisements by facsimile has been illegal under the federal Telephone Consumer Protection Act of 1991 (the TCPA) for more than a decade. Violators are subject to forfeiture proceedings by the Federal Communications Commission, to civil penalties in actions brought in federal courts by the Attorneys General of the several states, and to damages ranging from \$500 to \$1,500 per fax in civil actions brought by private citizens in state courts.

According to court and FCC interpretations of the TCPA, consent to receive facsimile advertisements must be expressly given and cannot be inferred from publication of a fax number in a trade directory or the like, from permission given to unaffiliated entities, or from failure to "opt out" by calling any sort of removal number. Unlike laws that regulate voice telemarketing, which often require two or more violations before a subscriber can start a court case, the TCPA's junk fax right of action kicks in on the very first fax from a given advertiser.

Many state laws also regulate unsolicited facsimile advertising.

MSI formerly did business under the name "Y2 Marketing" and sent faxes that bore the names Executive Recruiters and Educational Systems. Persons responding to faxed advertisements were invited to attend seminars at which marketing programs were discussed. Participants could obtain details on payment of a five-figure fee.

MSI, in company with many other clients of Fax.com, has been the subject of an ongoing FCC investigation into unsolicited facsimile advertising. The FCC proposed a forfeiture against Fax.com in an amount exceeding \$5 million in August of 2002. The Attorney General of California has sought a penalty exceeding \$15 million. Other Attorneys General, most recently Idaho's, are seeking to halt what the FCC termed Fax.com's "massive on-going violation" of the TCPA.

MSI originally sought liquidation in the United States Bankruptcy Court for the Northern District of Texas by a petition filed on June 6, 2003. On July 1, 2003, it converted its case to a reorganization under chapter 11 of the Bankruptcy Code. Its original reorganization plan contained no admissions of past fax advertising; did not restrain future fax advertising by MSI, its principals, or affiliated entities; and would have cut off TCPA claims on November 3, 2003.

MSI's second amended reorganization plan was confirmed by the court on December 30, 2003.

Under the terms of the amended plan, "the officers and directors of MSI Marketing, Inc. namely Richard C. Harshaw, Edward A. Earle, and Phillip R. Settles, and each entity in which any or all of them now holds directly or indirectly through any chain of ownership a 20% or greater equity interest, and each entity in which any or all of them now holds an executive, managerial, or directorial position, must consent in writing to the entry of an order by the Court permanently enjoining them, and each of them, (a) from directly or indirectly sending, or contracting to send, any advertisement by facsimile transmission that advertises the commercial availability or quality of any goods or services- including without limitation any document that by its literal terms promotes any event denominated as free, without cost, or the like, or offers to give away goods [and/or] services, when the underlying purpose of the promotion or offer is to induce anyone to purchase a good or service- without the express written consent of every prospective recipient thereof, or in violation of the laws (including without limitation statutes, administrative regulations, and authoritative judicial interpretations thereof) of the United States or any of the several states, as they may be from time to time enacted, amended, promulgated, or decided, (b) ensure that the enjoined parties do not hereafter associate with entities that, did they exist today, would fall within the scope of clause (a), (c) restrain the enjoined parties from using a voting power to indirectly violate the proscription on fax advertising and (d) restrain the enjoined parties from indirectly profiting from illegal fax advertising through some sort of non-ownership or non-control relationship."

The amended plan also requires MSI to publish the following notice to potential claimants via the worldwide web: "MSI Marketing Inc., an entity operating in Texas, has filed a proceeding in the United States Bankruptcy Court, Northern District of Texas, being No. 0335822-SAF-11. MSI has used Fax.com to generate leads and do faxing for it between January, 2001 and May, 2002. The faxes may have also referred to 'Y2 Marketing', 'Executive Recruiters' or 'Educational Systems.' That faxing activity gives rise to claims under the Telephone Consumer Protection Act, and those persons that have claims have until March 31, 2004 to file a proof of claim with the Clerk of the Bankruptcy Court, 1100 Commerce St. Room 1254, Dallas, Texas 75242. Persons wishing to file a proof of claim may obtain a copy of the official bankruptcy form at this web site: <http://www.txnb.uscourts.gov/forms/> or may request one in writing from the Clerk. Proofs of claim may be submitted in either electronic form according to the rules of the court or in paper form, and must be accompanied by appropriate proof, such as copies of the faxes on which the claims are based."

The bankruptcy court took the unusual step of appointing Attorney Walter Oney of Boston to voice the interests of unknown TCPA claimants in crafting a consent decree and a notice of an extended claims period. Oney said, "The MSI case sends a clear signal to junk faxers that bankruptcy court is no place to hide. The many thousands of consumers and small businessmen whose equipment, paper and ink has been coopted to print a bankrupt debtor's ads can expect the bankruptcy judge to require full disclosure and adequate opportunity to file claims."

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Follow-up to [Walter.Oney@oneylaw.com](mailto:Walter.Oney@oneylaw.com)