FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

January 7, 2003

Computers Across America
7657 Winnetka Avenue, Suite 409
Canoga Park, CA 91303
Attention: Marco Maldonado

RE: EB-02-TC-268

Dear Mr. Maldonado:

This is an official **CITATION** issued pursuant to section 503(b)(5) of the Communications Act of 1934, as amended (the Communications Act), 47 U.S.C. § 503(b)(5).

It has come to our attention that your company recently sent one or more unsolicited advertisements to telephone facsimile machines (see attachment).[1] Pursuant to the Telephone Consumer Protection Act of 1991 (TCPA) and the Commission's rules, it is unlawful to use a "telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine." 47 U.S.C. § 227(b)(1)(C); 47 C.F.R. § 64.1200(a)(3).

In addition to the violation identified above, it appears that your company has also violated the provisions of the TCPA and the Commission's rules that require any person or entity who sends a message via a telephone facsimile machine to clearly mark "in a margin at the top or bottom of each transmitted page of the message or on the first page of the transmission, the date and time it is sent and an identification of the business, other entity, or individual sending the message and the telephone number of the sending machine or of such business, other entity, or individual." 47 U.S.C. § 227(d)(1)(B); 47 C.F.R. § 68.318(d).

Please be advised that subsequent violations of the Communications Act or of the Commission's rules may result in the imposition of monetary forfeitures not to exceed $11,000 for each such violation or each day of a continuing violation. *See* 47 C.F.R. § 1.80(b)(3).

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[1] In addition to the advertisement(s) referenced by and attached to this citation, the complaining party may also have included with the complaint one or more facsimile advertisements transmitted by other senders. This citation concerns only the facsimile advertisement(s) referenced by and attached to the citation, and your response only needs to address such advertisement(s).

The phrase "unsolicited advertisement" is defined in the TCPA and the Commission's rules 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." 47 U.S.C. § 227(a)(4); 47 C.F.R. § 64.1200(f)(5). Both the TCPA and the Commission's rules define "telephone facsimile machine" as "equipment which has the capacity to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line, or to transcribe text or images (or both) from an electronic signal received over a regular telephone line onto paper." 47 U.S.C. § 227(a)(2); 47 C.F.R. § 64.1200(f)(2). Addressing the TCPA's definition of "telephone facsimile machine," the Commission stated that "[f]ax modem boards are the functional equivalent of stand-alone facsimile machines." *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 10 FCC Rcd 12391, 12405, para. 29 (1995).

Pursuant to section 503(b)(5) of the Communications Act, you may request a personal interview at the Commission's Field Office nearest to your place of business. The nearest office appears to be the Los Angeles Office at Cerritos Corporate Tower, 18000 Studebaker Road – Room 660, Cerritos, California 90703-3684, which you can contact by telephone at (562) 865-0598. You must schedule this interview to take place within 21 days of the date of this citation. Alternatively, you may submit a written statement to the following address within 21 days of the date of this citation:

Kurt A. Schroeder
Deputy Chief, Telecommunications Consumers Division
Enforcement Bureau
Federal Communications Commission
445-12th Street, S.W.
Washington, D.C. 20554

If you choose to submit a written statement, your written statement should specify what actions have been taken to correct the violation(s) outlined above. Please reference EB-02-TC-268 when corresponding with the Commission.

Under the Privacy Act of 1974, 5 U.S.C. § 552(a)(e)(3), we are informing you that the Commission's staff will use all relevant material information before it to determine what, if any, enforcement action is required to ensure your compliance with the TCPA and the Commission's rules. This will include any information that you disclose in your interview or written statement. Please be advised that if you choose not to respond to this citation and a forfeiture is issued, your unresponsiveness will be considered in our assessment of a forfeiture amount.

You should also be aware that the knowing and willful making of any false statement, or the concealment of any material fact, in reply to this citation is punishable by fine or imprisonment under 18 U.S.C. § 1001.

Thank you in advance for your anticipated cooperation.

Sincerely,

Kurt A. Schroeder
Deputy Chief, Telecommunications Consumers Division
Enforcement Bureau
Federal Communications Commission

Enclosures