

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FILED

AUG 29 2002

U. S. DISTRICT COURT
EASTERN DISTRICT OF MO

STATE OF MISSOURI, *ex rel*,)
JEREMIAH W. (JAY) NIXON,)
Attorney General,)
)
Plaintiff,)
)
vs.)
)
AMERICAN BLAST FAX, INC., et al.,)
)
Defendants.)

No. 4:00CV933-SNL

ORDER

On March 13, 2002 the Court sustained defendants' motions to dismiss and dismissed this action with prejudice. Notice of Appeal was filed and this Court understands that a briefing schedule has been set by the United States Court of Appeals for the Eighth Circuit. Plaintiff/Appellants, including the United States on behalf of the Federal Communications Commission (FCC), as an intervenor, have filed their brief and Defendants/Respondents' brief is due in September.

There is now pending before this Court defendants' emergency motion for writ of mandamus pursuant to 28 U.S.C. § 1651 or for injunctive relief pursuant to Federal Rules of Civil Procedure 62(c).

In its memorandum supporting the motion, defendants assert that the FCC seeks to fine defendants \$5,380,000 for faxing 489 one-page advertisements on behalf of its customers over a two-year period. Defendants assert that FCC is issuing citations and letters of inquiry to defendants' customers threatening those advertisers with large fines unless they stop utilizing defendants' services to advertise through facsimile means.

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It is asserted that the citations sent to defendants' customers involve letters of inquiry which seek substantial information regarding the customers' use of defendants' faxing services. At least 23 letters of inquiry and citations have been sent to defendants' customers, some of which were dated August 8, 2002 and in the letter of inquiry the customer is advised that it must respond within 21 days from the date of the letter of inquiry. Apparently, some customers must respond as early as this date, August 29, 2002.

Although defendants assert that this Court has jurisdiction pursuant to 28 U.S.C. § 1651, the Court feels that it needs further source material to support the jurisdiction that this Court may have to consider the emergency motion for writ of mandamus.

IT IS THEREFORE ORDERED that the parties shall brief the issue as to whether this Court has jurisdiction to consider the present request of defendants on or before September 6, 2002. Each party may respond to the briefs of the other parties on or before September 11, 2002. Shortly thereafter, the Court will make a decision as to whether it has jurisdiction to entertain the relief requested by defendants. If the Court determines that it has jurisdiction, then the Court will set a hearing for the purpose of determining whether a preliminary injunction should or should not issue. If the Court decides it has no jurisdiction to rule on defendants' request, all parties to whom the FCC has sent citations and letters of inquiry shall have 21 days from the date of the Court's order to respond to the citation and letter of inquiry.

IT IS FURTHER ORDERED until the Court determines whether or not it has jurisdiction, that:

- a. The Federal Communication Commission is hereby ordered to stay any and all proceedings under the Telephone Consumer Protection Act (TCPA)

dealing with unsolicited advertisements transmitted by facsimile, 47 U.S.C. § 227, or related regulations against Fax.com and/or any customer, client or party in privity with Fax.com;

- b. to cease and desist from enforcing, or attempting to enforce, those provisions of the TCPA dealing with unsolicited advertisements transmitted by facsimile, 47 U.S.C. § 227, or related regulations against Fax.com and/or any customer, client or party in privity with Fax.com;
- c. to cease and desist from requiring any response and/or payment from Fax.com with regard to the Notice of Apparent Liability for Forfeiture that is the subject of Fax.com's Motion, File No. EB-02-TC-120, NAL/Acct. No. 200232170004, FRN 0007-2970-47, or in any way proceeding under said Notice;
- d. to identify by September 4, 2002 any and all parties and/or entities against whom it plans to proceed in connection with the Notice of Apparent Liability for Forfeiture against Fax.com and/or its announcement of August 7, 2002 of its intent to issue Citations and Letters of Inquiry;
- e. to provide notice by September 9, 2002 to any and all parties and/or entities identified in accordance with paragraph d of this Order, specifically advising them of this Order.

Dated this 29th day of August, 2002 at 12:00 noon.



SENIOR UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT -- EASTERN MISSOURI
INTERNAL RECORD KEEPING

**** CONSOLIDATED CASE ****

AN ORDER, JUDGMENT OR ENDORSEMENT WAS SCANNED, FAXED AND/OR MAILED TO THE
FOLLOWING INDIVIDUALS ON 08/29/02 by lholwitt

4:00cv933 Nixon vs American Blast Fax

47:0227 Telephone Consumer Protection Act

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SCANNED & FAXED BY:

AUG 29 2002

MJM