

ANDERSON + WANCA
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August 27, 2014

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW - Room TW-A325
Washington, DC 20554

Re: Notification of Ex Parte Presentation, CG Docket Nos. 05-338 and 02-278,
Petitions Concerning the Commission's Rule on Opt-Out Notices on Fax
Advertisements

Dear Madam Secretary,

On August 25, 2014, Glenn L. Hara of the law firm of Anderson + Wanca¹ spoke by telephone in meetings with Adonis Hoffman, Maria Kirby, and Nicholas Degani, along with Phyllis J. Towzey, Richard Perlin, and Dr. Richard Maynard (who attended only the meeting with Ms. Kirby). The meetings were designed to give small-business owners an opportunity to express their views regarding their use of fax machines and the continued relevance of the Commission's fax-advertising rules, including the rule requiring opt-out notice where the sender claims to have the consumer's permission. Neither Ms. Towzey, Mr. Perlin, nor Dr. Maynard is a named plaintiff in any TCPA litigation, including the underlying TCPA actions against the petitioners.

Ms. Towzey, a solo practitioner attorney in St. Petersburg, Florida, discussed in each meeting her regular use of faxes in her practice. First, she explained that individual clients seeking review of employment contracts or severance agreements frequently do not have scanners at home allowing them to email the document to her, but they do tend to have fax machines. Mr. Towzey stated that she needs her fax machine to be free from interruption by fax advertisements and to not be out of ink or paper due to printing those advertisements. Second, Ms. Towzey stated that some agencies she deals with require her to file documents

¹ A+W is plaintiffs' counsel in private TCPA actions against petitioners American CareSource, Inc.; Best Buy Builders, Inc.; Crown Mortgage Co.; Forest Pharms., Inc.; Gilead Sciences, Inc.; Masimo Corp.; Prime Health Services, Inc.; Purdue Pharma, Inc.; Staples, Inc. and Quill Corp.; Stericycle, Inc.; TechHealth, Inc.; Douglas Walburg and Richie Enterprises; and Unique Vacations, Inc.

by fax. Again, if her fax machine is occupied with advertisements or has run out of ink or paper from printing them, it impacts her business.

Third, Ms. Towzey recounted an incident where an administrative hearing had to be continued because Ms. Towzey's fax machine was occupied with fax advertisements, making it impossible for opposing counsel to send her documents being presented to the hearing officer. This incident not only annoyed Ms. Towzey, it caused a delay in her client receiving sorely needed unemployment benefits. Ms. Towzey stated she is not particularly forgiving about senders who claim they unknowingly violated the opt-out-notice rule and that in her opinion, if a company is going to send faxes, the onus is on the sender to research its legality. Ms. Towzey stated she hears similar complaints from clients, particularly in the wage-and-hour area, where they say it is not fair to hold them liable because they did not know the law, but that is not a viable excuse. Ms. Towzey stated her belief that the fax-advertising rules ought to be strictly construed, and that there is nothing unreasonable about requiring a sender who claims to have permission to include instructions on how to make an enforceable opt-out request.

Finally, Ms. Towzey discussed her experience with faxes she received in 2009 advertising tickets to Tampa Bay Buccaneers games, where she sent letters to the team's registered agent threatening to sue under the TCPA and spoke on the phone with the team's general counsel in order to opt out of the faxes, where the "unsubscribe" language on the fax was deficient.² Ms. Towzey estimated she receives fax advertisements five or six times a week on her office machine. She stated that at one time it was five or six per day, and that she attributes the decline to the threat of damages in private TCPA enforcement actions. Mr. Hoffman requested copies of the fax advertisements in question, which are attached as Exhibits A & B.

Mr. Perlin, an owner of a small business providing ERISA-plan administration and life-insurance services, explained that his office uses a combined printer/fax/scanner and that, when it is occupied by incoming fax advertisements, it makes the other functions unavailable. Mr. Perlin stated that, although the cost of the paper and ink may not be high, there is a cost to fax advertisements and his business should not be required to pay for the sender's advertising. The cost on the sender's end is near nothing, Mr. Perlin argued, while all the costs (even if they are not large in terms of the ink and paper) are shifted to the recipient.

Mr. Perlin stated he feels strongly that the Commission should not weaken any of its fax-advertising rules, including the rule requiring opt-out notice. Otherwise, Mr. Perlin states, the consumer will end up with an endless series of faxes. Oftentimes, Mr. Perlin observed, it is not clear whether a consumer gave permission in the first place. Given that there will be

² As Mr. Hara disclosed during the meetings, Anderson + Wanca is plaintiff's counsel in the TCPA action against the Tampa Bay Buccaneers arising out of the fax campaign in which Ms. Towzey was targeted.

disputes over permission, and that a consumer might not even remember giving permission, Mr. Perlin submitted, consumers need an easy, efficient mechanism to opt out. One should not have to be a lawyer like Ms. Towzey, Mr. Perlin argued, tracking down the sender's registered agent and threatening to sue, in order to get out of future faxes.

Mr. Perlin also observed that, with other means of communication, the consumer has more tools at their disposal to avoid unwanted advertisements. Email programs can block certain senders or keywords as spam, and legitimate senders almost always give "unsubscribe" instructions. On the telephone, the consumer can refuse to pick up the call. Or the consumer can hang up as soon as it is clear the call is a solicitation. The consumer does not have that option with faxes, Mr. Perlin stated; if the machine is on and connected to a phone line, it will receive whatever message comes through.

Mr. Perlin also explained that in his financial representative work, his firm is governed by FCC and FINRA rules, and that they maintain a do-not-contact list for emails, which some clients choose not to receive. Mr. Perlin stated he is subject to rules not to solicit clients by telephone or by fax. Mr. Perlin stated his view that if a small business like his is required to comply with such rules, so should huge companies like Staples/Quill. Mr. Perlin stressed that the opt-out notice requirement ultimately benefits the sender as well, since it provides standards for what counts as an effective opt-out request. Mr. Perlin estimated his office receives one fax advertisement per day. He noted the frequency has declined over the years, which he attributes to the TCPA and the Commission's rules, which he emphasized is why he does not want those rules relaxed in any way in favor of fax advertisers.

Dr. Richard Maynard, a chiropractor in the Washington, D.C., area stated that the disruption caused by fax advertisements can jeopardize his clients' health. Dr. Maynard explained his office is often required to send and receive patient information by fax, for example, to schedule patients for MRI scans. Dr. Maynard explained his office is often also required to fax documents pertaining to Medicare and Medicaid coverage, as well as state workers compensation benefits. Receiving advertisements on the two fax machines in his office, Dr. Maynard stated, takes significant staff time that should be spent on the business of the office, which is patient treatment.

Dr. Maynard stated that, even where there is opt-out notice, there's a time element and a cost to having an employee opt out, although the dollar costs are secondary to the disruption from being able to send and receive patient records and requests. Dr. Maynard also stated there can be a "domino effect" in terms of patient health, where their care is delayed because their information cannot be sent or received by fax, and their health worsens. Dr. Maynard stated on average fax advertisements cause his office a problem about once per week.

Ms. Marlene H. Dortch
August 27, 2014
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Sincerely,

ANDERSON + WANCA

s/Glenn L. Hara_____

cc: maria.kirby@fcc.gov
adonis.hoffman@fcc.gov
nicholas.degani@fcc.gov
amy.bender@fcc.gov
valery.galasso@fcc.gov

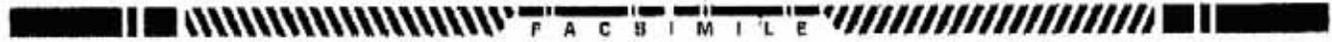
07/15/2009 12:25 PM

Buccaneers

-> 18132373792

TAMPA BAY BUCCANEERS

FAX COVER



ONE BUCCANEER PLACE TAMPA, FL 33607

TEL: (813) 870-2700

BUCCANEERS.COM



DATE: 7/15/09 # of Pages (including cover): 2

TO: Human Resources

FROM: Group Seating Department

SUBJECT: Buccaneers Group Tickets

ADDITIONAL COMMENTS:

Attached is the information on group seating. Tickets are available for groups of 20 or more people. When buying group seating, you save up to \$16 per ticket versus the individual game ticket cost. Group seating also gives you access to large blocks of seating that are not available any other way.

Many companies use group seating as a retreat and/or reward to build team unity.

If you have any questions, please don't hesitate to call us at (877) 649-BUCS (2827).

2009 SCHEDULE

DALLAS
September 13 | 1:00pm

AT BUFFALO
September 20 | 4:05pm

N.Y. GIANTS
September 27 | 1:00pm

AT WASHINGTON
October 4 | 1:00pm

AT PHILADELPHIA
October 11 | 1:00pm

CAROLINA
October 18 | 1:00pm

NEW ENGLAND
October 25 | 1:00pm | LONDON

GREEN BAY
November 8 | 1:00pm

AT MIAMI
November 15 | 1:00pm

NEW ORLEANS
November 22 | 1:00pm

AT ATLANTA
November 29 | 1:00pm

AT CAROLINA
December 6 | 1:00pm

N.Y. JETS
December 13 | 1:00pm

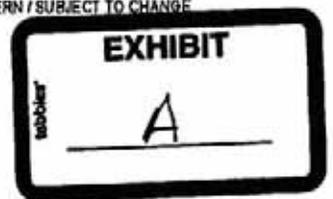
AT SEATTLE
December 20 | 4:15pm

AT NEW ORLEANS
December 27 | 1:00pm

ATLANTA
January 3 | 1:00pm

*ALL TIMES EASTERN / SUBJECT TO CHANGE

2002 WORLD CHAMPIONS

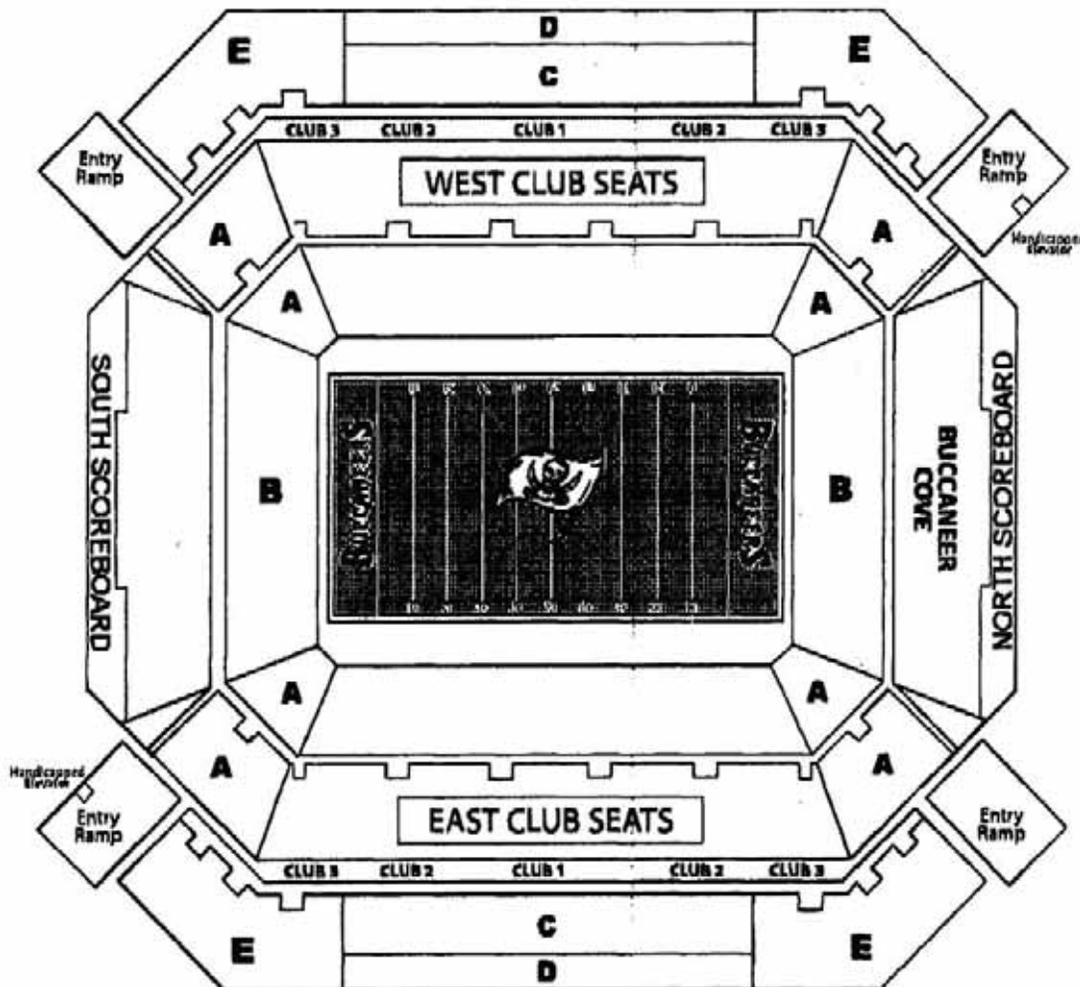




GROUP TICKETS ON SALE NOW!

877-649-BUGS (2827)

SECTION	A	B	C	D	E
GROUP PER GAME PRICE	\$99.00	\$89.00	\$85.00	\$75.00	\$65.00
Group tickets are available in packages of 20 or more and reflect a discount of up to \$16 per ticket					
2009 SEASON					
DALLAS September 13 1:00pm	N.Y. GIANTS September 27 1:00pm	CAROLINA October 18 1:00pm	GREEN BAY November 8 1:00pm		
NEW ORLEANS November 22 1:00pm	N.Y. JETS December 13 1:00pm	ATLANTA January 3 1:00pm			



Call 877-649-BUGS (2827) or visit www.buccaneers.com today for seat locations

To immediately and permanently remove your fax number from our opt-in compiled database, please call 877-272-7614. Removaltech@FaxQom.com

To: 13523779774

Fr:

11:23 08/19/09 PG 001



INDIVIDUAL GAME TICKETS ON SALE NOW!

	MIAMI	August 27	8:00pm
	HOUSTON	September 4	7:00pm
	DALLAS	September 13	1:00pm
	N.Y. GIANTS	September 27	1:00pm
	CAROLINA	October 18	1:00pm
	GREEN BAY	November 8	1:00pm
	NEW ORLEANS	November 22	1:00pm
	N.Y. JETS	December 13	1:00pm
	ATLANTA	January 3	1:00pm

All game dates and times are subject to NFL flexible scheduling.

TO PURCHASE TICKETS CALL 800-745-3000 OR VISIT BUCCANEERS.COM

To immediately and permanently remove your fax number from our opt-in compiled database, please call 888-703-9205. Remove@FaxDom.com

