

07

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS FILED-3  
COUNTY DEPARTMENT, CHANCERY DIVISION

03 DEC -2 PM 2:56

CIRCUIT COURT OF COOK  
COUNTY, ILLINOIS  
CHANCERY DIV.

CLERK  
DOROTHY BROWN

DEMBO TRAVEL )  
CONSULTANTS, INC., )  
an behalf of itself and all )  
others similarly situated, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
PCS INTERNATIONAL, )  
 )  
 )  
Defendant. )

No. 03CH20187

Judge

CLASS ACTION COMPLAINT

*Introduction*

Plaintiff Dembo Travel Consultants, Inc. brings this action to secure redress for the actions of Defendant PCS International in sending out unsolicited advertisements to telephone facsimile machines in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 ("TCPA"), the Illinois Consumer Fraud Act, 815 ILCS 505/2 ("ICFA"), and Illinois Common Law.

*Parties*

1. Plaintiff Dembo Travel Consultants, Inc. is an Illinois corporation that maintains a telephone facsimile machine in Northbrook, Illinois.
2. Defendant PCS International is an Illinois corporation that maintains a principal place of business at 1340 Remington Road, Suite W, Schaumburg, IL 60173

### *Factual Allegations*

3. Plaintiff operates a facsimile machine on one of its telephone lines.

4. Plaintiff incurs expenses pertaining to the facsimile machine, including paper, maintenance and toner costs.

5. On October 16, 2003 at 9:29 p.m., Plaintiff received the unsolicited fax advertisement attached as Exhibit "A", from Defendants.

6. Plaintiff had no prior relationship with Defendant and had not authorized Defendant to send it fax advertisements to Plaintiff.

7. The fax advertisement at issue contains a telephone number, 847-310-0080, associated with the mass "broadcasting" of unsolicited advertising faxes to lists compiled by "fax broadcasters" and sold or otherwise made available to businesses desirous of engaging in illegal fax advertising. The same number, 847-310-0080, has been included in other unsolicited faxes sent to large numbers of persons.

8. Defendant or their agents designed the facsimile advertising material in question in a manner calculated to pass on the cost of dissemination to the recipient.

9. There is no reasonable means for Plaintiff to avoid the receipt of unsolicited illegal faxes. Plaintiff needs to leave its fax machine on in order to receive urgent communications which it desires to receive. On information and belief, based on experience and the FCC citation against Fax.Com, Inc., dialing the "remove" numbers provided by fax broadcasters does not result in cessation of unsolicited faxes. Indeed, it may result in the dialer being placed on a "sucker list" of people that actually pay attention to unsolicited faxes

and being inundated with other unsolicited faxes. Note 25 of the FCC citation, File No. EB-02-TC-120, 2002 WL 1798553 (FCC, Aug. 7, 2002), states:

Information provided by consumers indicates that Fax.com continued to send faxes even after receiving opt-out calls. For instance, a log provided by William Robert White, President of Regency Sales, Inc. documents over 50 attempts between May 2000 and August 2001 to use Fax.com's opt-out numbers to halt Regency's receipt of unsolicited advertisements from Fax.com's clients. Despite these attempts, Fax.com continued to transmit unsolicited advertisements to Regency, as evidenced by at least 12 faxes received by Regency from December 2001 to February 2002. See Table 1; see also Letter from Andrew Hansis to Consumer Information Bureau (Oct. 5, 2001) (October 5 Hansis Letter) (stating that Mr. Hansis continued to receive faxes even after using Fax.com's automated opt-out system and speaking with a senior Fax.com employee in an effort to end the faxing); Consumer Form for Telephone-Related Issues from Norman Jensen, III (rec'd Jan. 8, 2002) (consumer continued to receive at least one advertisement a week despite "repeatedly" calling opt-out numbers and faxing a message to the originating fax number asking that his telephone facsimile number be removed from the fax number database); Consumer Form for Consumer-Related Issues from Dora Wong Goto (rec'd Oct. 15, 2001) (Goto Complaint Form); annotated copies of faxes submitted by James Allen Dobbins. It is clear that a call to one Fax.com opt-out line does not end all fax transmissions from the company. We emphasize here that even an effectively administered opt-out system does not change the statutory ban on sending unsolicited facsimile advertisements or insulate such transmissions from statutory penalties. However, the fact that Fax.com apparently does not even adhere to its own stated procedures makes it conduct even more egregious. (Emphasis added)

### COUNT I

*Violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227 Brought by Plaintiff, Individually and on Behalf of a Class, Against Defendant PCS International*

10. Plaintiff restates, realleges and incorporates herein by reference paragraphs 1-9 as if set forth fully in this count.

11. Plaintiff brings this complaint on behalf of a class, consisting of (a) all persons with Illinois fax numbers (b) who were sent advertising faxes by Defendant (c) and with respect to whom Defendant cannot provide express written evidence of consent.

12. There are questions of law and fact common to the class that predominate over any questions affecting only individual class members. The predominate common questions include:

- A. Whether Defendant engaged in a pattern of sending unsolicited fax advertisements;
- B. The manner in which Defendant compiled or obtained its list of fax numbers;
- C. Whether Defendant thereby violated the Telephone Consumer Protection Act (“TCPA”).

13. Plaintiff will fairly and adequately protect the interests of the class. Plaintiff has retained counsel experienced in handling class actions and claims involving unlawful business practices. Neither Plaintiff nor Plaintiff’s counsel have any interests which might cause them to not vigorously pursue this action.

14. A class action is an appropriate and superior method for the fair and efficient adjudication of this controversy. Since the actual monetary damages suffered by Plaintiffs and the statutory damages available to them is relatively small, the burdens of individual litigation makes it effectively impossible for the class members to seek individual redress for the Defendants’ violations.

15. Several courts have certified class actions under the TCPA. *Nicholson v. Hooters of Augusta, Inc.*, 245 Ga. App. 363, 537 S.E.2d 468 (2000); *ESI Ergonomic Solutions, LLC v. United Artists Theatre Circuit, Inc.*, 50 P.3d 844 (Ariz. App. 2002) (private class actions); see *State of Texas v. American Blast Fax, Inc.*, 164 F. Supp. 2d 892 (W.D. Tex. 2001) (state enforcement action)

16. The TCPA makes unlawful the “use of any 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).

17. The TCPA, 47 U.S.C. § 227(b)(3), provides:

*Private right of action.*

*A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of the State-*

*(A) an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation,*

*(B) an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each violation, whichever is greater, or*

*(C) both such actions.*

18. Plaintiff and each class member suffered actual damages as a result of receipt of the unsolicited faxes, in the form of paper and ink or toner consumed.

19. Plaintiff and each class member are entitled to statutory damages.

20. If the evidence shows the violation was willful, Plaintiff requests trebling of the damages.

21. Defendant should be enjoined from committing similar violations in the future.

WHEREFORE, Plaintiff DEMBO TRAVEL CONSULTANTS, INC. requests that the Court enter judgment in favor of Plaintiff and the class and against the Defendant PCS INTERNATIONAL and award:

A. Actual damages

B. Statutory damages;

C. An injunction against further transmission of unsolicited fax advertising;

D. Costs of suit

E. Such other or further relief as the Court deems just and proper.

**COUNT II**

***Conversion Brought by Plaintiff, Individually and on Behalf of a Class, Against Defendant PCS International***

22. Plaintiff restates, realleges and incorporates herein by reference paragraphs 1-9 as set forth fully in this Count.

23. Plaintiff brings this claim on behalf of a class consisting of (a) all persons with Illinois fax numbers (b) were sent advertising faxes by the Defendant (c) and with respect to whom Defendant cannot provide express written evidence of consent.

24. There are questions of law and fact common to the class that predominate over any questions affecting only individual class members. The predominate common questions include:

(A) Whether Defendant engaged in a pattern of sending unsolicited fax advertisements;

(B) Whether Defendant thereby committed the tort of the conversion.

25. Plaintiff will fairly and adequately protect the interests of the class. Plaintiff has retained counsel experienced in handling class actions and claims involving unlawful business practices. Neither Plaintiff nor Plaintiff's counsel have any interests which might cause them to not vigorously pursue this action.

26. A class action is an appropriate method for the fair and efficient adjudication of this controversy. A class action is an appropriate and superior method for the fair and

efficient adjudication of this controversy. Since the actual monetary damages suffered by Plaintiffs and the statutory available to them is relatively small, the burdens of individual litigation makes it effectively impossible for the class members to seek individual redress for Defendants' violations.

27. By sending Plaintiff and class members unsolicited faxes, Defendant converted to their own use ink or toner and paper belonging to Plaintiff and the class members.

28. Immediately prior to the sending of unsolicited faxes, Plaintiff and the class members owned and had an unqualified and immediate right to the possession to the paper and ink or toner used to print the faxes.

29. By sending the unsolicited faxes, Defendants appropriated to their own use the paper and ink or toner used to print the faxes and used them in such a manner as to make them unusable. Such appropriation was wrongful and without authorization.

30. The Criminal Code, 720 ILCS 5/23-3, makes it an offense to send an unsolicited fax advertisement.

31. Plaintiff and the class members were deprived of the paper and ink or toner, which could no longer be used for any purpose. Plaintiff and each class member thereby suffered damages as a result of the receipt of the unsolicited faxes.

32. Defendants should be enjoined from committing similar violations in the future.

WHEREFORE, Plaintiff DEMBO TRAVEL CONSULTANTS, INC. requests this Court enter judgment in favor of Plaintiff and the class and against Defendants PCS INTERNATIONAL for:

- A. Appropriate Damages;
- B. An injunction against the further transmission of unsolicited fax advertising;
- C. Costs of suit;
- D. Such other or further relief as the Court deems just and proper.

**COUNT III**

***Violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, Brought by Plaintiff Individually and on Behalf of a Class, Against Defendants PCS International***

33. Plaintiff restates, realleges and incorporates herein by reference paragraphs 1-9 as if set forth fully in this Count.

34. Plaintiff brings this claim on behalf of a class consisting of (a) all persons with Illinois fax numbers (b) were sent advertising faxes by Defendant (c) and with respect to whom defendant cannot provide express written evidence of consent.

35. There are questions of law and fact common to the class that predominate over any questions affecting only individual class members. The predominate common questions include:

(A) Whether Defendant engaged in a pattern of sending unsolicited fax advertisements;

(B) Whether Defendant thereby engaged in unfair and deceptive acts and practices, in violation of the ICFA.

36. Plaintiff will fairly and adequately protect the interests of the class. Plaintiff has retained counsel experienced in handling class actions and claims involving unlawful

36. Plaintiff will fairly and adequately protect the interests of the class. Plaintiff has retained counsel experienced in handling class actions and claims involving unlawful business practices. Neither Plaintiff nor Plaintiff's counsel have any interests which might cause them not vigorously pursue this action.

37. A class action is an appropriate and superior method for the fair and efficient adjudication of this controversy. Since the actual monetary damages suffered by Plaintiffs and the statutory damages available to them relatively small, the burdens of individual litigation makes it effectively impossible for the class members to seek individual redress for the Defendants' violations.

38. Defendant engaged in unfair and deceptive acts and practices, in violation of ICFA § 2, 815 ILCS 505/2, by sending unsolicited fax advertising to Plaintiff and others.

39. Plaintiff and each class member suffered damages as a result of the receipt of unsolicited faxes, in the form of paper and ink or toner.

40. Defendants engaged in such conduct knowing that such conduct was causing recipients of its advertising to bear the cost thereof.

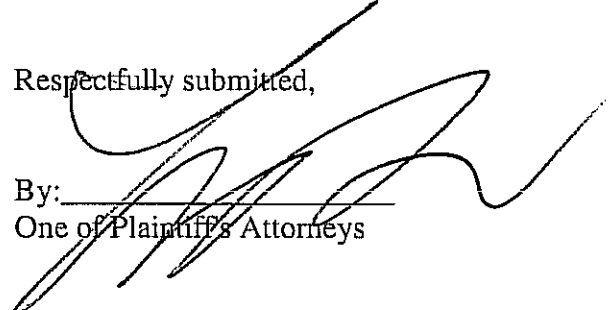
41. Defendant's shifting of advertising costs to the Plaintiff and the class members in this manner makes such practice unfair. In addition, Defendant's conduct was contrary to public policy, as established by the TCPA and Illinois statutory and common law.

Wherefore, Plaintiff DEMBO TRAVEL CONSULTANTS, INC. requests that the Court enter judgment in favor of Plaintiff and the Class and against Defendant PCS INTERNATIONAL for:

A. Appropriate damages;

- B. An injunction against further transmission of unsolicited fax advertising;
- C. Attorney's fees, litigation expenses and costs of suit;
- D. Such other or further relief as the Court deems just and proper.

Respectfully submitted,

By:   
One of Plaintiff's Attorneys

Lance A. Raphael  
Stacy M. Bardo  
Saulius V. Modestas  
THE CONSUMER ADVOCACY CENTER, P.C.  
180 West Washington, Suite 700  
Chicago, IL 60602  
(312) 782-5808  
Firm No. 36667

# EXHIBIT

A

# Microsoft Word

Word! More than just a text-editing tool...

## Word: Introduction

- Learn to create new documents and the basics of entering text
- Learn to use save, and the save as commands
- Learn to open and edit documents
- Learn how to use headers and footers
- Learn to use page breaks
- How to use the AutoCorrect feature
- How to move and copy text
- How to format characters and paragraphs
- How to create tables
- Learn how to print documents, envelopes, and labels
- Learn how to create a web page using themes in word (applies to word 2000 only)

## Word: Intermediate

- Learn to create sections newspaper columns using sections to change page orientation
- Drawing a table
- Learn to Create and format tables, insert data
- Learn to work with mail merge
- Learn to apply, create and modify styles
- Learn to use and create templates
- Learn to run, edit, and test macros
- Learn to create new web pages and how to add hyperlinks and graphics to your web page

## Word: Advanced

- Learn to AutoFormat features and how to link styles
- Learn to create forms and fields
- Learn to insert and edit WordArt drawings in a document
- Learn to create footnotes and endnotes, bookmarks, cross-references
- Learn to use highlights and comments
- Learn to create hyperlinks, and view and insert multimedia elements into your web pages (Word 2000 only)

Interested??? Have Questions? Call PCS for more information or for our course outline  
**Seating is limited so call today!!**

Word XP Introduction	11-04 or 12-01
Word XP Intermediate	11-10 or 12-12
Word XP Advanced	10-22 or 11-25
Word 2000 Introduction	11-07 or 12-04
Word 2000 Intermediate	11-17 or 12-16
Word 2000 Advanced	10-27 or 11-26

All classes are instructor-led, and include a FREE training textbook. Class times starting at 8:30 am  
\*\*\*PCS provides training in a variety of programs, please call or fax us for a full schedule.\*\*\*



PCS International  
 1340 Remington Road, Suite W  
 Schaumburg, IL 60173  
 847-310-0080 x 382 voice  
 847-310-9106 fax  
 register@pcsintl.com  
 http://www.pcsintl.com



To register call at (847) 310-0080, fax (847) 310-9106, or email register@pcsintl.com  
 Visit us at <http://www.pcsintl.com>

To be removed call 847-310-0080x390 or fax 847-310-9106