

CLASS ACTION ALERT

By Rudy A. Englund and Charles C. Huber

Business owners should be aware of a new trend in class actions based on statutes prohibiting the transmission of unsolicited facsimile advertisements to consumers with whom the sender has no prior relationship. Under the federal Telephone Consumer Protection Act, violators are subject to an award of actual damages or a fine of \$500 per infraction, whichever is greater. Under the state law equivalent in Washington, these amounts are subject to trebling, while under Oregon's law, punitive damages are available. Under both states' laws, attorneys fees can be awarded.

Attorneys who bring such actions typically have a single client who has received multiple unsolicited faxes from various companies. The attorney will then file a class action suit on behalf of that individual and all other consumers who received a fax from the same entities. Several such suits have been certified across the country.

Business owners need to protect themselves against these suits. While mass mailings are legal, mass facsimiles are not. You should ensure that you are only faxing advertisements to persons who have solicited them, or with whom you have a prior business relationship. Should you have any question concerning these or other issues, please do not hesitate to contact Charles Huber or Rudy Englund, chair of Lane Powell Spears Lubersky's Class Action Practice Group.

Rudy A. Englund is a partner in the Seattle office where he is Co-Chair of the Firm's Litigation Department and Group Chair of the Firm's Class Action Practice Group. His practice emphasizes commercial and complex litigation in federal and state courts, class action litigation, including extensive wage and hour experience, intellectual property disputes, consumer fraud, as well as business dispute resolution. He is a member of the Washington Defense Trial Lawyers Association, and has been active in the ABA Section of Litigation where he currently serves on multiple task forces. In addition, he recently completed a five-year term on the ABA Standing Committee on Federal Judiciary. E-mail: englundr@lanepowell.com

Charles C. Huber is a partner in the Seattle office. He is an active litigator whose practice involves complex commercial litigation. His practice includes the defense of corporate clients in the areas of commercial and real estate transactions, insurance coverage and bad faith, and major personal injury matters. He represents petroleum industry clients against environmental and toxic tort claims. He regularly defends class actions, including employment and insurance related matters. He has a wide range of trial experience that includes class action, intellectual property, insurance and significant tort matters. E-mail: huberc@lanepowell.com

For more information on these or other business issues, please contact our Business Lawyers at:
Lane Powell Spears Lubersky LLP
(503) 778-2100 Portland
(206) 223-7000 Seattle
businesslaw@lanepowell.com
or visit our website at <http://www.lanepowell.com>

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