

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

DANIEL W. HAMBLIN, D.V.M., P.C. d/b/a)	
ALPINE ANIMAL HOSPITAL, LTD., an)	
Illinois professional corporation, individually)	
and as the representative of a class of similarly-)	
situated persons,)	
)	Civil Action No.
Plaintiff,)	
)	CLASS ACTION
v.)	
)	
AMERICAN IV PRODUCTS, INC., a)	
Maryland corporation,)	
)	
Defendant.)	

CLASS ACTION COMPLAINT

Plaintiff, DANIEL W. HAMBLIN, D.V.M., P.C. d/b/a ALPINE ANIMAL HOSPITAL, LTD., (“Plaintiff”), brings this action on behalf of itself and all others similarly situated, through its attorneys, and except as to those allegations pertaining to Plaintiff or its attorneys, which allegations are based upon personal knowledge, alleges the following upon information and belief against Defendant, AMERICAN IV PRODUCTS, INC. (“Defendant”):

PRELIMINARY STATEMENT

1. This case challenges Defendant’s practice of sending unsolicited advertisements by facsimile.
2. The federal Telephone Consumer Protection Act of 1991, as amended by the Junk Fax Prevention Act of 2005, 47 U.S.C. § 227 (collectively, “TCPA” or the “Act”), and the regulations promulgated under the Act, prohibit a person or entity from sending fax advertisements without the recipient’s “prior express invitation or permission.” The TCPA provides a private right of action and provides minimum statutory damages of \$500 per violation.

3. On or about February 24, 2022 and April 27, 2022, Defendant sent Plaintiff two unsolicited fax advertisement in violation of the TCPA (the “Faxes”), true and correct copies of which are attached hereto as Exhibit A and Exhibit B, respectively, and made a part hereof.

4. Upon information and belief, Defendant sent the Faxes and other facsimile transmissions of unsolicited advertisements to Plaintiff and the Class in violation of the TCPA.

5. The Faxes describe the commercial availability or quality of Defendant’s property, goods, or services, namely, Defendant’s Industrial PowerMATE® (Exhibit A) and it’s IVetMATE™ IV Fluid Warmer (Exhibit B).

6. Plaintiff alleges on information and belief that Defendant has sent, and continues to send, unsolicited advertisements via facsimile transmission in violation of the TCPA, including but not limited to the advertisements sent to Plaintiff.

7. Unsolicited faxes damage their recipients. A junk fax recipient loses the use of its fax machine, paper, and ink toner. An unsolicited fax wastes the recipient’s valuable time that would have been spent on something else. A junk fax intrudes into the recipient’s seclusion and violates the recipient’s right to privacy. Unsolicited faxes occupy fax lines, prevent fax machines from receiving authorized faxes, prevent their use for authorized outgoing faxes, cause undue wear and tear on the recipients’ fax machines, and require additional labor to attempt to discern the source and purpose of the unsolicited message.

8. On behalf of itself and all others similarly situated, Plaintiff brings this case as a class action asserting claims against Defendant under the TCPA. Plaintiff seeks to certify a class which were sent the Faxes and other unsolicited fax advertisements that were sent without prior express invitation or permission and without compliant opt-out language (to the extent the affirmative defense of “established business relationship” is alleged). Plaintiff seeks statutory damages for each violation of the TCPA and injunctive relief.

9. Plaintiff is informed and believes, and upon such information and belief avers, that this action is based upon a common nucleus of operative facts because the facsimile transmissions at issue were and are being done in the same or similar manner. This action is based on the same legal theory, namely liability under the TCPA. This action seeks relief expressly authorized by the TCPA: (i) injunctive relief enjoining Defendant, its employees, agents, representatives, contractors, affiliates, and all persons and entities acting in concert with them, from sending unsolicited advertisements in violation of the TCPA; and (ii) an award of statutory damages in the minimum amount of \$500 for each violation of the TCPA, and to have such damages trebled, as provided by § 227(b)(3) of the Act in the event the Court determines any TCPA violations were willful or knowing.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 and 47 U.S.C. § 227.

11. This Court has personal jurisdiction over Defendant because Defendant transacts business within this judicial district, has made contacts within this judicial district, and/or has committed tortious acts within this judicial district.

PARTIES

12. Plaintiff, DANIEL W. HAMBLIN, D.V.M., P.C., is an Illinois professional corporation that does business as ALPINE ANIMAL HOSPITAL, LTD. Plaintiff's principal place of business is within this judicial district.

13. On information and belief, Defendant, AMERICAN IV PRODUCTS, INC., is a Maryland corporation with its principal office in Harmans, MD.

FACTS

14. On or about February 24, 2022 and April 27, 2022, Defendant sent the Faxes to Plaintiff using a telephone facsimile machine, computer, or other device. (Exhibits A and B).

15. The February 24, 2022 Fax states, in part:

**Industrial PowerMATE®
Safe & Convenient Access to Outlets...**

This versatile power relocation solution, provides cord management and increases equipment mobility in a variety of settings.

- Mounts on a pole, wall or the leg of a cart
- Attaches and detaches in seconds and requires no tools
- 15 foot cord increases mobility of equipment when mounted to a roll-away pole
- UL962A Listed
- One-year warranty

Call us today 800.913.6215 or visit us at www.aiv-vet.com

(Exhibit A)

16. The April 27, 2022 Fax states, in part:

**IVetMATE™
IV Fluid Warmer**

***Reliable & Accurate
Fluid Warming...***

The IVetMATE™ IS FOR Veterinary Use Only.

www.aiv-vet.com • 800.913.5419 • sales@aiv.vet-com

(Exhibit B)

17. Defendant created or made the Faxes, or directed a third party to do so, and the Faxes were sent by or on behalf of Defendant with Defendant's knowledge and authorization.

18. Plaintiff did not give Defendant "prior express invitation or permission" to send the Faxes.

19. On information and belief, Defendant faxed the same and other unsolicited

facsimiles advertisements without first receiving the recipients' prior express invitation or permission, and without the required opt-out language, *see* 47 U.S.C. § 227(b)(1)(C) and 47 C.F.R. § 64.1200(a)(4), thereby precluding the affirmative defense of established business relationship.

20. There is no reasonable means for Plaintiff (or any other class member) to avoid receiving unauthorized fax advertisements. Fax machines are left on and ready to receive the urgent communications their owners desire to receive.

21. The Faxes do not display a proper opt-out notice as required by 47 U.S.C. § 227(b)(1)(C) and 47 C.F.R. § 64.1200(a)(4).

CLASS ACTION ALLEGATIONS

22. In accordance with Fed. R. Civ. P. 23(b)(3), Plaintiff brings this class action pursuant to the TCPA, on behalf of the following class:

All persons who (1) on or after four years prior to the filing of this action, (2) were sent telephone facsimile messages of material advertising the commercial availability or quality of any property, goods, or services by or on behalf of Defendant, (3) from whom Defendant did not obtain "prior express invitation or permission" to send fax advertisements, or (4) with whom Defendant did not have an established business relationship, or (5) where the fax advertisements did not include an opt-out notice compliant with 47 C.F.R. § 64.1200(a)(4).

Excluded from the Class are Defendant, its employees and agents, and members of the Judiciary. Plaintiff seeks to certify a class which includes, but is not limited to, the Fax advertisements sent to Plaintiff. Plaintiff reserves the right to amend the class definition upon completion of class certification discovery.

23. Class Size (Fed. R. Civ. P. 23(a)(1)): Plaintiff is informed and believes, and upon such information and belief avers, that the number of persons and entities of the Plaintiff Class is numerous and joinder of all members is impracticable. Plaintiff is informed and believes, and upon such information and belief avers, that the number of class members is at least forty.

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