

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

ACM ASSOCIATES, INC.,	)	
	)	
Plaintiff,	)	10 C 02474
	)	
v.	)	
	)	Judge Lindberg
BOGIES ALE HOUSE, INC.,	)	
and JOHN DOES 1-10,	)	
	)	
Defendants.	)	

**NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT**

To: All persons and entities who, between March 10, 2006 and March 30, 2010, were sent faxes by or on behalf of defendant Bogies Ale House, Inc., promoting its goods or services for sale and who were not provided a proper “opt out” notice.

***PLEASE READ THIS NOTICE CAREFULLY.  
THIS IS NOT A NOTICE OF A LAWSUIT AGAINST YOU.  
IF YOU WISH TO RECEIVE A PORTION OF THE CLASS SETTLEMENT PROCEEDS  
DESCRIBED BELOW, YOU MUST COMPLETE AND RETURN THE SUMMARY  
NOTICE/CLAIM FORM BY FEBRUARY 15, 2011.***

**1. WHY DID YOU GET THIS NOTICE?**

You received the Summary Notice/Claim Form because you met all the criteria contained in the class definition set forth in paragraph 3 below and are a member of the Settlement Class in the above captioned civil action (“Action”) now pending in the United States District Court, Northern District of Illinois, against Bogies Ale House, Inc. The purpose of this Notice is to advise you of a proposed settlement in the Action, and of a hearing to consider that settlement to be held on **March 23, 2011 at 10:30 a.m.** before Judge Lindberg, Room 1425 of the U.S. District Court for the Northern District of Illinois, Eastern Division, 219 S. Dearborn Street, Chicago, IL 60604 (“Fairness Hearing”).

**2. WHAT IS THIS LAWSUIT ABOUT?**

Plaintiff, ACM Associates, Inc., filed this action on behalf of a putative class. Plaintiff alleged that the defendant violated the Telephone Consumer Protection Act, 47 U.S.C. §227 (“TCPA”) and state law by sending unsolicited facsimile advertisements. Defendant denies these allegations but has agreed to settle to avoid the costs of litigation. Counsel for plaintiff has conducted an extensive investigation into the relevant facts and law underlying plaintiff’s claims, and has concluded that the outcome of the lawsuit is uncertain and that a settlement is in the best interests of plaintiff and the Settlement Class. Defendant denies that it acted unlawfully, denies liability to plaintiff and the Settlement Class, and denies that class certification is required or appropriate if there was not a settlement. This Notice should not be understood as an expression of any opinion by the Court as to merits of any of the claims asserted by plaintiff or any of the defenses asserted by defendant.

**3. WHO IS IN THE SETTLEMENT?**

On December 1, 2010, the Court preliminarily approved the settlement and provisionally certified a Settlement Class (“Settlement Class”) in the Action for purposes of settlement only. The Settlement Class is defined to include: All persons and entities who, between March 10, 2006 and March 30, 2010, were sent faxes by or on behalf of defendant Bogies Ale House, Inc., promoting its goods or services for sale and who were not provided a proper “opt out” notice.

#### **4. THE SETTLEMENT BENEFITS - WHAT YOU GET**

The Settlement Agreement calls for the creation of a \$32,500 Settlement Fund which will be reduced by attorney fees awarded by the Court, expenses related to the administration of the settlement and an incentive award to the named plaintiff for having acted as class representative which amounts combined shall not exceed 40% of the settlement fund. The amount remaining in the fund (at least \$19,500) will be divided on a pro rata basis among those submitting timely claim forms. There are between 100-200 members in the Settlement Class.

#### **5. WHAT AM I GIVING UP AS PART OF THE SETTLEMENT?**

If the settlement becomes final, you will be releasing Bogie's Ale House, Inc. of any claims relating in any way to their sending of unsolicited advertisements by fax. This release is more fully explained in paragraph 13 of the Settlement Agreement. The Settlement Agreement is available at the Clerk's Office, U.S. District Court for the Northern District of Illinois, Eastern Division, 219 S. Dearborn Street, Chicago, IL 60604 during regular business hours. The Settlement Agreement specifically describes the released claims in necessarily legal terminology. You may speak with Class Counsel or your own lawyer if you have questions about the release.

#### **6. HOW DO I GET A PAYMENT?**

To ask for a cash payment, you must complete and return the attached Claim Form by facsimile to 866-834-3504 or by U.S. Mail to the address for Class Counsel listed below in paragraph 8. The deadline for Claim Forms is **FEBRUARY 15, 2011**; Claim forms **MUST BE** faxed or postmarked by **FEBRUARY 15, 2011**.

#### **7. WHEN WOULD I GET MY PAYMENT?**

Payments will be mailed to class members after the Court grants "final approval" of the settlement and any appeals are resolved. The deadline for Claim Forms is **FEBRUARY 15, 2011**; Claim forms **MUST BE** faxed or postmarked by **FEBRUARY 15, 2011**. The Court is scheduled to consider final approval at a hearing on **March 23, 2011 at 10:30 a.m.**

#### **8. EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you fall within the Settlement Class definition set forth in paragraph 3 above, you will be a member of the Settlement Class unless you exclude yourself from the Settlement Class. You need not take any action to remain in the Settlement Class, but you need to complete the Summary Notice/Claim Form to receive the benefits of the settlement. If you want to keep the right to sue Bogie's Ale House, Inc. over the legal issues in this case, then you must take steps to get out of the settlement. This is called asking to be excluded from - or sometimes called "opting out" of - the class. If you opt out of the settlement, you will not receive any payment from the Settlement Fund, you cannot object to the settlement and you will not be bound by anything that happens in this lawsuit. You must exclude yourself from *this* case to start or continue your own lawsuit against Bogie's Ale House, Inc. To opt out, you must complete and mail or fax a notice of intention to opt-out ("Opt-Out"), which contains the following: (a) your full legal name or business name if the facsimile number was one owned or controlled by a business, address, and telephone number; (b) the telephone number for the facsimile machine on which you were sent the Fax; (c) your signature or that of the class member's representative (such as a business' officer or manager); and (d) a statement that expressly states an intent of the class member not to participate in the Settlement and to waive all rights to the benefits of the Settlement. In addition, for your Opt-Out to be valid, it must be faxed to (866)834-3504 by **FEBRUARY 15, 2011** or mailed to the following address postmarked no later than **FEBRUARY 15, 2011**:

Edelman, Combs, Lattuner & Goodwin, LLC  
Julie Clark  
120 S. LaSalle Street, 18th Floor  
Chicago, IL 60603  
(312) 917-4504; (866)834-3504 (FAX)

#### **9. WHO ARE COUNSEL FOR PLAINTIFF AND CLASS COUNSEL?**

The Court has appointed the following attorneys to represent you and other members of the settlement class in this lawsuit:

Edelman, Combs, Lattuner & Goodwin, LLC  
120 S. LaSalle Street, 18th Floor  
Chicago, IL 60603  
(312) 739-4200; (866)834-3504 (FAX)  
[www.edcombs.com](http://www.edcombs.com)

These attorneys represent your interests in this lawsuit. You may contact them with any questions that you have about the lawsuit or the settlement. You may also hire your own attorney at your own cost to enter an appearance on your behalf in this matter. Class Counsel will ask the court for attorney's fees and costs from the fund and will also ask for an additional payment for ACM Associates, Inc., the Class Representative, who helped the lawyers on behalf of the whole class. The amount of these payments will be determined at Final Approval but will not exceed 40% of the Settlement Fund.

#### **10. OBJECTING TO THE SETTLEMENT**

You can tell the Court that you don't agree with the settlement or some part of it. You must give reasons why you think the Court should not approve the settlement. The Court will consider your views if you properly submitted an objection on time. Objecting is simply telling the Court that you don't like something about the settlement. You can object **ONLY** if you stay in the class. Excluding yourself is telling the Court that you don't want to be part of the class. If you exclude yourself, you have no basis to object because the case no longer affects you. If you wish to object to the settlement or to any awards to plaintiff or class counsel, then you must mail or fax a written objection to the settlement ("Objection") to class counsel and counsel for defendant at the addresses set forth below sent by fax or postmarked no later than **FEBRUARY 15, 2011**, and contemporaneously file the objection with the Clerk's Office, U.S. District Court for the Northern District of Illinois, Eastern Division, 219 S. Dearborn Street, Chicago, IL 60604:

##### **Class Counsel**

Daniel A. Edelman  
Julie Clark  
Edelman, Combs, Lattuner & Goodwin, LLC  
120 S. LaSalle Street, 18th Floor  
Chicago, Illinois 60603  
(866)834-3504 (FAX)

##### **Defendant's Counsel**

Michael D. Sanders  
Mark J. Mickiewicz  
Purcell & Wardrobe, Chartered  
10 South LaSalle St.,  
Suite 1200  
Chicago, IL 60603  
312-427-3944 (fax)

Each objection must (a) set forth the objector's full legal name or business name, if the objector is an entity, address and telephone number; (b) set forth the telephone number for the facsimile machine on which the class member was sent the fax; (c) state the Objection to the Settlement; (d) set forth a statement of the legal and factual basis for the Objection; and (e) provide copies of any documents in support of the Objection. If you do not submit a timely Objection in accordance with the requirements set forth above, you will not be treated as having filed a valid Objection to the settlement. If you do file an objection and wish it to be considered, you may also appear at the hearing before Judge Lindberg, Room 1425 of the U.S. District Court for the Northern District of Illinois, Eastern Division, 219 S. Dearborn Street, Chicago, IL 60604 ("Fairness Hearing"). **YOU ARE NOT REQUIRED TO ATTEND THIS HEARING.** Please note that it is not sufficient to simply state that you object. You must state reasons why the settlement should not be approved.

#### **11. THE COURT'S FAIRNESS HEARING**

The Court will hold a hearing on the settlement before Judge Lindberg, Room 1425 of the U.S. District Court for the Northern District of Illinois, Eastern Division, 219 S. Dearborn Street, Room 1219, Chicago, IL 60604 ("Fairness Hearing") on **March 23, 2011 at 10:30 a.m.** to determine, among other things, (i) whether it will be approved as fair, adequate and reasonable; (ii) what amount, if any, to award class counsel for attorney's fees and costs in the Action; and (iii) what amount, if any, to award plaintiff for his services as class representative. **YOU ARE NOT REQUIRED TO ATTEND THIS HEARING.** The hearing may be continued by the Court without further notice to class members. If the Court does not approve the settlement, the class action will proceed, and

you may or may not get the money that this case may provide in the future.

**12. WHERE CAN I OBTAIN ADDITIONAL INFORMATION?**

The description of the lawsuit and settlement that is contained in this Notice is only general in nature. All papers filed in this case, including the full settlement agreement, are available for you to inspect and copy (at your expense) at the Clerk's Office of the U.S. District Court for the Northern District of Illinois, Eastern Division, 219 S. Dearborn Street, Chicago, IL 60604. You must bring the name of the case and case number with you, since the Clerk will need to know this information in order to obtain the court file for you to inspect. If you or your attorney require additional information, you should write or call class counsel at the addresses and telephone numbers listed above in paragraph 9 during regular business hours. Please include the case name and number, your name and your current return address on any letters, not just the envelopes. Please do not contact the defendant's attorneys; they are not in a position to give you any advice about this settlement.

**PLEASE DO NOT CONTACT THE COURT OR DEFENDANT'S COUNSEL FOR INFORMATION.**

Dated: December 1, 2010

BY ORDER OF THE UNITED STATES DISTRICT  
COURT FOR THE NORTHERN DISTRICT OF  
ILLINOIS, EASTERN DIVISION