

Federal Communications Commission



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

May 22, 2007

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dakota Asset Management dba SMC Direct
Attn: Barry Poe
2603 Main ST #700
Irvine, CA 92614

Dakota Asset Management dba SMC Direct
Attn: Barry Poe
26322 Towne Center DR
Foothill Ranch, CA 92610

RE: EB-07-TC-1067

Dear Mr. Poe:

This is an official **CITATION**, issued pursuant to section 503(b)(5) of the Communications Act of 1934, as amended (the Act), for violations of the Federal Communications Commission's rules that govern telemarketing calls.¹ As explained below, you may appeal this citation. In addition, future violations of the Commission's rules in this regard may subject you and your company to monetary forfeitures.

Attached are consumer complaints regarding telemarketing calls that your company or an entity acting on behalf of your company, acting under your direction, made to residential telephone lines despite previous do-not-call requests by members of the households.² These complaints indicate that you and your company have violated the Commission's requirements regarding telemarketing calls in 47 C.F.R. § 64.1200(d).

Section 64.1200(d) of the Commission's rules requires entities that make telemarketing calls to residential telephone subscribers to follow certain procedures to ensure that the

¹ 47 U.S.C. § 227; 47 C.F.R. § 64.1200.

² See attached complaint(s).

Federal Communications Commission

subscribers are able to stop such calls. Specifically, entities that make telemarketing calls must (1) develop written policies for maintaining a do-not-call list and make such written policies available upon demand; (2) inform and train their personnel engaged in any aspect of telemarketing about the existence and use of the do-not-call list; (3) place consumers who request not to receive telemarketing calls on the do-not-call list; and (4) honor each do-not-call request within a reasonable time from the date of the request, which may not exceed thirty (30) days, for five years from the time the request is made.³ In addition, the Commission has found that it is unlawful to call a residential telephone line to deliver a telemarketing call if any member of the household has made a do-not-call request.⁴

Under the Act and the Commission's rules, a "telemarketing" call is "the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person."⁵

If, after receipt of this citation, you or your company violate the Communications Act or the Commission's rules in any manner described herein, the Commission may impose monetary forfeitures not to exceed \$11,000 for each such violation or each day of a continuing violation.⁶

You may respond to this citation within 30 days from the date of this letter either through (1) a personal interview at the Commission's Field Office nearest to your place of business, or (2) a written statement. You may use this response to appeal this citation. For example, you may claim that you honored the person's do-not-call request within a reasonable time that did not exceed 30 days, or that you can document that the person gave permission for the call after making an earlier do-not-call request. In addition, your response should specify the actions that you are taking to ensure that you do not violate the Commission's rules governing telephone solicitation and unsolicited advertisements, as described above.

You may schedule a personal interview at the nearest Commission field office. These offices are located in: Atlanta, GA; Boston, MA; Chicago, IL; Columbia, MD; Dallas, TX; Denver, CO; Detroit, MI; Kansas City, MO; Los Angeles, CA; New Orleans, LA; New York, NY; Philadelphia, PA; San Diego, CA; San Francisco, CA; Seattle, WA; and Tampa, FL. Please call Al McCloud at 202-418-2499 if you wish to schedule a personal interview. You should schedule any interview to take place within 30 days of the date of this letter. You should send any written statement within 30 days of the date of this letter to:

Kurt A. Schroeder
Deputy Chief
Telecommunications Consumers Division
Enforcement Bureau

³ 47 C.F.R. § 64.1200(d).

⁴ *Consumer.Net v. AT&T, Order*, 15 FCC Rcd 281, 298 (1999).

⁵ 47 U.S.C. § 227(a)(3); 47 C.F.R. § 64.1200(f)(7).

⁶ See 47 C.F.R. § 1.80(b)(3).

Federal Communications Commission

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445 - 12th Street, S.W.
Washington, D.C. 20554

You should reference EB-07-TC-1067 when corresponding with the Commission.

If you request a meeting, reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need including as much detail as you can. Also include a way we can contact you if we need more information. Please allow at least 5 days advance notice; last minute requests will be accepted, but may be impossible to fill. Send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau:

For sign language interpreters, CART, and other reasonable accommodations:
202-418-0530 (voice), 202-418-0432 (tty)

For accessible format materials (braille, large print, electronic files, and audio format): 202-418-0531 (voice), 202-418-7365 (tty)

As required by the Privacy Act of 1974, 5 U.S.C. § 552(a)(e)(3), you are hereby notified that the Commission's staff will use all relevant material information to determine what, if any, enforcement action is required to ensure your compliance with the Commission's rules. This will include any information that you disclose in your interview or written statement.

Finally, you should be aware that the knowing and willful making of any false statement or the concealment of any material fact in reply to this citation is punishable by fine or imprisonment under 18 U.S.C. § 1001.

Thank you in advance for your anticipated cooperation.

Sincerely,

Kurt A. Schroeder
Deputy Chief
Telecommunications Consumers Division
Enforcement Bureau
Federal Communications Commission

Enclosures