



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

December 20, 2011

**VIA FIRST CLASS MAIL AND CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED**

Somaticare, Inc.  
aka DSM Supply, LLC  
Attn: Scott Malcolm, President/Owner  
1187 Judd Court, Suite 104  
Dallas, TX 75243

DSM Supply, LLC  
aka Somaticare, Inc.  
Attn: Scott Malcolm, President  
Stephen A. Hall, Owner  
Bruce Witherspoon, Owner  
6320 Brookside Plaza, Ste 503  
Kansas City, MO 64113

RE: EB-11-TC-052

Dear Mr. Malcolm, Mr. Hall, and Mr. Witherspoon:

This is an official **CITATION**, issued by the Federal Communications Commission (Commission or FCC) pursuant to section 503(b)(5) of the Communications Act of 1934, as amended (Communications Act or Act), 47 U.S.C. § 503(b)(5), for violations of the Act and the Commission's rules that govern telephone solicitations, prerecorded and autodialed telephone calls, and facsimile or "fax" transmissions.<sup>1</sup> You are hereby on notice that if you subsequently engage in any conduct of the type described in this citation, including Attachment A hereto, in violation of section 227 of the Act or sections 64.1200, 64.1601(e), or 68.318 of the

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<sup>1</sup> 47 U.S.C. § 227; 47 C.F.R. §§ 64.1200, 64.1601(e), 68.318. A copy of these provisions is enclosed for your convenience. Section 227 was added to the Communications Act by the Telephone Consumer Protection Act of 1991 and is most commonly known as the TCPA. The TCPA and the Commission's rules restrict a variety of practices that are associated with telephone solicitation and the use of the telephone network to deliver unsolicited advertisements or prerecorded and autodialed telephone calls.

**Commission's rules, you and your company may be subject to further legal action, including monetary fines (forfeitures).<sup>2</sup>**

Based on the record developed in this case, the Enforcement Bureau, acting through its delegated authority, finds that Somaticare, Inc., aka DSM Supply, LLC, initiated, or caused to be initiated, one or more calls or sent, or caused to be sent, one or more messages and/or faxes in violation of section 227 of the Communications Act and the Commission's related rules. In this regard, one or more complaints have been filed against you or your company for violations of section 227 of the Act and our rules. Copies of the complaints are attached as Attachment C to this citation. For your convenience, the violations asserted in the complaints are checked below. Once you have identified the violation(s), proceed to the associated section(s) of Attachment A (Telephone Consumer Protection Act Violations) to obtain the legal requirements related to each violation and then read the section titled "Responding to the Citation," below, if you wish to respond. Because, future violations by you or your company of the type identified in Attachment A could result in fines, we encourage you to familiarize yourself with the other sections of Attachment A so that you or your company can take appropriate steps to ensure compliance with the Act and our rules.

**FACSIMILE VIOLATIONS**

- Unsolicited Fax Advertisement (See Attachment A, section I(A) – page 1)
- Incomplete Fax Header (See Attachment A, section I(B) – page 3)
- Insufficient Opt-Out Notice (See Attachment A, section I(C) – page 4)
- Opt-Out Request Not Honored (See Attachment A, section I(D) – page 5)

**PRERECORDED AND AUTODIALED CALL VIOLATIONS**

- Prerecorded or Autodialed Call to a Cell Phone, Emergency Line, Health Care Facility, or Toll-Free Line (See Attachment A, section II(A) – page 6)
- Prerecorded Call to a Residential Line (See Attachment A, section II(B) – page 6)
- Prerecorded Identification Not Provided (See Attachment A, section II(C) – page 8)
- Prerecorded Line Seizure (See Attachment A, section II(D) – page 8)
- Business Line Seizure (See Attachment A, section II(E) –page 8)

**DO-NOT-CALL VIOLATIONS**

- National Do-Not-Call (See Attachment A, section III(A) – page 8)
- Company-Specific Do-Not-Call (See Attachment A, section III(B) – page 10)

**TIME OF DAY VIOLATION (See Attachment A, section IV – page 11)**

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<sup>2</sup> This citation is being issued to the company named above and includes all d/b/a entities and any other entity names used by the company as well as its owners, principals, and officers. Accordingly, all references in this citation to the named company also include all d/b/a entities and any other entity names used by the company and its owners, principals, and officers.

CALLER IDENTIFICATION VIOLATION (See Attachment A, section V – page 12)

**If, after receipt of this citation, you or your company again violates section 227 of the Act or sections 64.1200, 64.1601(e), or 68.318 of the Commission's rules in any manner or violates section 1.17 of our rules (discussed below) when responding to this citation, the Commission may impose monetary forfeitures not to exceed \$16,000 for each such violation or each day of a continuing violation.**

### **RESPONDING TO THE CITATION**

You may respond to this citation within 30 days from the date of this letter either through (1) a written statement, (2) a teleconference interview with the Commission's Telecommunications Consumers Division in Washington, DC or (3) a personal interview at the Commission Field Office nearest to your place of business. Your response should specify the actions that you are taking to ensure that you do not violate the Communications Act or the Commission's rules governing TCPA violations, as described herein.

If you would like to arrange a teleconference or personal interview, please contact Al McCloud at (202) 418-2499. Such teleconference or interview must take place within 30 days of the date of this citation.

If you would like to submit a written response, including any supporting documentation, you must send the response within 30 days of the date of this citation to the address below.

Richard A. Hindman, Chief  
Telecommunications Consumers Division  
Enforcement Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Rm. 4-C224  
Washington, D.C. 20554

### **Reference EB-11-TC-052 when corresponding with the Commission.**

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 business days advance notice; last minute requests will be accepted, but may be impossible to fill. Send an e-mail to [fcc504@fcc.gov](mailto: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).

**If you choose to respond to this citation, be advised that it is a violation of section 1.17 of the Commission's rules (47 C.F.R. § 1.17) for any person or a staff member of that person**

**to make any false or misleading written or oral statement of fact. Specifically, no person shall:**

**(1) In any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading; and**

**(2) In any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.**

**Further, 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.**

If you or your company violates section 1.17 of the Commission's rules or the criminal statute referenced above, you may be subject to further legal action, including monetary fines pursuant to section 503 of the Communications Act.

Under the Privacy Act of 1974, 5 U.S.C. § 552a(e)(3), we are informing you that the Commission's staff will use all relevant material information before it, including information that you disclose in your interview or written statement, to determine what, if any, enforcement action is required to ensure your compliance with the Communications Act and the Commission's rules.

Thank you in advance for your anticipated cooperation.

Sincerely,

Richard A. Hindman, Chief  
Telecommunications Consumers Division  
Enforcement Bureau  
Federal Communications Commission

Enclosures