



**FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

December 18, 2001

Logistical Services, Inc.
d/b/a Stones Gym
d/b/a Stones Family Fitness Center
3354 East FM 528 Road
Friendswood, Texas 77546
Attention: Brian H. Walbrecher

RE: EB-01-TC-065

Dear Mr. Walbrecher:

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 Act and the Federal Communications Commission's rules that govern telephone solicitation.¹

It has come to our attention that your company has delivered a prerecorded unsolicited advertisement to a residential telephone line. The Act and the Commission's rules prohibit transmission of unsolicited advertisements through prerecorded messages to residential telephone lines unless the individual who has been called has an established business relationship with the caller, or has expressly agreed to receive the message.² The term "unsolicited advertisement" is defined in the Communications Act and the Commission's rules as "any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission."³ The attached information provided to the Commission indicates that your company delivered such an unsolicited advertisement, through a prerecorded message, to a residential telephone subscriber who does not have an established business relationship with your company and had not expressly invited or authorized the call. That action violates section 64.1200(a)(2) of the Commission's rules.

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

² The Commission's rules make it unlawful to "initiate any telephone call using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party unless the call is initiated for emergency purposes or . . . is not made for a commercial purpose, is made for a commercial purpose but does not include the transmission of any unsolicited advertisement, [is made] to any person with whom the caller has an established business relationship at the time the call is made, or [is made by or on behalf of] a tax-exempt nonprofit organization. 47 C.F.R. § 64.1200(a)(2), (c); *see also* 47 U.S.C. § 227(b)(1)(B) (prohibiting all prerecorded calls to residential lines "unless the call is initiated for emergency purposes or is exempted by rule or order by the Commission. . .").

³ 47 U.S.C. § 227(a)(4); 47 C.F.R. § 64.1200(f)(5).

Separately, it appears that your company may have violated other Commission rules governing prerecorded messages and telephone solicitations. Under section 64.1200(e)(2)(iv), any telephone solicitation – whether live or prerecorded – must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and an address or telephone number (which may not be for an autodialer or prerecorded message player) at which the person or entity may be contacted.⁴ According to the attached information received by the Commission, it appears that your telephone solicitation did not contain all the required information.

Please be advised that subsequent violations of the Communications Act or of the Commission’s rules of the type described herein may result in the imposition of monetary forfeitures not to exceed \$11,000 for each such violation or each day of a continuing violation.⁵

Pursuant to section 503(b)(5) of the Communications Act, you may request a personal interview with a Commission agent located nearest to your place of business. You may contact an agent in Houston at (713) 983-6103. You must schedule an interview to take place within 21 days of the date of this citation. Alternatively, you may submit a written statement to the following address within 21 days of the date of this citation:

Kurt A. Schroeder
Deputy Chief
Telecommunications Consumers Division
Enforcement Bureau
Federal Communications Commission
445 - 12th Street, S.W.
Washington, D.C. 20554

If you choose to submit a written statement, your statement should specify what actions you have taken to correct the violation(s) outlined above. You should also include a copy of your company’s written do-not-call policy as required by section 64.1200(e)(2)(i) of the Commission’s rules. Please reference EB-01-TC-065 when corresponding with the Commission.

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

⁴ 47 C.F.R. § 64.1200(e)(2)(iv). In addition, the Act and the Commission’s rules impose separate identification requirements for prerecorded messages. Under section 227(d)(3)(A) of the Act, all prerecorded messages “shall, *at the beginning* of the message, state clearly the identity of the business, individual, or other entity initiating the call, and . . . shall, during or after the message, state clearly the telephone number or address of such business, other entity, or individual.” 47 U.S.C. § 227(d)(3)(A) (emphasis added); *see also* 47 C.F.R. § 64.1200(d), (e)(2)(iv) (imposing identification requirements for prerecorded messages delivered by automatic telephone dialing systems).

⁵ *See* 47 C.F.R. § 1.80(b)(3).

Please be advised that if you choose not to respond to this citation and a Notice of Forfeiture is issued, your unresponsiveness will be considered in our assessment of a forfeiture amount.

You should also 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