



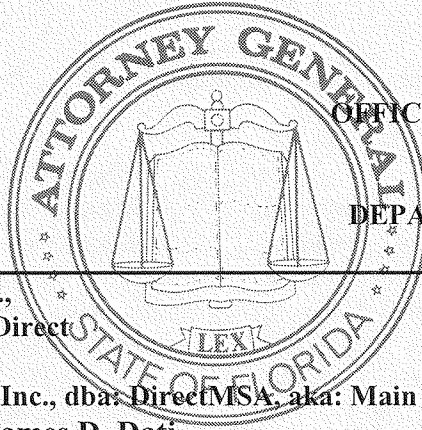
MARK MILLS
FINANCIAL INVESTIGATOR
ECONOMIC CRIMES DIVISION

OFFICE OF THE ATTORNEY GENERAL
STATE OF FLORIDA
CONCOURSE CENTER
3507 E. FRONTAGE ROAD, SUITE 325
TAMPA, FLORIDA 33607

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ATTORNEY GENERAL
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ECONOMIC CRIMES DIVISION
INVESTIGATIVE
SUBPOENA DUCES TECUM



OFFICE OF THE ATTORNEY GENERAL
PAM BONDI
STATE OF FLORIDA
DEPARTMENT OF LEGAL AFFAIRS

INVESTIGATION OF: DirectE, Inc.,
d/b/a Direct E-Cig, d/b/a Smokeless Direct

AG#L11-3-1010

TO: **Main Street Advertising, Inc., dba: DirectMSA, aka: Main Street Marketing**
c/o Registered Agent: James D. Dati
4001 Tamiami Trail North, #250
Naples, FL 34103

This investigative Subpoena Duces Tecum is issued pursuant to Florida's Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes, in the course and authority of an official investigation.


YOU ARE HEREBY COMMANDED to produce all documentary material and other tangible evidence as described herein that is in your possession, custody, or control, and to make it available for inspection and copying or reproduction before Robert J. Follis, and/or other Assistant Attorney(s) General on March 11, 2011 at 11:00 a.m., Eastern Time, at the following location: DEPARTMENT OF LEGAL AFFAIRS, OFFICE OF THE ATTORNEY GENERAL, ECONOMIC CRIMES DIVISION, 3507 E. Frontage Rd., Suite 325, Tampa, FL 33607.

If you wish, you may submit the requested materials by mailing copies of same to the above-referenced address c/o Assistant Attorney General Robert J. Follis. The production of material in response to this demand shall include the following:

SEE ATTACHED ADDENDUM

WITNESS, the Department of Legal Affairs at Tampa, Florida, this 24 day of February, 2011.

PAMELA JO BONDI
ATTORNEY GENERAL



Robert J. Follis
Assistant Attorney General
Florida Bar # 560200
Office of the Attorney General
Economic Crimes Division
3507 E. Frontage Road, Suite 325
Tampa, Florida 33607
(813) 287-7950
(813) 281-5515 (facsimile)

501.204 Unlawful acts and practices.

(1) Unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

(2) It is the intent of the Legislature that, in construing subsection (1), due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to s. 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. s. 45(a)(1) as of July 1, 2006.

501.206 Investigative powers of enforcing authority.

(1) If, by his or her own inquiry or as a result of complaints, the enforcing authority has reason to believe that a person has engaged in, or is engaging in, an act or practice that violates this part, he or she may administer oaths and affirmations, subpoena witnesses or matter, and collect evidence. Within 5 days, excluding weekends and legal holidays, after the service of a subpoena or at any time before the return date specified therein, whichever is longer, the party served may file in the circuit court in the county in which he or she resides or in which he or she transacts business and serve upon the enforcing authority a petition for an order modifying or setting aside the subpoena. The petitioner may raise any objection or privilege which would be available under this chapter or upon service of such subpoena in a civil action. The subpoena shall inform the party served of his or her rights under this subsection.

(2) If matter that the enforcing authority seeks to obtain by subpoena is located outside the state, the person subpoenaed may make it available to the enforcing authority or his or her representative to examine the matter at the place

where it is located. The enforcing authority may designate representatives, including officials of the state in which the matter is located, to inspect the matter on his or her behalf, and he or she may respond to similar requests from officials of other states.

(3) Upon failure of a person without lawful excuse to obey a subpoena and upon reasonable notice to all persons affected, the enforcing authority may apply to the circuit court for an order compelling compliance.

(4) The enforcing authority may request that an individual who refuses to comply with a subpoena on the ground that testimony or matter may incriminate him or her be ordered by the court to provide the testimony or matter. Except in a prosecution for perjury, an individual who complies with a court order to provide testimony or matter after asserting a privilege against self-incrimination to which he or she is entitled by law shall not have the testimony or matter so provided, or evidence derived therefrom, received against him or her in any criminal investigation or proceeding.

(5) Any person upon whom a subpoena is served pursuant to this section shall comply with the terms thereof unless otherwise provided by order of the court. Any person who fails to appear with the intent to avoid, evade, or prevent compliance in whole or in part with any investigation under this part or who removes from any place, conceals, withholds, mutilates, alters, or destroys, or by any other means falsifies any documentary material in the possession, custody, or control of any person subject to any such subpoena, or knowingly conceals any relevant information with the intent to avoid, evade, or prevent compliance shall be liable for a civil penalty of not more than \$5,000, reasonable attorney's fees, and costs.

ADDENDUM

Definitions

- A. The word “company” and “companies” as used herein means the addressee/recipients of this subpoena, their parents, branches, departments, divisions, affiliates, subsidiaries, retail outlets, stores, franchises, successors, or predecessors, whether wholly owned or not, including, without limitation, any organization or entity in which said addressees have a management or controlling interest, together with all present and former officers, directors, agents, employees, sales people, brokers, agents, representatives or anyone else acting or purporting to act, on behalf of the above-identified persons or entities.
- B. The word “document” means all documents, records and writings of any kind, and all communication (as defined below in Paragraph E) which are stored or retrievable or recorded in any manner, including originals and all non-identical copies whether different from the originals by notation made on such copies or otherwise, all drafts, alterations, modifications, changes, and amendments, graphic or any electronic or mechanical records or representations of any kind. The term “documents” includes, but is not limited to, the original and any non-identical copy (which is different from the original because of notation on such copy or otherwise) of all correspondence, E-mail, telegrams, teletype messages, contracts (including drafts, proposals, and any and all exhibits thereto), drafts, minutes and agendas, memoranda (including inter- and intra-office memoranda, memoranda for file, pencil jottings, diary entries, desk calendar entries, reported recollections, and any other written form of notation of events or intentions), transcripts and recordings of conversations and telephone calls, books of account, ledgers, publications, professional journals, invoices, financial statements, purchase orders, receipts, canceled checks and all other documentary material of any nature whatever, together with any attachments thereto or enclosures therewith.
- C. The term “any” shall be construed as synonymous with “all” and shall be all inclusive.
- D. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside of its scope.
- E. The word “communication” means any act, action, oral speech, written correspondence, contact, expression of words, thoughts, or ideas, or transmission or exchange of data or other information to another person, whether orally, person to person, in a group, by telephone, letter, personal delivery, intercom, telex, fax, e-mail, compact or floppy disc, or any other process, electric, electronic or otherwise in any medium. All such communications in writing shall include, without limitation, printed, typed, handwritten or other readable documents.
- F. The word “person” means any individual and all entities, and, without limiting the generality of the foregoing, includes natural persons, employees, contractors, agents, consultants, vendors, telemarketers, consumers, customers, officers, directors, successors, assigns, joint owners, associations, partnerships, companies, joint ventures, corporations, affiliates, trusts, trustees, escrow agents and estates, and all groups or associations of persons.
- G. “Related to” or “relating to” means in whole or in part constituting, containing, concerning, embodying, reflecting, describing, analyzing, identifying, stating, referring to, setting forth, or dealing with, or in any way pertaining to.

Instructions

- H. The documents to be produced pursuant to each request should be segregated and specifically identified to indicate clearly the particular numbered request to which they are responsive.
- I. For each request, or part thereof, which is not fully responded to pursuant to any privilege, the nature of the privilege and grounds in support thereof should be fully stated.
- J. If you possess, control, or have custody of no documents responsive to any numbered request set forth below, state this fact by so specifying in your response to said request.
- K. The use of the singular form of a word includes the plural and vice versa. In addition, the use of any tense of any verb includes all other tenses of the verb.
- L. Unless otherwise specified, original documents must be produced. If your "original" is a photocopy, then the photocopy would be and should be produced as the original. Said copy shall be legible and bound or stapled in the same manner as the original.
- M. This Subpoena is for the production of all responsive documents and information in your possession, custody or control regardless of whether such documents or information is possessed directly by you or your directors, officers, agents, employees, representatives, subsidiaries, managing agents, affiliates, investigators, or by your attorneys or their agents, employees, representatives or investigators.
- N. If any responsive document or information cannot be produced in full, you are to produce it to the extent possible, indicating which document, or portion of that document, is being withheld, and the reason that document is being withheld.
- O. Documents not otherwise responsive to this subpoena shall be produced if such documents mention, discuss, refer to, or explain the documents that are called for by this subpoena, or if such documents are attached to documents called for by the subpoena and constitute routing slips, transmittal memoranda, or letters, comments, evaluations or similar materials.
- P. If a document once existed and has subsequently been lost, destroyed, or is otherwise missing, please provide sufficient information to identify the document and state the details concerning its loss or destruction.
- Q. Documents maintained in electronic form must be produced in their native electronic form with all metadata intact. Data must be produced in the data format in which it is typically used and maintained. Moreover, to the extent that a responsive Document has been electronically scanned (for any purpose), that Document must be produced in an Optical Character Recognition (OCR) format and an opportunity provided to review the original Document. In addition, documents that have been electronically scanned must be in black and white and should be produced in a Group IV TIFF Format (TIF image format), with a Summation format load file (dii extension). DII Coded data should be received in a **(Comma-Separated Values) CSV format with a pipe (|) used for multi-value fields**. Images should be single page TIFFs, meaning one TIFF file for each page of the Document, not one .tiff for each Document. If there is no text for a text file, the following should be inserted in that text file: "Page Intentionally Left Blank." Moreover, this Subpoena requires all objective coding for the production, to the extent it exists. For electronic mail systems using Microsoft Outlook or Lotus Notes, provide all responsive emails and, if applicable, email attachments and any related Documents, in their native file format (i.e., .pst for Outlook personal folder, .nsf for Lotus Notes). For all other email systems, provide all responsive

emails and, if applicable, email attachments and any related Documents in OCR and TIFF formats as described above.

- R. If you claim the attorney-client privilege, work-product privilege, or any other privilege, for any document, provide a detailed privilege log that contains at least the following information for each document that you have withheld:
- a. The name of each author, writer, sender or initiator of such document or thing, if any;
 - b. The name of each recipient, addressee or party for whom such document or thing was intended, if any;
 - c. The date of such document, if any, or an estimate thereof so indicated if no date appears on the document;
 - d. The general subject-matter as described on such document; if no such description appears, then such other description sufficient to identify said document; and,
 - e. The claimed grounds for withholding the document, including, but not limited to, the nature of any claimed privilege and grounds in support thereof.

WHEREFORE YOU ARE HEREBY COMMANDED TO PRODUCE:

Provide the Office of the Attorney General for the State Florida with copies of the following for the time period of January 1, 2010 to the present, unless otherwise noted:

- 1) Documentation that illustrates the business structure of the Company, including identification of the divisions or departments, the reporting structure or hierarchy among the divisions within the organization, and the names of division heads or directors, and names of employees within each division.
- 2) Documentation identifying the past or present names of any and all corporate entities, fictitious names, trade names, subsidiaries, “d/b/a” s, or other identifiers used by or associated with the Company.
- 3) Documentation identifying the names, street addresses, mailing addresses, and telephone numbers of each individual, corporation, vendor, partnership or any other entity affiliated in any way with the Company, including but not limited to affiliate marketers and/or advertising networks. Include copies of any and all related contracts and/or agreements.
- 4) Documentation identifying any and all physical mail addresses, mail drops and/or postal mail boxes, telephone numbers, and electronic mail addresses used by and/or registered to the Company.
- 5) Documentation identifying all domain names and/or Uniform Resource Locators (URL) under which the Company advertises, markets, enrolls, and/or offers products to consumers. Include the names, mailing addresses, electronic mailing addresses, and telephone numbers for each domain name registrant, administrator, technical contact, and site manager.
- 6) Exemplary copies of any solicitation materials and documents used for the advertisement, marketing and sales of your products, including but not limited to solicitations through electronic mail creative, pop up advertisements, banner advertisements, pop under advertisements and/or any other electronic media.
- 7) Documentation listing the name, mailing address, electronic address, and telephone number of each and every individual whose testimonial has appeared on your advertising materials, marketing materials, and/or internet websites.
- 8) Copies of any and all documents filed with Florida’s Department of State, Division of Corporations, permitting the Company to do business in the State of Florida, including but not limited to cancelled and/or inactive corporations, fictitious names, and trademark names.
- 9) Copies of any and all documents filed in your county or counties permitting the Company to do business, since inception of the Company.
- 10) Documentation identifying the names, addresses, and telephone numbers of all past and present payment processors utilized since the inception of the Company, to include the following:
 - a. the account numbers associated with each merchant account; and
 - b. a list of all past and present descriptor names provided to the merchant account processor (used as an identifier for transactions on consumer’s bank account statements).
- 11) Documentation identifying the names, addresses, and telephone numbers of all past and present bank accounts utilized by the Company. Include the account numbers associated with each account.
- 12) Documentation identifying the names, addresses, email addresses, and telephone numbers of each and

every consumer who enrolled into the Company's Electronic Cigarette program who provided either a Florida address or a Florida telephone number, to include the following:

- a. the specific Uniform Resource Locator (URL) used for enrollment;
- b. the enrollment date;
- c. the completed order/application form;
- d. the date(s) fees were paid and the amount of fees;
- e. consumer payment authorization for each and every transaction;
- f. the package tracking number of each shipment as provided by the shipment courier (FedEx, UPS, etc.);
- g. the cancellation date, if applicable; and
- h. the date(s) fees were refunded and the amount of fees refunded, if applicable.

- 13) Copies of all consumer complaints received by the Company, including all written complaints and a summary of each oral complaint.
- 14) Copies of all communications disseminated in response to any oral or written complaint and any documents evidencing the disposition of such complaints.
- 15) Complete copies of any and all documentation relating to policies, procedures, manuals, directives, memorandums, etc., provided to any employee of the Company to prepare for or use during communications with consumers regarding billing charges, refunds, and/or the handling of consumer complaints, including but not limited to any scripts or prepared/prompted responses.