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FAYETTE COUNTY
OHIO

IN THE COURT OF COMMON PLEAS
FAYETTE COUNTY, OHIO

STATE OF OHIO ex rel.)	
ATTORNEY GENERAL)	
MICHAEL DEWINE)	Case No:
30 E. Broad St., 14 th Floor)	
Columbus, Ohio 43215)	
)	Judge:
Plaintiff,)	
v.)	
)	
JAMES M. DAY)	COMPLAINT AND REQUEST FOR
DBA M & D CONSTRUCTION)	DECLARATORY JUDGMENT,
AND DBA M & D IMPROVEMENTS)	INJUNCTIVE RELIEF, CIVIL
13812 State Route 41)	PENALTIES, AND OTHER
Jeffersonville, Ohio 43128)	APPROPRIATE RELIEF
)	
Defendant.)	
)	

JURISDICTION AND VENUE

1. Plaintiff, State of Ohio, by and through its counsel, the Attorney General of Ohio, Michael DeWine, having reasonable cause to believe that violations of Ohio's consumer

protection laws have occurred, brings this action in the public interest and on behalf of the State of Ohio under the authority vested in him by R.C. 1345.01 *et seq.*

2. The actions of James M. Day ("Defendant"), hereinafter described, have occurred in Fayette and other counties in the State of Ohio and, as set forth below, are in violation of the Consumer Sales Practices Act ("CSPA"), R.C. 1345.01, *et seq.* and the Home Solicitation Sales Act ("HSSA"), R.C. 1345.21.
3. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the CSPA.
4. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(1) and (3), in that Defendant resides in Fayette county and Fayette County is the county in which Defendant conducted activity that gave rise to the claims for relief.

DEFENDANT

5. Defendant James M. Day is a natural person residing at 13812 State Route 41, Jeffersonville, Ohio 43128.
6. At all times relevant to this action, Defendant used the fictitious names M & D Construction and M & D Improvements.
7. Defendant is a "supplier," as that term is defined in R.C. 1345.01(C), as he engaged in the business of effecting "consumer transactions" by soliciting consumers either directly or indirectly for home remodeling and repair goods and services for a fee, within the meaning of R.C. 1345.01(A).

STATEMENT OF FACTS

8. Defendant engaged in the business of offering and providing home improvement goods and services under the fictitious names M & D Construction and M & D Improvements.
9. Defendant failed to register the fictitious names "M & D Construction" and "M & D Improvements" with the Ohio Secretary of State.
10. Defendant engaged in the business of providing goods and services to consumers, including remodeling and demolition services, and failed to deliver some of those goods and services within eight weeks.
11. Defendant has refused to refund consumers' deposits or payments despite consumers' requests for refunds.
12. After receiving payment, Defendant sometimes began work but failed to complete the work.
13. Defendant provided shoddy and substandard home repair services to consumers and then failed to correct such services.
14. Defendant represented to consumers that he would provide the ordered goods and services within an estimated time and then failed to provide such goods and services in the time promised.
15. At the time of the transactions, Defendant failed to notify consumers of their rights to cancel the transaction, or to provide consumers with notices of cancellation forms describing the consumers' rights to cancel the transactions.

PLAINTIFF'S FIRST CAUSE OF ACTION:

VIOLATIONS OF THE CSPA

COUNT I- FAILURE TO DELIVER

16. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs 1-15 of this Complaint.
17. Defendant committed unfair or deceptive acts or practices in violation of the Failure to Deliver Rule, O.A.C. 109:4-3-09(A) and the CSPA, R.C. 1345.02(A), by accepting money from consumers for goods and services and then permitting eight weeks to elapse without making shipment or delivery of the goods and services ordered, making a full refund, advising the consumers of the duration of an extended delay and offering to send a refund within two weeks if so requested, or furnishing similar goods or services of equal or greater value as a good faith substitute.

COUNT II- SHODDY AND SUBSTANDARD WORK

18. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs 1-17 of this Complaint.
19. Defendant committed unfair or deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A), by performing shoddy and substandard work and then failing to correct such work.
20. The acts or practices described above have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 *et seq.* Defendant committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT III- FAILURE TO REGISTER FICTITIOUS NAME

21. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs 1-20 of this Complaint.
22. Defendant committed unfair or deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A), by failing to register with the Ohio Secretary of State his use of fictitious business names, as required by R.C. 1329.01.
23. The acts or practices described above have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 *et seq.* Defendant committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

PLAINTIFF'S SECOND CAUSE OF ACTION:

VIOLATION OF THE HSSA

COUNT 1:

FAILURE TO PROVIDE PROPER NOTICE OF THREE DAY RIGHT OF RESCISSION

24. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs 1-23 of this Complaint.
25. Defendant violated the HSSA, R.C. 1345.23 and R.C. 1345.02(A), by failing to give proper notices to consumers of their right to cancel their transactions by a specific date.
26. The act or practice described above has been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 *et seq.* Defendant committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

- A. ISSUE A DECLARATORY JUDGMENT that each act or practice complained of herein violates the CSPA, its Substantive Rules, and the HSSA, in the manner set forth in the Complaint.
- B. ISSUE A PERMANENT INJUNCTION enjoining the Defendant, his agents, servants, employees, successors or assigns, and all persons acting in concert and participation with him, directly or indirectly, through any corporate device, partnership, or other association, under these or any other names, from engaging in the acts and practices of which Plaintiff complains and from further violating the CSPA, R.C. 1345.01 *et seq.*, its Substantive Rules, and the HSSA, R.C. 1345.21 *et seq.*
- C. ORDER Defendant, pursuant to R.C. 1345.07(B), to pay all actual damages, including non-economic damages, to all consumers injured by the conduct of the Defendant as set forth in this Complaint.
- D. ASSESS, FINE and IMPOSE upon Defendant a civil penalty of up to \$25,000.00 for each separate and appropriate violation of the CSPA described herein pursuant to R.C. 1345.07(D).
- E. ISSUE AN INJUNCTION prohibiting Defendant from engaging in business as a Supplier in any consumer transactions in this state until such time as Defendant has satisfied all monetary obligations ordered pursuant to this litigation.
- F. GRANT Plaintiff its costs incurred in bringing this action.
- G. ORDER Defendant to pay all court costs associated with this matter.

H. GRANT such other relief as the court deems to be just, equitable, and appropriate.

Respectfully submitted,

MICHAEL DEWINE
Attorney General

A handwritten signature in dark ink, appearing to be 'D' with a vertical line through it, enclosed in a loop.

BRANDON C. DUCK (0076725)
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Counsel for Plaintiff, State of Ohio
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