

IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO



STATE OF OHIO, ex rel.
MICHAEL DEWINE
Attorney General of Ohio
30 East Broad Street, 14th Floor
Columbus, Ohio 43215

Plaintiff,

v.

PRO AUDIO VIDEO, INC.
1620 30th Street NE
Canton, Ohio 44714

and

MICHAEL E. WHITE
3707 Scenic View Street NW
Canton, Ohio 44721

Defendants.

CASE NO.

JUDGE

2013CV01571

COMPLAINT AND REQUEST
FOR INJUNCTIVE AND
DECLARATORY RELIEF,
CONSUMER RESTITUTION,
AND CIVIL PENALTIES



JURISDICTION

1. Plaintiff, State of Ohio, by and through the Attorney General of Ohio, Michael DeWine, having reasonable cause to believe that violations of Ohio's consumer 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. 1345.07.
2. The actions of Defendants, as described below, have occurred in Stark County and, as set forth below, are in violation of the Ohio Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 et seq. and its Substantive Rules, OAC 109:4-3-01 et seq.
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)-(3) in that Stark County, Ohio is the county in which Defendant Michael E. White resides, where Defendant Pro Audio Video, Inc. has its principal place of business, and where both Defendants conducted some of the transactions complained of herein.

DEFENDANTS

5. Defendant Pro Audio Video, Inc. ("Pro Audio Video") is an Ohio corporation with its principal place of business located at 1620 30th Street NE, Canton, Ohio 44714.
6. Defendant Michael E. White ("White") is a natural person who, upon information and belief, resides at 3707 Scenic View Street NW, Canton, Ohio 44721.
7. Defendant White is or was the owner of Pro Audio Video and dominated, controlled, and directed the business activities and sales conduct of Pro Audio Video causing, personally participating in, or ratifying the acts and practices of Pro Audio Video, as described in this Complaint.
8. In addition to using the name Pro Audio Video, Defendants also did business using the names Cheap Band Gear, Cheap DJ Gear, Eliminator Lighting Direct, Halloween Effects, and Pro Sound Depot.
9. At all times relevant to this action, Defendants have been engaged in the business of advertising, soliciting, offering for sale, and/or selling goods to consumers.
10. Defendants are "suppliers" as that term is defined in R.C. 1345.01(C), as Defendants were, at all times relevant herein, engaged in the business of effecting consumer transactions by using the internet to advertise and sell goods to individuals for purposes that were primarily personal, family, or household within the meaning specified in R.C. 1345.01(A) and (D).

STATEMENT OF FACTS

11. Defendants operated and sold goods from numerous websites, which included:
 - a. www.eliminatorlightingdirect.com
 - b. www.cheapdjgear.us
 - c. www.cheapbandgear.com
 - d. www.proaudiovideo.net
 - e. www.prosounddepot.com
 - f. www.halloweeneffects.us
 - g. www.cheaphalloweencostumes.us
12. The goods sold by Defendants varied and ranged from sound systems and band equipment to Halloween costumes.
13. Defendants accepted payment from consumers once consumers placed their orders on Defendants' websites.
14. In some instances, Defendants failed to deliver the goods for which consumers paid and failed to refund payments within eight weeks.
15. Defendants advertised goods for sale via their websites that were on backorder and not available.
16. When Defendants used their websites to advertise backordered products, Defendants' websites did not inform consumers that those particular products were on backorder.
17. In some instances, Defendants sold and accepted payment for goods even if the goods were on backorder and not available.
18. Defendants' backorder policy, which it called its "refund policy," required consumers to call Pro Audio Video, prior to ordering, to find out if an item was available or on backorder.

19. Defendants' refund policy appeared on the check-out webpage, well below the section where consumers entered their payment information and submitted their orders.
20. Defendants failed to clearly and conspicuously disclose, prior to the consumer placing the order and providing payment for the good, that the backordered goods that they were advertising were not available.
21. When Defendants received inquiries from consumers who had not received their orders within eight weeks, Defendants would assure consumers that the products were just on backorder and that they would be receiving their products shortly. Despite these assurances, consumers would still not receive their orders.
22. In many instances, consumers tried to contact Defendants to find out when they should expect to receive their goods or to request refunds, but Defendants routinely failed to return the consumers' phone calls or respond to emails.
23. In the instances when Defendants did issue refunds to consumers who never received the product they ordered, consumers waited several months before receiving refunds on their credit card statements or in their online accounts. Many consumers, however, did not receive refunds at all.
24. All facts alleged above have routinely occurred in the two years prior to this lawsuit.

PLAINTIFF'S FIRST CAUSE OF ACTION:
VIOLATIONS OF THE CONSUMER SALES PRACTICES ACT

COUNT ONE
FAILURE TO DELIVER VIOLATION

25. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs One through Twenty-four (1-24) of this Complaint.

26. Defendants committed unfair or deceptive acts or practices in violation of R.C. 1345.02 of the CSPA and the Failure to Deliver Rule, OAC 109:4-3-09(A)(2), by accepting money from consumers for goods and permitting eight weeks to elapse without delivering the promised goods or making a full refund.

COUNT TWO
FAILURE TO CLEARLY AND CONSPICUOUSLY
DISCLOSE CONDITIONS OR LIMITATIONS
IN ADVERTISEMENTS

27. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs One through Twenty-four (1-24) of this Complaint.
28. Defendants committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02, and OAC 109:4-3-02(A)(1) by failing to state clearly and conspicuously, in close proximity to the words stating the offer, material exclusions, reservations, limitations, modifications, or conditions, including the fact that the advertised goods were not in stock during the sale or offering for sale of goods.

PRAYER FOR RELIEF

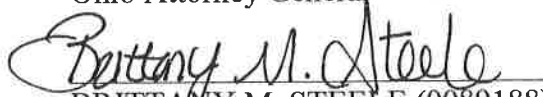
WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

- A. ISSUE a permanent injunction enjoining Defendants Michael E. White and Pro Audio Video Inc., doing business under those or any other names, their agents, representatives, salesmen, employees, successors, or assigns, and all persons acting in concert and participation with them, directly or indirectly, from committing any unfair, deceptive, or unconscionable act or practice that violates the CSPA, R.C. 1345.01 et seq., and its Substantive Rules, OAC 109:4-3-01 et seq., including, but not limited to, violations of the specific code sections and rules set forth herein.

- B. DECLARE that each act or practice complained of herein violates the CSPA and its Substantive Rules in the manner set forth in this Complaint.
- C. ASSESS, FINE, AND IMPOSE upon Defendants a civil penalty of Twenty-Five Thousand Dollars (\$25,000.00) for each separate and appropriate violation described herein, pursuant to R.C. 1345.07(D).
- D. ORDER Defendants to pay all actual damages, including non-economic damages, to all consumers injured by the conduct of the Defendants as set forth in this Complaint.
- E. ISSUE an Injunction prohibiting Defendants from engaging in business as a supplier in any consumer transaction in the State of Ohio until such time as they have satisfied all monetary obligations ordered by this Court, and any other Court in Ohio, in connection with a consumer transaction.
- F. GRANT the Ohio Attorney General his costs in bringing this action.
- G. ORDER Defendants to pay all court costs.
- H. GRANT such other relief as the Court deems to be just, equitable, and appropriate.

Respectfully submitted,

MICHAEL DEWINE
Ohio Attorney General



BRITTANY M. STEELE (0089188)
TRACY MORRISON DICKENS (0082898)
Assistant Attorneys General
Consumer Protection Section
30 E. Broad Street, 14th Floor
Columbus, Ohio 43215
(614) 466-9529
(866) 566-7358 (fax)
brittany.steele@ohioattorneygeneral.gov
tracy.dickens@ohioattorneygeneral.gov

Counsel for Plaintiff