

FILED
LUCAS COUNTY

2016 APR 27 P 2: 22

COMMON PLEAS COURT
BERNIE QUILTER
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

STATE OF OHIO, ex rel.
OHIO ATTORNEY GENERAL
MICHAEL DEWINE
30 East Broad Street, 14th Floor
Columbus, Ohio 43215

Plaintiff,

v.

1871 DEVELOPERS, LLC
d/b/a Red Fitness 24/7
2035 S. Reynolds Road
Toledo, Ohio 43615

and

DAVID BARNA
1100 Old Farm Trail
Medina, Ohio 44256

Defendants.

CASE NO.

G-4801-CI-0201602535-000

Judge

JUDGE

LINDA J. JENNINGS

**COMPLAINT AND REQUEST
FOR DECLARATORY JUDGMENT,
INJUNCTIVE RELIEF,
CONSUMER DAMAGES,
AND CIVIL PENALTIES**

JURISDICTION AND VENUE

1. Michael DeWine, Attorney General of Ohio, 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. 1345.07.
2. The actions of Defendants, hereinafter described, have occurred in Lucas County, Ohio and, as set forth below, are in violation of the Consumer Sales Practices Act ("CSPA"), R.C.

1345.01 et seq., its Substantive Rules, O.A.C. 109:4-3-01 et seq., and the Prepaid Entertainment Contracts Act (“PECA”), R.C. 1345.41 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)(3), in that Lucas County, Ohio is where Defendants conducted the transactions that gave rise to this action.

DEFENDANTS

5. Defendant 1871 Developers, LLC owned and operated, at all times relevant to this action, a fitness facility located in Toledo, Lucas County, Ohio.
6. At all times relevant to this action, Defendant 1871 Developers, LLC also did business as “Red Fitness” or “Red Fitness 24/7” (hereinafter “Defendant Red Fitness”).
7. Defendant David Barna (hereinafter “Defendant Barna”) is a natural person who resides at 1100 Old Farm Trail, Medina, Ohio 44256.
8. Defendant Barna is the owner, principal representative, and registered agent for Defendant Red Fitness.
9. 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 either directly or indirectly by soliciting and selling goods or services to consumers in Lucas County, Ohio for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D).
10. Defendants, at all times relevant herein, operated “health spa services,” as defined by the PECA, R.C. 1345.41(A)(4).

11. Defendants entered into prepaid entertainment contracts with consumers, as defined in R.C. 1345.41(A), as Defendants entered into contracts with consumers for gym memberships where the consumers paid for or were obligated to pay for service prior to being able to use the Defendants' fitness facilities.

12. Defendant Barna, by virtue of his position as owner and principal representative of Defendant 1871, alone or in conjunction with others, caused, participated in, controlled, directed, ratified and/or ordered the violations of law alleged in this Complaint.

STATEMENT OF FACTS

13. At all times relevant herein, Defendants owned and operated a fitness facility in Toledo, Lucas County, Ohio.

14. Defendants issued gym memberships to consumers that often required the consumers to enter into contracts that were typically one to three years in length.

15. In order to use the facility, Defendants required consumers to either pay the full contract price in advance or authorize the company Affiliated Acceptance Corporation to bill the consumers' checking, savings, or credit card accounts monthly.

16. Defendants' contracts contained an "auto-renewable" clause which stated that after the initial contract term, the contract would automatically renew and monthly payments would be automatically withdrawn from consumers' accounts. Some contracts required the consumer to cancel the automatic renewal by issuing written notice directly to the billing company.

17. At the time of the transactions, Defendants failed to provide consumers with proper notices of cancellation forms describing the consumers' rights to cancel.

18. From approximately April 27, 2014 until approximately January 30, 2015, Defendants operated a fitness facility that had certain features, such as an indoor swimming pool and a track. This gym was located at 5424 Airport Highway, Toledo, Ohio 43615.
19. On or about January 30, 2015, Defendants moved their gym to a building that did not have the same or substantially similar features, such as an indoor swimming pool or a track. This facility was located at 2035 S. Reynolds Road, Toledo, Ohio 43614.
20. When Defendants moved to the Reynolds Road facility, some consumers attempted to cancel their memberships due to the substantial change in the features of the facility.
21. Defendants failed to honor the cancellation requests from consumers who wanted to cancel due to the substantial change in facilities and failed to give refunds or arrange for a substantially similar facility within twenty-five miles to accept Defendants' contracts with the consumers.
22. On or about August 26, 2015, Defendants permanently closed their facility on Reynolds Road without giving prior notice to consumers.
23. Defendants closed their facility and did not arrange for a substantially similar facility located within twenty-five miles of the consumers' residences to accept Defendants' obligations under their contracts with consumers.
24. Defendants have not provided refunds to consumers for the unused portions of their pre-paid contracts.
25. Some consumers continued to be billed for membership dues after the gym had closed. Defendants have not provided refunds to these consumers.

PLAINTIFF'S CAUSES OF ACTION

COUNT ONE

VIOLATIONS OF THE PREPAID ENTERTAINMENT CONTRACTS ACT

26. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Twenty-Five (1 – 25) of this Complaint.
27. Defendants violated the PECA, R.C. 1345.42(B)(8), and the CSPA, R.C. 1345.02(A), by failing to honor cancellations or give refunds after Defendants relocated to a facility that was not substantially similar. Alternatively, Defendants did not arrange for a substantially similar facility within twenty-five miles from the buyers' residences to accept Defendants' obligations under their contracts with consumers.
28. Pursuant to R.C. 1345.48, the violations described herein constitute deceptive practices in violation of R.C. 1345.02 of the CSPA.
29. Such acts and practices have previously been determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendants committed such acts or practices after the court decisions were made available for public inspection pursuant to division R.C. 1345.05(A)(3).

COUNT TWO

VIOLATIONS OF THE PREPAID ENTERTAINMENT CONTRACTS ACT

30. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Twenty-Five (1 – 25) of this Complaint.
31. Defendants violated the PECA, R.C. 1345.42(B)(8), and the CSPA, R.C. 1345.02(A), by closing their fitness facility and failing to provide refunds for the unused portions of the contracts. Alternatively, Defendants did not arrange for a substantially similar facility within twenty-five miles from the buyers' residences to accept Defendants' obligations under their contracts with consumers.

32. Pursuant to R.C. 1345.48, the violations described herein constitute deceptive practices in violation of R.C. 1345.02 of the CSPA.

33. Such acts and practices have previously been determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendants committed such acts or practices after the court decisions were made available for public inspection pursuant to division R.C. 1345.05(A)(3).

COUNT THREE
VIOLATIONS OF THE PREPAID ENTERTAINMENT CONTRACTS ACT

34. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Twenty-Five (1 – 25) of this Complaint.

35. Defendants violated the PECA, R.C. 1345.42(B)(7), and the CSPA, R.C. 1345.02(A), by providing contracts to consumers that contained an improper Relocation term, stating that no prepaid membership dues would be refunded if a buyer relocated beyond a twenty-five mile radius of the gym.

36. Pursuant to R.C. 1345.48, the violations described herein constitute deceptive practices in violation of R.C. 1345.02 of the CSPA.

37. Such acts and practices have previously been determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendants committed such acts or practices after the court decisions were made available for public inspection pursuant to division R.C. 1345.05(A)(3).

COUNT FOUR
VIOLATIONS OF THE PREPAID ENTERTAINMENT CONTRACTS ACT

38. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Twenty-Five (1 – 25) of this Complaint.

39. Defendants violated the PECA, R.C. 1345.44(A) and (B), and the CSPA, R.C. 1345.02(A), by failing to give proper notice to consumers of their right to cancel their contracts.

40. Pursuant to R.C. 1345.48, the violations described herein constitute deceptive practices in violation of R.C. 1345.02 of the CSPA.

41. Such acts and practices have previously been determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendants committed such acts or practices after the court decisions were made available for public inspection pursuant to division R.C. 1345.05(A)(3).

COUNT FIVE
VIOLATIONS OF THE FAILURE TO DELIVER RULE

42. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Twenty-Five (1 – 25) of this Complaint.

43. Defendants committed unfair and deceptive acts and practices in violation of R.C. 1345.02(A) and O.A.C. 109:4-3-09 by accepting money from consumers and then closing their facility before delivering all services paid for by consumers. Defendants have not issued refunds to consumers.

COUNT SIX
VIOLATIONS OF THE CONSUMER SALES PRACTICES ACT

44. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Twenty-Five (1 – 25) of this Complaint.

45. Defendants committed unfair and deceptive acts and practices in violation of R.C. 1345.02(A) by making withdrawals from consumers' bank accounts after their facility had closed. Defendants have not issued refunds to consumers.

PRAYER FOR RELIEF

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

- A. DECLARE that each act or practice complained of herein violates the CSPA, R.C. 1345.01 et seq., and the PECA, R.C. 1345.41 et seq., in the manner set forth in the Complaint.
- B. ISSUE A PERMANENT INJUNCTION enjoining Defendant David Barna and Defendant Red Fitness, doing business under those names or any other names, their agents, partners, servants, representatives, salespersons, employees, successors and assigns, and all persons acting in concert and participation with them, directly or indirectly, through any consumer transaction from committing any unfair, deceptive, or unconscionable act or practice which violates the CSPA, R.C. 1345.01 et seq. or the PECA, R.C. 1345.41, et seq. including, but not limited to, violations of the specific statutes alleged to have been violated herein.
- C. ORDER Defendants to pay damages to all consumers injured by Defendants' conduct as set forth in this Complaint, pursuant to R.C. 1345.07(B) and R.C. 1345.48(B).
- D. 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).
- E. GRANT Plaintiff his costs in bringing this action.
- F. ORDER Defendants to pay all court costs.
- G. Grant such other relief as the Court deems to be just, equitable, and appropriate.

Respectfully submitted,

MICHAEL DEWINE
Ohio Attorney General



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