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Clerk of Courts
Hamilton County, Ohio
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**STATE OF OHIO EX REL
ATTORNEY GENERAL DAVE
YOST
vs.
JOSHUA SWANN**

A 2001558

**FILING TYPE: INITIAL FILING (OUT OF COUNTY) WITH NO JURY
DEMAND**

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VERIFY RECORD

**IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO**

STATE OF OHIO ex rel.)	
ATTORNEY GENERAL)	
DAVE YOST)	Case No:
30 E. Broad St., 14 th Floor)	
Columbus, Ohio 43215)	
)	Judge:
Plaintiff,)	
v.)	
)	
JOSHUA SWANN)	COMPLAINT AND REQUEST FOR
D/B/A WINDOW CITY OF CINCINNATI)	DECLARATORY JUDGMENT,
D/B/A CUSTOM WINDOW SOLUTIONS)	INJUNCTIVE RELIEF, CIVIL
7496 Knights Knoll Ct.)	PENALTIES, AND OTHER
West Chester, Ohio 45069)	APPROPRIATE RELIEF
)	
)	
)	
Defendant.)	

JURISDICTION AND VENUE

1. Plaintiff, State of Ohio, by and through its counsel, the Attorney General of Ohio, Dave Yost, 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 Joshua Swann d/b/a Window City of Cincinnati, d/b/a Custom Window Solutions ("Defendant"), hereinafter described, have occurred in Hamilton 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 its substantive rules, and the Home Solicitation Sales Act (“HSSA”), R.C. 1345.21 *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(C)(3) and (6), in that Defendant conducted activity that gave rise to the claims for relief in Hamilton County and Hamilton County is the county in which all or part of the claims for relief arose.

DEFENDANT

5. Defendant Joshua Swann is a natural person residing at 7496 Knights Knoll Ct., West Chester, Ohio 45069.
6. Defendant operated under the names Window City of Cincinnati and Custom Window Solutions, both fictitious business names not registered with the Ohio Secretary of State.
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 window repair and installation, home repair, and 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 providing goods and services to consumers, including repair and installation of windows, siding, gutters and, in at least one instance, shutters, and failed to deliver some of those goods and services within eight weeks.

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9. Defendant does not have a retail business establishment having a fixed permanent location where goods are exhibited or services are offered for sale on a continuing basis.
 10. Defendant accepted substantial payments from consumers, but failed to begin work for which he was paid.
 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 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.
 14. Defendant provided shoddy and substandard window replacement and installation and home repair services to consumers and then failed to correct such services. In some instances, Defendant's shoddy workmanship caused additional damage to consumers' properties.
 15. Defendant failed to register his fictitious business names Window City of Cincinnati and Custom Window Solutions with the Ohio Secretary of State.
 16. Defendant failed to honor the workmanship warranty on the consumers' contracts.
 17. At the time of the transactions, Defendant failed to provide proper notice to consumers of their rights to cancel the transactions, including providing a detachable notice of cancellation form.

PLAINTIFF'S FIRST CAUSE OF ACTION:

VIOLATIONS OF THE CSPA

COUNT I- FAILURE TO DELIVER

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 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

20. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs 1-19 of this Complaint.
21. 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.
22. 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 NAMES

23. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs 1-22 of this Complaint.
24. 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.
25. 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 IV-FAILURE TO HONOR WARRANTY

26. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs 1-25 of this Complaint.
27. Defendant committed unfair or deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A) and R.C. 1345(B)(10), by representing that a consumer transaction involved a warranty when that representation was false.
28. 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

**FAILURE TO PROVIDE PROPER NOTICE OF THREE-DAY RIGHT OF
RESCISSION**

29. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs 1-28 of this Complaint.
30. Defendant violated the HSSA, R.C. 1345.23 and R.C. 1345.02(A), by failing to provide proper notice to consumers of their rights to cancel their transactions, including providing detachable notice of cancellation forms.
31. 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).

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, 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 actual 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, including, but not limited to, the costs of collecting on any judgment awarded.
- 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,

DAVE YOST
Attorney General

/s/ Brandon C. Duck
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